

[2019] EWCA Crim 2056
2019/03170/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 15 November 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE JACOBS

and

HIS HONOUR JUDGE LODDER QC

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

REGINA

- v -

AARON BOATENG

Computer Aided Transcript 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)

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.

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.

Miss M Stevenson appeared on behalf of the Appellant

JUDGMENT
(For Approval)

LADY JUSTICE NICOLA DAVIES:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead to members of the public identifying that person as the victim of that offence.
2. Following earlier pleas of guilty to five offences, on 31 July 2019, in the Crown Court at Snaresbrook, the appellant was sentenced as follows:
 - Count 1, assault by beating, four months' detention in a young offender institution to run concurrently with the offence on count 2;
 - Count 2, committing an offence with intent to commit a sexual offence, eighteen months' detention;
 - Count 3, assault by beating, four months' detention, to run concurrently;
 - Count 4, committing an offence with intent to commit a sexual offence, eighteen months' detention, to run consecutively;
 - count 5, sexual assault, four months' detention, to run consecutively to counts 1, 2 and 4.
 - The total sentence was three years and four months' detention in a young offender institution.
 - A Sexual Harm Prevention Order was made, the appellant was required to comply for 10 years with the provisions of Part 2 of the Sexual Offences Act 2003 (notification to the police).
3. The appellant appeals against sentence by leave of the single judge.

The facts

Counts 1 and 2

4. At around 9.30am on 6 March 2019, the complainant "AD" was on her way to visit a friend in Morse Close, West Ham. As she walked along the road, she noticed the appellant, who was behind her on the same side of the road. She crossed the road as the appellant made her uneasy. AD attempted to call her friend on her mobile phone. She heard a noise, which was the appellant running up behind her. He grabbed her with an arm around her neck and a hand on her face and said "Don't fucking make a noise or I'll fucking stab you". AD was scared, she froze.
5. The appellant pushed AD forward in order to keep her walking. His arm remained around her neck, as a result of which AD could not breathe properly. AD believed that the appellant had a knife and that he was going to kill her or steal her mobile phone. She offered her phone, but the appellant did not take it. He grabbed her hand, pulled her

around the corner towards some flats and pulled her hand towards his genital area, saying “Touch my dick”. AD tried to pull her hand away. She saw some railings, held on to them and screamed. She crouched down and knelt by the railings, whereupon the appellant punched her to the lip, the arm and scratched her neck by pulling it back. He punched her arms a few times in order to remove her from the railings. AD held on and continued to scream. A neighbour heard and came out, which caused the appellant to run away. AD sustained a cut inside her mouth and bleeding from the mouth. Her neck was scratched and there was bruising to her left arm.

Counts 3 and 4

6. Some thirty minutes later, the appellant targeted another lone female, “MD”. MD was leaving a friend’s house in Davis Street, London E13. MD noticed the appellant as he was walking very slowly. She walked onto the street past the appellant, but a few minutes later she felt someone grab her around the right side of her waist from behind. At the same time, her left upper leg was grabbed. The appellant covered her mouth with one of his hands, while keeping hold of her waist. MD tried to scream, but the appellant told her to keep quiet. She screamed and attempted to run away. As she did so she fell to the ground and continued to scream, whereupon the appellant ran off. MD was scared and crying. Help was sought and the police were called.

Count 5

7. Nine days later, on 15 March 2019, the complainant “HP” was shopping at Westfield in Stratford. At 6.50pm she was walking away from the shopping centre when she noticed the appellant on her right-hand side. He was walking very close which alarmed her. HP went to a bus stop. As she was looking at the times of the buses, she felt her bottom being touched by the appellant. It was a slight touch and she was not sure if it was deliberate. She sat down at the bus stop, the appellant went to another bus stop. HP began to look at her telephone. The appellant returned and sat on her right, so close that their legs were touching. He attempted to make eye contact and said “Excuse me, but you are really beautiful”, to which HP responded “Thank you”, but felt nervous. The appellant then said, “How did you get such thick thighs?” and asked “Will you touch me down there?”, pointing to his penis. HP said “No”, jumped up and walked to another bus stop. The appellant followed and grabbed her bottom with both hands. He then walked past HP and turned to face her. He remained close, as HP tried to call a friend. Community support officers were in the area. HP alerted them and the appellant was apprehended.
8. When interviewed by the police, the appellant admitted talking to HP and saying that she looked nice, but denied sexually assaulting her. He declined to comment to other questions relating to that and earlier incidents.
9. Before the sentencing court were Victim Personal Statements from AD and MD in which they spoke of their terror at these events and the profound effect which each has had upon them and the lives they lead.
10. A pre-sentence report was prepared. The appellant told the author that he had not had any sexual relationships and, as a result, felt frustrated. He regretted his behaviour and understood that he had caused harm to the victims. He was assessed as posing a high risk of sexual re-offending until he developed a full understanding of his actions, with increased victim awareness and self-control. He presented a high risk of serious harm to females to whom he was sexually attracted.

11. The appellant was aged 17 at the date of the offences and 18 at the date of sentence. He had no previous convictions and was given full credit for his guilty pleas. The judge sentenced the appellant upon the following bases. On count 1, there was greater harm and higher culpability by reason of the fear of injury that was serious in the context of the offence. It involved the deliberate targeting of a vulnerable victim, namely, a lone female, isolated from other people to whom she could turn for help. The judge found that the offence fell within Category 1 of the Sentencing Council Assault Guideline, with a starting point of a high community order and a range of up to 26 weeks' custody. The judge stated that, even allowing for the fact that the appellant was aged 17 at the date of the offence, a sentence at the very top of the range was required, which is the sentence he imposed, namely six months' custody, discounted by one-third for the guilty plea.
12. In relation to count 2, the judge described the appellant's intention as being demonstrated by his demand that the victim touch his penis. The judge identified the starting point as being that for the offence of assault and then applied an enhancement to reflect the intention to commit a sexual offence. The starting point was six months' custody for the assault. An uplift of two years was imposed to reflect the intention to commit a very serious sexual offence. The judge reduced that figure to reflect the appellant's age of 17 at the date of the offence. The starting point was identified as 27 months, reduced to 18 to reflect the guilty plea.
13. In relation to counts 3 and 4, the judge adopted the same approach as upon counts 1 and 2.
14. In relation to count 5, the judge found that the facts did not fit within any particular category in the Sentencing Council Guideline. He concluded that he would treat the assault as falling within Category 3A, which had a starting point of six months' custody, with a range of a high level community order to one year's custody.

The grounds of appeal

15. The overarching submission advanced on behalf of the appellant is that the judge gave insufficient weight to the appellant's youth. Further to that submission, the point is made that the principle of totality has to be considered by the court. We commend the clarity and focus of Miss Stevenson's realistic submissions.
16. It is submitted on behalf of the appellant that the principles identified in the Sentencing Council Guideline for Children and Young People were relevant in that the age of the appellant at the time of the offending allowed for an increased prospect for reform and change. Priority should be given for rehabilitation. The appellant's lack of maturity should be assessed as a mitigating feature. The appellant was of previous good character. He had never been arrested, which is relevant to the impact of custody upon him.

Discussion and conclusion

17. In our judgment, there is force in the submission made by Miss Stevenson that in passing sentence the judge gave insufficient weight to the appellant's age. It is clear from the pre-sentence report that the appellant's lack of maturity played a part in his offending. The Children and Young Persons Sentencing Guideline identifies the fact that not attaining full maturity can impact on decision-making and risk-taking behaviour. Young people may not fully appreciate the effect that their actions can have on others and may not fully understand the distress and pain caused to the victims of their crimes.
18. In sentencing the appellant, the court should take as its starting point the sentence likely to

have been imposed at the date at which the offence was committed. Further, at 6.3 of the Guideline it is stated that when any significant age threshold is passed, it will rarely be appropriate that a more severe sentence than the maximum the court could have imposed at the time the offence was committed should be imposed. We also note from the same Guideline that in respect of Adult Sentencing Guidelines it is indicated that the court may feel it appropriate to apply a sentence broadly within the region of a half to two-thirds of the appropriate adult sentence for those aged 15 to 17.

19. The assaults the subjects of counts 2 and 4 were serious and frightening for the victims. The sentences must reflect the gravity of those assaults and their impact on the lone female victims. The assault in respect of count 5 was not as serious as the assaults on counts 2 and 4, but its impact upon the victim was nonetheless frightening.
20. In approaching the sentences in this appeal, the determination of the court should also reflect the age of the appellant. Account must also be taken of the principle of totality. The total sentence should reflect all of the offending behaviour in a manner which is just and proportionate.
21. In our judgment, counts 2 and 4 were the most serious offences. Counts 1 to 4 occurred within thirty minutes of each other. To reflect these facts, together with the age of the appellant at the time of the offending and the principle of totality, the sentences will be structured as follows: on count 2, a sentence of eighteen months' detention in a young offender institution; on count 4, eighteen months' detention, to run concurrently; on each of counts 1 and 3, two months' detention, to run concurrently; and on count 5, two months' detention, to run consecutively.
22. Accordingly, we quash the consecutive sentence passed on count 4 and substitute for it a concurrent sentence of eighteen months' detention. We quash the sentences on counts 1 and 3 and substitute for them sentences on each count of two months' detention, to run concurrently. We quash the sentence on count 5 and substitute for it a sentence of two months' detention, to run consecutively. The total sentence is accordingly one of twenty months' detention in a young offender institution. Credit will be given for 121 days spent in custody on remand. To this extent the appeal is allowed.

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

Lower Ground, 18-22 Funnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk
