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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



Case No: 2023/04108/A2

On appeal from the Crown Court at Liverpool  
(Mr Recorder Harris)

Neutral Citation Number: [2024] EWCA Crim 993

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 19<sup>th</sup> July 2024

**B e f o r e:**

**LADY JUSTICE ANDREWS DBE**

**MRS JUSTICE CUTTS DBE**

**HER HONOUR JUDGE MUNRO KC**

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

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**R E X**

**- v -**

**STEPHEN BLACKMORE**

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**Mr M O'Neil** appeared on behalf of the Appellant

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**J U D G M E N T**

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Friday 19<sup>th</sup> July 2024

**LADY JUSTICE ANDREWS:** I shall ask Mrs Justice Cutts to give the judgment of the court.

**MRS JUSTICE CUTTS:**

1. On 21 September 2023, following his trial in the Crown Court at Liverpool, the appellant was convicted of wounding with intent, contrary to section 18 of the Offences against the Person Act 1861.

2. On 27 October 2023 he was sentenced to 81 months' imprisonment. Ancillary orders were made.

3. He now appeals against that sentence by leave of the single judge.

4. The assault took place in the early evening of 29 May 2023. At that time the victim, Harry Crawford, was eating a meal with his family, including family who were visiting from Canada, at the home of his brother Matty in Woolton. The appellant lived next door.

5. As they were eating their meal, the family heard the appellant outside shouting loudly and aggressively for Matty, who was not present. Mr Crawford went out to speak with him. The appellant was in his back garden, shouting and swearing. He was holding a pint glass, and Mr Crawford formed the impression that he was drunk. He asked the appellant to keep the noise down, whereupon the appellant told him to shut the window. Mr Crawford returned to the house.

6. The aggressive shouting continued, causing Mr Crawford again to go outside and ask the

appellant to keep the noise down. The appellant walked out of his garden and confronted Mr Crawford. He placed his forehead on Mr Crawford's head in an aggressive fashion. Without warning the appellant then smashed the glass he was holding into the left side of Mr Crawford's head and face with significant force. The glass smashed, causing a deep wound which severed Mr Crawford's left temple artery, and caused further wounds to his left ear, face and hand.

7. Mr Crawford was admitted to hospital overnight, where his wounds were treated.

8. The police were called and the appellant was arrested. He was still issuing threats against Mr Crawford, saying that he was "fucking getting it".

9. The impact both physically and mentally on Mr Crawford has been severe. In an impact statement, he described how after the attack he experienced flashbacks. He was constantly wary of people even during the day, often experiencing an increase to his heart and breathing rates and a tightening in his chest for fear something would happen to his family. He would have an overwhelming feeling of vulnerability which would make him extremely anxious. Physically, he was paralysed and numb to the left side and front of his face, between his left cheek and top lip as a consequence of the severed artery. He suffered frequent migraine attacks above his left eye which would happen up to six times a day. This caused him difficulties with work. As he is self-employed, there were consequent financial difficulties. The assault had also had a substantial impact on Mr Crawford's family, in particular his partner who witnessed it.

10. The appellant, who was aged 53 years at sentence, had ten convictions for 12 offences between 1988 and 2021. These included assault with intent to resist arrest in 1989; public order offences in 2002, 2013, 2015 and 2021; and harassment in 2013. He had received a

variety of community sentences and fines and had also served custodial terms.

11. The appellant told the author of the pre-sentence report that he had been drinking prior to the incident; he had consumed a bottle of Prosecco and a quarter of a bottle of rum in an hour. Prior to the incident he said that he had shouted at a passer-by for looking inappropriately at his daughter who was sunbathing. He said that he felt aggrieved at being told by Mr Crawford to keep the noise down.

12. He maintained his defence at trial, rejected by the jury, that Mr Crawford had headbutted him first and he had hit him, forgetting that he had a glass in his hand. In the view of the author of the report, the appellant demonstrated little victim empathy and expressed no remorse. In her view, the offence was part of a pattern of violent offending behaviour when under the influence of alcohol. She assessed the appellant's risk of causing serious harm to others as high if he did not complete offence-focused work and relapsed into alcohol misuse. The appellant posed a risk of violence when under the influence of alcohol and experiencing conflict.

13. The Recorder had the benefit of character references on the appellant written by his three daughters, his partner and another. It would seem that he regularly misused alcohol to deal with issues in his personal life, in particular the sad death of his young son some years before.

14. In his sentencing remarks, the Recorder described the offence as "cowardly and cruel". He specifically rejected the appellant's account that he had been knocked to the ground by Mr Crawford, observing that there was no evidence of it. He placed the offence within category B culpability within the relevant guideline as the appellant had used the glass as a weapon. In terms of harm, he placed the offence "either at the top of category 3, or lower category 2". He said:

"But the aggravating factors, in my judgment, including the effect on the victim, elevate this to a category B2, although I do add at the lower end of B2."

15. The Recorder found aggravating factors in the appellant's previous convictions, although he observed that they were nothing like as serious as the instant offence, and in the fact that the offence had been committed whilst the appellant was under the influence of alcohol.

16. The Recorder took the appellant's mitigation into account, specifically his background, the loss of his son (albeit many years ago) and the impact of his incarceration on his family. He expressed concern about the appellant posing a risk to the public. He said that he could be a dangerous individual, but drew back from finding him to be dangerous within the meaning of the Criminal Justice Act 2003, on the basis that an extended sentence was unnecessary when a lengthy custodial sentence would enable offending work to be carried out with the appellant, both in custody and on licence.

17. Mr O'Neill, who represents the appellant today as he did below, concedes that a significant period of imprisonment was merited. He submits, however, that the term of six years and nine months imposed was manifestly excessive for three reasons: first, that the Recorder selected too high a starting point in the guideline; second, that he gave undue weight to aggravating factors; and third, that he incorrectly categorised the level of harm.

18. As to the first reason, Mr O'Neill submits that whilst the offence fell within category B culpability, the Recorder erred in giving no weight to other matters which reduced the appellant's overall culpability, specifically that this was an impulsive, short-lived assault consisting of one strike to the victim's head, which caused all of the injuries, and that the appellant had accepted the unlawful wounding of the victim, with the only issue at trial being one of intent. This led to too high a starting point within the guideline.

19. As to the second reason, Mr O'Neill accepts that the Recorder was entitled to find aggravating factors in the appellant's previous convictions and the fact that he was under the influence of alcohol at the time of the offence. He submits, however, that, having placed the offence as a low B2 within the guideline, an additional 21 months to reflect these was substantially too long.

20. Finally, on the question of harm, Mr O'Neill submits that the Recorder, having said that the offence fell at the lower end of category 2 harm, then erred in coming to a sentence near to the top end of the category range.

21. We have reflected on these submissions. There is no suggestion that the sentence imposed was wrong in principle. The question for us is whether the sentence imposed by the Recorder was manifestly excessive.

22. This was a serious offence of its kind. Mr Crawford was seriously hurt in an unprovoked attack with a glass when he did no more than reasonably ask the appellant to keep the noise down. It is clear that, no doubt affected by the substantial amount of alcohol he had drunk in a short time, and for no good reason, the appellant felt aggrieved by that request. In hitting Mr Crawford forcefully with the glass, the appellant caused substantial injury, with ongoing consequences in the paralysis and numbness of his face and his migraine headaches. Mr Crawford and his family also suffered severe psychological harm. It is no exaggeration to say that in the months following the incident his whole life and ability to socialise have changed.

23. As is conceded, the Recorder was right to find culpability B in circumstances where the appellant used the glass as a weapon. We do not accept that there was any reason to find

lower culpability. There may have been only one blow with the glass, but it was of sufficient force for it to smash and to cause considerable injury to Mr Crawford.

24. The appellant chose to contest his trial and allege that Mr Crawford had started the violence and had lied throughout. His guilty plea to unlawful wounding afforded him little, if any, mitigation.

25. In light of the impact statement, we consider the Recorder right to conclude that the harm caused was greater than that ordinarily catered for in category 3 of the guideline. It was undoubtedly for that reason that he said that the case fell either at the top end of category 3 harm, or the lower end of category 2.

26. Whilst we understand the reasons for him so saying, we can also see how this may have caused some confusion. This is because there is considerable overlap between the category ranges for 2B and 3B in the guideline. Category 2B has a starting point of five years' imprisonment, with a range of four to seven years. Category 3B has a starting point of four years' imprisonment, with a range of three to six years. It is difficult to see how, with such a wide overlap, a case could fall at the top end of category 3B, resulting in a sentence of six years' imprisonment, as well at the lower end of category 2B, resulting in four years' imprisonment.

27. Although the Recorder said that he had concluded that there was lower category 2B harm, from an assessment of his sentencing remarks as a whole, we do not understand him to have meant that he reached a starting point of four years' imprisonment before consideration of aggravating and mitigating factors. If that was what he meant, he would have placed the offence squarely within category 3B, which has a starting point of four years' imprisonment.



28. In our view, and taking the otherwise clear sentencing remarks into account, this was a case which fell at the upper end of category 3B harm. That is by reason of the harm described in the impact statement of Mr Crawford. This would have afforded a notional sentence of six years' imprisonment. The Recorder then correctly identified the aggravating factors of the appellant's previous convictions with offences of violence and public disorder (always when in drink), and his intoxication at the time of the instant offence, as well as the very limited mitigation.

29. Taken together, these in our judgment justified the uplift of nine months' imprisonment. We would add that we consider the appellant fortunate not to have been found dangerous in all the circumstances.

30. We cannot accept that the resulting sentence of six years and nine months' imprisonment was manifestly excessive. It was just and proportionate for this unprovoked and serious assault. It follows that this appeal is dismissed.

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