

2019/03927/A2 & 2019/03966/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

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Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 24th March 2020

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE MARTIN SPENCER

and

THE RECORDER OF SHEFFIELD

(His Honour Judge Jeremy Richardson QC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

SVEN ERIK ISLE

LEE JAMES HARRISON

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)

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Mr S D Garth appeared (via telephone-link) on behalf of the Appellant Sven Erik Isle

Miss R Scott appeared (via telephone-link) appeared on behalf of the Appellant Lee James Harrison

JUDGMENT

Tuesday 24th March 2020

LADY JUSTICE RAFFERTY: I shall ask Mr Justice Martin Spencer to give the judgment of the court.

MR JUSTICE MARTIN SPENCER:

1. By leave of the single judge the appellants appeal against their sentences of eight years and four months' imprisonment in the case of Isle and six years and seven months' imprisonment in the case of Harrison, imposed by His Honour Judge Thackray in the Crown Court at Kingston upon Hull on 3rd October 2019. The breakdown of the sentences was as follows. In the case of Isles, for burglary (count 1), to which he had pleaded guilty on the first day of trial, eight years and one month's imprisonment, and for assault on an emergency worker (count 2), three months' imprisonment, to run consecutively. In the case of Harrison, for burglary, to which he pleaded guilty at the plea and trial preparation hearing but on a basis which the Crown did not accept, six years and four months' imprisonment, and for handling stolen goods (count 3), three months' imprisonment, to run consecutively. A *Newton* hearing was to have taken place in relation to the basis of plea, but on the morning it was to have taken place, the basis of plea was abandoned and Harrison accepted that he should be sentenced on a full facts basis.

2. The facts were as follows. The burglary was committed at the home of 18 year old Emma Sayer. It was an end of terrace house with access to the front and rear. She lived in the property with her 2 year old son Louey. At about 9.30pm on 1st June, Miss Sayer took her son to bed. The front and rear doors were locked. At 2am on the following day, she was woken by banging noises from downstairs. She felt unable to do anything as her son was in bed with her. She reached for the mobile phone that she had left by the side of her bed, but it had already been taken. Approximately ten minutes later, Harrison entered her bedroom. He had seen an Xbox remote control downstairs and demanded to know where the console was. Miss Sayer told him that she did not have an Xbox and that it was simply a spare control. Harrison demanded money. Miss Sayer told him that all she had was on the bedside table. He told her that she was a "lucky girl" before asking her about a broken television that was on the landing. While making his way back downstairs, Harrison asked her if she had a telephone. Miss Sayer replied that she only had the one, which they had already taken. Harrison told her not to telephone the police, as he had told her he was not going to hurt her or her son.

3. After Harrison returned downstairs, Miss Sayer heard him speak with Isle who asked if they were going to take an electric bicycle from her son's room. Harrison told him no as it belonged to the little boy. Miss Sayer heard the two men moving around and banging for a further ten minutes. They eventually left the house with a television taken from downstairs, some frozen food, an iPhone and Miss Sayer's keys.

4. Miss Sayer woke her son and made her way to her mother's house which was located nearby. En route, she saw the appellants moving her television on to a cream coloured bicycle. Some of the frozen food had been left in the road. She arrived at her mother's house in a very distressed state. Her stepfather, Joshua Sayer, examined her house. Entry had been gained through a dining room window that had been prised open. The fridge and freezer had been emptied and a bread knife had been moved from the kitchen and left in the middle of the living room floor.

5. The appellants were seen by a witness, Michael Stannard, who saw them resting the television on his girlfriend's car. When Mr Stannard shouted at them, Harrison made off on his bicycle, leaving Isle to struggle with the television. Another witness, James Clabby, saw Isle and thought that he was simply in difficulties. Unaware that the television was stolen and

wanting to assist, Mr Clabby took the television to Isle's address at 102 Morley Street. Isle travelled there on his bicycle which had a bag of the stolen frozen food on the handlebars. Harrison was waiting at Morley Street as Isle and Mr Clabby arrived. Mr Clabby left the appellants only to learn that there had been a burglary and that he had unintentionally assisted the culprits. The police were informed and arrived at 102 Morley Street at 4.20am. They found Isle intoxicated and asleep in the rear garden. The television and some frozen food were found in the garden. Papers belonging to Miss Sayer were located in an adjacent field.

6. Following his arrest, Isle became aggressive. He threatened to head-butt Police Constable Julie Smith as she placed him in the rear of the police vehicle, and he kicked the driver's console. When PC Smith opened the rear door to speak to him, Isle spat in her eyes and face. This formed the basis of the offence of assault on an emergency worker (count 2). He was aggressive until he arrived at the police station.

7. During his police interview, Isle said that he was unable to remember anything due to having been under the influence of drugs. He later made some admissions as to having been in the property, although in his Defence Case Statement he claimed that Harrison had only contacted him after the burglary had taken place.

8. Harrison was traced by Miss Sayer's brother, Adam Sayer, through the local community who had found out about the burglary. Adam Sayer confronted Harrison on 2nd June. Harrison placed the blame solely on Isle, before then attempting to escape. He was chased and caught soon after. Harrison surrendered a pair of black gloves and took Adam Sayer to a fence, where he had hidden the iPhone. The stolen keys were inside his rucksack.

9. When police officers went to Harrison's address on 7th June, they found a pink Barracuda bicycle, worth around £220, that had been stolen previously from the garden of a woman named Jessica Dennis on 31st May (count 3, handling stolen goods). Harrison answered "No comment" to all questions during his police interview.

10. Miss Sayer made a Victim Personal Statement on 26th June 2019, in which she said this:

"I am an 18 year old single mother and I live with my 2 year old son, Louey. My house is in the centre of Old Goole and for the time I have lived at the address, which is two years, I have lived without any incidents and have suffered no crimes whilst staying at this address. I felt safe in my home and had no worries about sleeping at the address with my son.

Since the incident, my life has changed greatly. I have only been back to my home once with my son and this was when I had to relive the events of 2nd June. When I went back, I then realised that the incident was worse than I had first thought. I felt sick. I began to shake and what made it worse, when we were both inside the house was when my son Louey said, 'Is there a man at the back door?' I know he said this as on the night of the burglary there was a man at the back door. I could tell how he was acting that he was scared also. At this point I quickly gathered the belongings I had come for and left within a few minutes of arrival.

Since the incident I have been living with my mother and have

slept there ever since the burglary happened. At this point I cannot see me coming back any time soon to my home, as I now feel unsafe in my own home.

I have had to have new locks fitted to my doors and windows to make the house more secure, but I feel at this time this will not help me. It is very important to me that the people that carried out the crime at my home must be punished severely. I need to know that the people responsible are off the streets and are not allowed to do this to anyone else in the future.

I'm not sure that I'll ever get over what has happened to me, to have an unknown man enter my bedroom and switch a light on in my bedroom and then for him to make a comment of 'You're a lucky girl' was the most frightening thing that has happened to me in my life.

My son keeps saying that he won't go back to the house. He doesn't like loud bangs and noises and is very unsettled of a night. We both slept in my brother's room last night, but he would not settle properly due to us being in a different room. He constantly gets out of bed and looks through the window to see if he can see anyone in the street who might attempt to come into my mother's home.

I don't like to be in the house on my own, so now I have to make sure that there is someone with me whilst I try to do the normal things in my life.

I guess at some point I will have to return home, but I believe I will have a long path [for] me to get back to some kind of normality."

11. Miss Sayer made a further Victim Personal Statement on 3rd October 2019, in which she described an unsuccessful attempt to sleep back at the house. She said:

"On the only night we tried to sleep together at the address which was around two months after the burglary, he [Louey] screamed continually for an hour. It was at this point we both left the address and went to sleep at my son's father's house.

...

... I still feel very unsafe when I go to the house. I still have to collect my post most days from the address and every time I go there, I take someone with me. I feel like I could have a panic attack every time I step through the door. I have now got to the point where I think I'm going to give the house up. Currently, I'm staying with my sister at her home, so at least I have support from my family, which makes both my son and I more settled on a

night.

Even though I'm trying to get over what has happened to me and my son, when I do sleep, I am still self-consciously listening for any little noise. My sister has cats and regularly through the night I can hear them jumping about in the house. This takes me straight back to the night of the burglary and makes me feel insecure, even though I know I'm with my sister.

This incident has affected me that much, that deep down inside I feel I will never get over what has happened to me. I would like the people who burgled me to know how their actions have affected me and my son, and I hope they are proud of themselves knowing how it has left me feeling."

12. Sentencing the appellants, the learned judge had regard to the relevant sentencing guidelines and the principle of totality. Category 1 of the definitive guideline, involving greater harm and higher culpability, has a starting point of three years' custody and a category range of two to six years. The learned judge referred to the fact that the victim of the burglary would have been terrified to wake up and find two men in her home. She was an 18 year old mother, living with her 2 year old son, and she remains traumatised. He said that there were multiple features of greater harm. The trauma caused went beyond what would normally be expected of a domestic burglary. The victim had not been able to return home. Although no violence was used or threatened, there was no doubt that saying "You're a lucky girl" was intended to intimidate. The victim was at home for the duration of the burglary, which had lasted 20 to 30 minutes. There were multiple features of higher culpability: the vulnerability of the victim; the sinister movement of the knife from the kitchen to the living room; the fact that the burglars had gone equipped; and the fact that they had acted as a part of a group. In his view, those greater harm and higher culpability factors took the offence beyond the six year range, even before consideration of the aggravating features. Those were: there was a child at home; the burglary was committed at night; Isle was under the influence of drugs; and both appellants had previous convictions. These were particularly serious in the case of Isle who had served a number of substantial custodial sentences, including one of five years' imprisonment. Harrison's longest sentence had been one of 18 months' imprisonment.

13. Both appellants had written letters to the court. In his, Harrison said:

"I deeply regret my part in the burglary that happened on 2nd June 2019. I am ashamed, embarrassed and deeply sorry. I'm dreading the reaction when this goes in the newspaper, but I know it is nothing to how Miss Sayer must have felt."

14. In mitigation, it was pointed out that Harrison had two daughters, aged 9 and 13, with whom he had regular contact. Prior to being remanded in custody, he had been in full-time employment and whilst in custody he had taken a number of positive steps towards tacking his 20 year addiction to heroin. It was said that he was now sober and was working with the prison drug rehabilitation team.

15. In his letter to the court, Isle said:

"I'm deeply sorry for my actions that night. Even though I don't remember nothing from that night, that is no excuse for ruining someone's life. I take full responsibility for my actions. I did try my hardest to change my life for the better, but I messed up bad. I've let my family down and myself. What sentence you give me, I fully deserve. I'm deeply sorry for my actions and what pain I caused."

16. On Isle's behalf, it was conceded that the available mitigation was very limited because, on his case, Isle could remember virtually nothing of the events of the night in question, having taken a number of tranquiliser tablets. The main mitigating factor was his plea of guilty, albeit late.

17. Isle was given ten per cent credit for his guilty plea to count 1, and 25 per cent credit in respect of count 2. Isle's previous convictions were a substantial statutory aggravating feature. The learned judge considered that the sentence for the burglary, after trial, would have been nine years' custody, reduced to 97 months after credit for the guilty plea.

18. Harrison was given 20 per cent credit for his guilty plea to count 1, as the victim was expected to have to give evidence until the morning of the trial of issue, and 25 per cent credit for his guilty plea to count 3. Harrison had been the one to enter the bedroom, but his previous convictions were far less serious. In his case, the learned judge considered that the sentence for the burglary, after trial, would have been eight years' custody, reduced to 76 months, with 20 per cent credit for the guilty plea.

19. On behalf of Isle, Mr Garth has confined himself to a single submission. He conceded that this was a very serious offence with many aggravating features, and he acknowledged that Isle has a substantial and serious criminal record. He submitted that the Crown had conceded at the hearing below that this was a category 1 offence within the definitive guideline, with a starting point of three years, and a range of two to six years. The Crown had put the case at the top of the range. Mr Garth accepted that the Crown's approach was fair and accurate. He submitted that in all the circumstances of the case, the learned judge had gone too far in reaching a sentence of nine years, before credit for the guilty plea, which Mr Garth pointed out was 50 per cent over the top of the range for the sentencing bracket. He submitted that for the learned judge to have gone as high as nine years meant that this sentence was manifestly excessive.

20. On behalf of Harrison, Miss Scott similarly submitted that the sentence of eight years' custody, before credit for the guilty plea, was manifestly excessive, because of the extent to which the learned judge had gone outside the guideline. She submitted that his case could and should have been dealt with within the guideline.

21. Despite the commendably short and succinct arguments by both counsel, for which we are very grateful, we do not accept their submissions. Although the top of the sentencing category is six years' custody, we note that the maximum sentence for burglary is fourteen years and there must be cases which fall outside the sentencing guidelines by reference to their seriousness and the trauma caused to the victim. In our view, this is one of them. For the reasons stated by the learned judge, the burglary in this case fell outside the sentencing guideline by reference to the multiple features involving greater harm and higher culpability alone. When the aggravating

features were then taken into account, and in particular the previous convictions, in our judgment the learned judge was wholly justified in lighting upon sentences of nine years and eight years' imprisonment respectively, before the credit for the guilty pleas was taken into account.

22. We repeat, as we have said on many previous occasions, sentencing guidelines are only those: guidelines. Judges are entitled to step outside those guidelines where the circumstances justify it, as long as they recognise that they are so doing and explain their reasons. Judge Thackray explained his reasoning on this occasion. We do not consider that the sentences, although towards the higher end, can be categorised as manifestly excessive.

23. For these reasons, these appeals are dismissed.

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Lower Ground, 18-22 Fumival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk
