

[2019] EWCA Crim 1913
No: 201900660
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 14 May 2019

B e f o r e:

LORD JUSTICE DAVIS

MRS JUSTICE SIMLER DBE

HIS HONOUR JUDGE HILLIARD QC
RECORDER OF LONDON

R E G I N A

v

SCOTT ROYDON MARJORAM

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd, Lower Ground Floor, 18-22 Furnival Street, London EC4A 1AB

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

This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

If this transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

Mr D Snow appeared on behalf of **Scott Marjoram**

J U D G M E N T
(APPROVED)

1. JUDGE HILLIARD: The provisions of the Sexual Offences Act 1992 apply to this case and so no matter relating to any of the victims must be published in their lifetimes if it is likely to lead to them being identified as a victim.
2. On 1 August 2018, the appellant pleaded guilty in the magistrates court to two offences of sexual assault, contrary to section 3 of the Sexual Offences Act 2003 and was committed to the Crown Court for sentence. On 10 December 2018, in the Crown Court at Norwich, the appellant pleaded guilty to three further offences of the same kind. On 23 January 2019, he was sentenced to concurrent terms of 10 months' imprisonment for each of the offences on the committal sentence and to concurrent terms of 14 months' imprisonment for each of the three further offences. The sentences for each set of offences were, however, ordered to run consecutively, making a total sentence of 24 months' imprisonment. In addition, a restraining order under the Protection from Harassment Act 1997 was made for a period of five years. He now appeals against sentence with the permission of the single judge.
3. The appellant and the first complainant lived in a multi-occupancy house. On 30 July 2019, the first complainant, A, returned home having been discharged from hospital. The appellant welcomed her back but then put his hands on her breasts over her clothing. A shrugged him off and said, "Don't touch me." She walked back downstairs but the appellant grabbed her in a bear hug and said, "I want to make love to you." He dragged her back towards his room but she managed to struggle free. A feared that she was going to be raped.
4. Complainant B had known the appellant for a number of years. The appellant knew that she suffered from anxiety and depression. On the evening of 30 July, he went to see her at her house. Another man was at the property. The appellant sat very close to her on the sofa. She was scared as he was acting strangely. He put his arm around her shoulders and kissed the top of her right shoulder. B froze as she had been sexually assaulted in the past, a fact known to the appellant. B said that she wanted to telephone her mother. The appellant blocked her from getting up. B told him to leave her alone. He pulled her top down, exposing her bra. He put his hands inside her leggings from behind and then tried to pull to the leggings down. B managed to get to her bedroom and shut the door. She felt terrified. The police attended. The appellant was found lying outside by the bins surrounded by clothing. He was interviewed and admitted both offences to the police. He was bailed.
5. Turning now to the indicted offences, C was another resident at the accommodation the appellant shared. On a day between 30 July and 3 August 2018, he knocked on C's door. She opened it and the appellant was standing there. She felt uncomfortable and backed away. He moved forward, touched her between her legs and grabbed her. On 3 August, she was in the kitchen area. On this occasion he grabbed at her breast. She said, "I know you are ill, but this is inappropriate." She returned to her room and started to

cry and self harm.

6. On 3 and 5 August, the appellant had presented at his local hospital behaving bizarrely and on 5 August, traces of cocaine and methadone showed up on a drugs screen.
7. On 9 August, C was in the main reception area at the accommodation. She told the appellant who was following her not to come any closer. Staff member D came out of the office and told the appellant to leave C alone. The appellant then grabbed D's breast and squeezed it firmly. D was shocked. The appellant went away when challenged about his behaviour.
8. When interviewed, he said he could not remember the incidents relating to C. He then became abusive which may have been a consequence of his psychiatric condition at the time. The appellant was remanded into custody, his mental health deteriorated and he was moved to the hospital wing for a time.
9. The appellant was 40 years old at the time of sentence. Relevant convictions consisted of 14 offences of sexual assault for which he had received a community order in 2010. In summary, the appellant had touched female victims who he did not know in public.
10. In a psychiatric report dated 30 November 2018, it was said that the appellant had presented with an acute mental disorder whilst in custody on remand, probably an acute psychosis, which had responded to treatment in hospital. There was a previous diagnosis of depression and a history of polysubstance misuse. He had poor coping skills which left him at risk of deterioration in his mental state, which was considered to be fragile. Cocaine and methadone had been found in his blood on 5 August. The appellant also admitted to having used Spice.
11. A pre-sentence report said that the appellant believed the driver for the offences was the deterioration in his mental state. That said, there was no expert evidence making a connection between his mental state and the offending. He was assessed as posing a high risk of reconviction for a sexual crime. He said that he had a high sex drive. If the court was prepared to suspend any sentence of imprisonment or make a community order, the recommendation was for a 36-month community order with a rehabilitation activity requirement and attendance at a sex offender treatment programme, if his mental health permitted. A mental health treatment requirement was said not to be an available option. We do not know whether that was because nothing was available or because the appellant was not suitable.
12. In a helpful prison report dated 24 April 2019, the appellant said that he was experiencing mental illness at the time of the offending, that he could not think rationally and was not

compliant with his medication. He thought that medication was now keeping his mood stable.

13. In passing sentence, the judge said that the first two victims were particularly vulnerable and that the appellant knew about their personal problems. Whilst the appellant may have had mental health issues, he simply had not learned the lessons from his offending in 2010. There was, the judge said, an element of persistence about the offences. Having pleaded guilty at the first opportunity, he was then bailed but offended again. He knew that C was vulnerable because of her own difficulties and he then assaulted a member of staff who had come to her assistance. Again, said the judge, there was the element of persistence. The prosecution had correctly categorised the offences as being in category 2B of the Sexual Offences Sentencing Guidelines because of the vulnerability of the victims. One offence of this kind had a starting point of 12 months' custody, with a range from a high level community order to 2 years' custody. The judge said that there had to be an immediate custodial sentence. The appellant had not taken the chance he was given in 2010 and he had to understand that this type of behaviour could not be tolerated.
14. On the appellant's behalf, it is submitted that the judge failed to give sufficient regard to the possibility of a non-custodial sentence and to the appellant's mental health at the time the offences were committed. In any event, it is said, a period of three years' custody before discounting for the pleas of guilty was manifestly excessive.
15. We have considered the definitive guideline for the imposition of community and custodial sentences. In our judgment, the custody threshold had been passed in this case notwithstanding the appellant's own difficulties. The offences were so serious in combination that a community sentence could not be justified. There were a number of vulnerable victims and a member of staff involved. The judge was right to identify persistence in the offences and the appellant had caused very significant distress and turmoil. A sentence of imprisonment was unavoidable. The offender did present a risk in the future, particularly if he did not come to appreciate the seriousness of what he had done. Appropriate punishment required immediate custody.
16. So far as the length of the sentence is concerned, the category range for one category 2B offence extends up to two years' imprisonment. Here, there were five offences with a number of victims who were particularly vulnerable and to the appellant's own knowledge, and one victim who was performing a public service. Even taking account of the appellant's own difficulties, the fact is that he knew right from wrong and having begun the assaults, they were persisted in for a time and in a way which added to their seriousness. Having been arrested and interviewed, the appellant then went on to commit the second set of offences. Nor can the appellant's previous convictions be left out of account.

17. In all those circumstances, in our judgment the total sentence of two years' imprisonment cannot properly be said to be either wrong in principle or manifestly excessive and this appeal must be dismissed.

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

Lower Ground Floor. 18-22 Fumival Street London EC4A 1AB
Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk