

Neutral Citation Number: [2019] EWCA Crim 1442

No: 201901320/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 23 July 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE PICKEN

HIS HONOUR JUDGE MICHAEL CHAMBERS QC

(Sitting as a Judge of the CACD)

R E G I N A

v

TYRONE CONWAY

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

J U D G M E N T

(As approved)

1. HIS HONOUR JUDGE MICHAEL CHAMBERS: The appellant, Tyrone Scott Conway, who is aged 37, appeals with leave of the single judge against a sentence of 5 years and 6 months imposed on 19 March 2019 by His Honour Mark Savill sitting in the Crown Court at Minshull Street, Manchester, following his conviction for robbery on 18 March. This was rightly described in the sentencing remarks as "a very serious and unpleasant offence of robbery" committed in the early hours of the morning at an amusement arcade staffed by female employees.
2. On Monday 5 November 2018 Wendy Richards and Alicia Mahon were working at Cashino, a 24-hour amusement arcade in Farnsworth. At approximately 3.25 am Richards was at the brew station, situated about 20 feet away from the night entrance, when the appellant stormed into the premises shouting: "Open the door you fat bastard". Richards recognised the appellant's voice; he had previously been a customer at the premises. He was holding a hammer and had attempted to conceal his face with a scarf and hood. The appellant went towards Richards with a hammer raised above his head. He demanded that she open the office door. When Richards told him that she did not have the door key he grabbed her by her clothing and began to drag her back towards the door. The appellant threatened to smash the door down if she did not open it.
3. Richards called to her colleagues for help. Mahon ran from the toilet and opened the office door. The three went into the office where the appellant demanded money. The appellant's scarf fell down revealing his identity. He was given a quantity of cash (estimated at £200 to £300) before leaving the scene.
4. The police alarm was activated during the course of the robbery. When officers attended they were given the appellant's name. He was arrested on Wednesday, 7 November. In interview the appellant gave a prepared statement in which he claimed to have been in bed at a friend's house at the material time. He then answered "no comment" to all questions.
5. The appellant was not entitled to any credit. The judge considered the Sentencing Guidelines. He determined that this was a street robbery/less sophisticated commercial offence - culpability B because of the production of the hammer. There was no physical or psychological harm caused because the victims were "made of stern stuff". He found it was a case which fell into category 2, possibly towards category 3. The judge had read the victim personal statements. At least one woman had felt on edge since the incident. Not surprisingly, both found this to be a frightening incident.
6. The judge identified the starting point for a category 2B offence to be 4 years. There were a number of aggravating features. The appellant was subject to post sentence supervision at the time, he was not of good character, he had concealed his identity, it was preplanned and had been a prolonged incident. Although it took only a matter of minutes, it was prolonged in the sense that for the victims it would have seemed far longer.
7. The judge considered the mitigating features: the appellant had a difficult upbringing; his previous convictions were not for serious offences and between 2006 and 2017 he had been drug free and in employment. When not taking drugs the appellant had showed he

could lead a decent life. The judge sentenced the appellant to five-and-a-half years' imprisonment.

8. The grounds of appeal emphasise the unsophisticated nature of the robbery, fortunately the harm caused was minimal and the lack of relevant previous convictions. We have been assisted by the oral submissions of Mr Ross, who has emphasised those points and suggested that the learned judge could and should have put the case between either category 2 or category 3 having regard to the amount of harm that was caused. However, we are of the view that it cannot be said that it was not intended to cause more than minimal harm.
9. Mr Ross afforded us the opportunity to see the CCTV recording which both reflects the points that he has wished to make but also has endorsed the overall view expressed by the learned judge.
10. Whilst we recognise that the judge was well placed to assess the seriousness of this unpleasant robbery, having heard the evidence and, as we have observed, seen the CCTV recording, we consider that there is force in the appellant's submissions. The case was rightly placed in category 2B, giving a starting point of 4 years, with a notable aggravating factor of these being vulnerable premises in the early hours of the morning. However, we consider that insufficient weight was attached to the very unsophisticated nature of the offence, the lack of lasting harm, fortunate as it was, and the fact that the appellant had no previous convictions for robbery or serious violence.
11. In all the circumstances, a sentence at the top of category range for category B at 5 years 6 months is, in our judgment, manifestly excessive; a sentence of 4 years 6 months properly reflects the aggravating and mitigating factors. Therefore, we allow this appeal to that extent by quashing the original sentence and substituting one of 4 years and 6 months imprisonment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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