

Judgement 55/2006

**Paul Christopher Luke Walsh – Court of Appeal
(Criminal Appeal 337) – 7th April 2006**

Grievous bodily harm with intent – appeal against sentence – element of provocation – sentence reduced from 6 years 9 months to 5 years imprisonment

IN THE COURT OF APPEAL OF GUERNSEY

The 7th day of April, 2006 before The Rt. Hon. Sir Charles Mantell, PC, presiding, David Arthur John Vaughan, Esq., C.B.E., Q.C. and Sir de Vic Carey

THE LAW OFFICERS OF THE CROWN

v

PAUL CHRISTOPHER LUKE WALSH

Appellant

In the appeal of the
Appellant from the sentence imposed on him by the Royal Court on 4th November, 2005;

THE COURT, having
on 6th April, 2006, heard Advocates P.T.R. Ferbrache and F. Russell for the Appellant and the Crown respectively thereon, this day ALLOWED the appeal, SET ASIDE the sentence of six years and nine months' imprisonment imposed by the Royal Court and SUBSTITUTED a sentence of five years' imprisonment, to run from the 20th May, 2005.

K H TOUGH
Registrar of the Court of Appeal.

FRIDAY 7TH APRIL 2006

COURT OF APPEAL

Before

Sir Charles Mantell; presiding
David Arthur John Vaughan, Esq., CBE QC
Sir de Vic Carey

PAUL CHRISTOPHER LUKE WALSH
(Criminal Appeal No. 334)

Judgment delivered by Sir Charles Mantell

1. Paul Christopher Luke Walsh is 32 years of age having been born and brought up in Ireland before moving first to England and then to Guernsey in February 2005. By that time he had accumulated a large number of criminal convictions, mainly for burglary and theft, but also in 1994 for possessing an offensive weapon in a public place and in 1998 for wounding, the last for which he received a sentence of 30 months imprisonment. Unfortunately, he had also acquired a liking for alcohol which he habitually indulged to excess. Perhaps we should not be over critical as reports show his upbringing to have been far from satisfactory with a father who had abandoned him at a young age and a mother who was chronically addicted to heroin. Also in his favour is that he has never been work shy and whenever possible has found employment in the building industry.
2. By 20 May 2005, Walsh had found employment with a firm of building contractors in Guernsey and had begun a relationship with a young

woman. It may have seemed that there was some improvement in his prospects, but on that day things went badly wrong. His girlfriend was a barmaid at a public house called Happy Landings. She was working there during the evening of 20 May and Walsh was present as a customer, so was a man named Dean Lawson. For some reason, not entirely clear from the accounts of others present in the bar, fighting broke out between Walsh and Lawson. Nor is it entirely clear who started the brawling or who came off best, although Lawson must have had a considerable advantage being very much the larger of the two. What is clear, however, is that the manager, a Mr Opie, intervened, told the two men that they were not to have more to drink and as a result Walsh left to go to his home which was nearby, but smashing the windows of Lawson's motorcar on the way.

3. It seems that once at home, Walsh had more to drink and in due course set off back to the Happy Landings, having first armed himself with a kitchen knife. What happened as he drew near to the public house was witnessed by Mr Opie, whose account is accepted as accurate:-

"I saw Paul walking along the pavement from the airport toward the hotel. I ran to him, about 200 yards, and told him not to return. As I spoke to him I saw a knife in his right hand. I saw the knife slide down his sleeve and into his hand. The knife had been concealed up his right sleeve. The knife was a kitchen type knife with a blade about 10" or 12" long.

It had a black handle.

I told him not to be stupid and to go home. He was not aggressive towards me. He said he was not going home without 'Chez', his

girlfriend. At this time I saw Dean and another person come out of the hotel and walk towards us. We were still on the pavement between the hotel and airport entrance. I told Dean and the other man not to come nearer as Paul had a knife. I saw my wife at this time in the hotel car park and shouted to her to call the police. I saw the man with Dean pick up a metal road sign I had seen on the gateway to Jackson's Garage. I told him to put it down which he did. Dean then picked up the sign and ran towards Paul.

During this, Paul had the knife out in his right hand pointing towards Dean and the other man and said "If you come near me I'll stab both of you". Dean then hit Paul with the sign and they both fell to the ground. Then I saw Paul quickly get up. Dean was still on the ground and Paul stabbed Dean at least five times with the knife. The knife hit Dean about the abdomen, on his right side and around Dean's arm.

Two of Dean's friends then appeared and set about Paul. These two men punched and kicked Paul. Paul then ended up on the ground.

I could see lots of blood on Dean and around him. Dean had stood up at this time. Between Dean's friends and myself we took Dean back to the hotel. As we reached the hotel car park Dean collapsed on to the ground and people tried to help Dean.

At this time Paul was sitting on the pavement where we left him. I saw somebody I only know as 'New' standing next to Paul at this time".

4. The Police, called to the scene by Mr Opie's wife, arrested Walsh who explained that he had been assaulted by four people who had jumped him. The knife was recovered from a hedge where Walsh had thrown it. Walsh was taken to the Accident and Emergency Department for treatment for his injuries. So was Lawson, but in his case there was much more to worry about. Although conscious and communicating he was pale and shivering, hypertensive and subject to a rapid pulse. On examination it turned out that he had suffered multiple stab wounds including one to the right armpit, two to the right arm, one to the right side of the neck, two to the posterior right chest, one to the lower posterior chest and one to the back of the left hand. There was both blood and air in the pleural cavity. Fortunately, prompt surgical intervention allowed for drainage and closure of the several wounds. Lawson's blood pressure returned to normal. His recovery was rapid enough to allow for discharge from hospital on 27th May. Even so there is no doubt that his injuries were potentially life threatening.

5. Walsh was charged and indicted with inflicting grievous bodily harm with intent. On 19th August 2005 he pleaded guilty to the indictment before the Deputy Bailiff sitting alone. On 4th November 2005 he appeared before the Deputy Bailiff and 11 Jurats and after the facts had been opened and Advocate Ferbrache had mitigated was sentenced to 6 years 9 months imprisonment. In passing sentence the Court said "*this was a very serious incident. You had armed yourself with a large kitchen knife, which the Court has seen. Although you left your home to return to Happy Landings not to look for Mr Lawson but to persuade your partner to return home a confrontation with Mr Lawson was almost inevitable. He suffered multiple stab wounds which could well have been fatal.*"

The Court has decided that the starting point for this offence is 11 years immediate imprisonment. Taking into account your guilty plea and all that has been said on your behalf, the Court sentences you to 6 years and 9 months immediate custodial sentence to take effect from the date of the offence.”

6. At an earlier stage in its sentencing remarks the Royal Court had noted a decision of its own in *Brender and Ceillam* 7th April 2005, in which it had been stated by way of postscript “*the Court has sentenced 13 defendants for offences involving serious violence since 1st January 2003. In the period 1st January 2000 – 31st December 2002 it had sentenced only 7 such defendants.*

Persons appearing in the Royal Court for sentencing cases involving violence will invariably receive a lengthy immediate custodial sentence unless there are most exceptional mitigating factors.

In light of the substantial increase in offences appearing for sentences 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.

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.”

7. Walsh now appeals against his sentence with the leave of Sir de Vic Carey.
8. At the heart of the appeal is a complaint that the Royal Court set too high a starting point at 11 years. Previously, it is said, the range of

sentences considered appropriate following a trial for knifing offences lay between 3 and 8 years. A number of authorities from this and other jurisdictions have been cited which seem to justify the submission put forward by Advocate Ferbrache and nothing in the very helpful researches carried out by Crown Advocate Russell would appear to gainsay the proposition. Of course, even the authorities allow for departure from the suggested range in the case of particularly serious cases as, for example, where there has been torture or deliberate mutilation. These authorities, however, have to be viewed in the light of what has been said in *Brender and Ceillam*. We are quite sure that the sentiments there expressed are entirely justified and such as deserve the respect and support of the Court of Appeal. It would follow that the bracket indicated earlier will need to be revised though perhaps this is not the case in which such revision should be attempted.

9. There has also been some question whether the Court was right to adopt the procedure it did, namely to select a starting point from which a final sentence or finishing point might be achieved by making appropriate deductions for a timely plea of guilty and personal mitigation. In that connection we have been referred to an important judgment in the Jersey Court of Appeal namely *Harrison v Attorney General (2004) JCA 046*. Again, we do not think that this is the occasion to make pronouncements of principle concerning the proper approach to sentencing in this jurisdiction save to remark that the method adopted by the Royal Court in this case was, in our view, entirely appropriate. It must be remembered, of course, that a starting point is not the same thing as a tariff, though on occasions the two may coincide. Also, conventionally, in arriving at a starting point all the circumstances relating to the offence itself must be considered whether they serve to aggravate or to mitigate.

10. In the present case it was accepted that Walsh did not return to Happy Landings with any aggressive intent. Very wrongly he was carrying a knife but it is clear that his intention was to deter others from attacking him. In the event he was the victim of a very frightening assault carried out by more than one person and involving the use of a large metal sign. He himself received injuries. Nothing, of course, can justify or excuse the use of the knife once Lawson was on the ground and on that basis Walsh was plainly right to plead guilty to the offence, but there is no doubt in our minds that the offence was committed under a very considerable degree of provocation. But for that element of provocation we are far from saying that the starting point of 11 years was manifestly excessive; but giving it the weight we think it deserves, we arrive at a lower starting point namely 7 ½ years. Making due allowance for the early plea of guilty we consider that the appropriate sentence in this case was one of 5 years imprisonment. That will be substituted for the sentence of 6 years 9 months imposed by the Royal Court and to that extent this appeal against sentence is allowed.
11. Perhaps for the avoidance of doubt, we should say that that sentence is to commence on the date previously ordered by the Royal Court.