

Judgment 22/2003

**Christopher Mark Coleman
v Law Officers of the Crown
Court of Appeal
(Criminal Appeal 295)
11th April, 2003**

Blackmail – Co-accused – Disparity of sentence

IN THE COURT OF APPEAL OF GUERNSEY

Criminal Division

The 11th day of April, 2003 before Richard Charles Southwell, Q.C., Presiding, Sir John Nutting Bt., QC., and David Arthur John Vaughan, CBE, QC.

THE LAW OFFICERS OF THE CROWN

v

CHRISTOPHER MARK COLEMAN

Appellant

In the appeal of the Appellant
from the sentence imposed on him by the Royal Court on 22nd January, 2003;

THE COURT, having heard Advocates Miss S. L. Brehaut and G. D. McKerrell for the Appellant and the Crown respectively, thereon, GAVE JUDGMENT in the terms attached hereto and ALLOWED the appeal to the extent that the sentence of two years' imprisonment on the second count was set aside and replaced by a sentence of one and a half years' imprisonment, to run concurrently with the sentence of six months' imprisonment imposed by the Royal Court on the third count and to be effective from 2nd August, 2002.

K. H. TOUGH
Registrar of the Court of Appeal

OFFICIAL TRANSCRIPT

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FRIDAY 11TH APRIL 2003

THE COURT OF APPEAL OF GUERNSEY

Before

Richard Charles Southwell, Esq., QC
Sir John Nutting, Bt., QC
David Arthur John Vaughan, Esq., CBE QC

CHRISTOPHER MARK COLEMAN
(Criminal Appeal No. 295)

Judgment delivered by Sir John Nutting, Bt., QC

1. On 22nd January 2003 this Appellant appeared before Lieutenant Bailiff Day, and Jurats, to answer an Indictment containing four Counts. His co-accused was Miss Rachel Windsor-Smith. The first Count charged them with robbery to which they pleaded not guilty, pleas which were accepted by the Crown. The second, alternative, Count charged them with blackmail in that on 25th July 2002, with a view to gain for themselves, they made an unwarranted demand of money from Sasha Smith with menaces. They both pleaded guilty to this Count.
2. The third Count charged the Appellant alone with a further offence of blackmail the following day, 26th July 2002, in relation to the same victim. The fourth Count charged Miss Windsor-Smith alone on 31st July, with a similar offence in relation to the same victim. To the third and fourth Counts the offenders respectively entered pleas of guilty.
3. The Appellant was sentenced to 2 years imprisonment on the second Count and 6 months imprisonment on the third Count, concurrent. Miss Windsor-Smith was sentenced to 1½ years' imprisonment on the second Count and 3 months imprisonment on the fourth count, concurrent.
4. On 24th January 2003 the Appellant served notice of his intention to seek leave to appeal on the grounds of the disparity between the sentence that he had received and that given to his co-accused. On 1st April a single Judge of the Court of Appeal granted leave to appeal and legal aid.
5. In the winter of 2001 to 2002, Miss Windsor-Smith was employed by Bacon & Woodrow, which has offices in St. Peter Port. Whilst she was working for that company she became friends with the victim in this case, Mr. Smith. He was living at that time in a flat in the Commercial Arcade. Shortly before Christmas 2001 he became aware that Miss Windsor-Smith had to leave the flat which she was occupying at that time. Feeling sorry for her, he agreed that she could rent a room at his flat for approximately £400 a month. He also requested a deposit of £200.
6. Miss Windsor-Smith moved in shortly afterwards. After a while Mr. Smith became aware that she had a drink problem. He asked her to leave. When Miss Windsor-Smith moved out, she owed outstanding rent and due to the condition in which he quitted her room, Mr. Smith insisted she forfeit some of the deposit. According to Mr. Smith it was agreed between them

- that he would keep the deposit in lieu of outstanding rent and the state of the room. Some items of property belonging to Miss Windsor-Smith remained in the room after she left.
7. On 25th July, Mr. Smith finished work shortly after 5 o'clock and later went home. As he approached his flat he noticed Miss Windsor-Smith and the Appellant waiting nearby. This caused him some concern as he had been receiving threats from Miss Windsor-Smith since she had moved out, and he knew that the Appellant had a reputation for aggression.
 8. We now turn to Count 2 of the Indictment: Mr. Smith opened the door of the entrance to the flats, but as he started to close the door he found it jammed open by the Appellant and Miss Windsor-Smith who tried to force their way in. Mr. Smith was then grabbed by the throat, and felt a broken bottle against his neck, held by Miss Windsor-Smith. At that point the Appellant said "*You remember me, don't you? You know who I am?*" Miss Windsor-Smith added "*I want my ... money. I know you've got the ... money because you've been paid.*" The Appellant then reinforced the threat by telling Mr. Smith that the money had better be handed over. Mr. Smith promised to obtain £30 and the offenders allowed him to leave the flat and followed him to the cash point machine around the corner.
 9. Using his cash point card, Mr. Smith withdrew £30. Both offenders were present. Miss Windsor-Smith had the same broken bottle in her hand, and waved it in a threatening manner in order to encourage Mr. Smith to withdraw the money. She again held it to his face. During this time the Appellant, who was standing nearby, moved closer and grabbed hold of Mr. Smith's tie and threatened him with violence. Mr. Smith handed to Miss Windsor-Smith the £30 which he had obtained from the machine.
 10. Mr. Smith was concerned not to reveal the amount of money that he had in the account. He was also fearful that if he became aggressive it might inflame the situation and he thought that if he handed over some more money that might be the end of the matter. So he withdrew a further £100 while Miss Windsor-Smith continued to threaten him and the Appellant to stand in the doorway of the lobby where the cash machine was situated, preventing anyone from entering. Eventually Mr. Smith was permitted to return to his flat.
 11. We turn to Count 3: The following day, Mr. Smith received a telephone call at work from the Appellant, who said to him "*I want the rest of the money or we'll come back and kick the door into your flat.*" Mr. Smith was sufficiently alarmed by this to believe that the threat would be carried out and about 45 minutes later he was told that the Appellant was at reception. Mr. Smith did not want any problems at work so he checked his wallet and found that he had £67 in cash. He quickly made his way to the reception area with the money in his hand and gestured to the Appellant to join him outside where he handed it over.
 12. We turn finally to Count 4: On 31st July, Mr. Smith went to a public house where he received a telephone call from Miss Windsor-Smith who told him "*You've still got more of my stuff, I want £93, I'm going to come and kick the door down.*" A short while later he received another message on his voice mail to the effect that if he wasn't outside his house within the next 10 minutes "*we*" (presumably she and her co-accused) intended to smash through the door in order to enforce the debt. Fearing that the threats might be carried out during the weekend when his 6 year old daughter would be present, Mr. Smith finally contacted the Police, and on 2nd August the Appellant and Miss Windsor-Smith were arrested at a campsite.
 13. The Appellant was interviewed. So far as Count 2 was concerned, he admitted attending at the flat with Miss Windsor-Smith and admitted waiting outside for the victim to arrive. He denied using force to enter the flat, denied participating in any threats to Mr. Smith and insisted that he had not seen his co-accused in possession of a broken bottle. He claimed that Mr. Smith had attended the cash point machine of his own free will, but agreed that £30 had been handed over, and later a further £100, but denied anything untoward had occurred. With reference to count 3, he said that arrangements had been made for Miss Windsor-Smith to attend at Bacon & Woodrow the following day to collect the rest of the money and he admitted going there, as he claimed with Miss Windsor-Smith, with a view to retrieving the rest of the deposit. He

- denied telephoning Mr. Smith prior to attending or putting any pressure on him to hand over the money.
14. Later he admitted to Police that he had been lying but insisted that he had little recollection of the actual events prior to Mr. Smith going to the cash machine since, as he claimed, he was under the influence of a combination of alcohol and diazepam tablets at the relevant time. He admitted grabbing Mr. Smith by the tie at the cash point, but he continued to deny that he had telephoned Mr. Smith prior to the visit at his place of work on the following day, and denied he had used threats to force Mr. Smith to hand over any further money.
 15. In interview, relating to count 2, Miss Windsor-Smith denied using force to enter the doorway to Mr. Smith's flat, and denied having a broken bottle in her hand at that time. She claimed that Mr. Smith had gone to the cash point of his own free will, but she did admit that she had threatened him with a bottle at the cash point machine, a fact that she could hardly deny because her part in that incident had been filmed on a CCTV camera.
 16. The Appellant is now 34 years of age. He has two children by different relationships. He met Miss Windsor-Smith in May 2002, and concluded the relationship in January 2003, shortly before the trial. He has a long criminal record, having served periods of imprisonment for various offences, which include disorderly behaviour, criminal damage, theft, burglary and assault.
 17. Miss Windsor-Smith by contrast is 22 years of age and at the time of her arrest had no previous convictions.
 18. As outlined above neither the Appellant nor Miss Windsor-Smith accepted in full the circumstances of these offences as alleged by the victim. The Appellant wisely decided that the disputes which he had with Mr. Smith's account did not justify a Newton Hearing, which would necessarily have resulted in his recollection of events being tested in cross-examination. Since he had admitted to Police that his recollection of events had been blunted by drink, it is hardly likely that any dispute between him and Mr. Smith would have been resolved in his favour by the Court.
 19. Miss Windsor-Smith however, who, on the evidence, certainly had had a good deal to drink on the occasion of the incidents in which she participated in Count 2, decided to pit her alleged recollection of events against those of Mr. Smith. A Newton Hearing took place before the Lieutenant Bailiff and the Jurats. It was inevitable perhaps that the version put forward by Mr. Smith, who suffered no such disability, was accepted by the Court in preference to Miss Windsor-Smith's version.
 20. In mitigation to the Royal Court, Advocate Whitmore, who then appeared for the Appellant, emphasised the following matters:
 1. That the Appellant's life had been ruined by his addiction to alcohol, for which he had repeatedly sought treatment to no real avail, and which, to no small degree, had contributed to the long catalogue of offences to which we have already referred.
 2. That the offence had been committed out of loyalty to Miss Windsor-Smith, of whom he had been genuinely fond at the time, and whom he genuinely believed to have been wronged by the victim.
 3. That the Appellant had effectively accepted his guilt without reservation, and had not wasted the time of the Court in a forlorn attempt to try to reduce the extent of his involvement.

Advocate Green for Miss Windsor-Smith emphasised:

1. That Miss Windsor-Smith held a genuine belief that she was owed money by the victim, though she readily accepted that the method she had sought to recover the debt was wrong.
 2. That like her co-accused, albeit necessarily for a shorter period, her life had also been blighted by alcohol.
 3. That she had never previously been before a Court and deserved credit for her good character.
21. In his sentencing remarks the Lieutenant Bailiff said in clear terms that the Courts of this Island would not tolerate the use of force, particularly accompanied by the possession of a broken bottle as a weapon in support of menaces to recover a debt, real or imagined. That is a view which this Court wholeheartedly endorses.
22. The Lieutenant Bailiff went on at the transcript page 19 G to say:
- “As far as you are concerned Miss Windsor-Smith, with regard to the joint offence, you played the leading role in that you brandished the bottle on two occasions. Taking into account the second offence, which you committed a few days later, which was of a minor nature, ... the overall starting point in your case will be a term of imprisonment of 3 years. As far as mitigation is concerned, that must be somewhat limited in respect of your guilty plea and the Court would assess it at about ¼, which is not the full discount because of the Newton Hearing. However, you were a person of exemplary good character, and the Court also takes into account your relatively young age.*
- As far as you are concerned Mr. Coleman, the Court considers that you played a vital supporting role in the blackmail. Taking into account your second offence, which was another nasty one, in view of the fact that it took place only a day after the incident with the bottle, and that you visited the victim at his place of work, taking into account both of those offences, the Court considers the appropriate starting point in your case is also one of 3 years. As far as mitigation is concerned, you have a full ½ discount for your guilty plea. You are unfortunately not a person of good character, you have an atrocious record, and there is no other mitigation other than your plea.”*
23. In this appeal Advocate Brehaut has highlighted the disparity between the sentence imposed on the Appellant and that on his co-accused resulting from the starting points and the discounts adopted and applied to these two offenders. The difficulty, as defined by Advocate Brehaut, is that the Appellant who was less culpable than his co-accused and was acknowledged to be so by the Royal Court, is received a longer sentence of imprisonment for these offences.
24. She points firstly to the fact that it was Miss Windsor-Smith who involved the Appellant by recruiting him to her cause; secondly, that it was she who at all times was in possession of the broken bottle, that it was she who held the bottle against the victim’s neck at the flat and threatened him with it by waving it about at the cash point; and thirdly, that the debt and the accompanying menaces was owed to, and were for the benefit of, Miss Windsor-Smith.
25. We note that the Royal Court passed a sentence on the Appellant relating to count 3 of 6 months and on Miss Windsor-Smith relating to count 4 of 3 months. Since these offences were ordered to be concurrent with the sentences on Count 2, nothing turns on them in this appeal, but we feel bound to point out that we are not wholly persuaded that the distinction was justified. While we accept that the events in Count 3 resulted on 26th July in the handing over of yet more money by the victim, the demand for more money a week later was an aggravating feature of Count 4, which was apparently frustrated in its commission only by the arrest of these two offenders.
26. There is no doubt that Count 2 was a joint offence, and both offenders must share the blame. There is of course no rule that merely because two offenders share such blame, they should be

treated in the same way for the purposes of sentence, but, submits Miss Brehaut, the disparity here is not justified and the test laid down by Lawton, LJ, in R. v. Fawcett (1993) 5 Cr. App. Rep. (S.) page 158, and adopted in this jurisdiction in Law Officers of the Crown v. Harvey (Court of Appeal No. 261) is satisfied for the purposes of this appeal. That test is; would right thinking members of the public with full knowledge of all the relevant facts and circumstances, learning of this sentence, consider that something had gone wrong with the administration of justice?

- 27. We do not accept Miss Brehaut’s submission that the fact that Miss Windsor-Smith played a more prominent part in these offences justified a higher starting point in her case, nor, in our judgment, would there have been reason to pass on her a longer sentence than that passed on the Appellant. Even if one accepts in his favour that he was unaware of the existence of the broken bottle until it was presented by Miss Windsor-Smith against the victim’s neck, the fact is that the Appellant remained at the flat after its production, associated himself with the verbal menaces uttered by Miss Windsor-Smith, and thereafter accompanied her to the cash point and participated in the events which took place there with the knowledge that she was still in possession of the bottle. The question is not whether Miss Windsor-Smith should have received a longer sentence than the Appellant but whether in all the circumstances it was appropriate for the Appellant to receive a longer sentence than his co-accused.
- 28. We emphasise “*in all the circumstances*” because since the Royal Court chose the same starting point for both offenders, the sentence passed must reflect a greater discount allowed for the mitigation advanced on behalf of Miss Windsor-Smith. In any sentencing exercise where starting points are used and discounts given it is necessary for the tribunal to step back after the exercise is complete and test the result by a rubric, which involves an assessment whether the mathematical computation has resulted in a just sentence. This is particularly important where two or more offenders are being sentenced for the same offence. The fact is that Miss Windsor-Smith was a person of good character, while the Appellant was a man with a long and lamentable catalogue of convictions. Against that Miss Windsor-Smith insisted on trying unsuccessfully to reduce her culpability, while the Appellant accepted his guilt. It is also a fact that there is a gap of a decade or more between the ages of the offenders, though, as Miss Brehaut has observed, notwithstanding her relative youth, Miss Windsor-Smith is an adult.
- 29. The balancing exercise between these competing aspects of the backgrounds of the two offenders is not free of difficulty. The extent to which they cancel each other out or serve ultimately to warrant a greater discount in mitigation for one offender rather than the other is necessarily a subjective judgment, but we have to ask whether at the end of the day, and looking at all the circumstances, right thinking members of the public would consider something has gone wrong with the administration of justice, where the Appellant received a sentence of imprisonment longer by a factor of 25% than his co-accused for his participation in a crime in which she played a more prominent role.
- 30. Not without some real hesitation, and not without sympathy for the Royal Court in the sentencing exercise which it had to undertake, we are persuaded that Miss Brehaut’s argument is made out and that the appeal should be allowed. We vary the sentence so that the Appellant will serve a sentence on Count 2, which is the same as that passed on his co-accused. Accordingly we substitute a sentence of 1½ years imprisonment on that Count in substitution of the sentence passed by the Royal Court. We order, as did the Royal Court, that the sentence should be concurrent to the sentence in respect of Count 3.

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I, Suzanne Margaret O'Neill hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill
Tuesday 20th May 2003