

Neutral Citation Number: [2018] EWCA Crim 1985

Case No: 201801920 A2

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Date: Friday, 22 June 2018

**B e f o r e:**

**LORD JUSTICE SIMON**

**SIR JOHN SAUNDERS**

**THE RECORDER OF NORTHAMPTON - HIS HONOUR JUDGE MAYO**  
**(Sitting as a Judge of the CACD)**

**REFERENCE BY THE ATTORNEY GENERAL UNDER**  
**S.36 OF THE CRIMINAL JUSTICE ACT 1988**

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**R E G I N A**

**v**

**BERNIE WARD**  
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**Mr H Sandhu** appeared on behalf of the **Attorney General**

**Mr C Aspinall** appeared on behalf of the **Offender**  
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LORD JUSTICE SIMON:

1. The Solicitor General seeks leave to refer to this court sentences under section 36 of the Criminal Justice Act 1988 which he considers to be unduly lenient. The sentences were passed in the Crown Court at Sheffield by Mr Recorder Wynn.
2. On 28 March 2018, the offender pleaded guilty to two offences: count 1, causing grievous bodily harm, contrary to section 20 of the Offences Against the Persons Act 1861; and count 2, attempted robbery, contrary to section 1(1) of the Criminal Attempts Act 1981. The case was adjourned to a hearing on 13 April, when the offender was sentenced by the Recorder: on count 1, to a term of 20 months' imprisonment; and on count 2, to a concurrent term of 40 months' imprisonment; a total sentence of 3 years and 4 months.
3. The offender is aged 32. The victim of both offences was Adrian Betts, aged 58. Adrian Betts lived on his own but with the support of his family who live nearby. A previous aneurysm and bleed to the brain had resulted in part of his skull being removed and replaced with a metal plate. He had, in addition, suffered a stroke which had left him in a coma for some 3 months. The combination of those events left him with short-term memory loss and permanent left-sided weakness. He could walk a short distance with the aid of a walking stick. He wore a medical alarm around his neck so that he could call for assistance if he fell or had a medical episode. He suffered from anxiety.
4. He had been a friend of the offender's father and had known the offender for some 15

years. He had been awaiting a delivery to his home on 31 January. He answered a knock to his front door at 9.45 pm, which he thought was that delivery. In fact, it was the offender. He was drunk and was holding a half-finished bottle of dark rum. Adrian Betts invited him into his home. They went into the kitchen where they talked until without warning the offender began punching Adrian Betts repeatedly to the face using both fists. He was unable to defend himself. He pleaded with the offender to stop and to leave. The offender then punched him on the nose. The punches to his face left him with injuries which were the subject of count 1 on the indictment. Adrian Betts noticed that he was bleeding. He repeatedly pressed his medical alarm, which was covered in blood. This alerted the company that monitored the alarm and they contacted his daughter. She telephoned his brother, Martin Betts, and asked him to attend.

5. The events giving rise to count 2, the attempted robbery, then began. The offender took a knife with a 10-inch blade from a knife block in the kitchen. By this stage, Adrian Betts was standing against the kitchen wall. The offender grabbed him by the neck and held him against the wall. He used the knife to stab the wall on either side of Adrian Betts several times. He was shouting, "Give me a tenner". The knife caught and ripped Adrian Betts's dressing gown, and sliced through to his shoulder and lacerated his upper arm.
6. By this stage he was shaking with fear. He said to the offender, "Don't do anything stupid". The offender simulated the slitting of his throat by running the blunt edge of the knife across Adrian Betts' neck several times. This resulted in his neck being scratched. The offender then placed the knife under his chin and pressed it into the skin. The offender repeated, "Give me a tenner". The offender removed his own shirt and used it to

wipe the blood from his victim's face. Adrian Betts told the offender that he would ruin that shirt, whereupon the offender punched Adrian Betts again.

7. The offender stopped his violence to go outside the house and urinate. He then returned. Martin Betts arrived at this point through an open front door to find his brother standing against the wall and the offender standing in the kitchen. Adrian Betts told his brother that the offender had assaulted him. Martin Betts could see that he had sustained facial injuries and that his clothing was bloodstained. The offender grabbed Adrian Betts by the face and jaw. He stopped when Martin Betts said that his brother had suffered from a brain injury. The offender then threatened Martin Betts by saying to him, "You'll get some too." The offender began hitting himself and continued to issue threats. This continued for about a minute.
8. At this point, Martin Betts took his brother from the kitchen into the sitting room. The offender followed them. The offender would not let Martin Betts leave to get first aid nor would he let him call an ambulance. He said, "You're not fetching anybody". By this stage, Adrian Betts was seated and his brother was attending him. The offender sat next to Adrian Betts, held him in a headlock and moved his head around. He was asked to desist by Martin Betts. The offender hit himself again and said, "I'm hard, me. Look at my muscles". "Adrian Betts was crying and telling his brother how scared he was.
9. Martin Betts was able to leave the house eventually with the knife, which he hid, and the bottle of spirits from which the offender had been drinking. When he did so, he called the police. The episode had lasted some 30 minutes. When the police arrived, they saw

that the victim was distressed. He was crying and shaking. They found the offender in a semi-conscious state at the foot of the stairs. The officers believed he was heavily intoxicated.

10. His victim had sustained the following injuries. Heavy bruising and swelling to his face. A cut to his upper lip, which was sutured with two stitches. Lacerations to his face and left upper arm. A small bleed to the brain: a traumatic subdural and subarachnoid haemorrhage. Several light scratches to his neck. Those visible injuries were photographed and the court has seen those photographs.

11. The offender was arrested. He was interviewed under caution on 1 February 2018 and he answered no comment to all questions asked of him.

12. Adrian Betts spoke of the impact of the offending on him in a statement dated 1 February and in a victim impact statement dated 4 April. He said he was absolutely terrified during the attack, hurt by being attacked by someone he knew, frightened by the sight of his own injuries, emotional because he was attacked in his own home, experiencing flashbacks, especially at the thought of the offender holding him against a wall and then stabbing the wall on either side of him, frightened of being a victim of crime and encountering the offender again. He was a changed person.

13. At the date of the sentence the offender had 18 convictions relating to 28 offences. Those offences included public order offences committed on 25 March 2005 and 4 July 2007; being drunk and disorderly committed on 1 December 2010, 12 April 2011, 7 December

2011, 2 June 2012 and 29 March 2013; battery committed on 22 April 2007, 8 August 2011 and 6 September 2016; breach of a community order committed between 7 April and 11 April 2008 and between 28 July and 27 August 2008; breach of a conditional discharge committed on 8 August 2011 and 29 March 2013; theft committed on 20 February 2012 and 23 February 2012; and attempted theft committed on 7 March 2015.

14. The offender had last been sentenced on 5 December 2016 to a 4-month term of imprisonment suspended for 24 months with a rehabilitation activity requirement for an offence of battery. The period of suspension was due to expire on 5 December 2018. The offender's commission of these offences placed him in breach of that suspended sentence order at the approximately halfway point of the period of suspension.

15. There was a psychiatric report prepared by Dr Ajay Pawar, a consultant psychiatrist. This set out the offender's domestic circumstances as the father of four children and the carer of his mother. But also his habit of binge drinking and his awareness of the problems that this has caused him throughout his life. Following his last conviction and suspended sentence he had stopped drinking for 11 months because he did not want to get into any police trouble. The night of the offence was the first time he had broken this resolution. He told the psychiatrist that the victim had made some derogatory remarks. At this point he said his mind went blank. He said he did not remember assaulting the victim. Although there was a history of harmful use of alcohol, the psychiatrist did not consider that he had an alcohol dependence. There was plainly a risk of committing further offences when he drank alcohol.

16. The Recorder had sight of a letter written by the offender's partner who spoke of his

positive relationship with his children and his mother. She confirmed that at that point the offender had stopped drinking alcohol. In addition, the Recorder saw two certificates obtained by the offender while he was remanded in custody and awaiting the outcome of the proceedings.

17. The offender was charged on 1 February 2018 with an offence of causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Persons Act 1981, and attempted robbery. The offender's first appearance before the Magistrates' Court was on 2 February. He did not give any indication of plea at that stage. The Magistrates' Court was told that the offender had been advised of credit for a guilty plea. The potential trial issues were identified as "forensic issues" and "identification issues". The prosecution had not at that stage served the statements, photographs and medical evidence upon which reliance was placed.

18. The offender appeared in the Crown Court on 2 March for a plea and trial preparation hearing. The indictment he faced reflected the offences he had been charged with. He was not arraigned as the medical evidence was awaited. The hearing was adjourned to 28 March, when the offender pleaded guilty to the offence of causing grievous bodily harm, contrary to section 20, in the alternative to the offence charged under section 18; and also guilty to count 2. There was no basis of plea. The Crown was afforded 14 days to consider the acceptability of those pleas and these were confirmed in writing to be acceptable on 6 April 2018.

19. The matter was listed on 13 April to confirm the acceptability of those pleas and the

Recorder was invited to sentence the offender with the benefit of Dr Pawar's psychiatric report and the mitigation material that we have set out.

20. The Recorder sentenced the offender to a total term of 40 months. He considered the Sentencing Council definitive guidelines on assault. In addition, he considered the Sentencing Council's robbery definitive guideline. He concluded that count 2, attempted robbery, was a category 1A offence. He also indicated that the offender would be afforded full credit for his guilty pleas; and it is not submitted on behalf of the Solicitor General that that was inappropriate in the circumstances.

21. The more serious offence was the charge under count 2, the attempted robbery, which was committed immediately after the section 20 assault. The Recorder characterised this offence as falling within category 1, greater harm; and category A, greater culpability, within the definitive guidelines for robbery. It was category 1 harm because of the serious physical injury to the victim: damage to his brain. It was category A culpability because the offender had produced a bladed article to threaten violence.

22. Mr Sandhu, who appears for the Attorney General, submits that on that basis the starting point in the guideline set out at page 15 of the definitive guidelines for dwelling robbery indicates a term of 13 years' imprisonment and a range of 10 to 16 years.

23. The Recorder took a starting point of 8 years and it appears that he did so because he was looking at a different guideline: page 3 of the definitive guidelines, street and less sophisticated commercial robbery, where the starting point for a category 1A offence is 8



years and a range of 7 to 12 years. Having taken this starting point of 8 years, the Recorder then reduced it to 5 years before giving credit for the plea:

Thus, if I start with that guideline, I would start with a period of eight years imprisonment. However, I do not do so because of the matters raised by your counsel and the fact that this really should not be treated as a pure and simple robbery. Therefore, my starting point is five years imprisonment. That is a substantial reduction.

24. Mr Sandhu submits that it was indeed a substantial reduction and that nothing in the case justified it. There was the commission of the section 20 offence immediately before the robbery. There was the statutory aggravating factor of his previous convictions, including offences of battery. There were also a number of other aggravating factors identified in the Sentencing Council guidelines that increased the seriousness of the offending: steps taken to prevent the victim reporting the offence or getting help, the prolonged nature of the offence, the restraint of the victim and the commission of the offence half way through a 24-month suspension period of a 4-month term of imprisonment for an offence of battery.

25. For the offender, Mr Aspinall submits, that this was not a conventional dwelling robbery and the Recorder was entitled to adopt the street robbery guidelines. We disagree. This was an attempted dwelling robbery. The Recorder has in a note addressed to the Court of Appeal Criminal Division very properly accepted that he applied the wrong guideline.

26. Mr Aspinall also submits that this was an attempted robbery that does not fit "easily or comfortably" within the guidelines for dwelling robbery. The offender had been invited

in and, at least initially, had a normal conversation with the victim. He had not entered his home with the intention of either assaulting him or robbing him. We agree, at least to this extent: this was not a break-in; the violence began suddenly and without justification in the victim's home.

27. Next, it is argued that the offences were spontaneous, unplanned, short-lived and chaotic.

The offender did not attempt to escape; he remained at the scene until arrested. We accept that submission as far as it goes. But so far as harm and culpability of the offending is concerned, it does not go very far.

28. Mr Aspinall also submitted that if one takes the section 20 offence which caused the serious head injury, the offence became a category 2A offence under the dwelling robbery guideline, since the serious physical injury was caused by the assault and not by the subsequent attempted robbery. Again, we accept this point to an extent, but always subject to looking at the overall criminality when looking at the total sentence.

29. As to the reduction from the starting point of 8 years to a term of 5 years, as the Recorder put it - "to take account of submission made on behalf of the defendant" - Mr Aspinall says, frankly, that it is difficult to make any submissions. We agree. The reduction was unexplained and is inexplicable.

30. Finally, he submits that the Recorder was right to give full credit for the pleas. That is common ground.

31. In our view, four initial points can be made. First, the offending properly fell within the guideline for dwelling robbery. Second, it was an attempt and not the completed offence. Third, standing alone, the attempted robbery fell into category 2A of the dwelling robbery guidelines. Fourth, there were a number of aggravating factors which increased the seriousness of the offending viewed overall: the commission of the section 20 offence immediately before the robbery that caused the serious harm to the victim, the bleed to his brain; the offender's previous convictions, including offences of battery; the steps taken by him to prevent the victim reporting the offence or getting help; the extended nature of the offence, which included the restraint and the drunken bullying of the victim; and the fact that the offence was committed while subject to a suspended sentence.

32. Taking all these matters into consideration, we have concluded that the overall offending, the section 20 crime and the attempted robbery offence, took the sentence to the top of the category range for category 2A dwelling robbery, a term of 10 years' imprisonment. With the offender entitled to full credit for his plea, that leads to a sentence of 6 years and 8 months.

33. Accordingly, we grant leave in this case and order that the sentence on count 2 will be a term of 6 years and 8 months and we substitute that sentence for the sentence of 3 years and 4 months passed by the Recorder. The sentence on count 1 will be unaffected. Two months of the suspended sentence will be ordered to be served concurrently.

