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.

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.

Neutral Citation No. [2023] EWCA Crim 258

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202203088/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 2 March 2023

Before:

LORD JUSTICE DINGEMANS
MR JUSTICE LAVENDER
THE RECORDER OF LIVERPOOL
HIS HONOUR JUDGE MENARY KC
(Sitting as a Judge of the CACD)

REX
V
LEE PATMORE

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)

MR M TOWERS appeared on behalf of the Appellant

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is an appeal against sentence. The appellant is a 26-year-old man. He has 24 previous convictions for 66 offences, 18 of which involved offences against the person.
2. On 30 May 2022 at a pretrial preliminary hearing in the Crown Court at Teesside, the appellant pleaded guilty to a count of controlling or coercive behaviour, contrary to section 76 of the Serious Crime Act 2015. He was entitled to full credit for that plea because that count had been added to the indictment only on the day of the pretrial preliminary hearing. He also pleaded guilty to: making a threat to kill, contrary to section 16 of the Offences Against the Person Act 1861; inflicting grievous bodily harm, contrary to section 20 of the Offences Against the Person Act 1861; possessing a firearm with intent to cause fear of violence, contrary to section 16A of the Firearms Act 1968; and possessing a firearm whilst prohibited, contrary to section 21(2) of the Firearms Act 1968. He was entitled to 25 per cent credit for those other pleas.
3. On 14 October 2022 the appellant was sentenced to 45 months for the making of threats to kill, 16 months consecutive for the controlling or coercive behaviour and 27 months consecutive for the possession of the firearm with intent to cause fear of violence, with concurrent sentences of nine months for inflicting grievous bodily harm and 27 months for possessing a firearm whilst prohibited. This gave an overall sentence of 88 months or seven years and four months. The grounds of appeal against sentence are that the overall sentence is manifestly excessive because insufficient regard was paid to the principles of totality and in any event the individual sentences were too long in a number of specific respects.

The factual background

4. The complainant (whose name it is not necessary to give in this judgment) and the appellant began a relationship in August 2019 and lived together from June 2020. The complainant said that the appellant had always been aggressive towards her and would smash the house up whilst being verbally abusive towards her. This escalated following the birth of their daughter in April 2021. The complainant had made previous statements to the police about the violence but always retracted them.
5. On 19 February 2022 the complainant met with her parents to discuss leaving the appellant because of his behaviour. She made a telephone call to the appellant and told him she was going to end their relationship. The appellant seemed to accept her decision and agreed to leave the following Monday.
6. The complainant returned to their flat and as she walked in the appellant locked the door behind her and took her phone from her. The appellant had already disconnected the Wi-Fi and the CCTV cameras in the flat, ensuring that the complainant would be unable to communicate with anyone. As the sentencing judge noted, this showed that there had been planning for the commission of the offences.
7. The complainant was carrying her 10-month old daughter in her arms. The appellant pulled the complainant into the kitchen by her hair and said, "Put her down now". The complainant did as she was told. The appellant then picked up a kitchen knife and a hunting knife and demanded that the complainant sit on the sofa. The complainant was holding her daughter again when the appellant grabbed the complainant by her hair and yanked her forward, crushing her into her child and pulling out hair. The appellant then began to slap the complainant in the face repeatedly. The complainant managed to get away from the appellant and went to the bedroom to change her daughter's nappy. Once she had finished doing that the appellant pulled her up by her hair and made threats

towards her as she walked through the flat. The appellant pushed the complainant around and inflicted a small cut to the left side of the complainant's stomach, although the way in which it was caused was disputed at the sentencing hearing.

8. The complainant deliberately carried her daughter around because she said she did not believe the appellant would hurt her if she had her with her. The complainant went to the toilet and the appellant followed her. At one point the appellant threatened to rape the complainant "up the bum with knives".

9. The complainant thought the appellant was going to kill her because of the numerous threats he was making. The reported threat to kill was that he threatened to "tie me up and kill me or something similar" and complaint is made that that was a vague threat.

10. Neighbours heard heavy banging in the flat followed by a woman’s scream. The appellant heard a noise that he believed to be the police and he ran through the flat towards the front door, leaving the complainant in the bedroom with her daughter. The complainant was so terrified that she made the decision to jump from the window to safety. The flat was on the third floor of a building - and we have seen photographs of that. She laid her daughter in her cot, climbed out of the window and hung onto the edge before jumping backwards in an attempt to absorb the impact of the fall. The fall was over six metres and as she landed the complainant felt a surge of pain. This was the section 20 offence of inflicting grievous bodily harm.

11. The appellant came out and carried the complainant back up the stairs to the flat. Inside the flat the complainant managed to kick the appellant away from her and get out of the flat again. She attracted the attention of a neighbour who noticed her distress, her swollen lip and the fact that she was moving stiffly following the injuries she had suffered in the fall. The neighbour took the complainant into his home and called the

police. The complainant told the neighbour that she had left her daughter in the flat and the neighbour went into the flat, brought her out and back into his home to be re-united with the complainant.

12. When the police arrived the complainant told officers that the appellant had hit her the day before and that he had also put his hands around her neck. He told her that he would throw acid in her mother's face if she left him and that he would not let her out on her own. He had made her break ties with her friends and had thrown her around the flat to intimidate her.

13. The complainant was taken to hospital. She was found to have suffered a broken right wrist and a 2-centimetre laceration to her liver. Doctors found gas in the central part of her chest from an unknown effect of the injury.

14. The police attended the flat and found the appellant hiding in the loft. He told officers: "I carried my girlfriend. She jumped out of the window. I was speaking to the victim today. I pulled her hair, I slapped her but I didn't punch her." He then went on to say: "My Mrs hit me on my left ear and kicked me when I was trying to carry her back up the stairs." He was taken into custody at Darlington Police Station.

15. On 22 February the officers at Darlington Police Station were tasked with placing the appellant into anti-ligature clothing in his cell. PC Bramley had a loaded Taser in a holster in his uniform as he and other officers entered the appellant's cell. The appellant grabbed the Taser and pushed PC Bramley away. The appellant stepped backwards several paces so that his back was against the wall of his cell, about six feet away from the officers. The appellant held the Taser in both hands and pointed it towards PC Bramley's chest. The appellant had armed the Taser and had he pulled the trigger it would have fired the live Taser cartridge towards PC Bramley. The appellant shouted at

the officers and PC Bramley ran out of the cell protecting his head and face with arms. Custody affray alarms were activated. The appellant remained in his cell with the Taser for a few minutes before agreeing to place it on the cell floor and lay down to allow officers to enter the cell and remove it from him. Once the Taser was removed from the cell, the appellant looked at PC Bramley and said something along the lines of "Sorry mate, I've been playing too much call of duty." It is apparent that the appellant had no insight into the seriousness of his actions.

16. The appellant was interviewed and made no comment regarding the offences against the complainant. In a further interview regarding the Taser he claimed he was not thinking straight and he had not wanted to put anybody in harm's way.

The sentence

17. There was a pre-sentence report and a psychiatric report. The pre-sentence report identified that the appellant was a high risk of harm to adults, staff, prisoners and the public and lacked empathy or remorse. The psychiatric report showed that the appellant had been in the care system from the age of three years. His later meeting and contact with his birth mother had caused problems but he did not have any mental health disorders. The complainant read out her victim personal statement and the police officer's victim personal statement was read. That showed that the police officer really believed that the Taser would be fired at him. There was a comprehensive sentencing note prepared on behalf of the Crown.

18. When sentencing the judge related the facts and set out the discounts for the guilty pleas for the offences. The judge referred to the victim personal statements, the pre-sentence reports and the psychiatric report. The judge said: "In this sentencing exercise I have in mind the domestic violence guidelines and the totality guidelines."

19. Complaint is made that the judge said that and nothing more in relation to totality. The judge then set out the relevant guidelines and imposed the sentences which we have already set out.

A permissible sentence

20. The first point to address is whether the judge adopted starting points which were too high for the respective offences. For the first count of coercive and controlling behaviour it was common ground that this was a Category B1 offence - Category B because it was between Categories A, persistent action over a prolonged period, and Category C, limited in scope and duration. There had been a fear of violence on many occasions and the judge recorded that he had been particularly struck by the complainant's evidence about the need to risk assess boiling kettles and empty them because she feared that the contents would be thrown over her.

21. The starting point given by the sentencing guidelines was one year with a range of 26 weeks to two-and-a-half years. Having regard to aggravating factors, the judge took a sentence of two years before giving the full discount for the plea. In our judgment a sentence of two years before discount for plea was permissible for this individual offence, because it was much closer to a prolonged period of offending than limited in scope and duration. This was a bad case of controlling and coercive behaviour and was aggravated by the appellant's numerous previous convictions.

22. So far as the threats to kill were concerned, this was a Category A1 offence. There was significant planning. The appellant had turned off the Wi-Fi and the CCTV. There was a visible weapon namely the two knives that were there. There were threats made in presence of a child. There was a history of violence towards the victim and there were threats with significant violence, namely to rape the victim up the bum with knives.

Those are all higher culpability factors. It was Category 1 because the offence had a significant impact on the victim, as evidenced by the fact that she felt the need to jump out of the window.

23. The guideline gives a starting point of four years with a range of two to seven years. The judge must have taken a final sentence point of six years before giving discount for plea, given the 25 per cent credit which this offence attracted. Given the circumstances that the complainant was so afraid that she jumped from the third storey of the building and suffered grievous bodily harm for which a concurrent sentence was imposed, and all the other aggravating factors, in our judgment this was a permissible individual sentence. The suggestion that the threat to kill was "vague" does not do justice to the effect that it had on the complainant or the sheer terror that she obviously experienced before jumping out of a third floor window.

24. So far as count 6 was concerned, this was the section 20 inflicting grievous bodily harm. That was categorised as A2 because the victim was vulnerable due to the circumstances, she had her baby in her arms, she was locked in a house by the appellant who had threatened her life and threatened to rape her with knives. There was a grave injury which was suffered and that gave a starting point with a range of two to four years. There were other aggravating factors including the previous convictions and presence of children.

25. The judge took a sentence of nine months after a discount of 25 per cent and made it concurrent. That showed a regard for totality, although we accept the point that has been made by Mr Towers that it was not expressed in terms in the sentencing remarks.

26. That brings us to count 8 which was possession of a firearm with intent to cause fear of violence. The judge characterised this as Category 2B. It was Culpability B because

there was an armed Taser, albeit it was not discharged. Mr Towers made the point this morning that there were some lower culpability factors. That is true but that does not undermine the fact that this was Culpability B because the appellant had an armed Taser. As to category 2, the judge found that there was a high risk of severe physical or psychological harm. There were also, so far as the sentencing guideline is concerned, other factors which made this Category 2, in particular a high risk of disorder. The discharge or the threat to discharge a loaded Taser in a custody unit needs only to be stated for that to be appreciated. It was also apparent from the victim personal statement that the police officer had genuinely believed that he was in real danger from the pointed and armed Taser.

27. That would have given a starting point of four years of its own with a range of three to six years. The judge must have had regard to issues of totality to have reduced the sentence to one of 27 months.

28. So far as count 9 was concerned, possession of a firearm when prohibited, that plainly overlapped with and did not disclose any separate criminality from that under count 8 so it is not necessary to address that separately.

29. For all those reasons we cannot see any error on the part of the judge or any manifestly excessive sentence in so far as any individual counts are concerned.

30. This leaves the real point of the appeal, namely the issue of totality. As to totality, it is accepted that the judge referred to totality but it is complained that the judge did not explain how it was taken into account or give any obvious reduction to take account of totality. The Over-arching Sentencing Council Guideline on Totality provides:

> "All courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending

> behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive."

31. It is clear in our judgment that the judge did not just add the sentences together in this case because, for example, the section 20 inflicting grievous bodily harm offence was made concurrent to the threats to kill. Further, the coercive and controlling behaviour had continued for a very long time and merited a separate sentence from the offences of threats to kill and inflicting grievous bodily harm on the day in which they occurred in February 2022. Those offences were separate again from the taking and pointing of the Taser in the police station at the police officer which required separate sentencing.
32. As to the issue of proportionality and overall length, this was a severe sentence but each of the offences was very serious and in our judgment we are unable to say it was manifestly excessive. We are very grateful to Mr Towers for his helpful written and oral submissions, but the appeal will be dismissed.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk