

Neutral Citation Number: [2012] EWCA Crim 3058

No: 201205969 A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 18th December 2012

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE GLOBE

MR JUSTICE LEGGATT

R E G I N A

v

COLIN GUY BURTENSHAW

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WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr R McConaghy appeared on behalf of the **Appellant**

J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE LEGGATT: On 4th October 2012, in the Guildford Crown Court, the appellant, Colin Burtenshaw, was convicted of wounding with intent contrary to section 18 of the Offences Against the Person Act 1861. For that offence he was sentenced to nine years' imprisonment. He appeals against sentence by leave of the single judge.
2. The offence was committed on the evening of 9th December 2011 at a wine bar in Guildford where the appellant had gone drinking with friends. The appellant was drunk. A member of the bar staff saw him smash a shot glass by throwing it on the floor. She alerted a member of the door staff, Christopher Smith, who went across to speak to the appellant and asked him to come to the door. The appellant refused. Mr Smith put his hand over a pint glass which the appellant was holding, but another member of the group pulled Mr Smith's hand away. The appellant put his arm around Mr Smith's neck, and when he refused to remove it, Mr Smith pushed his arm away. Mr Smith told the appellant that he must leave, but the appellant refused and swore at him. At that point the appellant pushed Mr Smith off balance. He smashed the glass that he was holding in Mr Smith's face and then immediately struck him in the face a second time with the broken glass.
3. Mr Smith suffered serious cuts to his face which required over 30 stitches and have left him with a permanent scar on his left cheek. As is apparent, however, from a further witness statement which he has made dated 17th December 2012, and with which we have been provided, those injuries were not the only impact which the offence has had on Mr Smith. Following the attack he suffered severe depression and was diagnosed with post-traumatic stress disorder. He had an epileptic seizure, having never previously suffered from epilepsy. As an indirect result of his injuries, Mr Smith has also lost his job as he was unable to meet his employer's requirements and his employer would not give him the time that he needed to attend hospital appointments, which on average were two a week. He is consequently now unemployed. The financial loss that he has suffered, in terms of loss of earnings and costs of treatment and prescriptions, is around £10,000, which is set to increase as he still needs further surgery and treatment for his facial scarring.
4. When interviewed after the attack, the appellant claimed that he was so drunk that he could not remember the incident. He accepted that he had struck and wounded Mr Smith and pleaded guilty to an offence of unlawful wounding under section 20, but he denied that he had intended to cause serious bodily harm and a trial accordingly took place to decide whether the appellant was guilty of the more serious offence of wounding with intent to do grievous bodily harm. He was convicted at that trial of the more serious offence.
5. At the time of sentence the appellant was 29 years old and with no relevant previous conviction.
6. In sentencing the appellant, the judge took the view that the case involved serious injury and fell into the category of greater harm for the purpose of the sentencing guidelines. In terms of culpability, a beer glass had been used as a weapon, but the judge was not satisfied that there was any premeditation. He said it was apparent that

the attack came about in "an instant flash of temper". The judge also accepted that the offence was completely out of character for the appellant. He sentenced the appellant on the basis that the offence fell on the boundary between category 1 and category 2 in the sentencing guidelines. The sentencing range for category 1 is nine to 16 years' custody, and for category 2 it is five to nine years' custody. The judge imposed a sentence of nine years' custody.

7. On behalf of the appellant, Mr McConaghy has argued as his fundamental point that the judge placed this offence in the wrong sentencing category. He submits that although the injury in this case was a really serious injury, it has to be seen in the context that all cases involving wounding or grievous bodily harm involve really serious harm. He contends that for the purpose of the guidelines the harm suffered in this case was lesser harm in the context of an offence under section 18. In terms of culpability, Mr McConaghy submitted that there was one factor - use of a weapon - indicating higher culpability, and one factor - lack of premeditation - indicating lower culpability. This put the case overall, in his submission and taking all other aggravating and mitigating factors into account, at the lower end of category 2 for the purpose of the sentencing guidelines.
8. The central question, in our view, in relation to this appeal is how the level of harm caused by this offence should be assessed. While it is certainly true that there are other offences under section 18 which involve still greater harm than this, given the impact on Mr Smith to which we have referred, we think that the judge was entitled to regard the level of harm in this case as falling in the higher category for the purpose of applying the sentencing guidelines. In terms of culpability, the judge found that the appellant's conduct was impulsive and not premeditated. It is, however, an aggravating feature of this case that the appellant, after striking Mr Smith with the glass for the first time and smashing it in his face, then delivered a second upward blow with the jagged glass. In our view, that significantly increases the level of culpability.
9. In the circumstances we do not think that the judge can be faulted in taking the view that the case fell between categories 1 and 2.
10. Further aggravating factors were that the victim was working at the time of the incident, that it occurred in a public place and that the appellant was under the influence of alcohol. The main mitigating factors which Mr McConaghy prayed in aid were the appellant's previous good character and what the judge took to be his remorse. The judge, however, took those factors into account and in our view it cannot be said that the weight he attached to them was wrong.
11. In all the circumstances we do not consider that the sentence of nine years' imprisonment which the judge imposed can properly be said to have been manifestly excessive. The appeal is accordingly dismissed.