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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202301024/A4

NCN: [2023] EWCA Crim 1328



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday, 6 October 2023

Before:

LORD JUSTICE EDIS  
MRS JUSTICE STACEY DBE  
HIS HONOUR JUDGE LEONARD KC  
(Sitting as a Judge of the CACD)

REX  
V  
ANTHONY STEPHEN HAND

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MR I KHAN appeared on behalf of the Appellant

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**J U D G M E N T**

1. MRS JUSTICE STACEY: This is an appeal against sentence by leave of the single judge. On 27 February 2023 in the Crown Court at Birmingham before Mrs Recorder Stanistreet-Keen, the appellant, then aged 39, was sentenced to three years' imprisonment for attempted robbery, contrary to section 1(1) of the Criminal Attempts Act 1981 and a summary only section 51 offence of using threatening, abusive or insulting words of behaviour to cause harassment, alarm or distress, contrary to section 4A(1) and (5) of the Public Order Act 1986. He received a consecutive custodial term of three months.
2. At around 5.00 pm on Saturday 19 November 2022 the appellant walked into a branch of Greggs in Birmingham City Centre. He was the only customer at the time. He went to the hot counter, grabbed some food and began to eat it. He put his belongings down on one of the tables and it appeared that he was not intending to pay. His behaviour was erratic and he kept changing his tone between playful and slightly aggressive as he chatted to the staff. He complained that he did not need their charity when he was offered the food for free in an attempt to make him leave and he discussed robbing a bank due to the price of inflation. At one point he shouted to staff to get down, as if pretending to be robbing a bank, pointing his arm at them with his hand in the shape of the gun. The staff thought he was joking and none of them got down. But his tone then changed and he criticised them for laughing. He told them that he actually did have a gun and started making actions as if he had something in his coat and asked them to empty the till. One staff member became worried that the applicant might have a weapon of some sort and it was at that point that the manager told another staff member to call the police.
3. The staff, four of whom were behind the till at that point, refused to give him any cash from the till as he leant towards the sturdy protective Covid screen that separated the staff and the till area from the public area. He reached through the serving hatch and helped

himself to a caramel doughnut. He then sauntered out of the shop as other customers arrived, throwing the half-eaten doughnut onto the floor.

4. The whole incident lasted around 10 minutes. The episode of the attempted robbery when he threatened the staff by saying he had a gun lasted for some two to three minutes. He was recorded on the excellent quality shop CCTV.
5. The police arrived and found the appellant nearby shortly afterwards. He was arrested, handcuffed and taken to a police station. En route he abused the officers with homophobic and sexist epithets and other terms of general abuse and threatened to spit in their faces so they placed him in a spit hood.
6. In interview the appellant said his actions were due to high spirits and drink and were meant as a joke. He had been celebrating his release from prison and he had been drinking solidly for 24 hours. He apologised to the police for his actions.
7. The staff members at the shop felt threatened and were shaken and intimidated by him. One staff member felt anxious leaving work shortly afterwards on his way home, fearing that he might encounter the appellant again. We note and pay tribute to the careful handling of the whole episode by the staff at Greggs that day and in particular the cool-headed manager. They showed sensitivity and patience in seeking to de-escalate and manage the appellant's erratic behaviour.
8. One of the police officers subject to the insulting and threatening behaviour in the van provided a victim personal statement in which he said he was offended by the onslaught of unprovoked verbal abuse when the appellant had been treated professionally and with courtesy throughout.
9. The appellant had 26 previous convictions for 48 minor offences spanning the period from 29 January 2002 to 8 October 2022. These included 20 theft and kindred offences,

namely shoplifting, and five public order offences. Over a 20-year offending period he had received many community orders but has been sentenced to short custodial sentences for shoplifting with increasing frequency from December 2021. He has no convictions for violence beyond four offences for criminal damage in the period of offending for which he was lightly sentenced. He has not received a custodial sentence of more than four months in his entire criminal career. On the day of the offence he had been released from serving a short sentence from HMP Birmingham the day before and was on licence.

10. He pleaded guilty to the attempted robbery at the plea and trial preparation hearing and was entitled to a 25 per cent discount. He pleaded guilty to the section 4A public order offence on the day of sentence.
11. The prosecution placed the attempted robbery within Category 2B of the sentencing guidelines for street and less sophisticated robbery, with a starting point of four years and a range of three to six years. The prosecution sentencing note was silent on the section 4 offence but two notes on the sentencing of hate crimes had been uploaded to the digital case system.
12. The appellant submitted a lengthy letter in mitigation to the judge explaining the problems he had had with alcohol abuse over the years and the destructive effect it had had on his life. He described his difficult childhood and upbringing and his mother's alcoholism. He explained that he had not intended to cause fear or intimidation but thought that staff had understood his actions as the joke they were intended to be, due to his high spirits in drink. He was now remorseful and understood the unsettling effect his behaviour may have had.
13. In brief sentencing remarks the Recorder accurately described the offending as the accumulation of years of alcohol abuse and that people working with the public should be

able to work without being caused fear. She agreed with the prosecution assessment that the offence fell within Category 2B, rejecting a submission that the harm more accurately felt within Category 3. She then adjusted the starting point of four years upwards to reflect the appellant's previous convictions and that the offence was committed on licence. She arrived at a sentence of four-and-a-half years from which she deducted one-third for his guilty plea. She then imposed a consecutive sentence of three months' imprisonment for the section 4A offence.

14. The appeal grounds can be distilled into three aspects. First, that the harm should have been treated as Category 3B with a starting point of two years and a range of one to four years. Secondly, that insufficient account had been taken of the fact that the robbery guideline assumes a completed, not attempted, offence. Thirdly, that the sentence for the threatening behaviour should have been concurrent and not consecutive, or if consecutive, the overall sentence failed to have regard to totality.
15. There is no doubt that the incident was alarming and intimidating for staff at Greggs who are entitled to work without fear. However, the behaviour was at the very bottom end of the scale of attempted robbery and up until the point that the appellant said that he had a gun and threatened force part of the incident bore the hallmarks of aggressive and threatening shoplifting. It was an inchoate offence. It did not attract the same punishment as the completed offence would have done had he achieved the theft of money from the till as he said he was intending to do. Much will depend on the stage at which the attempt failed and the reason or reasons for non-completion.
16. We conclude that the offence fell on the cusp of Categories 2 and 3 harm. There was no physical injury but the psychological harm from the threat of a gun was more than de-minimus or minimal. One staff member, Mr King, described feeling in genuine fear

the moment he saw the appellant rustling with his coat, alarmed at what may be pulled out from it as well as being anxious on the way home.

17. As to culpability, we find that the offence fell at the lowest end of culpability B and would give a starting point of three years. The aggravating factors of being in drink and of the offence occurring within 24 hours of release from custody on licence, together with his lengthy previous convictions for shoplifting and public order, would increase the starting point to three-and-a-half years. From that however the mitigating factors must be balanced. The offence was not completed, it was inchoate. The appellant did not intend to cause fear but believed he was joshing with the staff in an amusing way in his high spirits – he thought he was being entertaining. He expressed remorse and regret for his actions to the police when he was arrested. It is also to be borne in mind that he has had a difficult early life and struggled with alcohol throughout his life. The mitigation would move the sentence back down so that the correct starting point after trial would be three years. From this should be deducted 25 per cent for the guilty plea, arriving at an end point of two years and three months' immediate custodial sentence for the robbery.
18. As for the section 4 public order offence towards the police officers, we find that this formed part of the same incident, even though it took place outside Greggs. It was part and parcel of the appellant's behaviour that night in Birmingham City Centre and it ought to have been imposed as a concurrent sentence. It fell within the lower end of 2A within the sentencing guidelines. It was a sustained incident which places it at Category A culpability because it occurred throughout the journey in the police van which is a confined space and the officers feared the appellant might spit at them. It follows therefore that the three-month consecutive sentence was manifestly excessive since a 2A guideline offence will have a starting point of a high level community order with a range

of a low level community order to 26 weeks' custody. The sentence imposed therefore fell outside the range and was manifestly excessive.

19. We therefore allow the appeal, quash the sentence imposed below and substitute both an immediate custodial sentence of two years and three months for the attempted robbery and a one month concurrent sentence for the section 4 public order offence. To that extent this appeal is allowed.

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

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