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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation No. [2020] EWCA Crim 1299
Case No: 202000817/A3

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 6th October 2020

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE JEREMY BAKER

MR JUSTICE HOLGATE

R E G I N A

- v -

NASAR AHMED

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Mr B O'Leary appeared on behalf of the Appellant

J U D G M E N T

Tuesday 6th October 2020

LORD JUSTICE DAVIS: I shall ask Mr Justice Jeremy Baker to give the judgment of the court.

MR JUSTICE JEREMY BAKER:

1. On 1st August 2019, the appellant, Nasar Ahmed, appeared in the Crown Court at Preston for a plea and trial preparation hearing in relation to an indictment containing two counts of attempted murder. He pleaded not guilty to both counts and a trial was fixed for 6th January 2020.

2. On 10th November 2019, a Defence Statement was served on behalf of the appellant in which he denied responsibility for causing the injuries to the two complainants.

3. At a pre-trial review hearing on the following day, the prosecution was granted leave to amend the indictment by adding two alternative counts of wounding with intent, contrary to section 18 of the Offences against the Person Act 1861, and the case was adjourned to allow a conference with the appellant to take place.

4. The adjourned plea and trial preparation hearing took place on 19th December 2019. On that occasion the appellant entered pleas of guilty to the two counts of wounding with intent and sentence was adjourned.

5. The adjourned sentencing hearing took place on 13th February 2020, when the Recorder of Preston imposed concurrent terms of eleven years' detention in a young offender institution on each count.

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

Circumstances of the offences

7. The circumstances relating to these offences commenced on the late evening of 15th July 2019 when one of the complainants, Hamza Yasser, drove his motor vehicle onto the forecourt of a petrol station situated on Manchester Road in Nelson in order to confront the appellant about some damage which the appellant had previously caused to his vehicle. During this incident there came a stage when the appellant retrieved a metal baseball bat from his own motor vehicle and threatened Yasser with it. As a result of a phone call made by Yasser to his friend Junaid Arif, the latter agreed to attend the scene together with Shahmeer Choudhry in order to calm the situation. The incident came to an end when the appellant's mother also attended the scene, became distressed and fainted, as a result of which she was taken to hospital.

8. Following the conclusion of that incident, Choudhry drove his two friends to the Brunswick Business Centre in Nelson, where they sat in his vehicle for the next couple of hours listening to music. It was whilst this was taking place that in the early hours of the following morning two other motor vehicles containing a number of males, including the appellant, drove onto the car park of the business centre and parked in such a way that Choudhry's vehicle was prevented from driving away.

9. The males then alighted from the two recently arrived vehicles and commenced an attack on both Yasser and Arif. During the incident, Yasser was pulled out of the vehicle and the appellant, armed with a machete, used it to inflict injuries to Yasser's body, and in particular a deep laceration to his back. The appellant then attacked Arif with the machete whilst he was still seated in the vehicle, causing injuries to his upper and lower limbs. Once having caused these injuries, the appellant then got back into one of the two recently arrived vehicles and deliberately drove it towards Yasser, before driving off from the scene.

10. When the police arrived at the scene, they were provided with the registration number of the vehicle in which the appellant had driven away. As a result, he was detained a short time later on the A56, where he was found in possession of a black bin liner containing clothing, including a bloodstained glove which, when forensically examined, was found to contain traces of DNA matching that of Arif.

11. In subsequent interviews, the appellant made no comment.

12. As a result of the attack upon him, Arif suffered extensive wounds to his limbs, including his left ring finger, which was partially severed. He also sustained a laceration to his left middle finger, involving the extensor tendon, a laceration to his left elbow, a laceration to his left leg and two deep lacerations of the right leg, one of which had severed the patella tendon and chipped the patella and tibia. The injuries were treated at hospital, where his left ring finger was re-attached; and six screws were placed into his elbow during an eleven hour surgical operation, which necessitated him being detained in hospital for a period of two weeks.

13. Yasser sustained a 15 centimetre by 6 centimetre laceration to his back, which required surgical closure and the insertion of a drain for 48 hours to prevent infection. He also suffered a laceration to the back of his scalp and abrasions to both shoulders.

14. The Victim Impact Statements from the two complainants describe the difficulties which Arif had with walking and the constant pain that he was still suffering in September 2019. He had been due to commence a college course but was not able to do so and had to defer his place for a year. Yasser described how he had become depressed as a result of the attack and had to take medication. He had also become anxious about socialising, as a result of which he stayed indoors and had to take time off work.

The appellant

15. The appellant was 18 years of age at the time of the offences and 19 at the date of his sentence. He had no previous convictions and had become the main carer for his mother, who had a number of significant underlying health issues.

16. Various written statements had been made by those who knew the appellant. They described him as happily married, with a strong work ethic, and someone who is normally likeable, respected, courteous and dependable.

17. However, the author of the pre-sentence report, which noted that the appellant had had a difficult upbringing, some of which was spent in the care of the local authority, stated:

"At this moment in time, [the appellant's] risk of serious harm to the public, as well as to his specific victims, is assessed as being in the high range."

Sentencing remarks

18. In his sentencing remarks, the Recorder rejected the submission that the appellant should be afforded a 25 per cent deduction to reflect the timing of his pleas of guilty, and instead indicated that a 20 per cent reduction was appropriate, as the appellant had not indicated a willingness to plead guilty to these offences at the plea and trial preparation hearing and had subsequently caused a Defence Statement to be served on his behalf in which he denied any responsibility for having caused the injuries.

19. The Recorder also rejected two submissions which had been made to him on behalf of the appellant: firstly, that Yasser had been responsible for the incident by attending at the petrol station in order to confront the appellant about the earlier damage to his motor vehicle; and

secondly, that the appellant had been pressurised by the group of males in the two vehicles into taking part in the attack upon the two complainants. On the contrary, the Recorder described the attack as being a well planned, brutal and sustained assault on two unarmed youths, which had been intended to teach Yasser a lesson for what had happened earlier to the appellant's mother.

20. In so far as the sentencing guidelines were concerned, the Recorder noted that it was accepted that the offence in relation to Arif was a category 1 offence, whilst that in relation to Yasser was a category 2 offence. However, there was mitigation to be taken into account, including the appellant's relative youth, previous good character, his role in caring for his mother, and the steps taken whilst in custody to address his offending behaviour.

21. The Recorder determined that, despite these factors, he had no doubt that the dangerousness criteria under the Criminal Justice Act 2003 had been satisfied, but that the risk to the public could be met in this case by the imposition of a significant determinate sentence of custody, rather than an indeterminate or extended sentence, which would reflect the appellant's culpability in respect of the two separate offences.

Grounds of appeal

22. Mr O'Leary, who appears before us today as he did before the Recorder, submits that the sentence imposed upon the appellant did not adequately take into account the mitigating features which were present in this case, as a result of which the sentence is manifestly excessive. He submits that, although the sentence had to reflect the fact that there were two separate offences, there were no other aggravating features under the sentencing guidelines. Conversely, there were multiple features of mitigation, including the appellant's lack of previous convictions, his remorse, his previous good character, the steps taken to address his offending whilst in custody, namely the completion of a Victim Awareness Course, his wish

to become a mentor, the isolated nature of the incident, his age at the time of the offences, and his role as a carer for his mother.

23. Mr O'Leary submits that, although the Recorder did not express the period of custody which he would have imposed upon the appellant prior to the deduction to reflect the timing of his pleas of guilty, given the determination of the deduction at 20 per cent, this must have been a period of 14 years, which he submits is excessive, given the overall circumstances of the case.

Discussion

24. We respectfully agree with the Recorder's description of these offences as being well planned, brutal and sustained assaults on two unarmed youths. It may be that it would have been preferable for Yasser not to have confronted the appellant about the damage which had been caused to his motor vehicle on an earlier occasion. However, there is no suggestion that this was a violent confrontation, until the appellant produced a baseball bat and used it to threaten Yasser. It was this scene that was witnessed by the appellant's mother, and it was therefore the appellant who was consequently responsible for the difficulties which were experienced by her.

25. There the matter could have ended, had it not been for the actions of the appellant in arming himself with a potentially lethal weapon and gathering a group of males to seek out and cause really serious bodily injury to the two complainants in the course of a sustained attack upon them.

26. Under the sentencing guidelines, the offence involving Arif was undoubtedly a category 1 offence. Greater harm was indicated both by the injuries inflicted upon him, which were serious in the context of such an offence, and by the sustained nature of the assault upon him. Higher culpability was indicated by at least three factors, namely the significant degree of

premeditation, the use of the machete, and the appellant's leading role in the group incident. Although it may be that there were no other aggravating factors which increased the seriousness of the offence, we have no doubt that the multiple nature of the factors which indicated both greater harm and in particular higher culpability meant that prior to any reduction to reflect the relevant mitigating factors, this was an offence which required a substantial increase from the appropriate post-trial starting point of 12 years' custody.

27. Likewise, if it is accepted that the offence involving Yasser was a category 2 offence, due to the absence of injury which was serious in the context of such an offence, the multiple nature of the factors indicating higher culpability would also require a substantial increase from the appropriate post-trial starting point of six years' custody.

28. In our judgment, the Recorder was correct to determine that the appellant was not entitled to a greater reduction than 20 per cent to reflect the timing of his pleas of guilty. Although it was only at the plea and trial preparation hearing that the prosecution had sought to amend the indictment by the addition of alternative counts, it had always been open to the appellant to indicate his willingness to plead guilty to these alternative offences, but had failed to do so. Moreover, the appellant had not only pleaded not guilty at the plea and trial preparation hearing, but a trial date had been set and a Defence Statement was subsequently served on his behalf in which he denied being responsible for the injuries to the complainants.

29. On this basis, although the Recorder did not express his determination as to the post-trial sentence which he would have imposed upon the appellant but for his pleas of guilty, it is apparent that this would have been a period of 13 years and nine months' custody. In our judgment, given the fact that not only was the sentence imposed upon the appellant one which had to deal with the risk of serious harm to the public posed by the appellant, but also had to take into account the commission of the two separate offences of violence, we are of the view

that the sentence imposed by the Recorder, after the deduction of 20 per cent to reflect the timing of the appellant's pleas of guilty, adequately took into account all of the relevant mitigation which was available to the appellant in this case.

Conclusion

30. In these circumstances, we are satisfied that for these two offences of wounding with intent the overall sentence of eleven years' detention in a young offender institution is neither wrong in principle nor manifestly excessive. Accordingly, the appeal must be dismissed.

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

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