Neutral Citation Number: [2015] EWCA Crim 1575
No: 2015/1438/A7
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 16 September 2015

B e f o r e:
MR JUSTICE HOLROYDE

MR JUSTICE LEWIS

R E G I N A

V

DALE THOMPSON

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

The **Crown** did not appear and was not represented

J U D G M E N T
(Approved)

1. MR JUSTICE HOLROYDE: On 2nd July 2014 in the Crown Court at Carlisle, this appellant was convicted by a jury of offences of wounding with intent contrary to section 18 of the Offences Against the Person Act 1861 and witness intimidation contrary to section 51(1) of the Criminal Justice and Public Order Act 1994. At a later date he pleaded guilty to an offence of handling stolen goods which he had committed whilst on bail for the earlier offences.
2. On 29th January 2015 he was sentenced to a total term of eight years two months' imprisonment, comprising a sentence of seven years for the section 18 offence, 12 months consecutive for the intimidation offence and two months consecutive for the handling offence. He now appeals against his total sentence by leave of the single judge. We are grateful for the written and oral submissions of counsel Mr Richard Dawson, who has presented the appellant's case very skilfully.
3. The appellant is now 39 years of age. He has a number of previous convictions. He has in the past been convicted of 12 offences, including offences of dishonesty, public disorder and battery. It is particularly relevant to note that on 1st March 2013, that is to say some 16 months before the section 18 offence with which this court is concerned, he was made subject to a community order for offences of battery and disorder. The terms of the order required him to be supervised for that period of 12 months and also required him to attend a Thinking Skills Programme. It may be noted that on the occasion when that sentence was imposed, the appellant was also fined for a separate and further offence of public disorder.
4. The appellant was therefore subject to the community order when he committed the section 18 offence. The circumstances of that offence can be summarised as follows. It occurred on a Saturday in July 2013 when a local rugby league club in West Cumbria

was holding a fundraising day. Among the various events and attractions there was a bouncy castle. The proprietor and manager of the bouncy castle was Mr Mattinson. In the course of the day it was necessary for him to speak to this appellant's son about the boy's behaviour. The initial response of the appellant was to deflate the bouncy castle and there was an exchange of words between him and Mr Mattinson.

5. Later that night, Mr Mattinson was preparing to leave the rugby ground. He was attacked and knocked to the ground whilst outside the club. He went back inside the club premises and confronted a man called Hall whom he believed to be responsible. Hall, it seems, is a friend of this appellant. The appellant was clearly disposed to involve himself in that confrontation. He was held back by others who tried to remove him the area. It should be noted that amongst the many persons still present at the club were children.
6. The appellant told those who were restraining him that he had calmed down. They therefore let him go. As soon as they did so he charged at Mr Mattinson and knocked him to the ground. As they grappled on the ground the appellant bit Mr Mattinson on the outer corner of his right eyebrow. As one of the photographs before the court vividly shows, he bit away a portion of the flesh.
7. The two men were separated. The police were called and the appellant was arrested. His observation about what he had done was: "I bit him because he hit my mate for nothing." He also made a threat to kill Mr Mattinson.
8. Medical evidence before the lower court indicated that there had been a bite wound to Mr Mattinson which encompassed the outer half of his right eyebrow and the outer half of his upper eyelid. We pause there to make the obvious point that the biting teeth must have come within millimetres of causing damage to the orbit of the eye. It was a full depth bite through the skin and the muscle and the fatty part of the body in that area had

been completely bitten away. The unfortunate Mr Mattinson required plastic surgery and is left with a scar.

9. So far as that offence was concerned the appellant denied it when interviewed. He blamed Mr Mattinson as being the aggressor. He was bailed by the police.

10. Whilst on bail he committed the witness intimidation offence. It was, it must be said, a nasty example of that type of offence. Mr Mattinson, who operated a mobile burger stall, was returning with his burger trailer to the compound in which he stored that vehicle. As he arrived the appellant in a car pulled up alongside him. It seems that the appellant was accompanied at the time by his wife and his teenage daughter. Plainly her presence did nothing to moderate her father's conduct because he shouted at Mr Mattinson that he was "a grassing bastard". The appellant then sped up and cut in front of Mr Mattinson's vehicle, making it necessary for Mr Mattinson to take avoiding action to avoid a collision. The appellant then drove off but when Mr Mattinson completed his journey to the storage compound he found that the appellant and the other members of his family were there ahead of him. They were filming Mr Mattinson. The footage, which was recovered by the police, records the appellant saying: "I want him to know that I know where he parks his van."

11. The police were called. When interviewed the appellant again denied any wrongdoing. He said had come across Mr Mattinson by chance and it was Mr Mattinson who had been goading him.

12. The third offence can be briefly summarised. Electrical equipment had been stolen in a burglary in late September 2013. When the police went to the appellant's house in mid-November 2013 they found some of the items which had been stolen in that burglary. The appellant at that stage denied any knowledge or belief that they were

stolen goods, but clearly he abandoned that defence when he later pleaded guilty.

13. There was before the court a victim personal statement from Mr Mattinson. Mr Mattinson described the effects upon him of the incident. He described the fear which he had experienced. He summarised his medical treatment. Over the course of the year or so which had then passed since the incident he had had to make ten separate attendances at hospital in West Cumbria, Carlisle and Newcastle, with further attendances on his GP and an optician. He had undergone plastic surgery to his right eyebrow, but was left with permanent scarring and an impairment of his peripheral vision, together with a loss of sensation in the injured area. He had been unable to drive for seven weeks after the attack upon him and unable to work for 12 weeks.

14. In addition to those physical injuries, he had suffered severe psychological consequences. He had had to endure an anxious wait of some eight weeks before receiving a favourable result of tests which had necessarily been carried out for HIV infection. He had suffered a general loss of confidence, felt himself under stress and anxiety and was having difficulty sleeping. Fearful of further attack by the appellant, Mr Mattinson had taken various security measures in and about his home and had resorted to changing the school which his own son attended in order to avoid any risk of encounter with the appellant.

15. The learned judge considered the sentencing guidelines in relation to the section 18 offences. The prosecution and defence advanced contradictory submissions as to the appropriate application of that definitive guideline. The learned judge concluded that there was in this case greater harm but lower culpability. The greater harm he found was because he regarded the injuries suffered by Mr Mattinson as being, in the words of the guideline, "injury ... which is serious in the context of the offence". Having thus categorised the offence, the judge noted the guideline starting point of six years. He also

noted however the significant aggravating features which were present in this case. He itemised them as follows in a list with which this court entirely agrees. First, the previous convictions for offences of violence. Secondly, the ongoing effect on Mr Mattinson of, as the judge put it, "this savage attack". Thirdly, the presence of a large number of persons including children when the attack was made. Fourthly, the breach of the community order to which we have referred. Fifthly, the fact that the appellant was intoxicated at the time.

16. As to the submission that this was an offence which lacked any premeditation, the learned judge said this:

    i. "Whilst it is obvious that you did not set out that day to wound Mr Mattinson, because you did not even know him, the circumstances in which you came to bite him, did in my view, involve some degree of premeditation, albeit made up within a very short time, because you were shouting at a time when you were being restrained by others that you were going to get at him and as soon as ... they released their grip upon you that is when you ran over to him and attacked him. So in my mind that shows an element of premeditation."

17. It was in those circumstances that the learned judge, giving such weight as he could to matters of personal mitigation advanced on the appellant's behalf, imposed the sentences we have noted. It was of course a case in which the only guilty plea had been to the minor offence of handling.

18. On behalf of the appellant, Mr Dawson challenges the learned judge's view that this was a case of greater harm. He refers to the phrasing in the guideline which we have quoted and in carefully-expressed submissions, making perfectly and properly clear that he in no way seeks to minimise the injury, he makes the submission that this was not an injury which was "serious in the context of the offence". He points out, rightly, that this category of offence is, with unhappy frequency, committed by methods such as stabbing,

even in some cases repeated stabbing, and so submits Mr Dawson there are many section 18 offences which result in substantially more serious injury than was the case here. Indeed, pursuing his submission a little further he says that within the overall scale of grievous bodily harm the injury here, unpleasant and intensely painful though it was, should be regarded as coming somewhere lower in the scale.

19. In an alternative submission, Mr Dawson argues that even if the offence was correctly placed into category 2 of the guidelines, there was no justification for the judge to impose a sentence for the section 18 offence which was 12 months longer than the guideline starting point. In all the circumstances he submits the sentence should have been below the guideline starting point. He invites the court to take the view that there was, if not provocation, at least a perception of provocation on the part of the appellant which should perhaps be taken into account in his favour.

20. In his written submissions Mr Dawson also advanced a ground of appeal based upon the principle of totality. Rightly in our judgment he has not sought to pursue that and has this morning abandoned it before us.

21. We have reflected upon Mr Dawson's submissions as to whether this was an offence involving greater harm. We do think it is important to bear in mind not only the physical injury but also the persisting psychological consequences of the attack upon Mr Mattinson. We do nonetheless accept that within the scale of grievous bodily harm this case falls somewhat short of being injury "which is serious in the context of the offence". To that extent we differ from the learned judge below in our application of the guideline for we would not regard this as a case of greater harm. On the other hand, we also respectfully differ from the judge below in relation to his conclusion that this was a case of lesser culpability. We see force in the submission which was advanced on behalf

of the prosecution in the court below to the effect that the use by the appellant of his teeth should be regarded by the court as being, in the terms of the guideline, the "use of weapon or weapon equivalent". There is authority in support of that submission in both Wagner [2013] EWCA Crim. 529 and more recently in Attorney General's Reference No 6 of 2015 [2015] 2 Cr.App.R (S) 24, where this court has confirmed that in a case of biting the use of the teeth may be regarded as the use of a "weapon equivalent". Mr Dawson realistically does not seek to argue otherwise.

22. Thus, albeit by a different route we arrive at the same conclusion as the judge, namely that this case should be categorised in category 2 of the guideline. The starting point within that category is, as we have said, one of six years' custody. The range is from five to nine years' custody. Mr Dawson argues for a sentence for this offence at the lower end of that range. We do not agree. Although as we have acknowledged the injury fell somewhat short of being serious in the context of the offence, we cannot regard it as falling below the level ordinarily to be expected in an offence involving the causing of grievous bodily harm. The starting point therefore is undoubtedly in our view six years' imprisonment, but the aggravating features correctly identified by the learned judge below equally clearly result in a significant increase in that starting point. Although Mr Dawson sought to persuade us otherwise, we for our part can see little, if anything, to set in the scales in the appellant's favour. This was not a case of provocation. The learned judge does not seem to have been addressed about that, but whether he was or not we are clear in our conclusion that there is no mitigation to be found in provocation or presumed provocation. Nor in our judgment can this be regarded as a case entirely lacking in premeditation, for the reason which the learned judge below very clearly set out.

23. We are therefore unable to see that the sentence of seven years' imprisonment for this very serious section 18 offence was excessive, let alone manifestly so. No separate challenge is made to the other sentences or to the fact that they were ordered to run consecutively to the principal sentence. We for our part can see no reason whatsoever why either of those consecutive sentences should be reduced in any way.
24. For those reasons, grateful though we are for Mr Dawson's endeavours on the appellant's behalf, this appeal fails and is dismissed.