

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 851

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/01663/A1



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 14th July 2023

B e f o r e:

LORD JUSTICE DINGEMANS

HER HONOUR JUDGE MUNRO KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

SIR ROBIN SPENCER

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E X

- v -

PATRICK BLENMAN

Computer Aided Transcription 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 B Lloyd appeared on behalf of the Attorney General

Mr J McCrindell appeared on behalf of the Offender

J U D G M E N T

LORD JUSTICE DINGEMANS:

1. This is an application by His Majesty's Solicitor General, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court a sentence which he considers to be unduly lenient. We grant leave.

2. The offender, Patrick Blenman, is aged 56. Before these incidents he was of effectively good character. He had one immaterial previous conviction for driving with excess alcohol.

3. On 10th March 2023, following a four day trial in the Crown Court at Reading, the offender was convicted of false imprisonment (count 2), assault occasioning actual bodily harm (count 3), and arson (count 4). He was acquitted of making threats to kill (count 3). On 21st April 2023, he was sentenced to 30 months' imprisonment for the assault occasioning actual bodily harm, 20 months' imprisonment for the false imprisonment, and six months' imprisonment for the arson. All of the sentences were ordered to run concurrently with each other.

4. The grounds upon which the Reference is brought are that the Recorder failed to elevate the sentence to reflect the false imprisonment and arson offences, in addition to the other aggravating features. Whilst he was entitled to place the offence of assault occasioning actual bodily harm within category 1A of the guideline, the Recorder ought to have elevated the starting point of two years and six months' custody further to reflect the offences of false imprisonment and arson; in addition, the starting point was required to be elevated to reflect the fact that the offending was committed in a domestic context and the other aggravating features. Whilst appropriate reduction was required for the mitigating features, in reality the mitigation was limited, given that the offender continued to deny the offending, and the Recorder appears to have made too great a reduction for mitigating features.

5. The application is resisted on the basis that the fact that the offender continued to deny the offences did not limit his mitigation; the judge had taken the offences of false imprisonment and arson into account when sentencing for the offence of assault occasioning actual bodily harm; the sentence was appropriate and proportionate; the mitigation may have made the sentence generous, but it certainly could not fairly be described as unduly lenient.

6. We are very grateful to Mr Lloyd and Mr McCrindell for their helpful written and oral submissions.

The Factual Circumstances

7. The offender and the victim had begun a relationship in December 2020. Their relationship lasted for about six months, when the victim ended it. The offences occurred about three months later.

8. On 9th August 2021, the offender had slept on the victim's doorstep. He had also been sending her abusive and threatening messages. Consequently, she asked him to come round to her home so that they could talk in an effort to clear the air and then go their separate ways.

9. During the evening of 10th August 2021, they drank alcohol together. At some stage during the evening, the offender began to talk to himself. He then telephoned his sister and said that he was going to explode and hurt someone. Following this, and despite having called himself a taxi, the offender refused to leave the victim's flat. She repeatedly asked him to leave, telling him that he was scaring her. She told him that if he would not leave she would call the police. He responded by pushing her to the ground and grabbing her by the throat, pinning her against a wall and squeezing.

10. The victim left her third-storey flat and went to a ground floor neighbour's flat to report what had happened. When she arrived at the neighbour's door, she was shaking because of her distress. She told her neighbour that the offender had strangled her and that she needed to get him out of the flat but that he was refusing to leave.

11. The victim went back upstairs to try again to make the offender leave the flat. Instead of leaving, the offender further assaulted the victim. He dragged her by her hair, threw her into the hallway, and hit her on her chest. He brandished a claw hammer, gesturing as though he was going to hit her with it. He also got some scissors and threatened to cut her hair, but she ran into the bathroom and closed the door behind her. She then called the police. Meanwhile, her neighbour had also telephoned the police.

12. The victim provided a running commentary to the police of what was taking place. We have seen the transcript of the 999 call. At various points in the call, the offender's aggressive shouting can be heard. He also switched on the gas hob. By this time he had already bolted the front door and padlocked the bolt. He removed the key to the padlock so that there was no obvious way out for the victim. Her fear could be heard in her voice as she pleaded with the police operator to send some police officers to rescue her.

13. The victim then smelt smoke and realised that the offender had set fire to the carpet by the front door. We have seen photographs of the damage. It is fair to record that the damage was minor, but, on the other hand, it is also right to note that the victim had no way of knowing that at the time that she was on the phone, and the offender had turned on the gas. The victim obviously thought that she was going to die and reported as much to the police officers. The offender tried to force open the bathroom door. It did not lock properly, so the victim exited the bathroom to try to get away from the offender by going into a different room.

14. The offender went into the kitchen and returned with a large knife. He approached the victim with the knife. She thought that she was about to be stabbed and, believing that she had no other choice, she jumped out of the living room window of her third-storey flat. Again, we have seen the photographs showing the distance which the victim jumped down.

15. She landed on the grass below. The police arrival was almost simultaneous with her jump. They looked after her. They ensured that she lay still on the ground as she cried out from the fall. We have seen the body-worn footage. She told the officers, "He was going to stab me so I jumped". Paramedics later arrived and treated her. She was taken by ambulance to hospital. Fortunately – and somewhat amazingly – she suffered no broken bones. The physical injuries amounted to actual bodily harm. However, the psychological harm was more serious and long-lasting.

16. In addition to assisting the victim, other officers went to the front door of the flat. The offender refused to let them in. They forced open the door. Once it was open, they saw that he was standing in the hallway with the kitchen knife, and a hammer was on the floor by the front door. He threatened to hurt himself. After at least 45 minutes of negotiating – and again there is CCTV showing this – the offender, who had continued to behave in a volatile fashion, handed the knife to one of the police officers and surrendered.

17. When interviewed by the police he provided a prepared statement in which he denied the allegations. He said that he did not know why the victim had jumped from the window.

18. At his trial, the offender gave evidence and maintained his denials. He said that he was merely packing up his belongings after he and the victim had had an argument. He said that he was calm. He said that he continued to pack his belongings when he realised that the

victim had exited through the front door, and that he continued to pack his belongings after she returned. He said that she went into the living room and said that she was going to jump out of the window. He told her not to and went back to packing up his belongings. He then realised that she had jumped. He claimed that he had not been in the same room as her at the time. He had no answer for the contents of the transcripts or indeed the body-worn footage.

The Documents before the Court

19. There was a Victim Personal Statement in which the victim said that she was struggling to find the words to explain the impact that the offender had had on her life. She had attempted suicide and had spent time in hospital. She did not know if she would ever feel "right" again. She had jumped from the window because she was terrified that she was going to die. She said of her flat: "What once was a sanctuary for me and my children became a place of terror". She was thankful that her children were not there to see what happened, but they had suffered the consequences. She was "drained physically, emotionally and mentally" after the attack. She struggled to cope with where she was living. She was terrified that the offender would return. She had had a panic attack, had lost control and had destroyed the place. She had moved out of those premises and she said that the offender had "broken" her. Her children were now being looked after by other family members. Her physical pain was nothing compared to the emotional and psychological pain.

20. There was a pre-sentence report in which it was said that the offender continued to maintain his innocence. The author assessed that the offending was triggered by the victim's rejection of the offender and that he had sought to punish her. His intoxication was likely to have had a disinhibitory impact upon him. In the author's opinion, the likelihood of re-offending was high; the offender posed a risk of serious harm.

21. There were also references, by way of balance, which talked about the offender's

qualities. They were from employers, from fellow employees, from friends and from family. They indicated that he had helped disabled individuals by providing financial assistance.

The Sentence

22. In his sentencing remarks the Recorder noted that the offender had attended the victim's flat and had become threatening. She had told him to leave and the offender had pushed her to the ground. He referred to the offender grabbing her throat. Having been to her neighbours, the victim had returned and the offender had pulled her hair, had hit her to her chest and had threatened to cut her hair. He had said words to the effect of "You want to die" or something similar. He had set the carpet on fire, had locked the door to the flat and had taken the key. The victim was so scared that she had jumped out of the window, which was a plain indication of the level of fear caused. The Recorder noted the Victim Personal Statement which described the significant impact on the victim both physically and, more significantly, psychologically. The victim was still complaining of a bad back, pelvis and hip, which required pain relief.

23. The Recorder took the offence of assault occasioning actual bodily harm as the lead offence. That offence was aggravated by the offences of false imprisonment and arson. The Recorder had regard to the domestic abuse guideline. As regards the guideline for the offence of assault occasioning actual bodily harm, higher culpability factors included the fact that the victim was vulnerable due to the circumstances in which she found herself. That included the fact that the offender had purposely locked herself in her own flat. There was the use of a highly dangerous weapon. The offender had made threats with a hammer and a knife, although neither had been used to inflict harm. Further, the assault was prolonged. Lesser culpability factors did not apply, and so the offence fell within high culpability. As regards harm, it fell within category 1, because the offence caused serious psychological harm and had a substantial impact on the victim. The starting point for that offence was,

therefore, two years and six months' custody.

24. The aggravating factors included that the offence had been committed in a domestic context and the fact that the offender was under the influence of alcohol. As regards mitigating factors, there were no relevant previous convictions. The offender was aged 56. There was a character reference from his sister who spoke of his remorse, although the offender had continued to deny the offences.

25. The Recorder considered authorities in relation to the offence of false imprisonment. He found that the arson offence was medium culpability and category 2 harm for the offence specific guideline. The use of fire intensified the victim's fear. These factors provide a category starting point of nine months' custody. The pre-sentence report indicated that the offender continued to deny the offending and that he had shown no insight into his actions or demonstrated any willingness to address his behaviour. The Recorder noted the contents of the pre-sentence report and noted the fact that any immediate custodial sentence would mean that the offender would lose his employment and accommodation. However, the Recorder concluded that the offences were so serious that only an immediate custodial sentence could be justified. He had regard to totality. The sentence was discounted substantially to reflect the fact that the offender had reached the age of 56 and had no relevant previous convictions. That explained the total sentence of 30 months' imprisonment which was imposed. A restraining order was also made.

Relevant provisions

26. The offence of assault occasioning actual bodily harm was a category 1A offence. It was culpability A because the victim was obviously vulnerable. There was the use of a highly dangerous weapon (a hammer) and there was a prolonged and persistent assault. The harm was category 1, because there was serious psychological harm and a substantial impact upon

the victim, as evidenced by the Victim Personal Statement. As such, the guideline provided a starting point of two years and six months' custody, with a range of one year six months to four years.

27. In *Attorney General's Reference Nos 92 and 93 of 2014 (R v Gibney)* [2014] EWCA Crim 2713, [2015] 1 Cr App R(S) 44, the court considered the correct approach in relation to sentences for false imprisonment. In *R v Parchment* [2021] EWCA Crim 1854, [2022] 2 Cr App R(S) 9, a sentence of two years and four months' imprisonment was upheld following a conviction for false imprisonment following a guilty plea to putting a person in fear of violence by harassment. In that case the victim had also jumped from a window and had suffered a compression fracture of a vertebra. But it was apparent that there was mitigation in that the appellant had grown in maturity and had gained employment since the offending. There are other cases involving jumps from window: see, for example, *R v Patmore* [2023] EWCA Crim 258, but the factual circumstances of each case are very different.

28. The offence of arson fell into category 2B of the guideline, which gives a starting point of nine months' custody, and a range of six months to one year and six months.

29. It is also right to record that the offender has had positive reports since he has been in prison. It is apparent that he is making a positive contribution to others in the prison.

Appropriate sentence

30. In our judgment, the Recorder was right to take the offence of assault occasioning actual bodily harm as the lead offence, because there was a guideline to apply and because of the approach taken in the court below about the seriousness of the offence. It was also right to take the starting point of two years six months' custody. There was category 1 harm, because

of the serious psychological harm caused to the victim following the assault which caused her to jump from the window; and there was culpability A, because of multiple culpability factors: the victim's vulnerability due to personal circumstances; the use of a dangerous weapon; and the fact that the assault was prolonged. Under the guideline, multiple culpability factors themselves justify an increase from the starting point of 30 months' custody, before the consideration of aggravating factors. There were aggravating factors, namely: the domestic context and the fact that the offence was committed under the influence of alcohol.

31. The Recorder was right to avoid double counting by aggregating all of the offending on to the offence of assault occasioning actual bodily harm and to consider the false imprisonment as part of the victim's vulnerability due to personal circumstances. The judge however had to recognise the use of the knife and the hammer, which had so frightened the victim that she had jumped out of the window. The Recorder also needed to reflect the criminality in relation to the arson which, it is apparent from the transcripts of the 999 calls, terrified the victim and which distinguished this case from that of *Parchment*.

32. It is right to record that the only mitigation available to the appellant was his effective good character. There was the absence of any relevant previous convictions, but there was also positive good character, which we have referred to by way of the references. It is also necessary to record that the effect of the punishment meant inevitably that the offender would lose his employment and his accommodation.

33. Taking all of these matters into account, a sentence to reflect all of the criminality of the offences of assault occasioning actual bodily harm and false imprisonment, and to avoid double counting, meant that the Recorder should have taken the starting point of two years and six months' custody and gone up to a figure of effectively four years for the assault

occasioning actual bodily harm and the false imprisonment. There would have to be an increase of that sentence to take account of the arson, which was another and important aspect of the criminality. That notional addition would have had to be discounted, to reflect issues of totality, down to a figure of six months. Overall that would give a sentence of four years and six months' imprisonment, before a consideration of the mitigation. Mr McCrindell is right that there is very substantial mitigation available to the offender.

34. Doing the best we can, we propose to reduce the notional sentence of four years and six months for all of the offending to one of three years and nine months' imprisonment to reflect the exceptional mitigation and the effect of the punishment on the offender. It seems to us that a sentence of less than three years and nine months' imprisonment is the least sentence that could be imposed to reflect this offending. The sentence was therefore unduly lenient.

35. We therefore allow the Reference. We quash the sentence of two years and six months' imprisonment and impose a sentence of three years and nine months' imprisonment on the count of assault occasioning actual bodily harm. The other sentences remain undisturbed.

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
