

ROYAL COURT
(Samedi Division)

50.

17th March, 1997

Before: Sir Philip Bailhache, Bailiff, and
Jurats Vibert and Quérée

Police Court Appeal (The Magistrate)

Robert John Strathie

- v -

The Attorney General

Appeal against conviction on 6th February, 1997, on a not guilty plea to 1 count of assaulting a police officer in the execution of her duty (count 1).

[The appellant was also convicted on 6th February, 1997, on a not guilty plea to 1 count of assaulting a police officer in the execution of his duty (count 2); 1 count of resisting police officers in the execution of their duty (count 3); and 1 count of urinating in a public place (count 4), but did not appeal against conviction on these counts. The following sentences were passed: count 1: 1 month's imprisonment; count 2: 2 weeks' imprisonment (concurrent); count 3: 1 week's imprisonment (concurrent); count 4: £50 fine or 7 days' imprisonment in default of payment].

Mrs. S. Sharpe, Crown Advocate.
Advocate N. Pearmain for the Appellant.

JUDGMENT

5 THE BAILIFF: The appellant was convicted on 6th February, 1997, by the Police Court of the offence of having assaulted WPC Henderson in the due execution of her duty. The appellant appeals against that conviction on the ground that the conviction was contrary to the weight of the evidence.

10 Both Mr. Pearmain for the appellant and Crown Advocate Sharpe relied upon the authority of Annison -v- A.G. (13th July, 1988) Jersey Unreported as setting out the definition of an assault in Jersey Law. The Deputy Bailiff in that case stated:

15 "An "Assaut" (assault) is the striking of another or at another, including an attempt to do so, whether or not the party striking misses his aim, in an angry, revengeful, rude, insolent or hostile manner. In other words there must be hostility towards someone, but not necessarily the person who is struck".

5 The evidence of WPC Henderson was, in our judgment, straightforward, candid and patently fair. She stated "I grabbed hold of Mr. Strathie and placed him in an armlock. I then walked across the Esplanade with him as he was struggling. As I called up on my radio for more assistance I received a punch to the face. This caused my hat to fall off and my torch". She went on to testify that she had received some bruising and some swelling for which she received some treatment at the Accident and Emergency Department.

10 The learned Magistrate then asked her whether the punch had been delivered intentionally:

15 **JUDGE SOWDEN:** "Can I ask you whether, in your opinion, the punch you received was deliberate, or might it have been accidental?"

WITNESS: "It could well have been, Sir, I honestly couldn't say".

JUDGE SOWDEN: "It might have been accidental?"

20 **WITNESS:** It possibly could have been. It all happened so quickly that I didn't even see it coming".

25 No other witness for the prosecution could throw any light on how the injury to WPC Henderson was caused. Several witnesses were called for the defence to testify that no blow was struck by the appellant.

30 Crown Advocate Sharpe submitted that it mattered not whether the blow was accidental or intentional because it was caused by the appellant in his struggle to escape. We cannot accept that submission. Although there might have been hostility in a legal sense in that the appellant was behaving unlawfully in seeking to evade a lawful arrest, it is necessary to link that hostility to the blow to the WPC's face. If the blow resulted from an accident there was no assault. In our judgment there was no sufficient evidence linking the blow received by
35 WPC Henderson to any intention on the part of the appellant to inflict that blow. The appellant was, of course, committing the common law offence of resisting a police officer in the execution of her duty but he has been separately convicted of that offence and sentenced for it. This appeal must therefore be allowed and we accordingly quash the
40 conviction.

Authorities

Templeton-Brown -v- A.G. (19th March, 1996) Jersey Unreported.

Copley -v- A.G. (13th November, 1980) Jersey Unreported.

Little -v- A.G. (12th September, 1994) Jersey Unreported.

Russell on Crime (12th Ed'n): pp.652-655.

Annison -v- A.G. (13th July, 1988) Jersey Unreported.

Archbold (36th Ed'n): para. 2640.