

2019/01064/A3  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
Neutral Citation Number: [2019] EWCA Crim 1540

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Tuesday 2 July 2019

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE NICOL

and

MR JUSTICE FREEDMAN

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**REGINA**

**- v -**

**CARMELO SPERDITO FARRUGIA**

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**Mr B Clark** appeared on behalf of the Appellant

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**JUDGMENT**  
**(For Approval)**

**MR JUSTICE FREEDMAN:**

1. This is an appeal against sentence brought with the leave of the single judge.
  
2. On 27 February 2019, in the Crown Court at Basildon, the Appellant was sentenced to 7 ½ years' imprisonment for an offence of aggravated burglary, contrary to section 10(1) of the Theft Act 1968, to which he had pleaded guilty at the plea and trial preparation hearing.
  
3. On 6 August 2018, at about 11:00am, the victim was at home by herself. She was upstairs in the family home. She saw at the front door a person she believed to be a postman wearing a red hat with a Royal Mail logo on it. He indicated that a letter needed to be signed for. She opened the door. He barged through, put his hand over her mouth and forced her onto the ground in the porch. She struggled with him and struggled to breathe. She tried to scream and to kick. Two other men stepped over her and entered the house. She was pulled to her feet and passed to one of the intruders who threw her onto a sofa. She was told to shut up and to be quiet. A pillow or cushion was held over her head, face down. She could hear the other men walking around upstairs. They were apparently looking for something. She was marched upstairs and pushed into her own bedroom. One man ripped a panel off the bath. She was pushed into her parents' bedroom and then into the box room. She saw two of the men coming down from the attic. She was taken downstairs and there was a discussion about the shed. In the extension she was told to face the wall and to shut up. One man took two cable ties from his pocket which he used to bind her wrists behind her back. She thought that she was to be kidnapped, because the "postman" had a sheet. She was told to stay put. The men ran off. Within a minute, she freed herself. The incident lasted about ten minutes.

4. A neighbour saw three men approach and go to a silver works van. She took a video-recording on her mobile. The van belonged to the Appellant. It had been bought from DEFRA and a tracker device remained operational. The van was abandoned at a football ground at about 11:45am that same morning.

5. The Appellant was arrested the following evening as he was about to board a flight to Malta. He first claimed that he had sold the vehicle two days earlier, until he was shown a picture of him filling it up with fuel on the day of the offence. Thereafter, he declined to comment in interview.

6. His case was that he was outside throughout, but part of a joint enterprise. Even if the plan had been to enter the property once the victim's father had left, the burglary continued, even when it was apparent that the home was plainly occupied, as the wearing of the postman's hat makes plain.

7. The victim sustained grazes to her back and shoulder. Nerve damage to one foot has led to the loss of feeling. In her Victim Personal Statement, among other things, she explains her consequential severe anxiety and her time off work as a police constable due to worry and stress. She cannot be alone at home for fear of another attack. Her sleep is affected and she worries about going out at night.

8. In seeking to minimise the impact of the Victim Personal Statement, it was suggested on the Appellant's behalf that improper pressure may have been applied on the victim by a colleague in connection with that statement. There is no evidence at all to support that suggestion and we reject it.

9. The Appellant is aged 32. He has previous convictions. His last sentence for theft led to a sentence of 23 months' imprisonment in 2011. In 2008 he was sentenced to 2 years' imprisonment for taking motor vehicles without consent.

10. In his sentencing remarks the judge rejected the submission that this was a Category 2 case on the basis of lesser harm and higher culpability. It was Category 1 on the basis of greater harm and higher culpability. The victim's problems were ongoing and likely to remain so. Greater harm was established by her significant psychological injury, physical injury and the fact that the offence was committed in her home. Factors indicating higher culpability were: a significant degree of planning, the house was targeted, and it was a group attack.

11. The starting point within the sentencing guidelines was 10 years' custody, with a range of 9 to 13 years. For this extremely serious aggravated burglary, the starting point of 11 years was appropriate, before any reduction for mitigation or guilty plea. The Appellant's mitigation was that in prison he had undertaken courses and had aided and assisted others. There were no recent previous convictions. The judge thus reduced 11 years to 10 years to reflect the Appellant's progress. A discount of 25 per cent for a guilty plea at the plea and trial preparation hearing further reduced the term to 7 ½ years' imprisonment.

12. This morning the appellant repeats his argument as to category. Even if the offending fell into category 1, he says, it was at the lower part of the scale. He argues that the only indicator of greater harm was that the victim was at home and was moved around during the search. He argues that too much emphasis was placed on this. The burglary was committed over a relatively brief period during which the intruders were plainly more interested in finding something, rather than in the victim.

## **Conclusion**

13. This argument ignores the terrifying nature of the victim's ordeal and its consequences, which justified the judge's view that this was a Category 1 case. The alternative submission that even if the offending fell into Category 1, the starting point should be in the lower part is hopeless, as the judge's careful analysis makes plain. Indeed, it was generous to allow a reduction of 1 year to reflect progress in prison over a few months prior to sentence.

14. There is nothing in the points raised before this court. This appeal against sentence is therefore dismissed.

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