

Neutral Citation Number: [2012] EWCA Crim 1335

No. 2012/00298/A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Friday 1 June 2012

B e f o r e:

LADY JUSTICE HALLETT

MR JUSTICE CALVERT SMITH

and

MR JUSTICE MADDISON

REGINA

- v -

REX ALAN COLLIS

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Mr S Skinner appeared on behalf of the Appellant

Judgment
As Approved by the Court

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Friday 1 June 2012

LADY JUSTICE HALLETT: I shall ask Mr Justice Maddison to give the judgment of the court.

MR JUSTICE MADDISON:

1. On 17 March 2011 in the Crown Court at Derby the appellant, Rex Alan Collis (40 years of age), pleaded guilty to an offence of wounding with intent contrary to section 18 of the Offences against the Person Act 1861. He was sentenced by Her Honour Judge Tayton QC to eight years' imprisonment. He appeals against that sentence by leave of the single judge.

2. The appellant, his wife and their baby lived in a block of flats in Derby. The complainant, Simon Scott, lived in the flat above theirs. The appellant and his wife had lodged complaints against Scott for noise nuisance in the past. They did not get on with him and there had been arguments between them in the past.

3. On 18 December 2010 Scott sent a text message to Mrs Collis complaining about an alleged theft by her of a rock of crack cocaine from him. He said that he would come round and ask for £10 for it. He arrived at the flat, knocked on the door and the appellant answered it. His wife was standing behind holding the baby. Scott pushed past the appellant and grabbed Mrs Collis. She fell backwards and ended up on the floor. The appellant and Scott started to fight. During the course of that the appellant reached out, picked up a kitchen knife and stabbed Scott more than once. He inflicted a serious wound to his neck. Mr Scott noticed that blood was coming from his neck and in panic left the premises. The appellant went back inside the flat and his wife called the police. When the police arrived they found a trail of blood. The appellant told them that Scott was upstairs.

4. Scott was taken to hospital where he was treated for a 3cm stab wound to his neck. It was a deep penetrating injury which caused injury to his right internal carotid artery. The injury was life threatening. Scott had to be intubated to keep the airway safe. The artery was repaired, but Scott has been left with a long scar on his neck and with a hoarse voice. He also sustained a superficial 2cm laceration to the left side of his head and a 1.5cm laceration to the back of his head.

5. The appellant was arrested on the night of the offence. A kitchen knife was found in his back pocket. It is not disputed that that was not the knife used in the course of the incident involving Scott.

6. The appellant pleaded guilty on a basis which was accepted, the material paragraphs of which were as follows:

"....

2. During the course of the fight with Simon Scott, I picked up a knife which Rosa had left on the three-wheeler pushchair. I had not armed myself with a knife before Scott knocked on the door.

3. The knife which was seized from my right-hand jeans

pocket I obtained from the kitchen and put in my jeans after Scott had left my flat and before the police arrived. I had armed myself at that stage in case Scott returned. It was never used.

....

7. Simon Scott had caused various problems for us prior to the incident because of his lifestyle. He had noisy parties at all times of the day and night and he was always drunk and/or under the influence of drugs. He also dealt drugs from this flat and there were numerous visitors to his flat.

8. The reason Scott came to my flat was because Rosa had stolen a lump of crack cocaine from him.

9. When Scott first started attacking us I feared for the safety of Rosa and our baby. I have myself been seriously assaulted in the past. Two people broke into my previous house and attacked me with a knife when I was in bed with my baby by a previous partner.

10. I picked up the knife from the pushchair and during the course of the fight stabbed Scott in the throat and also caused the other injuries described by the doctor. I accept that this was an extreme use of force in the circumstances."

7. The judge had a victim impact statement from Scott. It referred to an eight inch scar to the neck which required daily treatment with cream and would take years to fade. He could no longer speak loudly without his voice becoming distorted. He said that he had lost his job, his partner and his self-confidence since the attack and felt sapped of energy.

8. The appellant had made a large number of previous court appearances and had received a variety of custodial and community sentences. His offences had mainly involved drugs or dishonesty, but they included two previous convictions for possessing an offensive weapon, two for common assault or battery, and one for threatening behaviour.

9. The judge had a variety of reports: a pre-sentence report with an addendum, and two psychiatric reports with an addendum to one of them. The appellant was perceived as presenting a significant risk of causing harm to the public. Those risks would only be reduced when his own misuse of drugs and general poor attitude towards others had been addressed. He did not suffer from any major mental illness, but he had in the past suffered from depressive episodes and currently showed signs of depression. He also suffered from an antisocial personality disorder.

10. The judge also had a letter from the appellant explaining that he and his wife had made

determined efforts to stay away from drugs and lead law-abiding lives. They now had a baby daughter. He told the judge in his letter that he regretted what he had done, but had been concerned at the time to protect his wife and daughter from Scott who was a much larger man than the appellant.

11. The judge also had four impressive character references relating to the appellant.

12. When passing sentence the judge said that the appellant would receive full credit for his plea of guilty. He had an extensive record, but there were a limited number of offences for violence. Account was taken of the reports and letters before the court. He had not sought to commit an offence of violence, but had done so when he felt that he was under attack. It was accepted by the judge that the appellant was in a vulnerable position because of his illness and his weakness and his need to protect his wife and child. Nevertheless, the use of a knife was an extremely serious matter. The injury caused had also been extremely serious, and the ongoing serious effect on the victim was something that could not be ignored.

13. By reference to the Definitive Guideline of the Sentencing Council on cases of assault the judge expressed the view that this case fell towards the lower end of category 1, or potentially between categories 1 and 2.

14. On the appellant's behalf Mr Skinner submits that if this case was to be dealt with according to the Sentencing Council's guideline, then the judge adopted too high a starting point. Alternatively, the judge could properly have stepped outside the guideline altogether because this was an exceptional case.

15. We see no reason for the judge to have stepped outside the guideline. Section 125(1) of the Coroners and Justice Act 2009 requires the court to follow the guideline unless it would be contrary to the interests of justice to do so. The guideline itself specifically provides that a greater degree of provocation than normally expected and excessive self-defence are factors indicating lower culpability.

16. However, we accept Mr Skinner's alternative submission that, in applying the guideline, the judge's starting point was too high. It is accepted that this was a case of greater harm (as those words are used by the Sentencing Council) having regard to the life-threatening nature of the injuries sustained by Scott. In our view, however, this case does not fit comfortably into either of the categories of higher or lower culpability. The use of a weapon certainly points towards higher culpability, but it was a weapon grabbed in the heat of the moment. On the other hand, the degree of provocation offered by Scott and the use by the appellant of what on his own basis of plea could be seen as the use of excessive self-defence, pointed in our view towards lower culpability.

17. An offence of greater harm and higher culpability is a category 1 offence in accordance with the guideline, with a starting point of twelve years' custody and a sentencing range of nine to sixteen years. An offence of greater harm and lower culpability is a category 2 offence, with a starting point of six years' custody and a range of five to nine years. Thus it can be seen that nine years marks the borderline between categories 1 and 2. Since we regard this as a case that falls at the borderline of higher and lower culpability, we also regard it as a case that falls at the

borderline of categories 1 and 2. For these reasons, in our view, a starting point of nine years, rather than the judge's notional starting point of twelve, would have been appropriate and, granted that the appellant is entitled to full credit for his plea of guilty, it is our view that the proper sentence in this case, recognising both the gravity of the injuries and the use of a knife, but also the considerable mitigation available to the appellant, would be one of six years.

18. Accordingly, we quash the sentence passed, substitute for it a sentence of six years' imprisonment and allow the appeal to that extent.
