

ROYAL COURT
(Samedi Division)

211.

25th November, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Le Ruez and Qu er e

The Attorney General

-v-

David Waller

Sentencing by the Inferior Number of the Royal Court, following conviction at the *Assise Criminelle* on 9th October, 1997, on a not guilty plea to:

- 1 count of grave and criminal assault (count 1); and
- 1 count of obstructing the Police in the execution of their duty (count 2).

Age: 28

Details of Offence:

Count 1

The Police Officer assaulted had cautioned and arrested Waller for obstructing another Officer in the execution of her duty. Whilst leading Waller to the Police vehicle, Waller swore at and shrugged the Officer off. When the Officer took hold of Waller, Waller placed the Officer in a deliberate head lock. They fell to the ground with Waller on top of the Officer. Waller still had his arm around the Officer's throat and tightened his grip preventing the Officer from breathing. The Officer felt his eyes bulging, great pain, and said in evidence that he felt on the point of passing out. He had no strength left and thought he was going to die. Other Officers' evidence at trial confirmed the degree of choking as did the existence of petechial haemorrhages above the neck. The Officer was freed through considerable effort by colleagues whereupon he was found to be in a state of some shock and was conveyed to the hospital. The Officer had cuts, abrasions and bruising, and found it difficult to come to terms with the assault for some time afterwards. He was signed off work for three weeks, placed on light duties for a fortnight after that, and was still visibly affected by the experience when giving evidence at trial. The offence was aggravated by Waller having been under the influence of alcohol.

Count 2

The offence of obstruction occurred shortly prior to that of grave and criminal assault. Waller and a number of male friends had been out drinking. In the early hours of the morning, one of their number was apprehended by Officers in Le Masurier's car park off James Street. The group became abusive and threatening towards the Officers to such a degree that they had to draw and rack their ASP batons. Several calls for urgent assistance were put out and a large number of Police attended the scene to quell what had become a serious public order incident. Waller played his full part and in particular ignored an instruction from the female Officer to leave the scene on at least three occasions. He came up close to her on more than one occasion and she was very much intimidated by him, such that in evidence she said she had been absolutely petrified. She instructed another Officer to arrest Waller whereupon the offence of grave and criminal assault occurred.

Details of Mitigation:

There was no premeditation and no weapon was used. The background revealed a stable relationship with a girlfriend who had two children from an earlier relationship. They intended to marry. Waller had a good work record as a shop-fitter and references were produced. Offences of a similar nature had been committed in the past, including one of assault on Police, but all had been dealt with by way of moderate fine and there was a gap in the record subsequent to the last conviction on 3 January 1990. Waller expressed sympathy for the Officer but no remorse as he continued to protest his innocence.

Conclusions:

Count 1 : 2 ½ years' imprisonment.

The deliberate use of violence upon a Police Officer in the course of his duty must attract a custodial sentence, in the absence of exceptional circumstances. There were none here. Adopting the *Norris* range of three to five years' imprisonment, the Crown considered the appropriate starting point for the offence of grave and criminal assault to be one of three years' imprisonment. The Crown moved for a sentence of two and a half years' imprisonment.

Count 2 : 3 months' imprisonment, consecutive.

This was considered to be a serious incident of obstruction. The Crown moved for a sentence of three months' imprisonment to run consecutively in the light of the principle in *Hughes* (SN) 17 June 1987.

Sentence and Observations of the Court:

Count 1 : 2 years' imprisonment.

Count 2 : 7 days' imprisonment, concurrent.

The Court observed that the incident became extremely threatening and remarked upon the female Officer having testified as to being absolutely terrified. The male Officer was strangled near to death. The Court noted how dangerous the choke hold is and the fact that the Officer suffered injury and trauma. It expressly followed the *Norris* guidelines and was in no doubt that imprisonment was required. However, in light of the mitigation, the conclusions would be reduced. On Count 1, Waller was sentenced to two year's imprisonment and on Count 2 to a period of seven days' imprisonment expressed, in the "exceptional circumstances" of the case, to run concurrently.

**A.D. Robinson, Esq., Crown Advocate.
Advocate J. Martin for the accused.**

JUDGMENT

THE DEPUTY BAILIFF: Arising out of a *fracas* in Le Masurier's car park in James Street Waller was convicted of a grave and criminal assault by a jury.

A group of men, some of them intoxicated, were stopped at the car park because two police officers on mobile patrol noticed that one of them was urinating. The man was - as the police found out later - subject to an arrest order. He tried to run away and was put on the ground by the police officers. There were verbal remonstrations from the friends of this man and the matter became extremely threatening. As *bâtons* were drawn and emergency calls were made, WPC Garwood mentions being absolutely terrified.

One of those answering the call was PC Coxshall. There were a number of officers attending at the scene. We have the evidence of PC Coxshall and from his evidence and that of Dr. Holmes, it is clear that he was nearly strangled to death. The jury found that there was a grave and criminal assault. PC Coxshall, we recall, said that he was a rugby player and had never experienced anything like this, although he had often been under a pack of bodies.

Therefore, we are dealing with the deliberate use of violence on a police officer in the course of his duty. Police officers in such circumstances are entitled to be fully protected by these Courts. The choke-hold was, in our view, extremely dangerous and

PC Coxshall suffered injury and trauma. Dr. Holmes was also his general practitioner and both he and PC Coxshall told us of the injury and the trauma.

We have no reason to doubt that we must follow the guidelines of the Superior Number in AG -v- Norris (1992) JLR N.11; (3rd June, 1992) Jersey Unreported, and we agree with the learned Crown Advocate that the starting point in this case must be between three and five years. We have no doubt that a custodial sentence is the proper course to follow.

There is mitigation and Miss Martin has covered all the circumstances, in our view, very adequately. Waller has a record and there is an assault on a police officer, but he was dealt with in that case by a fine of £100 and eight years has elapsed since that offence occurred. He has given us references and his partner has written us a detailed letter, as has Waller himself. In that letter he has expressed sympathy for the officer. He has already served seven months in prison. He has, of course, pleaded not guilty and continues to maintain his innocence, but that is not a matter for this Court. He is now 28 years old and his future appears to be an optimistic one.

Although normally we would deal with the two counts consecutively, we are prepared, in these exceptional circumstances, to deal with the matter slightly differently. Waller, would you stand up, please; in the circumstances, we sentence you to two years' imprisonment on count 1; and, on count 2, we sentence you to seven days' imprisonment, concurrent. We will also take into account the seven months you have already spent in custody.

Authorities

Current Sentencing Practice:

R: 27 Feb'94: pp.110261-3: L2-2S.
pp.30203-4: C2-2D.

R: 30 Jul'95: pp. 110220-110220/1: R. -v- Finch (1992) 14 Cr.App.R.(S) 226.

Archbold (1997 Ed'n): pp.499-500: paras. 5-9 to 5-10.

R. -v- Solomon & Triumph (1984) 6 Cr.App.R.(S) 120 CA.

R. -v- Tovey (1993) 14 Cr.App.R.(S) 766.

AG -v- Aubin (27th July, 1989) Jersey Unreported.

AG -v- Murphy (3rd October, 1994) Jersey Unreported.

AG -v- Evans, Philips (8th November, 1996) Jersey Unreported.

AG -v- Norris (1992) JLR N.11; (3rd June, 1992) Jersey Unreported.

Whelan: Aspects of Sentencing in the Superior Courts of Jersey: pp.37A, 82-94.

Hughes -v- AG (1987-88) JLR N.19, 20; (17th June, 1987) Jersey Unreported.