Neutral Citation Number: [2019] EWCA Crim 1044
2019/00442/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 5th June 2019

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE SPENCER

and

MR JUSTICE MORRIS

R E G I N A

- v -

IMRAN KHAN

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Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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Mr A Dunn appeared on behalf of the Appellant

J U D G M E N T
(Approved)

Wednesday 5th June 2019

MR JUSTICE SPENCER:

1. On 13th December 2018 the appellant, who is now 37 years of age, was convicted by the magistrates, following a trial, of possessing a sharp bladed or pointed instrument, contrary to section 139(1) of the Criminal Justice Act 1988. The weapon in question was a small lock-knife with a two and a quarter inch blade. He was committed for sentence to the Crown Court. On 17th January 2019, in the Crown Court at Chelmsford, he was sentenced by His Honour Judge Morgan to a term of eighteen months' imprisonment. He appeals against that sentence by leave of the single judge.

2. At the time of the offence the appellant was on licence from prison, having served fourteen years of a sentence of life imprisonment for murder. He had been released on licence in August 2017, some fourteen months before the present offence.

3. The background to the offence is that the police had been called to an incident on the evening of 17th October 2018 at an address in Harlow, Essex. It seems that the appellant had visited his partner at her place of work. There had been an argument in which another young man had become involved and there had been some violence , to put it neutrally. The appellant was charged with assaulting the other man and with a public order offence,. He was acquitted by the magistrates of both those offences but convicted of the knife offence.

4. When the police attended, they were at first given an inaccurate description of the appellant and, although he was arrested nearby soon afterwards, the officer had to de-arrest the appellant because he did not fit the description given. Within a matter of minutes, however, the description was corrected and it was realised that the man who had been

arrested was indeed the man the police wanted, appellant. By then he had gone to the nearby train station at Harlow Mill. The two police officers followed him there. They saw him on the platform and they approached him. One of them grabbed hold of his arm, at which point the appellant handed over a small, silver lock-knife. The inference to be drawn is that it was readily available in his pocket at that point, if not in his hand.

5. He was arrested and interviewed. The explanation he gave for having the knife was that he normally had it on his keyring for legitimate purposes. That, it seems, was the account he gave to the magistrates, presumably in support of a defence that he had good reason or lawful authority for having a knife with him in a public place. He asserted that he had dropped the bunch of keys as he ran to the station and that is how the knife had become detached from the keyring.

6. We should explain that section 139 of the 1988 Act does not prohibit the carrying of a folding pocket-knife with a cutting edge with a blade less than three inches; but this was a lock-knife, not a folding pocket-knife. There is authority that a lock-knife does not fall within that exemption: *R v Deegan* [1998] 2 Cr App R 121.

7. The appellant had a bad record for carrying weapons and for offences of violence. In May 1999, at the age of 16, he was sentenced to a total of two years' detention for two batches of offences of robbery, assault and possessing a prohibited weapon, committed on two separate occasions. He would have been 15 at the time of the offences. On 26th November 1997, he was in possession of an unspecified weapon, charged under the Prevention of Crime Act 1953, the inference being that that was a knife. On 9th July 1998, he was in possession of a prohibited weapon under the Firearms Act 1968. In each case he was sentenced to six months' detention. In March 2001, aged 17, he was sentenced to a total of 33 months'

detention in a young offender institution for offences of criminal damage, possessing an offensive weapon contrary to the 1953 Act, and possessing an imitation firearm with intent to cause fear or violence. Those offences were committed on 7th September 2000. For possession of the imitation firearm, the sentence was 30 months' detention; and for possession of the offensive weapon, the sentence was six months' detention concurrent. It is conceded, and was conceded in the lower court, that the latter offence was a relevant conviction within the meaning of section 139AZA of the Criminal Justice Act 1988, which meant that there was a mandatory sentence on this occasion of six months' custody, unless it was unjust in the circumstances. Finally, some nine months after his release from that sentence of 33 months' detention, he committed the offence of murder which resulted in a life sentence, with a minimum term of fourteen years. That sentence was imposed at the Central Criminal Court on 16th October 2003. He was released on licence in August 2017.

8. In passing sentence in the present case, the judge set out the background to the appellant's arrest. He did so, as he explained in his sentencing remarks, for the benefit of the Parole Board, who would have to consider the circumstances of this latest offence in deciding whether it was safe to release the appellant again on licence. The appellant had, of course, been recalled to prison following his arrest for the present offence. The judge made it clear, however, that he remained loyal to the acquittal in the magistrates' court. In particular, the judge acknowledged that at no stage during that earlier incident was the knife produced, nor was there any threat to produce it. The judge observed, however, that this was a lock-knife which could easily be held within the hand without being seen once the blade was extracted. If it was used in a fight, it could have life-threatening consequences. It was, therefore, a serious offence, particularly given the appellant's record. The judge also observed that the previous offences of possessing offensive weapons aggravated the present offence.

9. The judge acknowledged that the gravity of the present offence was reduced by the fact that the knife had not been used at all. He concluded that the appropriate sentence was eighteen months' imprisonment. There could be no credit for a guilty plea, because the appellant had contested the matter in a trial before the magistrates.

10. On behalf of the appellant, Mr Dunn advances two grounds of appeal. The first did not find favour with the single judge, but Mr Dunn nevertheless seeks to renew it. He complains that the judge fell into error by describing the events leading up to the appellant's arrest during his sentencing remarks. He submits that the judge should have disregarded that evidence altogether. The sole evidence he had before him in relation to the offence itself was the handing over of the lock-knife to the police officer on the station platform – nothing more.

11. We are not impressed by that ground of appeal. The judge made it clear in his sentencing remarks why he was setting out the background in the way he did. He made it clear that he was loyal to the acquittal of the other offences.

12. The second and more substantial ground of appeal on which leave was granted is that a sentence as long as eighteen months was manifestly excessive, having regard to the Sentencing Council guideline for possession of a bladed article in such circumstances. That guideline came into force on 1st June 2018, several months before the sentencing hearing. It seems that the judge was not referred by counsel on either side to the sentencing guidelines, which is regrettable; nor did the judge in his sentencing remarks refer to the guideline. We do not know whether the judge nevertheless had the guideline in mind.

13. Under the guideline, Mr Dunn concedes that there was level A culpability, because this

was the possession of a bladed article. As to harm, none of the category 1 factors was made out. This was, therefore, a category 2A offence under the guideline, with a starting point of six months, and a range of three to twelve months' custody. Mr Dunn concedes that the sentence had to be at least six months, because that was the statutory minimum by reason of the appellant's previous conviction for a relevant offence. He submits, however, that by going as high as eighteen months (50 per cent above the top of the range under the guideline), the judge imposed a sentence that was manifestly excessive. Mr Dunn submits that there were no aggravating factors surrounding the offence itself. There was a mitigating factor in that the appellant co-operated with the police by handing over the knife without the police having to search him.

14. We have considered these submissions carefully, but we are unable to accept them. The grossly aggravating feature of this case was the appellant's record. On four separate occasions before he was convicted of murder, the appellant had been found in possession of an offensive weapon or a firearm (or imitation firearm) in a public place. In addition, the murder itself apparently involved the use of a bladed instrument, albeit a screwdriver rather than a knife. Within a little more than a year after his release on licence, the appellant was again carrying an offensive weapon in public. We note that it seems unlikely that the knife could have been on the keyring when the appellant had it in his possession at the station because, as we have said, he was able to hand it over so promptly to the officer. If, as Mr Dunn thinks is the position, the extent of the defence at the magistrates' court was the circumstances in which the knife came to be detached from the appellant's keyring, it may well be that this was an account which was rejected by the magistrates in any event. On any view, the inference is that he had it loose in his pocket at the station.

15. Furthermore, although we bear in mind that the offence for which he was convicted was

possessing the knife at the station, the reality is that the appellant must have had the knife in his possession at the time of the earlier incident. In other words, he had gone out that evening with this very dangerous lock-knife in his pocket, thereby committing this offence at a time when he was on licence for an offence of murder. The guideline states in terms that the presence of aggravating factors may make it appropriate to move outside the identified category range. This was just such a case. The judge did give credit for the fact that the knife had not been used at all and that no threat had been made with it. We have seen a photograph of the knife. It is a vicious-looking weapon. Its potential for causing serious injury was rightly identified and explained by the judge. This was a very serious offence of its kind because of the appellant's background and record.

16. In these circumstances, we are quite unable to say that the sentence was manifestly excessive. It was properly and necessarily severe. The appeal is, therefore, dismissed.
