IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2024/00552/A1

On appeal from the Crown Court at Harrow
(Mr Recorder Timothy Clark KC)

Neutral Citation Number: [2024] EWCA Crim 848

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 17th 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)

R E X

- v -

AMMUOD OSMEN

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Miss T Sher appeared on behalf of the Appellant

J U D G M E N T

Wednesday 17th July 2024

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

MRS JUSTICE CUTTS:

1. On 19 January 2024, following his trial in the Crown Court at Harrow, the appellant was convicted of an offence of attempted robbery, contrary to section 1(1) of the Criminal Attempts Act 1981. He was sentenced on the same day to five years' imprisonment. The Recorder revoked a community order imposed in February 2023, to which we refer below. In error, no surcharge was imposed.

2. The appellant appeals against his sentence with leave of the single judge.

3. The offence took place at around 11.50 pm on 6 July 2023, when the appellant approached the victim, Mr Alsaheli, on Cricklewood Lane, London. He took hold of Mr Alsaheli's arm and pulled him towards a dark alleyway. Mr Alsaheli resisted, at which point the appellant appeared to pull something which he held to Mr Alsaheli's side. We are told that in evidence at trial the victim said that he did not see what this was and accepted that it could have been a finger. Mr Alsaheli pretended to take some cash from his pocket in accordance with the appellant's demands, but then pushed him away and began to film him on his mobile telephone. At this the appellant made off. No property was taken.

4. The appellant returned to the area as Mr Alsaheli was flagging down a passing police car. Mr Alsaheli took a further photograph and video of the appellant who had by now pulled his hood over his head and walked away. He was later identified by the police and arrested on 20 July 2023. He made no reply to questions asked in interview, but gave a prepared

statement denying the offence.

5. The appellant was aged 25 years at the time of sentence. He had 17 convictions for 45 offences spanning October 2013 to May 2023. These included a conviction for wounding with intent in 2015, for which he was sentenced to three years' detention in a young offender institution, as well as one fraud and like offence and two theft and like offences. There were no prior convictions for robbery.

6. The appellant was in breach of a criminal behaviour order at the time of the offence in that he was not permitted to be in the area where the offence took place. He was additionally subject to a community order imposed in February 2023 for possession of cannabis, breach of the criminal behaviour order, and driving offences.

7. In his sentencing remarks the Recorder described the offence as a late at night attempted mugging of a man on his own whose car had broken down. He said he was sure that it was the appellant's intention to cause Mr Alsaheli to believe that he was armed with a small knife. For this reason, he placed the offence within culpability category B within the relevant sentencing guideline. He placed it within harm category 3 on the basis that this was an attempted robbery and no harm was actually done. In so doing he observed that the appellant had followed the victim for two to three minutes, had attempted to conceal his identity to frustrate the police investigation, and was also in further breach of his criminal behaviour order. We pause to note that a category 3B offence within the guideline has a starting point of two years' imprisonment, with a range of one to four years.

8. The Recorder accepted that the appellant had made progress in prison, but otherwise found no mitigation. He came to the view that the aggravating factors took the offence out of the sentencing range for a category 3B offence and into category 2B. This affords a starting

point of four years' imprisonment, with a range of three to six years. Observing that the people of the area were entitled to a break from the appellant's criminal activity, the Recorder imposed the sentence of five years' imprisonment.

9. Miss Sher, who represents the appellant before us as she did in the court below, submits that this sentence is manifestly excessive. In helpful and succinct submissions, she submits that whilst there were aggravating factors, as identified by the Recorder, these were not such as to elevate the offence from the appropriate guideline, let alone to a sentence 12 months longer than the starting point. She further submits that the facts were such that the case should have been categorised as a 3C offence in that there was no evidence of any weapon and only minimum force was used.

10. In our judgment the Recorder, who had presided over the trial, initially properly categorised the offence within the guideline. Although no knife was seen, the appellant plainly wanted Mr Alsaheli to believe that he had a weapon. The offence can therefore be said to be one of medium culpability category B. There was no physical harm caused, and the offence therefore properly fell within category 3 harm.

11. In coming to the appropriate term, in our view the Recorder properly identified the aggravating factors. These include the time and place of the offending, as well as the appellant's previous convictions, although it is right to say that the more relevant of these was some years ago. In our view, the breach of the criminal behaviour order and the offending within the term of a community order were significant aggravating factors which, together with the other factors identified by the Recorder, justified a significant uplift to the sentence. We agree with the Recorder that there was little in the way of mitigation.

12. However, we find ourselves in respectful disagreement with the Recorder, that the

aggravating factors took this attempted robbery into the next sentencing bracket. We find force in the appellant's submission that this was an offence which should not have been placed into the higher category. In our view, the range for the offence within the guideline category adequately catered for a just and proportionate sentence in this case.

13. Taking all factors into account, were this the completed offence of robbery, we consider that a sentence at the top of the category range of four years' imprisonment would have been appropriate. We reflect the fact that this was an attempt by reducing the sentence by six months to three and a half years. In coming to the appropriate deduction, we have taken into account that this was a determined attempt to rob, thwarted only by the brave actions of the victim.

14. We give effect to that conclusion by quashing the sentence of five years' imprisonment and substituting one of three and a half years' imprisonment in its place.

15. As we have reduced the appellant's custodial term, we consider it appropriate to impose the £228 surcharge which should have been imposed at the lower court.

16. To that extent this appeal is allowed.

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk