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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 827



No. 202200010 A4

Royal Courts of Justice

Friday, 13 May 2022

Before:

LADY JUSTICE NICOLA DAVIES

MR JUSTICE TURNER

HIS HONOUR JUDGE SLOAN QC  
(THE RECORDER OF NEWCASTLE)

REGINA

V

ARDZIS CICIS

**REPORTING RESTRICTIONS APPLY:  
THE SEXUAL OFFENCES (AMENDMENT) ACT 1992**

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MR C. WILDE appeared on behalf of the Appellant.

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**J U D G M E N T**

MR JUSTICE TURNER:

- 1 The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provision where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.
- 2 On 6 December 2021 at the Crown Court in Liverpool before Ms Recorder Tanya Griffiths QC the appellant (then aged 23) was sentenced for an offence of sexual assault contrary to s.3 of the Sexual Offences Act 2003 to two years and eight months' imprisonment. In addition, he was sentenced to a further period of two months' imprisonment to be served consecutively for breach of a community order earlier imposed by Cheshire Magistrates' Court for an offence of driving a motor vehicle with excess alcohol: thus making a total of two years and ten months' imprisonment.
- 3 He appeals against sentence by leave of the single judge.
- 4 Before turning to the facts of the case, we need to make a minor change to the amount of the victim surcharge order which fell to be made in this case. When calculating the victim surcharge the figure should be based on the date of the commission of the earliest offence before the court, which includes the date of offence for a breached order that has been resentenced. In this case, the earliest date was 4 May 2018, the date of the driving offences. According to the Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2016, the amount should therefore have been £170 and not £180, as specified by the learned recorder, who therefore varied the amount to reflect that.
- 5 We now turn to the facts of the substantive offence. On 13 October 2021 the appellant's victim had been out in Warrington celebrating a friend's birthday. At about 2 o'clock in the morning she left the nightclub where she had been with her friends to get a taxi to go to her boyfriend's home in Norwich. She had had quite a lot to drink. While on the telephone to her boyfriend, she took a shortcut through an alleyway when she felt the appellant grab her shoulder from behind. He said "I want to lick your pussy". She told him she had a boyfriend and tried to walk away. Undeterred, the appellant grabbed her left arm and pulled at her coat. She asked him to let her go, but he continued to hold onto her for a couple of minutes. Her boyfriend, who had heard some of what was going on, was temporarily disconnected. She pulled herself free and ran towards the nearby taxi rank. Her boyfriend called the police and then asked her to stay on the line as she made her way to the rank. The appellant was still behind her and, again, tried to grab her. She asked two men nearby for help.
- 6 The police arrived at the scene soon after and spoke to the appellant's victim who was still with the two men she had approached for help. One of the officers saw the appellant lingering nearby and his victim confirmed that he was the one who had followed her. The appellant lied to the officers, saying that he was waiting for a friend and had been drinking with his landlord. However, some of the appellant's behaviour had been captured on CCTV which showed that he had been untruthful.
- 7 He was arrested on 17 October 2021 and was interviewed the following day. He admitted having spoken with his victim, but denied having committed any offence against her. When charges were brought, however, he pleaded guilty at the first opportunity.
- 8 In her sentencing remarks the Recorder reached the conclusion that the defendant's offending fell between Categories 1A and 2A of the Sexual Offences Guideline. The

sentence she passed was one of four years before deducting one-third to reflect his prompt guilty plea.

9 The relevant grounds of appeal are:

1. The learned recorder erred in concluding that the offence fell between Category 1A and 2A in the sentencing guidelines. The learned recorder took a starting point of four years, which was consistent with Category 1A and not in between the categories, as has been indicated.

2. In any event, the offence should have been placed within Category 2B of the Sentencing Guidelines.

3. Insufficient regard was had to the principle of totality.

4. Insufficient regard was had to the appellant's limited convictions, absence of offending for two years, and the contents of the pre-sentence report.

5. Had the sentence been under two years, consideration could have been given to a suspended sentence order.

10 We consider that there is some force in the first two grounds of appeal, but not in those which follow.

11 Category 1 harm encompasses the following potentially material features: severe psychological or physical harm; abduction; violence or threats of violence. We agree that the appellant did inflict a level of violence on his victim by manhandling her in what must have been terrifying circumstances. For a lone woman to be accosted in an alleyway in the early hours of the morning by an intoxicated and persistent stranger with a clear sexual agenda is the stuff of nightmares. However, we are unpersuaded that the recorder was right to characterise his actions as being "so similar to an abduction" as to introduce a further element of Category 1 harm.

12 Furthermore, the victim declined to provide an impact statement, as she was fully entitled to do. But without seeking to trivialise the seriousness of the attack, the circumstances of the incident could not in the absence of other evidence be assumed to have had any lasting impact of that degree of severity which would be needed to satisfy the criterion of severe psychological harm.

13 It is necessary also to bear in mind that the offending did not involve any actual sexual touching and fell within the scope of being a sexual offence because of what the appellant had said, chilling as the implications were, rather than what he later did. Accordingly, the serious element of physically intimate violation necessarily involved in the touching of genitalia or naked breasts as referred to as an element of the lower Category 2 harm was absent, as indeed was any other sexual contact. Category 2 harm, however, also includes offending which involves a sustained incident. It is this element of the appellant's persistence in physically harassing his victim which in our view best characterises his offending and which more accurately reflects the sort of harm to which the guideline was directed.

14 The recorder went on to consider that the offence fell into Category A culpability, because of the element of "a significant element of planning". We are unable to agree with this analysis. Despite the fact that the appellant had on his own admission followed her from the club and into the alleyway, this remained an essentially opportunistic offence and any element of planning could not in our view comfortably be categorised as significant. In the

absence of any other qualifying factors, we would therefore place this offence within Category B. The characterisation of the offending as Category B, which happens to accord with the basis upon which the prosecution sought to present the case below, provides for a starting point of one year and a range of high level Community Order to two years' custody.

- 15 We consider that there were significantly aggravating features here which mean that there was no alternative to passing a non-custodial sentence. This may not have been a carefully planned attack, but by leaving the club to follow his victim out and into the alleyway the appellant was specifically targeting a particularly vulnerable victim. The location of the offence in an alleyway in the early hours of the morning fulfilled the aggravating features of location and timing as identified in the Guideline, as also does the fact that the appellant had been drinking. It is a further aggravating feature that this molestation took place while the victim's boyfriend was witnessing over the phone the development of events. It must have been a horrifying experience for him too.
- 16 Despite the appellant having no previous relevant convictions, we will place the offence at the top of the bracket at two years. Had the appellant had relevant previous convictions, it is likely he would have moved beyond the relevant category range. With one-third discount for his plea, the total is 16 months. Having regard to the imposition of community and custodial sentence guidelines, we are satisfied that the appropriate punishment can only be achieved by immediate custody. The seriousness of the offence precludes the option of suspending it. The imposition of a consecutive sentence of two months in respect of the breach is unobjectionable, which gives a total of 18 months.
- 17 The judge's sentence, however, was far in excesses of the top of the range for a 2B offence and in fact represented the starting point for a 1A offence. We regard this as being manifestly excessive and substitute a total sentence of 18 months and, to that extent, this appeal succeeds.

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This transcript has been approved by the Judge.