

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 20240320/A3
[2024] EWCA Crim 421

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 18 April 2024

Before:

LORD JUSTICE WARBY
MRS JUSTICE MCGOWAN DBE
HER HONOUR JUDGE KARU
THE RECORDER OF SOUTHWARK
(Sitting as a Judge of the CACD)

REX
V
TRAI FRASER

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MISS D MANSON appeared on behalf of the Appellant

J U D G M E N T
(Approved)

LORD JUSTICE WARBY:

Introduction

1. This is an appeal against sentence by Trai Fraser. On 7 December 2023 he was convicted after a trial in the Crown Court at Harrow of one count of having an article with a blade or point, contrary to section 139(1) of the Criminal Justice Act 1988. He was sentenced on 22 December 2023 by the trial judge, His Honour Judge Kay KC, to 21 months' imprisonment for that offence. The judge also activated in full a suspended sentence of 15 months' imprisonment that had previously been imposed for an earlier offence of a similar kind. The two sentences were ordered to run consecutively. The total sentence was therefore one of 36 months' imprisonment.
2. The appeal is mounted on the single ground that the sentencing judge had insufficient regard to the appellant's relative youth and immaturity. He was born on 8 July 2001, so he is now 22 years old. It is appropriate to set out the background which goes back some years, taking matters in chronological order.

The background

3. On 24 August 2017 (aged just over 16) the appellant was in possession of cannabis resin, an offence to which he later pleaded guilty.
4. On 8 November 2017 he was in possession of class A drugs and a knife or bladed article in a public place.
5. On 27 November 2017, having pleaded guilty to both those offences, he was sentenced to a referral order, later varied to a youth rehabilitation order.
6. On 20 June 2018 he was sentenced for the 2017 cannabis offence when the court imposed a further youth rehabilitation order.
7. On 5 December 2018, having pleaded guilty to possession of cannabis on 26 October that

year, he was sentenced again to a youth rehabilitation order for two offences of possessing class B drugs..

8. On 24 October 2019, by now aged 18, he committed an offence of assault occasioning actual bodily harm.
9. On 24 February 2021 he was given a 12-month conditional discharge for a further offence of possessing class B drugs, that having been committed on 16 April 2020.
10. On 14 April 2021, less than two months after the conditional discharge, he was involved in a conspiracy to steal involving violent disorder in which he was armed with a machete. The details in short are these.

(1) The appellant was one of a group of nine who travelled to an address in Luton which was operating as a cannabis factory. He intended to steal. The group arrived at around 7 am. Five of them, including the appellant, tried to gain entry to the address, the appellant and another male armed with machetes. The occupants of the property sought to resist, setting off a fire extinguisher in the process. The males attacked the occupants during the incident until they were fended off.

(2) Around 10 minutes later, when the occupants had left, some of the group of males returned in a car and entered the property to steal the cannabis. Some of the occupants returned in a BMW and threw something at the group's vehicle. Some of the group chased the BMW down the road. Eventually the group of males drove off in the BMW and a Vauxhall Astra. Both cars were stopped by police shortly afterwards and the appellant and others were arrested. The appellant was found to have a machete secreted down his trousers. He gave a no comment interview.

11. Just over two weeks later, on 30 April 2021, the appellant was again in possession of a knife or pointed article in a public place and used threatening or abusive words contrary

to section 4 of the Public Order Act. He pleaded guilty to those offences and was committed to the Crown Court for sentence. On 19 August 2021 he was sentenced to six months in a young offender institution, his first custodial sentence.

12. On 29 November 2022 the appellant was sentenced for the actual bodily harm committed in 2019. He had pleaded guilty. He received a 12-month community order with a rehabilitation activity requirement and programme requirements.

13. In March 2023 the appellant was tried with others in the Crown Court at Luton for offences committed in the course of the cannabis factory raid of April 2021. On day 4 of the trial he and others pleaded guilty. The appellant pleaded guilty to conspiracy to steal, violent disorder and possession of a bladed article.

14. On 13 April 2023 he was sentenced. It was on this occasion that the court passed the sentence of 15 months' imprisonment suspended for 18 months that we have mentioned. For the conspiracy the court imposed a concurrent suspended sentence of 10 months and there was a further concurrent suspended sentence of five months for the offence of violent disorder.

The index offending

15. It was at about 7.00 pm on 15 May 2023 that the appellant became engaged in the offence that led to the other sentence we have mentioned. He travelled from his home in Luton to the Grahame Park Estate in London NW9. He was armed with a large knife of the kind known as a hunting knife or Rambo knife and he was wearing gloves and some kind of Balaclava.

16. On arrival at his destination the appellant became involved in a fight with another male who was armed with a large sword. Mobile phone footage was taken by onlookers and showed what had happened. The fight lasted a couple of minutes during which the

appellant was disarmed and injured. He was then seen fleeing the scene with the other male in pursuit. A second mobile phone recording captured him and the unidentified male a few moments later standing near a parked car around the corner from the scene of the fight. The unknown male was seen to lunge towards the appellant who tried to disarm him. A scuffle ensued and the other male left. The appellant was forensically linked to the incident as a result of his blood being left at the scene.

17. He was arrested on 16 May 2023 and gave a no comment interview. He and another were each charged with affray and with the bladed article offence. At the trial in the Crown Court at Harrow the appellant's defence to the charge of affray was one of self-defence and he was acquitted. But the jury rejected his defence to the bladed article offence, which was that it was the other man and not he who had the Rambo knife.

Sentencing

18. The sentencing judge had the benefit of having presided over the trial at which witnesses had given evidence of seeing the fight and how they reacted. He also had the benefit of unused witness statements stating that the incident had affected the community and caused people to be fearful of going to the police lest that should make them a target for violence.
19. So far as the appellant was concerned, the judge had his antecedents, which we have summarised, a pre-sentence report prepared for the sentencing at Luton a month earlier, and a character reference. Miss Manson, who appeared for him below as she does today, prepared a detailed sentencing note citing extensively from the authorities on the right approach to sentencing young adults.
20. The judge addressed the question of age and maturity in the following words:

"So, I've read the character reference. I've read the pre-sentence

report. You are not a child or young person. You were 21 – almost 22 at the time. I cannot properly assess the level of your maturity. You are, so far as I can say, somebody who was almost at the age of 22 . You are recognised, for all purposes, as an adult. There's no evidence, medical evidence, before me to suggest you are anything other than an ordinary adult of your age. Just a young man. You are not representative of young men in this country, because the vast majority don't behave like you do, and that's fortunate.

Yes, I'm aware, and I have it quoted to me very many times, the scientific research that shows that the brain is not fully matured at the age of 22, but you are a standard 22 year old, and you've been given every opportunity to approach life in a different way. People who carry knives like this again and again are, in my judgement, potentially extremely dangerous. One never knows what's going to prompt that knife being produced, and what will happen if it is produced."

21. The judge reminded himself of the need to have regard to totality and conditions in prison. He decided that on any view of where the case fell in the guidelines or activation of a suspended sentence order the 15-month custodial term must be activated in full.
22. Turning to the 2023 offence, the judge categorised this as culpability Category A because the knife was not just a bladed article but "an aggressive large form of hunting knife". He held that the case was in harm Category 1 for two reasons: the offence was committed in circumstances where there was a risk of serious disorder and serious alarm had been caused to bystanders and in the community. The starting point was therefore one of 18 months with a range of up to two years and six months.
23. The judge identified three aggravating factors. First, the appellant's previous convictions and in particular the three previous convictions for possession of a bladed article. Secondly the commission of the offence when he had only just been made subject to a suspended sentence order. Thirdly, his attempts to conceal his identity. For those reasons, said the judge, the case would have been at the higher end of Category 1A. However, considering the principle of totality, current conditions in prison and, as he put

it, "taking everything into account as best I can do", the judge arrived at a sentence of 21 months.

24. The two sentences had to be consecutive, leading to the total sentence of three years.

The appeal

25. Miss Manson, in her concise and focused written advice and grounds of appeal on behalf of the appellant, concedes that it was "appropriate" to impose an immediate custodial sentence for the 2023 bladed article offence and to activate the suspended sentence order. We would go further. In our judgment both steps were inescapable. Anything other than immediate custody would have been unrealistic, not just because of the seriousness of the offending but also because all other options had been tried in the past with a conspicuous lack of success. Moreover, activation of suspended sentence in full was entirely in line with the applicable guideline. We find it hard to see how the judge could properly have taken any other course.

26. The appeal accordingly comes down to whether the length of the custodial term for the 2023 offence was excessive. On that issue Miss Manson's written argument was that the judge made one important error of principle. She said that he "openly refused to take into account the appellant's youth and immaturity." She wrote that there was a "very overt failure ... to adhere to ... a significant and important sentence practice in relation to young people."

27. Those submissions were advanced without the benefit of a transcript of the judge's remarks. Having reviewed the transcript, Miss Manson has however maintained the essence of those submissions today.

Decision and reasons

28. The authorities cited recognise that in young adults age can affect maturity and hence

culpability; that in some cases when a judge is sentencing a young adult the factors mentioned in the guideline on sentencing children and young persons can weigh in the balance; and that there will be cases where, to quote from R v Daniels (Branden) [2019] EWCA Crim 296, [2019] 4 WLR 52:

"... there is material available to the sentencing court which speaks about the maturity and developmental reality of the offender in question."

29. We have quoted what the judge said about the matter in this case. In our opinion the submissions advanced by Miss Manson rest on a misinterpretation of the judge's remarks.
30. It cannot be said that the judge ignored the question of age and maturity. On the contrary, he addressed it head on. Plainly, and unsurprisingly, this was by no means the first time this submission had been made to this judge on behalf of a young adult. The judge acknowledged the appellant's chronological age. He referred to the well-known research, cited in the leading authorities, that young adult brains take time to mature. But he did not disregard that point by, for instance, treating this appellant as if he were a fully mature young adult of, say, 28 years of age. He took account of age and maturity but proceeded on the basis that the appellant's maturity was that of a typical male of his age and not different from others of the same age. In our judgment the key observation in the passage that we have cited is that "there is no evidence ... to suggest you're anything other than an ordinary adult of your age".
31. We have considered whether that conclusion is open to criticism. We do not believe that it is.
32. There was no medical or psychiatric evidence.

33. The character reference did not assist on the point. It came from members of a youth organisation called 4Front, who had collectively known the appellant in their professional capacity for a number of years. They spoke of his difficulties with losing friends in 2019 and 2020. The reference describes the appellant as a "respectful, positive and caring young man", adding the somewhat unhappily worded suggestion that he was "willing to always fight for a better future". The authors did say that this was the case despite what they described as "a difficult upbringing" but this does not tell us anything about his particular level of maturity nor has Miss Manson suggested that it does. In our view the judge was entitled to regard this reference as of little assistance in all the circumstances.
34. The pre-sentence report, prepared by a probation professional, told the judge that the appellant had reported having a happy childhood and a supportive family. The report noted the appellant's poor criminal record, of which the character reference said nothing. It recorded the appellant's account of his motivation for the Luton offending, which he said had been committed for financial reasons and to score free cannabis. The author fairly observed that this showed "poor thinking skills" and speculated that the explanation could be mainly down to his age at the time, which was 19. The author also expressed the view that there was "an element of immaturity" in that offending behaviour. The report noted the research about the development of the young adult brain to which the judge himself referred. But these observations related to offences which the appellant had committed at the age of 19. The appellant was 21 at the time of writing. And there was nothing in the PSR to show or suggest that he was in any way unusually immature for his age.
35. We note that the sentence appears to have been reduced by at least six months to reflect totality, prison conditions and mitigating factors. It is of significance also that today

Miss Manson has candidly accepted that there might not have been any grounds of appeal at all but for the error of principle which she has alleged.

36. For these reasons, we have concluded that the judge did not err in principle and that the sentence imposed was not manifestly excessive. The appeal against the sentence of imprisonment must be dismissed.

The surcharge

37. There is one matter that we do need to address. The surcharge imposed was £187. That was a mistake. On the proper application of the relevant provisions it should have been £156. We therefore quash that order and substitute the lesser figure. Otherwise this appeal is dismissed.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk