IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 606

No. 202000255 A1

Royal Courts of Justice

Tuesday, 7 April 2020

Before:

LADY JUSTICE SIMLER DBE
MR JUSTICE MARTIN SPENCER
MRS JUSTICE FARBEY DBE

REGINA
V
JOANNE BAILLIE

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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

MS A. HAUGSTAD appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

1 Pursuant to the leave of the single judge the appellant appeals against a sentence of 38 months' imprisonment imposed by HHJ Brown in the Crown Court at Teesside on 7 January 2020 for an offence of inflicting grievous bodily harm contrary to s.20 of the Offences Against the Person Act 1861. A co-defendant, John Conlin, was sentenced to 36 months' imprisonment for the same offence.

2 The circumstances of the offence are as follows. At just after 2.00 a.m. on 17 July 2019 on Yarm Lane, Stockton-on-Tees, the defendants engaged in a joint attack on the complainant with their fists and feet whereby the complainant fell to the ground and, whilst he was lying in the middle of the road, he was narrowly missed by a passing taxi which passed within one foot of his head. The injuries he in fact sustained were a bruise to his right eye, which in photographs taken at the scene can be seen to have closed by the time the police arrived, a wound to his left eyebrow which was sutured and fractures to the eye socket and to a bone in the nose.

3 There is CCTV footage of the incident. This shows the victim on his bike. He was approached by the appellant who waives hers arms and gestures at him. There was an altercation and the victim fell off his bike. The initial attack was by the appellant who kicked at the victim. The defendant walked off and then she returned and kicked him again twice connecting with his midriff or lower back. Both the defendants manhandled the complainant by grabbing and dragging him. The complainant got up and walked off, but then returned and threw something which struck the appellant on her forearm. He was then attacked again by the co-defendant who punches him in the face, sending him to the ground, where the co-defendant kicked him twice to the upper part of the body.

4 At this stage, a friend of the defendants who was there, a Mr Collins, intervenes and pulls the co-defendant, Mr Conlin, off the complainant. However, Mr Conlin kicked the complainant again whose body can be seen to roll with the force of the kick. The victim was left lying in the road and the taxi approached. Mr Collins waived at the taxi to warn the driver that there was a person in the road and, thankfully, the driver swerved at the last second, narrowly missing the complainant's head by, as I stated, about a foot. Had it connected, he would almost certainly have been killed.

5 The learned judge in sentencing the appellant did not distinguish between the Defendants in terms of their respective roles in the attack. He found that the appellant by her actions and presence encouraged her co-defendant, Mr Conlin, to continue with the attack and that is what he did, kicking the victim whilst on the floor. The judge described this as a "horrific incident of violence." The learned judge found that the offences fitted within category 1 of the Sentencing Guidelines, because, on his view, this was a sustained and repeated assault on the same victim and, although it had its different facets, he found that both defendants were fully involved each in their own way in the overall incident. Considering the Sentencing Guideline, he found higher culpability because of the use of a weapon, that is shod feet, and the offence fitted within category 1 with a starting point of three years' custody and a range of two and a half to four years.

6 After a starting point of three years, the learned judge took into account the significant aggravating features: the location and timing of the incident and the previous convictions of the defendants. In this regard, the appellant, who is now aged 38 and was aged 37 at the time of the offence and sentence, having been born on 7 March 1982, had 39 previous convictions, including for attempted robbery, two offences of affray and an offence of battery for which she received 21 months' imprisonment in May 2016 and an offence of

robbery, for which she received 16 months' imprisonment on 9 January 2017. With these aspects in mind, the learned judge reached a sentence of three and a half years, which he reduced to 38 months to take account of the appellant's late plea of guilty, which entitled her to a discount of 10 per cent. Mr Conlin had pleaded guilty at an earlier stage, entitling him to a greater discount for plea, hence the difference between their sentences.

7 On behalf of the appellant, Ms Haugstad has submitted in writing that the sentence of 42 months' imprisonment before the reduction to give credit for plea was manifestly excessive on two grounds. First, the learned judge took too high a starting point for the assault and, secondly, he failed to distinguish the appellant's role to that of the co-accused and to reduce the sentence accordingly. In supplementary submissions to us today, for which we are very grateful, Ms Haugstad made two principal points. First, she said that this was in reality a two- or three-part incident and the appellant was involved only in the first part. She reminded us that an object had been thrown at the appellant and a gesture she made in response to that was interpreted by the learned judge in the worst way it could be interpreted when it had other potential interpretations. It was a feature of the CCTV from Stockton County Council that there is no audio and so it cannot be heard what was said. Ms Haugstad submitted that in part three, when the principal injuries were sustained, the appellant is sitting on the kerb and is, as she puts it, clearly disengaged. She therefore submits that the appellant's involvement should be interpreted as a lesser involvement than that of her co-accused and that she played a lesser role in terms of the incident itself.

8 She goes on to address the Guideline for sentencing in cases of grievous bodily harm and she submitted that although she concedes it is greater harm, because of the injuries caused and in particular the two fractures, this is not the most serious sort of injury in the context of this offence, that is offences of inflicting grievous bodily harm. But her principal submission was that this should be interpreted as lesser culpability, because of the subordinate role played by the appellant in terms of a group attack. It was put to her that the appellant had assaulted the victim using a shod foot, but Ms Haugstad submitted that those blows by this appellant were aimed at the torso and midriff, whilst the injuries which caused this offence to be grievous bodily harm were to the head and those injuries were committed exclusively by the co-defendant Conlin. In those circumstances, she submitted that the learned judge wrongly categorised the offences as category 1 when it should have been categorised as category 2 with a starting point of 18 months and a sentencing range of one to three years. Ms Haugstad accepted, rightly, that the appellant does have a significant history of previous offending.

9 Attractively as those submissions were made, we are not persuaded by them. In our judgment, the learned sentencing judge was wholly entitled to take the view that this was a joint enterprise in which he could not or should not distinguish between the roles of the appellant and her co-accused. The appellant appears to have instigated the attack. Although it was carried on by her co-defendant, she did nothing to stop the attack, as did Mr Collins who also assisted the victim. The learned judge was entitled to find that although the words spoken cannot be heard on the CCTV, by her continued presence and attitude, she encouraged Mr Conlin in his continued attack and bore full responsibility for the injuries sustained.

10 We take the view that this was, as the judge found, a serious violent assault committed in the street and a sustained attack where the victim had little or no chance of defending himself. The categorisation of the offence was, in our judgment, absolutely correct and the learned judge was entitled to go up from a starting point of three years to three and a half years to take account of the aggravating features. We take the view that there was nothing

manifestly excessive about this sentence. No complaint is made of the discount of ten per cent to the plea of guilty and, in those circumstances, this appeal must be dismissed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.