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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 521

CASE NO 202100496/A1



Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 23 March 2021

LADY JUSTICE SIMLER DBE

MR JUSTICE SPENCER

HIS HONOUR JUDGE PATRICK FIELD QC

(Sitting as a Judge of the CACD)

REGINA

V

UCHE CHIKWENDU

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MR M FORREST appeared on behalf of the Appellant.

J U D G M E N T

1. MR JUSTICE SPENCER: This is an appeal against sentence brought by leave of the single judge.
2. The appellant (who is now 45 years old) was convicted after a trial in the Crown Court at Kingston upon Hull of an offence of affray contrary to section 3 of the Public Order Act 1986. On 22 January 2021 he was sentenced by Mr Recorder Singh QC to a term of 12 months' immediate imprisonment.
3. The grounds of appeal, in short, are that the judge erred in his assessment of the appellant's culpability and therefore passed a sentence which was too high in the range, and secondly, that he failed to give proper consideration to suspending the sentence, particularly in view of the guidance in the case of R v Manning [2020] EWCA Crim 592 arising from the pandemic.
4. The appellant had a grocery shop in Hull with a flat above. On 2 August 2020 he was arrested by the police in relation to other matters concerning his conduct towards the woman with whom he had been living. He was taken to the police station to be interviewed. We should make it clear that although there were counts on the indictment which related to that conduct, the prosecution offered no evidence and that aspect of the matter was dealt with by a restraining order on acquittal.
5. During the course of those interviews he told the police of his concern that money was going missing from his shop. It is apparent from the appellant's defence statement that he was concerned that the woman he was living with had been stealing from him. The interviewing officer asked two other police officers to take the appellant to his home address in order to investigate this allegation that he was making about the disappearance of money.
6. The two officers and the appellant arrived at his shop at 3.40 in the afternoon. The appellant went to the till area. He looked under the counter and rummaged among some papers; he discovered that money was missing. He then went to the back of the store and looked there, and then went upstairs to check whether money was missing and discovered that it was. He told the police in interview that the sum that was missing was £12,000 in cash which represented a substantial part of the "bounce back" government loan he had received to support his business during the pandemic.
7. Whilst upstairs in his flat the appellant picked up a large kitchen knife and made his way downstairs armed with that knife. He was in an agitated state. There was a dispute at trial as to precisely what happened thereafter. We are told by Mr Forrest, who represented the appellant at trial and appears before us today, that the appellant's case at trial was that he was holding the knife to his own throat whereas the prosecution case was that he was threatening the officers with the knife holding it out at arm's length. We also note that the appellant asserted in his evidence, contrary to his defence statement, that he had picked the knife up downstairs in the shop when he returned rather than bringing it downstairs with him from the flat. The judge in his sentencing remarks expressly rejected that assertion by the appellant.
8. In order to have convicted the appellant of the offence of affray the jury must have been sure that the prosecution's account of how the knife was being held was correct rather than the appellant's account. The judge said in his sentencing remarks he was sure the appellant brought the knife with him from upstairs and that the appellant had taken at least five to six steps towards the police officers, pointing the knife at them with his arm

outstretched in a threatening manner, such that both the officers feared for their safety. One of officers, PC Hedges, said that she was shaking, the other officer, PC Leake, took out his PAVA spray. PC Hedges had to rack her baton ready for use. It was clearly a very frightening incident even to experienced police officers. The appellant was told repeatedly to drop the knife. He did not do so at first but did eventually drop it after several requests. The police officers acknowledged that at one point in the course of the incident the appellant was saying that he was going to hurt himself with the knife.

9. In his interview the appellant told the police that he had found everything had been ransacked at his premises when he returned with the officers and the money was not there. He said he had told the police officers, "Look my money has gone, I will take my life". He denied threatening them with the knife and, as we have explained, that was his defence at trial which the jury rejected.
10. The appellant had no previous convictions and was a man of positive good character, as several impressive testimonials demonstrated. For example, we note that there had been an incident when he was living in Gloucestershire where he intervened to break up a knife fight in the street and was stabbed himself. He was plainly hard working and well thought of in the community.
11. There was no pre-sentence report. In granting leave to appeal the single judge directed that a pre-appeal report be prepared. We have considered that report carefully. The report suggests that the level of risk posed by the appellant can safely be managed in the community provided that he has suitable accommodation to return to, something which the probation officer has been unable to establish despite attempts to do so.
12. In his sentencing remarks the judge concluded that this was a category 2A offence under the Sentencing Council Guideline for affray. There was level A culpability because the appellant had intended to cause fear of very serious violence by threatening the officers with a large knife. There was category 2 harm because the level of harm fell between category 1 and category 3. For a category 2A offence the starting point under the guideline was 12 months, with a range of 6 months to 18 months. It was an aggravating factor under the guideline, increasing the seriousness of the offence, that the threat of violence was directed towards police officers, that is to say public servants acting in the course of their duty. It was also an aggravating factor that the offence occurred when the appellant had been released under investigation in respect of the other matters for which he was being interviewed, albeit released only briefly and in the company of these other officers.
13. The judge took into account in the appellant's favour his good character, noting that the references described him as a dedicated, intelligent and helpful person. The judge said in his sentencing remarks that he found it a very difficult sentencing exercise: on the one hand, the appellant was a man of previous good character with many positive attributes. However, holding a knife to police officers was something that had to be marked by a deterrent sentence in order to send out a clear message that police officers would be protected. The judge therefore concluded that this was an offence which was so serious that only an immediate custodial sentence would suffice.
14. The judge did not specifically refer in his sentencing remarks to the Sentencing Council Guideline on the Imposition of Community and Custodial Sentences or to the factors which that guideline requires a judge to weigh in considering whether it is possible to suspend a sentence of imprisonment. Mr Forrest thinks that he would have referred the

- judge specifically to the guideline. We are quite sure in any event that the judge would have had the guideline well in mind.
15. In the grounds of appeal it is said first, that the mere fact of pointing a bladed article at the police officers did not suggest that the appellant had an intention to cause fear of very serious violence, which is the high threshold for culpability A under the guideline. Mr Forrest points out that the appellant's actions were not accompanied by threats or aggressive words towards the police officers although he accepts that the police officers described the appellant's action as brandishing the knife at them. Mr Forrest submits that the fact that one of the officers was preparing to use his PAVA spray, and the other officer racked her baton, sheds no light on the appellant's intention. The incident was short-lived and the appellant desisted once the officers had deployed their protective equipment.
 16. The second ground of appeal is that the judge was wrong not to suspend the sentence. Addressing the factors in the guideline in favour of suspension, Mr Forrest points out that the judge had no assistance on the issue of whether there was a realistic prospect of rehabilitation because he declined to order a pre-sentence report. There was, however, Mr Forrest submits, plainly strong personal mitigation. Mr Forrest explained that the judge interjected during the course of his plea in mitigation to say that his difficulty was that the police officers had been put in fear in the course of their duty which made it so serious that deterrence was important. Mr Forrest submits that deterrence should not have been the paramount consideration in deciding whether the sentence could be suspended. In his grounds Mr Forrest also submits that the impact of serving this sentence during the pandemic was a factor to which the judge seems to have given insufficient weight. In his oral submissions Mr Forrest developed these points most attractively and concisely.
 17. We have given all these matters very careful consideration. The judge had heard the evidence in the trial and was best placed to form a view of the appellant's culpability. He was satisfied that the appellant had an intention to cause fear to the officers by his conduct with the knife. Although the judge did not say so in terms, there must have been an intention on the part of the appellant to cause fear of very serious violence. Of that the judge must have been satisfied. That conclusion is entirely understandable: it was a very large knife and the protective action the officers took speaks for itself. Although the appellant was speaking of harming himself, there must have been some hostility towards the police officers to have induced him to act as he did, possibly because he regarded the behaviour of the police as unfair in arresting him in relation to the allegations his partner was making, whereas the appellant believed she was the one who had stolen his money. In the course of oral submissions Mr Forrest confirmed that there had been evidence during the trial to the effect that the police officers were saying to the appellant that the missing money was a civil matter and there was therefore every reason to infer that the appellant had formed some hostility towards the police, manifested in the way he was behaving with this knife, because he thought they were not dealing fairly and appropriately with his complaints.
 18. We are entirely satisfied that the judge was entitled to put this offence into category 2A of the guideline with a starting point of 12 months. It was a seriously aggravating factor that the knife was being used to threaten police officers in the execution of their duty. It was also an aggravating factor that he was effectively on bail at the time. The judge

plainly took into account the appellant's positive good character by passing a sentence which was no higher than the starting point under the guideline. We are satisfied that the custodial term of 12 months was entirely appropriate.

19. Turning to the guideline on suspending a sentence of imprisonment, the judge was required to weigh the factors in the table in the guideline in considering whether it was possible to suspend the sentence. Even without a pre-sentence report, the judge would doubtless in any event have concluded that there was a realistic prospect of rehabilitation. Under the guideline that was a factor indicating that it might be appropriate to suspend the sentence. The judge certainly found that there was strong personal mitigation which was another such factor. There was no evidence that the third positive factor under the guideline was present, namely that immediate custody would result in significant harmful impact upon others.
20. On the other side of the scales, applying the factors in the guideline, the judge did not find, and would not have been able to find, that the appellant presented a risk or danger to the public generally. Nor was there a history of poor compliance with court orders. However, the judge was satisfied that appropriate punishment could only be achieved by immediate custody, for the reasons he explained. Threatening police officers with a knife is undoubtedly conduct which ought to be marked with a sentence severe enough to deter others as well as to punish. Although the judge did not expressly refer to the impact of serving his sentence during the pandemic, no doubt that was a matter which was addressed by Mr Forrest in his submissions to the judge and there is certainly no reason to think that the judge did not have it in mind. It would be in the mind of any judge passing a sentence of imprisonment in the current climate.
21. In applying the suspended sentence guideline a judge is required to weigh the factors; it is not a question of numbers on one side of the scales or the other. Here the judge concluded that the overwhelming factor which outweighed any factors against suspension was that appropriate punishment could only be achieved by immediate custody.
22. We observe that immediately beneath the table of factors for and against suspension in the guideline the following appears:

"The imposition of a custodial sentence is both punishment and a deterrent."

23. That reflects the principle enshrined in section 57 of the Sentencing Act 2020 (formerly section 142 of the Criminal Justice Act 2003) that the purposes of sentencing to which the court must have regard include "the punishment of offenders and the reduction of crime (including its reduction by deterrence)."
24. The conclusion which the judge reached was one which he was entitled to reach and, in our view, it was the correct conclusion. Accordingly, despite Mr Forrest's tenacious and able submissions the appeal must be dismissed.

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

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