

**ROYAL COURT  
(Superior Number)**

25th February, 1993.

28

**The Bailiff, and Jurats  
Vint, Le Ruez and Rumfitt.**

**The Attorney General**

- v -

**Justin Andrew Welsh**

and

JO

Welsh & JO

Sentencing following conviction before the Criminal Assize on 29th January, 1993, on:

1 count of grave and criminal assault (Count 1 of the indictment).

JO

Sentencing following guilty plea before the Royal Court (Inferior Number) on 18th December, 1992, to:

- 1 count of taking a motor vehicle without the owner's consent or other lawful authority, contrary to Article 28 of the Road Traffic (Jersey) Law, 1956. (Count 2);
- 1 count of driving without a licence, contrary to Article 3(1) of the said Law. (Count 2);
- 1 count of using a motor vehicle uninsured against third party risks, contrary to Article 2(1) of the Motor Traffic (Third Party Insurance) (Jersey) Law 1948. (Count 4).

**AGE:**

Welsh: 21

JO 17

**DETAILS OF OFFENCE:**

Welsh was the passenger in a car which had been "borrowed" and was being driven by at dusk in the evening of 19th June, 1992. JO had parked it in the public car park at the Inn on the Park. Reversing out, his path was "obstructed" by a group of Victoria College lads who were also leaving the premises on foot. Words were exchanged, Welsh got out to show one of the lads what getting excited could mean. JO armed himself with a jack from the boot and struck one of the group, the victim R, an

O.V. on leave from the Army felling him to the ground. There was evidence that Welsh, in the fight, had repeatedly stamped on R's head. R's injuries included 2 black eyes, severe fractured nose, fracture of the floor of the right eye socket and the left eye socket, fracture of the whole of the upper jaw requiring surgery and a plastic graft. Injuries were consistent with somebody having "put in the boot" and with receipt of a head butt. In evidence JO admitted having struck the first blow by, he said, "pushing" R with the jack. Welsh admitted delivering a head butt and a karate-type kick to R's face as R was trying to get up from the iarnac. Both denied further involvement or causing the injuries suffered by R. Welsh was wearing trainers at the time. The Prosecution case was put to the jury thus:-

"The Prosecution have charged them together, because their combined fighting was one assault on Mr. R. It matters not which injury was caused by which blow. The Prosecution say that from the moment that JO got out of the car, he was involved in a joint enterprise with Welsh, the purpose of which was to attack the others. The brunt of this attack happened to be directed against R; it happened that JO struck the first blow; it happened that he used a weapon, thereby taking this assault into the category of grave and criminal; it happened that Welsh then directed specific attention to R - no doubt adding to the injuries already inflicted by JO. And, even though Welsh may not have originally intended that any weapon should be used, he renders himself liable to the charge by joining in and adding to the injuries, which amount to the aggravated assault - grave and criminal".

**PREVIOUS CONVICTIONS:**

0 none. Welsh 4, including one for grave and criminal assault and another for assault.

**CONCLUSIONS:**

3 years' imprisonment each for the grave and criminal assault. JO had, when indicted, pleaded guilty to three motoring offences and, moving for sentence for those three offences the Solicitor General suggested that whilst the convictions should stand, the appropriate sentences would be a discharge for each offence in line with the decision of the Court of Appeal in A.G. v. Mandel.

**DETAILS OF MITIGATION:**

Welsh:

Youth - 20 at time of offence - despite previous for grave & criminal assault & assault did not have lengthy record - insofar as Welsh admitted striking R and therefore causing injury, he was remorseful for causing those injuries - man of good character insofar as his college and work records concerned - comparison with Norris case to show Norris case (3 1/2 year sentence) more serious.

JO:

Very young man - first offender - father died when 13 years of age - mother supportive - difficulty in obtaining employment - maintains innocence of causing any serious injury to R - It was Welsh who put the boot in - JO not the principal offender - ran away after fight started - submission that sentence should reflect the level of participation in the crime.

**SENTENCE AND OBSERVATIONS OF THE COURT:**

Welsh:

2 1/2 years' imprisonment.

JO

Borstal Training and for each of the motoring offences, a discharge, but convictions to stand.

The Solicitor General.  
Advocate S.A. Meiklejohn for Welsh.  
Advocate Mrs. S. Sharpe for B

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JUDGMENT.

**THE BAILIFF:** The Crown in this case has asked for a sentence of three years' imprisonment in respect of each of the accused on count 1 of the indictment, and for Welsh, Mr. Meiklejohn has said there is no distinction to be made between them; nevertheless he did suggest that it might be appropriate - although it was Mrs. Sharpe who took up this point in more detail - to make a distinction in respect of the younger of the two accused, J.

We have looked at the authorities, particularly the case of Jamie Tyre (1984) 6 Cr.App.R.(S.) 247, which, to some extent, goes against Mr. Meiklejohn in that, although we would be bound to award a lesser sentence to J, if we thought appropriate, within the terms of Article 18 of the the Children (Jersey) Law, 1969, which limits our powers, nevertheless we would be entitled to award Welsh a sentence different from the one imposed on the younger accused at the level we thought appropriate.

However, after taking into account all the matters advanced by counsel and after considering the Crown's conclusions, and also having regard to the restrictions imposed on us, we have decided that the proper sentences are as follows: Welsh, you will be sentenced to 2½ years' imprisonment; and you, J, to Borstal training in respect of count 1; as regards the three traffic offences, to which you pleaded guilty, J, in accordance with the Solicitor General's conclusions, they will remain as convictions, but no sanction will be imposed.

Authorities

Norris -v- A.G. (28th September, 1992) Jersey Unreported C.of.A.

Mandel -v- A.G. (4th July, 1989) Jersey Unreported C.of.A.

Maguire -v- A.G. (1967) JJ 815 C.of.A.

Jamie Tyre (1984) 6 Cr.App.R(S.) 247.

R. -v- Lowe (1964) 2 All ER.

Children (Jersey) Law, 1969: Articles 16, 18.

Criminal Justice Act, 1982.

The Transfer of Offenders (Designation of Equivalent Sentences)  
Order 1983.

Emmins: "A Practical Approach to Sentencing": p.p. 104, 155-68.