COURT OF APPEAL

24th October, 1988

Before: J.M. Chadwick, Esq., Q.C., (President)
R.D. Harman, Esq., Q.C., and
E.A. Machin, Esq., Q.C.,

The Attorney General

- v -

Martin Francis Heuzé

Appeal against sentence of two and a half years' imprisonment passed by the Royal Court (Criminal Assize) on the 10th August, 1988, following guilty plea to one count of grave and criminal assault.

Advocate W.J. Bailhache, Crown Advocate
Advocate S.A. Meiklejohn for the Appellant.

JUDGMENT

THE PRESIDENT: On the 13th of May, 1988, Martin Francis Heuzé was charged with the offences of rape and grave and criminal assault. Both offences were alleged to have arisen out of an incident in the early hours of the morning of the 24th November, 1987, at premises in St. Helier, the home of Miss A . The accused pleaded not guilty to the first count of rape, but guilty to the second count of grave and criminal assault. He was remanded in custody to stand trial on

count 1 and for sentence on count 2.

He was tried before a Jury between the 18th and 26th of July, 1988, the trial taking some six days, and was acquitted on the first count of rape. He was then remanded in custody further to receive sentence on the second count.

On the 10th August, 1988, he was sentenced to a term of two and a half years on count 2. Leave to appeal to this Court against that sentence was granted on the 12th September, 1988. It is that appeal which is now before us.

In passing sentence the Deputy Bailiff said this: "The Court views with horror any attack upon a woman on this Island. The Court heard the victim of this assault in the witness box. The Court is therefore fully aware of the terror, fear, suffering and mental anguish that she experienced that night. After eight months she still displayed intense emotional suffering, so much so that she had to be supported by a counsellor from the Jersey Womens' Refuge when giving her evidence, albeit with the consent of the defence".

The Court, in sentencing, took account of the physical injuries which had been inflicted and the emotional damage which it held had been suffered by the victim. It also took account of the plea of guilty to the charge of grave and criminal assault; to the remorse which had been shown by the accused; to the provocation occasioned by a prior unprovoked attack on the appellant himself by Miss A ; to the absence of premeditation; and to the fact that there was no use of any weapon.

The grounds of appeal are that the sentence was manifestly excessive in all the circumstances of the case.

We have been referred by Mr. Meiklejohn to a number of authorities helpfully set out in his outline of appeal. Having considered all that he has urged upon us on behalf of his client, we think that the appeal really turns on two points. The first is whether the Royal Court took an unduly serious view of the injuries caused to the victim; the second, whether it gave

sufficient discount for the mitigating factors which have been urged upon us.

The sentencing Court was faced with an unusually difficult task. The victim's evidence had been that that was an assault upon her before intercourse took place. After hearing that evidence the Jury had acquitted the appellant of rape. It must follow that the Jury preferred, and accepted, the appellant's evidence as to what had occurred. It was therefore necessary to sentence him on the basis that there had been consensual intercourse followed by an incident which led to the injuries which the victim suffered. The medical evidence as to the extent of the victim's injuries was not inconsistent with the appellant's evidence that he had reacted, albeit with excessive force, to an unprovoked attack upon him.

The victim was giving her evidence against a background that she was accusing the appellant of having raped her. There is no reason to suppose that she had not persuaded herself, by the time she gave her evidence, that she had been raped. In those circumstances it is not, perhaps, at all surprising that she was in a state of intense emotional distress at the trial. The difficulty for the Court was to assess the extent to which that state of distress was caused by the circumstances in which she found herself at the trial so as to identify what continuing distress (if any) could properly be regarded as the result of the assault.

In our view the Court, in passing sentence, failed to give the appellant sufficient benefit of the doubt as to the real cause of the emotional suffering which they had observed at the trial; and so were led to over-emphasise the trauma which she suffered at the time of the assault.

Further, the appellant had to be sentenced on the basis that he had pleaded guilty to the charge on which the sentence was being passed. The trial which had taken place was not of his making. The appellant had co-operated fully with the police in respect of the assault. Although the sentencing Court took account of these mitigating factors, in our judgment the sentence which was paassed on the appellant has to be regarded as excessive.

We think that in all the circumstances the proper sentence in this case was one of eighteen months and we vary the sentence accordingly.

Authorities: (referred to at the hearing).

Thomas' Current Sentencing Practice - pages 11024/25/31/32:
L2.1(b): R. -v- Hudson (1979) 1 Cr. App. R.(S.) 130.
L2.1(f): R. -v- Whittle: 30 Apr. '74.

Thomas' Current Sentencing Practice - page 1067:
A8.2(f): R. -v- Barnes (1983) 5 Cr. App. R.(S.) 368.
A8.2(g): R. -v- Stevens (1986) 8 Cr. App. R.(S.) 297.
A.G. -v- Tregaskis: 25th July, 1988, Unreported Judgment.

Thomas' Current Sentencing Practice - pages 2107 and 2108:
B2-3.3 pages 2117 - 2119:
B2-4.2 R. -v- Williams (1980) 2 Cr. App. R. (S.) 150.
B2-3.2
B2-3.3: R. -v- Gingell (1980) 2 Cr. App. R. (S.) 198.
B2-3.3: R. -v- Fox (1980) 2 Cr. App. R. (S.) 188.

Thomas' Principles of Sentencing (1st Edition) - pages 98 - 102:
p.101: para 2.

Thomas' Current Sentencing Practice - page 3014:
C2.2.(e): R. -v- Canham: 12 May '75.
C2.2(f): R. -v- Rackley: 26 Mar '74.