

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

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.

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/01071/A4

NCN: [2023] EWCA Crim 800



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 30th June 2023

B e f o r e:

LORD JUSTICE STUART-SMITH

MR JUSTICE JACOBS

THE RECORDER OF SHEFFIELD

(His Honour Judge Jeremy Richardson KC)

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

R E X

- v -

GEOFFREY BUTLER

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr J Rosen appeared on behalf of the Appellant

J U D G M E N T

Friday 30th June 2023

LORD JUSTICE STUART-SMITH: I shall ask Mr Justice Jacobs to give the judgment of the court.

MR JUSTICE JACOBS:

Introduction

1. On 3rd February 2023 the appellant was committed to the Crown Court for sentence, pursuant to section 14 of the Sentencing Act 2020. On that day he had pleaded guilty before Northamptonshire Magistrates' Court to an offence of breaching a non-molestation order. He had also been convicted, after summary trial, of an offence of intentional strangulation and an offence of assault occasioning actual bodily harm.

2. On 3rd March 2023, in the Crown Court at Northampton, the appellant (who was then aged 30) was sentenced by Mr Recorder Jones to a total of three years and ten weeks' imprisonment. The sentences were ten weeks for breach of the non-molestation order; a consecutive term of three years for the offence of assault occasioning actual bodily harm; and a concurrent term of 12 months for the offence of strangulation.

3. The appellant now appeals against sentence with the leave of the single judge.

The Facts

4. The appellant and his former partner, "V", had been in a relationship between August 2021 and May 2022, but the relationship had broken up after the birth of their daughter. V also had a three year old son. A non-molestation order was made against the appellant on 20th October 2022 by the Family Court in Northampton. This order contained various prohibitions, including that the appellant must not use or threaten violence against V, and must not instruct, encourage, or in any way suggest that any other person should do so. The appellant was also prohibited from intimidating, harassing or pestering V. The order had been made on the application of V. It also prohibited the appellant from entering the family home or contacting V, other than through her solicitors.

5. Whilst the non-molestation order was in place, an incident occurred on 2nd November 2022. V could not settle the baby and so at 10.20 pm she and a friend took the baby to a Tesco Express store in V's car. V was in the car with the friend when a Mercedes motor vehicle pulled up alongside them. V and her friend could see the appellant in the front passenger seat and he appeared angry. The appellant got out of the Mercedes car and approached V's car. She drove off. The appellant chased her car on foot. V subsequently had to stop at a junction and the appellant appeared at the window which had been down. He appeared to be drunk. He said something like, "You're not allowed to be out of the house and you've got my daughter". V contacted the police. The appellant grabbed the rear door where the baby was, but V drove away. The Mercedes motor vehicle subsequently followed V's vehicle for around two minutes.

6. The appellant was arrested on 9th November 2022 for the offence. When he was

interviewed he said that V had been driving dangerously and that he had been concerned for the safety of his daughter and so had a reasonable excuse for breaching the non-molestation order.

7. The appellant appeared before Wellingborough Magistrates' Court on 11th November and pleaded not guilty. He was released on bail, pending a trial which was to take place on 3rd February 2023.

8. It appears that there was then some sort of reconciliation between the appellant and V, and that the non-molestation order may have been withdrawn. This explains why, on 23rd December 2022 the applicant was in the family home when the further offences were committed.

9. At 2 pm on 23rd December 2022, having been shopping, the appellant and V returned home. The appellant subsequently came downstairs and picked up their daughter. V asked him what he was doing as the child had been asleep and V thought that the appellant had been drinking. The appellant went upstairs with the child. V followed and asked the appellant to give her the child back. The appellant refused to do so. V then reached out to take the child off the appellant, but the appellant raised his left hand to V's throat and squeezed it to the point that V was coughing and could feel blood rushing to her head. A struggle subsequently ensued and the appellant pushed V to the floor and sat on her. She told the appellant to get off her and the appellant put her in a headlock. V managed to get to the landing by the stairs and the appellant thereafter pushed her down the stairs. She hit her head on a wall. The appellant wrapped his arms and legs around her and squeezed her. She threatened to call the police and the appellant eventually left the house. There was evidence that the children had been crying during the incident.

10. The appellant was arrested on 24th December 2022 and remanded in custody. In interview he denied the allegations in a written statement and then answered "No comment" to questions asked by the police.

11. As we have previously described, he was found guilty of these December offences after a trial in the Magistrates' Court on 3rd February 2023 and was committed to the Crown Court for sentence. He was also committed for sentence in respect of the earlier offence concerning the non-molestation order.

The Sentence

12. The appellant was sentenced on 3rd March 2023. The Recorder did not have a pre-sentence report. We consider that it was not then and is not now necessary to have one.

13. The appellant has 19 convictions, which include six offences against the person, one public disorder offence and 14 offences relating to breach of court orders. The three offences committed in November and December 2022 were committed in breach of a community order imposed on 11th March 2022 for an offence of dishonesty. There had been a gap in the appellant's convictions between 2015 and 2021.

14. The recorder had read two Victim Personal Statements from V, dated 3rd November 2022, immediately after the first incident, and 30th January 2023, after the second. In the first statement she described how she was now scared to go out and did not feel safe in her home. She was concerned that the appellant, who was erratic and intimidating, would take steps to steal her daughter. In the second, she described the impact of the December incident. It was physically and emotionally traumatic. She was constantly reliving what had happened. The incident had left her and her children traumatised. It would take a lot for her to trust anyone else again, and she felt that the incident would always stay with her.

15. In sentencing for the breach of the non-molestation order, the Recorder gave ten per cent credit for the guilty plea. Counsel had agreed that this was a culpability B, harm 2 case under the relevant guideline, with a starting point of 12 weeks' custody and a range up to one year. The recorder said that if he were sentencing for that offence alone, he would have passed a sentence of six months' imprisonment, in view of the aggravating features, namely the appellant's previous convictions, the significant history of disobeying court orders, the presence of a child, and the fact that the offence took place in a domestic context. However, the recorder had in mind totality and on that basis started at 12 weeks, which he reduced to ten because of the guilty plea.

16. For the offence of intentional strangulation the Recorder noted the absence of a sentencing guideline. The recorder did not have the benefit of the decision of the Court of Appeal in *R v Cook* [2023] EWCA Crim 452, which was decided a month after the sentencing hearing. The recorder said that he would treat the assault guideline in relation to offences of assault occasioning actual bodily harm as giving some indication of appropriate sentence. Under that guideline the offending would be categorised as B2, and the recorder considered that this warranted a sentence of 12 months' imprisonment. There was, of course, no reduction for any guilty plea since the appellant had been convicted after a trial.

17. The recorder treated the offence of assault occasioning actual bodily harm as the most serious; he categorised it as A2 under the guideline. That categorisation had been agreed by counsel. The recorder said that he took into account the offence of strangulation, the vulnerable situation of the victim, who was in her home at night with children present. The offence took place in a domestic context.

18. The guideline for an A2 offence has a starting point of one year and six months' custody, with a range of 36 weeks to two years and six months. However, in his sentencing remarks the recorder then erroneously referred to the sentencing range for an A1 offence, which has a starting point of two years and six months' custody and a range of 18 months to four years. He increased from that starting point to three years' imprisonment and ordered that term to run concurrently with the sentence for the strangulation. At the end of the sentencing remarks the recorder was asked by counsel about the category and sentencing ranges. He replied that he had meant to say that the offending fell into category A1, because of the serious harm caused to the victim.

The Argument on Appeal

19. In his written Grounds of Appeal, Mr Rosen submitted that this was not a category A1 offence; that the starting point taken was too high; this was all part of a single incident and the strangulation could and should be looked at against the sentencing guideline for assault

occasioning actual bodily harm. Under that guideline, this would fall into high culpability category A, because there was strangulation/suffocation/asphyxiation, and the assault was prolonged and persistent. But there was no evidence of serious injury, and so this was a category 2 offence. Although there were many aggravating features, Mr Rosen submitted that they did not justify a doubling of the sentence to three years. There was no criticism of the consecutive sentence of ten weeks for breach of the non-molestation order.

20. In his oral submissions this morning, Mr Rosen has essentially repeated those points. He has had to take account of the decision in *Cook* to which we drew his attention yesterday. His essential submission is that this was a sentence which was simply too high, bearing in mind that this was all one single, relatively short-lived incident against a background of an appellant who had no previous convictions for domestic violence.

Discussion

21. The key question on this appeal is whether the recorder's overall sentence for the totality of the offending of three years and ten weeks' imprisonment is manifestly excessive. We are not therefore ultimately concerned with the route by which the recorder arrived at his overall sentence. The route which the recorder took must be called into question for two reasons.

22. First, the decision in *Cook* has now provided guidance in relation to the new offence of intentional strangulation. The starting point for that offence is 18 months' custody. It is clear from that decision that the assault guideline is not directly applicable to such an offence. An important point made in *Cook* is that there is real harm inherent in the act of intentional strangulation. Accordingly, the categories of harm set out in the guideline for assault occasioning actual bodily harm cannot be directly applied to such an offence. In *R v Hartland*, an Attorney General's reference case which we heard yesterday, we stated that, in practical terms, *Cook* means that arguments made with a view to lowering sentence based on the absence of specific harm caused by strangulation will fail in view of the harm inherent in the act.

23. Secondly, we agree that the offence of assault occasioning actual bodily harm was, as counsel had agreed, and as the recorder initially appears to have thought, a category A2 offence, rather than category A1. On the basis of the Victim Personal Statements, there was clearly more than a limited impact on V, but we do not think that it reached the level of category 1 harm.

24. In view of the decision in *Cook*, we consider that the appropriate sentencing approach on the facts of this case, where both intentional strangulation and assault occasioning actual bodily harm were charged and where the appellant was convicted of both, should be to consider the appropriate sentence for the offence of intentional strangulation, and then to consider the extent to which that sentence should be increased to reflect the additional criminality involved in the other aspects of the assault and the assault as a whole. We must guard against double counting the strangulation which, under the guideline for assault occasioning actual bodily harm, is a factor which means that the offence of assault is category A for culpability. We think that in many cases where strangulation is charged together with assault occasioning actual bodily harm, this approach, which involves treating the strangulation as the lead offence and increasing the sentence for that offence to reflect the overall criminality, will be applicable. But there may perhaps be cases where, on the facts, it

is more appropriate to regard the offence of assault occasioning actual bodily harm as the lead offence. Ultimately, it may not matter which offence is treated as the lead offence, provided that double counting is avoided.

25. We therefore take a starting point of 18 months' custody for the offence of intentional strangulation, as indicated in *Cook*. There were numerous aggravating factors. They include: the presence of children; the attack was carried out in the victim's home; the appellant was under the influence of alcohol; the offence was committed while on bail and also committed while subject to a community sentence; the victim was vulnerable because V was a woman in her own home caring for a young child and baby; and the fact that V was seeking here to protect her baby. We also infer from the terms of the non-molestation order that there had been previous violence towards V. All of these matters, together with the appellant's previous convictions, would require a significant increase in the starting point of 18 months, to no less than 30 months.

26. As far as the offence of assault occasioning actual bodily harm is concerned, this was an A2 offence. It involved a persistent attack which went beyond the initial strangulation. It involved a headlock, which may well in itself have qualified as strangulation, and V being pushed down the stairs and then being squeezed with the appellant's legs. On any view, the additional criminality involved in the assault as a whole made a sentence of three years – in other words, an increase of six months from the 30 months for the offence of intentional strangulation alone – appropriate. A sentence of three years' imprisonment cannot, therefore, be criticised as manifestly excessive.

27. As we have said, there is no separate criticism of the sentence of ten weeks' imprisonment for breach of the non-molestation order, or the fact that it was ordered to run consecutively. In our judgment, the Recorder made an appropriate adjustment for totality. The overall sentence was, therefore, not manifestly excessive.

28. Accordingly, this appeal against sentence is dismissed.

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

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

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
