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IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday, 21 November 2018

B e f o r e:

LORD JUSTICE HICKINBOTTOM

MRS JUSTICE ELISABETH LAING DBE

MR JUSTICE WILLIAM DAVIS

R E G I N A

v

MARGARET MARY YORK

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Mr N Lewin appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. MRS JUSTICE ELISABETH LAING: Mr Lewin appears on behalf of the appellant and the court is grateful to him for his written and oral submissions this morning.

2. On 12 July 2018, in the Crown Court at Plymouth, the appellant pleaded guilty to an offence of being in charge of a dog which caused injury while dangerously out of control in a public place. His Honour Judge Timothy Rose passed the sentence of a community order with an unpaid work requirement of 150 hours. He also ordered the appellant to pay £1,000 compensation to Jayne Taylor.

3. The facts of the case, in brief, were that "Molly" was a young Rottweiler dog, 14 months old. The dog was owned by Corinne York who was the appellant's daughter. She had learning difficulties and was profoundly deaf.

4. In about September 2017 an RSPCA inspector was visiting and Molly, in an unprovoked attack, bit him. He had then given advice to the appellant and her daughter. He had advised them firstly, to have the dog spayed, so as to calm her down. He had also advised them that whenever the dog was taken out in a public place the dog should wear a muzzle. The inspector's advice was followed, in that Molly was taken to the vet to be spayed. She was given stitches by the vet.

5. On 24 October 2017 Molly needed to be taken to the vet again in order to have those stitches removed. On that morning Corrine York had a hospital appointment for chemotherapy at 11.30 am. The appellant, in order to help out, had agreed to take Molly to the vet for the stitches to be removed. That meant that the context was a stressful situation for the appellant. She was running late. She had checked the collar of the dog the night before and had tightened it. The collar did not have holes and a buckle; rather it had a clip, which was moved so as to tighten the collar. The appellant said that the collar had not come loose before and although she had checked it the night before she had not checked it again in the morning. She did not have the dog's headpiece or harness but she did have the muzzle. She parked close to the vet surgery and did not think it was necessary to use the muzzle when she was ready to take the dog out of the car because the vets' was only a short way away from the car. When she opened the car the dog slipped its collar and ran off down the road. It ran up to Jayne Taylor

and jumped up at her. The dog bit her through her anorak. The dog then let go and bit her buttock. The appellant ran after the dog calling its name but the dog did not respond. The appellant apparently had not realised how serious the incident was and thought the dog was simply greeting Jayne Taylor by jumping up at this stranger.

6. Jayne Taylor's arm was bitten down to the bone and there was a time it appears that it was broken, although from the papers it seems there might have been some doubt about that. That is certainly advanced in the grounds of appeal. In any event, she had eight stitches in her arm and stitches were advised not to be put in too tightly in case the arm became infected.

7. The appellant had taken the dog out before. When she was interviewed she said that she had experienced the dog being boisterous and scratching. However, when she was asked whether the dog had bitten anybody, she said that the dog had not. She did concede that she found it difficult to control the dog on her own when she was out and that it often took two of them to control the dog if they were out walking the dog together. She also said that she had tried to prevent the dog from jumping up by folding her arms and turning her back on the dog.

8. There was a victim personal statement before the sentencing judge.

9. The appellant was of previous good character. There was a "stand-down" pre-sentence report. We have read the transcript of that report. The relevant material, which emerges from that transcript, was that the appellant lived in a mortgaged property and had done so for 15 years. Her elder daughter was at work and supported the appellant, but did not live with her. The appellant worked on a casual basis in a kitchen at Plymouth Sea Centre and was on the minimum wage and earned about £110 a month. She did not receive any benefits. She suffered from a number of physical health problems which were described by the probation officer to the judge. She took a number of medications to manage those. Several years ago she had been diagnosed with depression.

10. The probation officer also referred to the appellant's eldest daughter, Corrine's, mental health problems. She had always had behavioural difficulties but had never been formally diagnosed. She also had physical health difficulties. She had cancer and was going to hospital for radiotherapy and had nasty burns on her body from that radiotherapy. The appellant was trying to help her and was taking her to those appointments.

11. Her daughter Corrine was receiving some care from the relevant local authority. However, she was not in supported living and therefore there was pressure on the appellant to take care of her daughter.

12. Both the appellant and her other daughter had advised her not to get the Rottweiler and to give it training but Corrine could be difficult.

13. Further relevant material from the stand-down report was that the judge

was told that the complainant's actual losses had been £280, time off work (three days at £85.65 per day), parking at the hospital and damage to her coat. The judge said in the course of the transcript:

> "... I strongly expect that I won't be able to do that justice in the forum of this Court."

What he meant by that was an award of compensation to compensate Jayne Taylor for the level of personal injury which she had suffered as a result of the dog's attack as opposed to her quantifiable pecuniary losses.

14. The judge was referred by prosecuting counsel to the sorts of amounts which would be available from the Criminal Injuries Compensation Scheme for injuries of this kind. There was an exchange between the judge and the probation officer at page 3D of the transcript, in which the probation officer told the judge that the appellant did not have any major debts but that her outgoings were more than her incoming earnings, but with the help of her daughter "they do just about cope with their bills". At page 6B the probation officer told the judge: "Clearly she has very little disposable income" and that she would ask for time to pay.

15. In the course of his oral submissions Mr Lewin told us that he had said to the judge that the appellant would be able to find £5 per week but that it would come from her elder daughter as she, the appellant, could not pay. He had indicated that the appellant was trying her best. She accepted responsibility for the injuries. Her position was that she wanted to make amends for those injuries and that she would do her best to do so.

16. In the course of his sentencing remarks, which we do not need to say very much about in view of the limited issue on this appeal, the judge observed that it was difficult to put this offence into any particular box in the sentencing guidelines. Taking account of the mitigation and her guilty plea, he passed the sentence to which we have referred having ruled out a higher figure of 250 hours.

17. The judge then turned to the issue of compensation. He described this issue as "intensely problematic". He understood that the appellant was:

> "... not in an easy position and I understand that if I make an order, I have already been told that it may frankly end up with somebody else stepping in to help you out to some extent."

He went on to say that put him in "a difficult judgment area in terms of what to do for the best" (transcript page 6F). He considered that the complainant should be receiving about £2,000 in compensation and, if she were to sue in a civil court for her injuries, she might receive a good deal more than that. Trying to balance the need for compensation against the realities of the appellant's position, he concluded that the appellant should pay the complainant £1,000 compensation.

That was to reflect the complainant's economic loss for something towards her injuries as well. A collection order was made and the judge expressly left it up to the Magistrates' Court to sort out the payment regime. He observed that the compensation payment was "at the limit of [the appellant's] means to pay" and that he would therefore reduce the victim surcharge order that would otherwise apply to zero. He also observed that he had given priority to compensation and would not make any order for costs.

18. The grounds of appeal, in short, are that in the circumstances of this case the compensation order which the judge made was wrong in principle and manifestly excessive.

19. On the facts of this case, it seems to us that six principles are relevant. First, an offender must give details of her means. Second, before making compensation order, a judge must enquire about, and make clear findings about the offender's means. Third, before making a compensation order the court must take into account an offender's means. Fourth, a compensation order should not be made unless it is realistic, in the sense the court is satisfied that the offender has or will have the means to pay that order within a reasonable time. Although a compensation order based on the repayment period as long of 100 months has been upheld, it has been said that while a repayment period of two or three years in an exceptional case would not be open to criticism, in general, excessively long repayment periods should be avoided. Fifth, a court should not make a compensation order against an offender without means on the assumption that the order will be paid by somebody else, for example, a relative. Finally and sixth, it follows that it is wrong to fix an amount of compensation without regard to the instalments which are capable of being paid by the offender and the period over which those instalments should be paid but rather to leave those questions for the Magistrates to sort out.

20. In our judgment, the judge did not observe those principles in ordering the appellant to pay a compensation order of £1,000. He seems to have acknowledged, in the passage to which we have referred, both that the appellant did not have the means to pay and that it was likely, in that situation, that the appellant's elder daughter would in fact in reality be making the payments rather than the appellant.

21. In all those circumstances, it is our decision that this compensation order was wrong in principle and manifestly excessive. We therefore quash it.