

Neutral Citation Number [2019] EWCA Crim 1555

2019/00225/A1

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Thursday 5th September 2019

B e f o r e:

LORD JUSTICE GROSS

MR JUSTICE STUART-SMITH

and

THE COMMON SERJEANT

(His Honour Judge Marks QC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

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R E G I N A

- v -

PHILIP JAMES DUESBURY

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Mr S J Taylor appeared on behalf of the Appellant

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## J U D G M E N T

(As Approved)

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Thursday 5th September 2019

LORD JUSTICE GROSS: I shall ask His Honour Judge Marks QC, the Common Serjeant, to give the judgment of the court.

THE COMMON SERJEANT:

1. On 20th December 2018, in the Crown Court at Derby, the appellant was sentenced by His Honour Judge Bennett as follows: on count 2, having an offensive weapon, twelve months' imprisonment; on count 3, causing grievous bodily harm with intent, an extended sentence of 23 years, comprising a custodial term of 18 years and a

five year extended licence period; on count 4, wounding with intent, ten years' imprisonment; on count 5, possession of a bladed article, nine months' imprisonment; and for theft (the subject of a committal for sentence), one month's imprisonment. All of those sentences were ordered to run concurrently with each other.

2. The appellant now appeals against sentence by leave of the single judge.

3. The gravamen of the defence submission, which has been ably and persuasively advanced by Mr Taylor, is to the effect that the sentence on count 3 was manifestly excessive.

4. The facts may be relatively briefly stated. The theft was an offence of shoplifting on 1st March 2018. When arrested for that offence, the appellant discarded a knife into a bin (that was the subject of the offence of possessing an article with a blade or point). Both of those offences were admitted by him.

5. The remaining offences all occurred on 29th March 2018, at a time when he was on bail for the earlier matters. The appellant denied these offences, but he was convicted following a trial. They arose in the following way.

6. The appellant had been in a relationship with a woman by the name of Kimberley Chand. They broke up, and she formed a new relationship with a man by the name of Damian Round. There was a chance meeting between all three of them in Derby on the day of the incident, at which time the appellant was in possession of a large kitchen knife. A confrontation quickly arose. The background was that the appellant evidently believed that Miss Chand had previously stolen items that belonged to him. The appellant produced the knife and thrust it into Miss Chand's face with a downwards motion, causing a severe slashing injury to her left cheek. He went to strike her again in the face with the knife, but Mr Round intervened. The result was that the appellant stabbed him with the knife – an injury which went all the way through his left hand.

7. At the trial the appellant claimed that it was Mr Round who had produced the knife and that he had at all time acted in self-defence. That account was rejected by the jury.

8. The judge viewed this as a category 1 offence, for which the starting point under the sentencing guidelines is twelve years' custody, with a range of nine to sixteen years. He came to the conclusion that the offence charged in count 3 was at the very top of the range, but increased the top figure of sixteen years by two years, to take account of the fact that there was a second victim (Mr Round), and made the sentence for the attack upon him concurrent.

9. The appellant is aged 35. He has sixteen convictions for 39 offences, including: in 2001 possession of an offensive weapon (a screwdriver); in 2004, possession of an offensive weapon and wounding (he used a pocketknife to cut the victim's face), which resulted in a sentence of two years' detention in a young offender institution; in 2013, an offence contrary to section 20 of the Offences against the Person Act 1861 (he stabbed the victim in the face), which resulted in a sentence of eighteen months' imprisonment; and in 2013, an offence of assault occasioning actual bodily harm (he threw a bucket of boiling water over the victim), which resulted in a sentence of 27 months' imprisonment.

10. Turning to the injuries suffered by Miss Chand, the court was not assisted by the fact that she declined to give evidence or to allow access to her medical records. However, photographs are available which show a very serious and substantial gash to her cheek, which undoubtedly will have led to permanent and visible scarring. In addition, there was evidence within the unused material that, following the incident, a metal plate had had to be inserted into her cheek in order to deal with potential nerve damage, although it appears that that may only have been temporary.

11. In relation to the offence of theft, there is an issue as to whether under the provisions of section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 the magistrates had the power to commit the appellant for sentence. However, we take the view that that point is of academic interest only and need not be addressed, having regard to the fact that it led to a concurrent sentence of one month's imprisonment.

12. As to the substance of the appeal, no issue is taken by the defence with the finding that under the sentencing guidelines the section 18 offences rendered this a category 1 case; nor with the learned judge's finding as to dangerousness. The defence submit, however, that the learned judge may have proceeded on the footing that Miss Chand's injury was more serious than was in fact the case and that he was not justified in going to the very top of the range under the sentencing guidelines.

13. In our judgment, there were a number of serious, aggravating features as identified by the judge, namely:

(1) The fact that the appellant was on bail at the time of the section 18 offences;

(2) His previous convictions, to which we have already referred;

(3) The fact that he intended to cause more serious harm to Miss Chand; so far as Mr Round was concerned, it was a case of transferred malice, although we acknowledge that we must avoid any double counting;

(4) The fact that this was an attack in the street during the hours of daylight;

(5) The fact that there were two victims, both of whom suffered severe injuries.

14. Whilst we acknowledge that the sentence imposed on count 3 was harsh, in our judgment it was not manifestly excessive, bearing in mind the aggravating features to which we have referred. Accordingly, this appeal is dismissed.

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk

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