



Jones v Law Officers of the Crown
Court of Appeal
29th September 2016

JUDGMENT
40/2016

Dismissal of appeal against conviction and sentence

**IN THE COURT OF APPEAL
OF GUERNSEY**

CRIMINAL DIVISION - APPEAL NO. 474

29th September 2016

Before:

**James McNeill QC Presiding
Clare Montgomery QC
Jonathan Crow QC**

Between:

MATTHEW RICHARD JONES

Appellant

and

LAW OFFICERS OF THE CROWN

Respondents

**Advocate J A S White represented the Appellant
Crown Advocate R J Calderwood represented the Respondents**

JUDGMENT

Montgomery JA:

1. Early on Christmas morning 2015, a distressed and drunken Latvian man called Druvis Lukstins was discovered in the Commercial Arcade, St Peter Port. He was bleeding profusely from a head wound. The wound proved to be an eight centimetre V shaped laceration on the crown of

his head. The right side of his forehead was swollen and bruised with a laceration in the middle. He had superficial lacerations on the right side of his right eye and on his right cheek.

2. Mr Lukstins told passers-by and the attending police officers that he had been hit on the head with a bottle. A trail of blood led to a broken bedroom window in Flat 7, 19-21 Commercial Arcade, St Peter Port (the Flat) occupied by the Appellant and his girlfriend.
3. At 2.30 am on Christmas morning the Appellant was arrested at the Flat. The Appellant was uninjured. There was fresh blood and blood staining in the bedroom, bathroom, corridor and living room of the Flat as well as blood inside and outside the broken window. There was blood on the Appellant's hands.
4. The Appellant was charged on an indictment with wounding Mr Lukstins with intent to cause him grievous bodily harm (count 1) and in the alternative with unlawful wounding (count 2). He was tried before Deputy Bailiff McMahon and nine Jurats. On 13 April 2016 the Appellant was cleared of wounding with intent by a majority verdict (7:2), but was convicted by a simple majority (5:4) of unlawful wounding. On 10 June 2016 the Appellant was sentenced by the Deputy Bailiff and seven of the Jurats to a term of three years imprisonment.
5. The appeal against conviction raises four issues:
 - [1] the reliability of the evidence given by Mr Lukstins;
 - [2] the directions given on corroboration and intention;
 - [3] the fairness of a verdict by a simple majority of the Jurats; and
 - [4] the failure of the Jurats to give reasons for their verdict.
6. The appeal against sentence does not challenge the sentence of imprisonment as being wrong in principle or manifestly excessive. The appeal is based on the proposition that it was unfair to sentence the Appellant without information about the factual basis on which the sentencing was to take place, either in the form of reasons by the Jurats or information from the prosecution. The obligation to sentence in conformity with the majority decision was also said to be unfair, as was the absence of two of the trial Jurats from the sentencing court.

The appeal against conviction

[1] Mr Lukstins' reliability

7. It was common ground at trial that both Mr Lukstins and the Appellant were drunk. It also appears to have been common ground that Mr Lukstins' recollection was affected by his drunkenness as well as by the injuries he sustained.
8. Mr Lukstins explained in evidence that he had been invited into the Flat by the Appellant and had been there for less than an hour. He said he was sitting on a sofa when, without any warning, he was struck repeatedly over the head with a wine bottle by the Appellant. The bottle eventually broke, causing a wound. He said he tried to escape after the attack through a window and had entered a bathroom by accident where he was restrained by the Appellant who took him into the kitchen and tried to strangle him. His iPhone 6S was taken from him and his forehead was cut. He was able to make his escape through the front door when he was left alone with the Appellant's girlfriend. His mobile phone was later found in the Flat by the police.
9. The defence case put to Mr Lukstins was that there had been an altercation with the Appellant who wanted Mr Lukstins to leave but he would not do so [124F-G]. It was suggested that Mr Lukstins may not have been injured in the Flat or alternatively that he may have been injured

getting out of the window.¹

10. It was also suggested that Mr Lukstins account was inconsistent with the blood staining recorded in the Flat and that his account of being strangled was inconsistent with the medical records and photos.
11. It was clear that Mr Lukstins was not able to recall details of the layout of the Flat or of the events. He said that his memory had started to come back over time [126E] and he agreed it might have resulted in his making inconsistent statements [126G-H]. He accepted that he had originally thought he might have escaped through a window but said later he remembered leaving through the front door. He said his memory of being strangled and having his iPhone taken only came to him at a later stage.
12. The crime scene investigator, Richard Breban, gave evidence about the appearance of the Flat. He agreed that there was no bloodstaining on the sofa. There was blood in the lounge area [132] with blood spotting in front of the sofa, on the arm chair, on the floor and on a carrier bag on the floor. There was also blood spotting inside the lounge door [133B-C].
13. Mr Breban agreed that there was no blood visible in the kitchen area but pointed out that there were blood spots on the edge of a rubbish bin in the kitchen and a top layer of bloodstained cloths in the bin.
14. Mr Breban confirmed that there was blood spotting in the bathroom consistent with blood falling from a wound [147] and stains on the door frame and the bathroom door itself [135].
15. There was blood spotting on the floor of the bedroom and on items in the bedroom [136-7]. There were blood smears on the outside handle of the bedroom door and bloody hand prints on the inside of the door, consistent with someone pushing or holding the door shut [137]. One of the blinds over the bedroom window had been pulled down and had blood stains on it [138]. The window itself was covered in blood stains. The pattern of staining suggested that the window had originally been shut when the blood marks were first made [138]. Two panes of glass had been smashed [139] and the lower sash window had then been slid open. Outside the window was broken window glass and a broken wine bottle [140]. There was no blood on the wine bottle [149]. Mr Breban concluded that someone had climbed out of the window when he had blood on his hands [150].
16. There was no blood in the lobby or immediately outside the front door.
17. No submission was made at the close of the prosecution case that there was no sufficient evidence on which reasonable Jurats, properly directed, could convict.
18. The Appellant gave evidence in his own defence. He said that he was very drunk [160] and he accepted that he could become argumentative when drunk [170]. He did not remember saying "If I say I was defending myself, then what?"² But he accepted he had said that. He also said he remembered "vaguely myself and Mr Lukstins exchanging punches between each other ... I'd asked him to leave as my girlfriend was asleep on the sofa and I'm not sure how it started but

¹ "We will hear though that there are no blood spots or any blood from the kitchen to the front door, so are you sure that when you left the kitchen and went through the front door you were bleeding, you had already been cut?" [128D-E] ... Are you sure that you did not, in fact, cause the wounds when you were trying to get out of the window, you got out of the window and then you went straight down to the Arcade? [128H]

² The statement was said by defence counsel to be "I defended myself. What can I say? I haven't done anything wrong"[196]. The arresting officer PC Brown (whose statement was read by agreement) recorded the statement set out above which the Appellant accepted in cross examination [178]. The Respondent maintained that the words used were those recorded in PC Brown's statement [188 and 193].

some sort of altercation started between us” [170]. He said he did not believe he had hit Mr Lukstins with a bottle and was not aware of having caused any injury. He did not know how the bedroom came to be covered in blood with the blind down, the window open and broken glass outside [171].

19. In cross examination he said that he did not remember who threw the first punch and could not remember if there was an attack by him on Mr Lukstins, “but referring to the evidence you have provided, I don’t think it could have either.” He said that he had no physical injuries and that the blows he remembered had been exchanged in the lounge. He agreed that he had Mr Lukstins’ blood on his hands [174]. He said that of the injuries to Mr Lukstins that he “could have obtained them from somewhere else”. He was not able to explain why there was blood inside the doors of the bathroom and bedroom or why two window panes were broken. He denied ditching a broken bottle outside the window before the police arrived [176]
20. The case was summed up by the Deputy Bailiff [196-205]. Given the grounds of appeal that are now advanced about the summing up, in particular that the directions on corroboration and intent were defective, it is surprising that Advocate White did not raise these issues with the Deputy Bailiff when he invited comments or corrections before the Jurats retired to consider the case.
21. In order to succeed in an appeal based on the reliability of the evidence of Mr Lukstins, it is not sufficient to allege that the verdict of the Jurats on count 2 was against the weight of evidence. As the Court of Appeal pointed out in *Ogier v Law Officers* [1989] GLR 446, a verdict may only be set aside on evidential grounds where the verdict “is obviously and palpably wrong.” The subsequent case law in Guernsey and Jersey was reviewed by this court in *Hastie v The Law Officers* Guernsey Court of Appeal 29 September 2015 unreported in which the following principles were identified and applied:
 - [1] Article 25(1) of the *Court of Appeal (Guernsey) Law* 1961 permits a verdict to be set aside on evidential grounds if it is unreasonable or cannot be supported having regard to the evidence.
 - [2] Questions of the reliability, credibility and sufficiency of evidence are matters for the Jurats; see *Garven v Law Officers* Guernsey Court of Appeal 13 September 2013 unreported.
 - [3] The Court of Appeal may only substitute its own views on the credibility or reliability of the evidence for those of the Jurats if the Jurats’ findings are irrational or otherwise unjustified; see *Attorney General for Jersey v Edmond O’Brien* [2006] 1 WLR 1485.
 - [4] It is not sufficient to allege that a verdict is based on evidence that is contradicted by other evidence. A verdict will only be set aside in those rare cases where the verdict can be shown to be plainly wrong; see *Pinto and Others v Law Officers* Guernsey Court of Appeal 24 May 2013 GLR 12/2013.
 - [5] It follows that it is no part of the duty of the Court of Appeal to review the totality of the evidence and attempt to make a judgment on an Appellant’s guilt or innocence. A criminal verdict will only be set aside if it is one which no reasonable tribunal could have reached.
22. In our judgment the evidence in this case does not suggest the verdict on count 2 was wrong, still less that it was unreasonable.
23. The Jurats were entitled to take the following undisputed facts and inferences into account:
 - The V shaped laceration on the top of Mr Lukstins’ head had been inflicted through hair and skin. It was open to the Jurats to conclude that it could not have been self-inflicted and must have been caused by a weapon.
 - The nature and extent of the blood staining in the Flat showed that Mr Lukstins had been

injured inside the Flat.

- The spread of blood also proved that the injury could not have been caused by the window as Mr Lukstins left the Flat (this was a mechanism proposed by the defence).
 - The appearance of the blood stains established that someone who was bleeding had tried to push the bedroom door shut from inside the bedroom and had also torn down the blind and opened the bedroom window. The only person who could have done this was Mr Lukstins.
 - The Appellant admitted that he had been in violent physical contact with Mr Lukstins. If (as the defence appeared to accept) Mr Lukstins had later resorted to breaking the glass and climbing out through a bedroom window, this was powerful evidence that Mr Lukstins was fleeing an attack. The only plausible explanation was that the Appellant was the attacker.
24. The Appellant places much weight on the suggestion that there were inconsistencies in Mr Lukstins' evidence. The inconsistencies relied on by the Appellant consist, in the main, of a comparison between the detail of Mr Lukstins' various accounts and the physical appearance of the Flat. However it is not clear that the scene was preserved intact after Mr Lukstins' departure. The police did not arrive immediately and there is evidence that the Appellant was moving about within the Flat before the Police forced their way in. The lack of any traces of blood in the kitchen and the hallway and the absence of any signs of a broken wine bottle in the Flat could be accounted for by a clean-up conducted in the minutes before the arrival of the police.
25. The evidence of Mr Breban was not unequivocally inconsistent with Mr Lukstins' various accounts. For example, the absence of blood on the sofa observed by Mr Breban could nevertheless be consistent with an attack having happened there. It seems likely that blood from any head wound, inflicted whilst Mr Lukstins was seated on the sofa, would initially fall on Mr Lukstins and his clothes and would fall onto the floor or the surrounding area only once he stood up or moved away from the sofa.
26. In addition the inferences to be drawn from Mr Breban's observations were not always clear. For example the relevance of the absence of any blood on the broken bottle glass found outside the window of the Flat was not established. It is not clear whether, if a bottle had inflicted the injury on Mr Lukstins, it would inevitably have had visible blood on it.
27. The most troubling part of the account given by Mr Lukstins related to his description of events, after the initial assault, when he says he was dragged back into the kitchen of the Flat and strangled and hit in order to get the PIN for his phone. There was no physical evidence of strangling (although there was no medical evidence on the significance of this finding). The account of being dragged and strangled only emerged late in the investigation and it had some unusual features including Mr Lukstins' claim that he asked for something to eat and was given some carrots. This account, although bizarre, is not wholly incredible. It is partly supported by the physical evidence. Mr Lukstins' phone was later found in the Flat. Carrots were found nearby in the Commercial Arcade.
28. However it was not necessary for the Jurats to reach a conclusion on Mr Lukstins' evidence on what happened after he had been wounded since it was not the core issue before them. The core issue was who might have caused the wound on Mr Lukstins' head, and with what intent.
29. In the circumstances, we consider that the Jurats were entitled to regard any inconsistencies in the evidence of Mr Lukstins as peripheral and not such as to damage his overall credibility. The Jurats were not bound to treat them as casting doubt on the consistent core of his account; that he had been beaten over the head with a wine bottle by the Appellant, that he had been injured

by the bottle, and that he had tried to flee in the face of repeated attack and had been pursued by the Appellant. This was his initial account. This was ultimately the basis on which the Appellant was convicted and sentenced. It appears to us to be a perfectly rational conclusion in the light of the evidence. Accordingly we do not accept the submission by the Appellant that the Jurats could not be sure on the basis of Mr Lukstins' evidence that the Appellant was guilty of count 2.

30. Given the fact that the Appellant was drunk, there appears to us to be no inconsistency between an acceptance of these facts and a determination that the Appellant may not have intended to cause really serious harm to Mr Lukstins. The Appellant submits that no Jurat, properly directed, could reasonably have concluded that the Appellant was guilty of wounding, having regard to the not guilty decision on count 1 (wounding with intent). This is effectively an argument that the verdicts are objectionably inconsistent.
31. In cases in which an appeal is brought on the ground of inconsistent verdicts, the burden lies on the Appellant to satisfy the court that the two verdicts may not stand together. That is that no reasonable Jurat who had applied their mind to the facts of the case could have arrived at the conclusion being considered, see *R v Durante* [1972] 1 WLR 1612 and the principles explained in the Jersey Court of Appeal in *E v AG* [2015] JCA 199A.
32. The Jurats had to consider whether the Appellant had formed the specific intention to cause really serious injury when he hit Mr Lukstins with the wine bottle. The Jurats were entitled to conclude that they could not be sure of the Appellant's specific intentions whilst they could be sure that he had the basic intent required for wounding in count 2. These were not inconsistent verdicts.

[2] The directions given

33. For the reasons set out above we consider that verdicts of not guilty on count 1 and guilty on count 2 were open to the Jurats. It follows that we do not accept the contention that the finding of the Jurats was so illogical that they must have misunderstood the directions on intent. The final direction to the Jurats made it clear that they first had to decide whether the Appellant caused the wound to Mr Lukstins. They were then directed to consider intention [204F-H]:

“It is your evaluation of the facts and judgment on the facts alone that matters. If you are not sure that a wound sustained by Mr Lukstins was caused by the defendant, you acquit on both counts. However, if you are sure that a wound was caused by the defendant, you must consider whether the prosecution has established so that you are sure that it was caused with the intent to do him really serious harm. If you are sure of that intent so that all the elements of count 1 are established, you convict on count 1. Do not consider count 2. If you are not sure of that intent, you will acquit on count 1 and move on to consider count 2. If you are sure that the wound was caused maliciously, in other words recklessly, you convict on count 2 rather than count 1.”

34. We also do not consider that there was, in the circumstances, any obligation to provide a written route to verdict. If this had been thought necessary or desirable, the Appellant should have raised the need for a written direction at trial. The position was explained correctly and with great clarity to the Jurats. There is no arguable basis for contending that their verdicts betray a misunderstanding of these directions.
35. The recommendations made in England and Wales by Sir Brian Leveson's Review of Efficiency in Criminal Proceedings 2015, that there should be a written route to verdict in all but the most straightforward cases, have not been adopted in Guernsey. However, even in England and Wales, this was not the type of case that would automatically require a written route to verdict. The issues were straightforward. Was Mr Lukstins telling the truth about the attack with

the bottle? If he was, what was the Appellant's intention? Advocate White explained she did not request a written direction at trial because the case appeared to her to be straightforward. We consider Advocate White's assessment at trial was correct.

36. So far as the direction on corroboration was concerned, there was no need for the Jurats to be directed that the evidence of the witnesses had to be compared and contrasted. This is self-evidently the role of a Jurat in a criminal trial. Jurats need no special direction to enable them to understand that this is part of their task. The observation by the Deputy Bailiff that there was no need to find "supporting evidence of corroboration before accepting a witness' evidence" was accurate. It would not have led to the Jurats thinking that they did not need to consider whether there was any other evidence that either supported or undermined Mr Lukstins' evidence.
37. Advocate White suggested that the Jurats should have been directed that some evidence (such as that of Mr Breban) should be accorded greater weight than other evidence. We do not accept that this would be an appropriate direction in this, or any, case. The weight of evidence is a matter for the Jurats. It is not a matter on which they can or should be directed by the trial judge.
38. The Deputy Bailiff had in any case made it clear that the Jurats had to consider all the evidence: "You will discharge your task by having regard to the whole of the evidence, which includes the oral evidence you have heard, the unchallenged witness statements, the admissions and the exhibits, including the photographs that have been produced to you. You will form your own judgment about the witnesses and about the reliability or otherwise of the evidence". We do not consider that the complaint about the direction on corroboration is even arguable.
39. A complaint was also made about the direction on memory. However the Jurats were adequately directed on the importance of considering the impact that alcohol could have had on short term memory. The Deputy Bailiff told the Jurats in terms that they had to assess "whether you regard the salient parts of Mr Lukstins' account as reliable. The alcohol admittedly consumed by both men is something that you will need to take into account. Memories can be affected by alcohol" [199B].

[3] The majority verdict

40. The conviction by a simple majority of Jurats is said to be unfair and to breach Article 6 of the *Human Rights (Bailiwick of Guernsey) Law 2006*, Schedule 1. It is not clear on what basis a simple majority is said to result in an unfair trial, other than the suggestion that doubts by the minority must indicate a failure to prove the case.
41. Decisions by trial courts in many of the continental European criminal courts are made by simple majority decisions, as are the decisions of lay magistrates in Magistrates' Courts in England and Wales and juries in Scotland. There are a number of other countries where juries may return verdicts on the basis of a simple majority, see Ethan Leib: "A *Comparison of Criminal Jury Decision Rules in Democratic Countries*" [2008] *Ohio State Journal of Criminal Law* 629.
42. The system of trial by jury in Scotland with its simple majority verdicts was held to satisfy Article 6 in *Judge v United Kingdom* (2011) 52 EHRR SE17. Simple majority verdicts have also been held to be consistent with the provisions of Article 6 in the context of simple majority decisions in Courts Martial, see *R v Twaite* [2011] 1 WLR 1125 and *R v Blackman* [2015] 1 WLR 1900.
43. In *Taxquet v Belgium* (2012) 54 EHRR 933, the Grand Chamber observed that the jury existed in a variety of forms in different states and that there are many different models of lay

adjudication in the Member States of the Council of Europe. The Grand Chamber confirmed that contracting states enjoy considerable freedom in the choice of the means calculated to ensure that their judicial systems are in compliance with the requirements of Article 6. The Court's task is to consider whether the method adopted to that end has led in a given case to results which are compatible with the Convention, while also taking into account the specific circumstances, the nature and the complexity of the case: "In short, it must ascertain whether the proceedings as a whole were fair."

44. In our judgment the fact of a simple majority verdict in this case did not render the proceedings unfair. The mathematical analysis carried out by the Appellant in an attempt to suggest that a majority verdict must imply doubt as to guilt is wrong. Each of the five Jurats who convicted the Appellant was satisfied beyond reasonable doubt as to his guilt.
45. The requirements of fairness do not in our judgment require a direction that the Jurats should strive to reach a unanimous verdict or that they should seek to reach some form of consensus. We consider that, whether or not the provisions of section 6(4) of the *Royal Court (Miscellaneous Reform Provisions) (Guernsey) Law 1950* survived repeal in section 15 of the *Royal Court (Reform) (Guernsey) Law 2008*, Jurats have a discretion as to the nature and extent of any consultation they carry out, see *Law Officers of the Crown v MacCafferty* (1991) 11 GLJ 7. Jurats cannot (on any view of the law) be compelled or directed to carry out their consultation in a particular manner or for a particular length of time. In this case it is clear consultation took place over 30 minutes whilst the Jurats were in retirement.
46. It was neither necessary nor desirable for the Deputy Bailiff to retire with the Jurats. An important feature of open justice in Guernsey is that all the legal directions given to the Jurats are given in public in the presence of the defendant. Section 6(4) of the *Royal Court (Miscellaneous Reform Provisions) (Guernsey) Law 1950* mandated that any directions required by Jurats after their retirement had to be given in open court. This appears to us to accord with basic principles of fairness. We are told this remains the practice of the Royal Court, notwithstanding the possible repeal of the subsection.

[4] The failure to give reasons

47. A further breach of Article 6 is said to arise by reason of the failure by the majority of the Jurats to give reasons for their decision. The need for fact finders to give reasons was directly considered by the Strasbourg Court in *Judge v United Kingdom*. The Court held that there was no need for a jury to give reasons provided there were sufficient safeguards to ensure a fair trial. The features of Scottish criminal procedure highlighted in *Judge* [36-39] as providing sufficient safeguards to secure a fair trial are also evident in the procedure adopted in Guernsey.
48. The Appellant was provided with details of the charges brought against him in the form of a particularised indictment. The basis on which the charges were pursued was opened to the Jurats and explained in open court to the Appellant and the public. The Appellant was able to hear and see Mr Lukstins give evidence and undergo cross-examination. His Advocate was able to make a submission of no case that would have been determined by the Deputy Bailiff as a matter of law (see *Kevin John Holland v The Law Officers of the Crown - Guernsey Judgment 02/2013*) if Advocate White considered no reasonable Jurats, properly directed, could convict.
49. The Jurats' verdict was not returned in isolation but was given in a framework which included addresses by the prosecution and the defence as well as directions from the Deputy Bailiff. It was the duty of the Deputy Bailiff to ensure the proceedings were conducted fairly and to explain the law as it applied in the case to the Jurats; it was the duty of the Jurats to accept those directions and to determine all questions of fact.

50. As is evident from this judgment on the appeal against sentence, the Appellant was given reasons for the sentence of imprisonment passed on him. Those reasons included a statement of the facts found by the Royal Court.
51. Finally the Appellant has exercised his right to appeal to the Court of Appeal which may quash any conviction that amounts to a miscarriage of justice; in particular if the verdict of the Jurats is lacking in rationality.
52. These are precisely the type of procedural safeguards that were contemplated by the Grand Chamber at [92] of its judgment in *Taxquet v Belgium* as necessary to secure the fairness of jury trials where no reasons are given. In the present case, the Appellant has not claimed that these safeguards were not available at his trial.
53. The Appellant sought to argue that the decision in *Snooks v United Kingdom* [2002] JLR 475 (in which an argument about the failure of Jurats in Jersey to give reasons was held to manifestly ill-founded by the Strasbourg Court) was distinguishable. However the distinctive procedure in Jersey whereby the Bailiff retires with the Jurats [27] does not appear to us to be a procedure that enhances the fairness of the proceedings and therefore is not a basis for distinguishing the reasoning of the Strasbourg Court in *Snooks*. There is no material distinction between the role of the Jurats in Guernsey and Jersey for these purposes.
54. It follows from the case law set out above that in our judgment the Convention does not require Jurats to give reasons for their decision and Article 6 does not prevent a defendant being tried by Jurats even if reasons are not given for their verdict.
55. Contrary to the submissions advanced by the Appellant, reasons were not required in order to enable him and the public to understand the verdicts that were given. Any observer who attended the trial would have realized that the majority of the Jurats must have been sure that the Appellant had wounded Mr Lukstins with a bottle and that, although the Jurats were not sure about the Appellant's specific intent, he had acted maliciously. There was nothing unfair about the procedure that was adopted in this case.
56. The appeal against conviction is accordingly dismissed.

The appeal against sentence

57. The basis on which the sentence was passed was explained by the Deputy Bailiff. He told the Appellant that he was being sentenced on the basis that he had launched an unprovoked assault on Mr Lukstins and struck him more than once with the bottle and that he had then pursued Mr Lukstins when he tried to escape. The Appellant was not a man of good character and committed the offence shortly after his release from prison. In those circumstances the sentence appears to be appropriate to reflect the seriousness of the attack and the harm caused to Mr Lukstins. Advocate White does not suggest that the sentence of three years imprisonment was either wrong in principle or manifestly excessive.
58. The complaint raised on appeal is that, without reasons given prior to sentencing, the sentencing process was unfair since, it is said, the Appellant could not know or challenge the facts on which sentencing was to take place and could not address the facts in mitigation or in assessing the offending behaviour. For the reasons we have set out above we do not accept that the Appellant did not know the basis on which he was to be sentenced. It was obvious that Mr Lukstins had been believed as to the circumstances in which the wound on his head had been caused and

(save for his account of his own drinking) the Appellant had been disbelieved.

59. It follows that the Appellant knew that he had to mitigate for the offence of deliberately inflicting a wound in the manner described by Mr Lukstins. If there was any difficulty for the Appellant in understanding the facts he had to address in mitigation, it could and should have been raised with the Royal Court at the sentencing hearing. No difficulty was identified and it is clear (even on a contingent basis) Advocate White was able to present the Appellant's mitigation fully and effectively.
60. Complaint is also made that only seven of the Jurats at trial attended the sentencing hearing. That seven Jurats are sufficient to constitute the Full Court is confirmed by section 1 of the *Criminal Justice (Constitution of Royal Court) (Guernsey) Law, 1966*. There seems to us to be no unfairness in proceeding to sentence in these circumstances. No application was made to adjourn the Court to secure the attendance of the two remaining trial Jurats. No explanation has been provided for not making this application, if the Appellant thought it was unfair that they were not present.
61. Finally it is said that it was unfair for sentence to be passed on the basis of the facts found under the majority verdicts at the trial. However that is an inevitable consequence of the sentencing hearing in Guernsey being a separate hearing that proceeds on the assumption that the verdict at trial was correct. This is a familiar feature in many sentencing courts amongst the members of the Council of Europe and worldwide, see for example Jersey Court of Appeal decision of *Barra Hotel Limited v Attorney General* [2000] JLR 3701 at page 379. There is no unfairness inherent in such a procedure.
62. In particular there is no unfairness in the lack of opportunity at that sentencing hearing to challenge the basis of the conviction. The opportunity for challenge is provided at trial (and on appeal). There is no reason in principle for a further opportunity to be provided at the stage of sentencing where there has been a fully contested trial and the central issues have been decided.
63. In any event, if the Appellant or the sentencing court considered that there was some factual issue that required determination at the stage of sentencing, that could and should have been raised before the Royal Court. It was not. It cannot now be raised as a ground of appeal against sentence, particularly since we consider that all the relevant factual issues for the purpose of sentencing had, in fact, been fully tested and determined at trial.
64. There was no obligation on the Respondent to provide a statement of facts for the Royal Court or for the Appellant. Such an obligation would be inconsistent with the abolition of the right of the prosecution to submit conclusions to the sentencing court (see section 8(2) of the *Royal Court (Miscellaneous Reform Provisions) (Guernsey) Law 1950*).
65. Furthermore the factual basis for the sentence was contained in the detailed reasons for sentence explained by the Deputy Bailiff. These reasons represented the views of the sentencing Jurats. The Deputy Bailiff and the Jurats retired to deliberate on the appropriate sentence and the reasons for sentence are based on that deliberation.
66. Any error in the factual basis for sentencing may form the basis of an appeal against sentence if the error is material. There is nothing unfair about this system. In the circumstances we dismiss the appeal against sentence.