

Judgment 19/2005

**Mark Robert Brender and Wesley
Guilbert Ceillam – Royal Court
(Criminal File 3/2005) – 7 April 2005**

Theft (Bailiwick of Guernsey) Law, 1983 – burglary and inflicting grievous bodily harm – need for a deterrent sentence – starting point set at four years’ imprisonment, before allowing for any discount for guilty plea and any mitigation

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 7th day of April, 2005 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:- David Charles Lowe, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Richard, O.B.E., Michael Henry de la Mare and Michael John Tanguy, Esquires, Jurats.

2005 – No. 3

In the action of THE LAW OFFICERS OF THE CROWN against MARK ROBERT BENDER and WESLEY GUILBERT CEILLAM to see the said Law Officers present an Indictment containing one count, copies of which Indictment were annexed to the Summonses served upon the said Accused and have been delivered to Advocates C.M. Fooks and S. Mallett, respective Counsel for the said Accused;

And the said Law Officers claim costs.

Indictment

THE LAW OFFICERS OF THE CROWN

v.

MARK ROBERT BRENDER AND WESLEY GUILBERT CEILLAM

Before the Bailiff and Jurats of the Royal Court of Guernsey, are charged with the following offences: -

First Count

Statement of Offence

Burglary; contrary to section 9(1)(b) of the Theft (Bailiwick of Guernsey) Law, 1983, as amended.

Particulars of Offence

MARK ROBERT BRENDER AND WESLEY GUILBERT CEILLAM, together on the 21st day of October, 2004 in the Parish of Saint Peter Port, having entered as trespassers a part of a building, namely a flat known as Top Flat, 28 Mill Street, inflicted grievous bodily harm upon Anthony Shaun Truffit, a person therein.

WHEREAS on the 4th day of February, 2005 the Accused Ceillam appeared before the Deputy Bailiff sitting alone and THE COURT ADJOURNED the matter in respect of the said Ceillam;

AND WHEREAS on the said 4th day of February, 2005 the Accused Brender also appeared before the Deputy Bailiff sitting alone and pleaded Guilty to the one Count in the Indictment and the Court recorded a plea of Guilty;

AND WHEREAS on the 11th day of February, 2005 the Accused Ceillam appeared before the Deputy Bailiff alone and pleaded Guilty to the one Count in the Indictment and the Court recorded a verdict of Guilty;

THE COURT this day having heard Advocate F. Russell, Counsel for the Crown and Advocates C.M. Fooks and S. Mallett, Counsel for the Accused Brender and Ceillam respectively, and having considered Social Enquiry Reports prepared by Greg Harvey, Senior

Practitioner – Probation Officer for the said Brender and Kerry Le Cheminant, Probation Officer for the said Ceillam, SENTENCED the Accused MARK ROBERT BENDER to a period of twenty-four months' Youth Detention, such sentence to reckon from the 23rd day of October, 2004 and the Accused WESLEY GUILBERT CEILLAM to a period of twenty-six months' imprisonment AND THE COURT ACTIVATED the suspended sentence of four months' duration imposed on the said WESLEY GUILBERT CEILLAM by the Magistrate's Court on the 19th day of September, 2003 and suspended for two years in respect of a charge of Assault, such sentence to be served in full and to run consecutively to that already imposed this day, the total sentence of thirty months' imprisonment to reckon from the said 23rd day of October, 2004.

S M SIMMONDS
Her Majesty's Deputy Greffier

SENTENCING REMARKS

Law Officers of the Crown

v

Mark Robert Brender (18) and Wesley Guilbert Ceillam (25)
Thursday 7th April 2005

Background

Mr Brender

1. Mark Robert Brender the Court has noted that you are an 18 year old single man. You had not been employed in the 4 month period before the offence.
2. You have a bad criminal record including an offence of assault, criminal damage, public order and offences of dishonesty.
3. You had been sentenced to 2 months Youth Detention on 19th April 2004 for an offence of common assault on an adult and suspended sentences had been activated resulting in a 3-month total sentence. You were released in June 2004. The period of post custodial supervision had expired in mid-September 2004.

Mr Ceillam

4. Wesley Guilbert Ceillam the Court has noted that you are a 25-year-old single man. You had been signed off work for some 6 months before the offence.
5. You also have a criminal record less serious than Mr Brender but it includes public order offences and an offence of common assault on an adult for which you were sentenced in the Magistrate's Court on 19th September 2003 to a period of 4 months imprisonment. That sentence was suspended for 2 years. You are now in breach of that sentence.

Offence

6. You have both pleaded guilty to a single count of burglary and inflicting grievous bodily harm. It was a joint enterprise. The maximum sentence for such an offence is a custodial sentence of 14 years. Mr Brender by virtue of his age would receive a sentence of Youth Detention.

Circumstances

7. It was shortly before 11.00 p.m. on 21st October 2004 that the offence occurred. The 40-year-old male victim was alone in his bedroom in a second floor flat in the Town area. He had locked the yale type lock on the door to his flat and gone to bed.
8. Mr Brender's mother had been the victim's partner for several years and the relationship had terminated some one-month before. She had then commenced a relationship with Mr Ceillam and that relationship was continuing.
9. Mr Ceillam forced a violent and menacing entry into the victim's flat. Mr Ceillam had drunk some alcohol but not a great deal. The Court noted from a photograph that part of the door containing the lock had been smashed and ended up on the floor.

10. It would be unsurprising in such circumstances if the victim had not sought to defend himself. Mr Ceillam was the first of the Defendants to attack the victim. The Court is satisfied that Mr Ceillam was followed into the flat by Mr Brender seconds afterwards. Mr Ceillam, the elder man, was clearly the instigator.
11. Mr Brender who had drunk 8 pints of cider and 2 pints of beer had joined in the attack. He had picked up a substantial candle 6 inches by 3 inches in the victim's lounge and armed with it as a weapon he had entered the victim's bedroom and set about beating the victim with it.
12. The victim sustained a broken nose, a laceration down his scalp extending almost to his left eyebrow, a laceration to his upper lip and face and extensive bruising to both sides of his jaw. His face was badly bruised and swollen including swelling over his left cheek and bruising to both sides of his jaw. He had extensive bruising down the back of his left chest from the armpit area down to the top of his buttocks extending to the spine.
13. The victim was taken to hospital by ambulance and because his injuries were so extensive he was admitted to the surgical ward for observation. He required morphine to relieve his pain. He spent the night in hospital and was discharged at 1.00 p.m. the following day. Fortunately he has made a reasonably good recovery and there will be no long lasting effects.
14. The precise involvement of each Defendant is not clear but Mr Brender accepts that his aggression was the most violent and sustained. Although Mr Ceillam has claimed that the violence, which he personally perpetrated on the victim, was less serious than that perpetrated by Mr Brender he nevertheless readily accepts that he initiated the attack and it was a joint enterprise in which two assailants attacked a defenceless man. The essence of joint enterprise responsibility for a criminal offence is that each defendant showed the intention to commit the offence and took some part in it however great or small so as to achieve that aim. Each of the defendants is responsible for the grievous bodily harm no matter which of them caused the injuries.
15. Furthermore Mr Ceillam, the elder of the assailants apparently did nothing at first to restrain Mr Brender but did stop him.
16. The attack was clearly horrific, violent and sustained and lasted for several minutes. There was extensive blood splattering across the walls of the flat, a large pool of blood on the bed and bedding and Mr Brender left on the bed a blood covered imprint of one of his feet.
17. When the Defendants were arrested blood splattering was visible on their clothing and shoes and this proved to be the victims blood.
18. The Court concluded that this was a most serious attack on a victim in his own home. The Defendants are fortunate that the victim did not suffer more serious injury.
19. Neither of the Defendants cooperated with officers when interviewed which they were entitled to do.

Youth Detention

20. The Court having taken account of the facts and circumstances of the offending is satisfied that the only appropriate method of dealing with Mr Brender who is 18 years of age is to impose on him a custodial sentence. The offence was so serious that a non-custodial sentence cannot be justified. The Court came to a similar conclusion so far as Mr Ceillam is concerned.

Starting Point

21. When offenders, no matter how young, deliberately and forcibly enter another persons private accommodation and there inflict grievous bodily harm on a defenceless occupant there is a legitimate public expectation that such offenders will be severely punished with a deterrent sentence to bring home to them the gravity of the offence and to warn others of the likely consequences of behaving in a similar way.
22. The Court when fixing a starting point took into account the involvement of both Mr Brender and Mr Ceillam and their respective criminal records.
23. Notwithstanding that Mr Brender is substantially younger than Mr Ceillam the Court after taking into consideration the involvement of both Defendants in the attack did not see fit to set a lower starting point for Mr Brender.
24. Taking into account the burglary element and the nasty and vicious joint attack on a defenceless man this Court considered a custodial sentence starting point of 4 years to be appropriate before taking account of any discount for a guilty plea and any further mitigation.

Mitigation

25. The Court has taken account of the contents of both Social Enquiry Reports and also the able submissions of both Counsel.

Mr Brender

26. Mr Brender the Court has noted the letter from your mother, the character reference from a Youth Worker and from the mother of your godchild.
27. The Court has noted that you have shown remorse.
28. The Court has noted your youth and also noted the unsettling features in your family, the peer group with whom you associate and your problems with alcohol.
29. The Court has noted that you were not the instigator of the violence.
30. The Court noted your claim that the victim had used threatening behaviour against your mother. Even if he had done so you should not have taken the law into your own hands. You had consumed an excessive quantity of alcohol, and were intoxicated. That may be in part an explanation for your aggression but it cannot be an excuse for your actions. The fact that you had completed post sentence Probation Service supervision some 7 weeks before was another unfortunate factor in your case.

Mr Ceillam

31. Mr Ceillam the Court has taken into account the character references provided by your mother and your uncle and your own personal letter. The Court has also noted that you had a particularly unfortunate childhood.
32. You also claim that the victim had issued threats against your daughter. Again whatever grievance you may have harboured you should not have taken the law into your own hands.
33. The Court has also noted the progress which you have made in prison and your motivation to change your life.

34. The Court was satisfied that in the case of both of you it would not be appropriate to suspend the sentences.

Sentences

35. The Court sentences you as follows:

Mr Brender 24 months Youth Detention

Mr Ceillam (1) 26 months imprisonment

(2) with respect to the sentence of 4 months imprisonment for assault imposed in the Magistrate's Court on 19th September 2003 the Court having considered the totality of the period of imprisonment nevertheless concluded that it should be activated without reduction and should be served consecutively to the sentence imposed today.

You will therefore serve a total sentence of 30 months imprisonment.

36. You were each taken into custody on 23rd October 2004. Your sentences will reckon and compute from that date.

Postscript

37. The Court has sentenced 13 defendants for offences involving serious violence since the 1st January 2003. In the period 1st January 2000 to 31st December 2002 it had sentenced only 7 such defendants.
38. Persons appearing in the Royal Court for sentence in cases involving violence will invariably receive a lengthy immediate custodial sentence unless there are most exceptional mitigating factors.
39. In light of the substantial increase in offenders appearing for sentence in the last 2¼ years the Court has resolved that the sentences, which the Court will hand down in future, will be more severe than in the past. This will be so in respect of all offences of violence committed from tomorrow. Sentences will include a substantial deterrent element.
40. The loud and clear message from this Court is that violent conduct will not be tolerated and will be punished severely by the Courts of this Island.