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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 452



No. 202300619 A3

Royal Courts of Justice

Tuesday, 4 April 2023

Before:

LORD JUSTICE WILLIAM DAVIS

MRS JUSTICE COCKERILL

MR JUSTICE JOHNSON

REX

V

ALFIE COOK

Transcript prepared from digital audio by
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MR J KIFFIN appeared on behalf of the Appellant.

MR L HARRIS appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

- 1 Section 70 of the Domestic Abuse Act 2021 introduced the offence of non-fatal strangulation by adding section 75A to the Serious Crime Act 2015 ("the 2015 Act"). It came into force for any offence committed on or after 7 June 2022.
- 2 The offence is committed when a person intentionally strangles another person, or does any other act to that person that affects the ability of the person to breathe and constitutes a battery of that person.
- 3 In this appeal we are only concerned with the first limb, namely intentional strangulation. The offence is triable either way. On indictment the maximum sentence is imprisonment not exceeding five years. There is no requirement to prove any injury or harm as a result of the strangulation so long as it is intentional. Although the offence is gender neutral, intentional strangulation, as a matter of fact, is much more often an act committed by a man against a woman rather than vice-versa. The offence was introduced as part of the Government's Violence Against Women and Girls Strategy 2021.
- 4 The absence of any reference to injury or harm was deliberate. The act of strangulation inevitably creates a real and justified fear of death. The victim will be terrified and often will be unconscious within a relatively few seconds if pressure is maintained. There is real harm inherent in the act of strangulation.
- 5 Alfie Cook is 20. He was born in May 2002. In about 2020 he formed a relationship with a young woman named Deborah Rodriguez. He was 18. She was 17. They did not live together full-time, but their relationship was close. In the autumn of 2021 Rodriguez became pregnant. The father was Cook. The pregnancy was unplanned. The relationship began to deteriorate. It broke down altogether in June 2022 as a result of an incident in which Cook assaulted Rodriguez. The assault occurred on 6 June 2022. It consisted of Cook strangling Rodriguez and spitting at her. This was the day before the commencement of section 75A of the 2015 Act, so Cook was charged with common assault. He was bailed with a condition not to visit Rodriguez's home address.
- 6 At about 9 o'clock in the morning on 6 November 2022, in breach of his bail condition, Cook went to the home of Rodriguez in Uxbridge. He asked her where their daughter was. He was told she was in the bedroom, whereupon he went to the bedroom. Rodriguez, who was in the kitchen, could hear Cook muttering words such as "slag" under his breath. He was in the bedroom for about 15 minutes before Rodriguez joined him there. There was an altercation between them. The precise form of the altercation was disputed as between Cook and Rodriguez. The sentencing judge did not consider it necessary to resolve that dispute.
- 7 In any event, Rodriguez followed Cook as he left the bedroom and confronted him about whatever it was that had occurred. This was in the living room. Cook's response was to grab her by the throat with some force with one hand. He squeezed her neck, his fingers digging into her skin. As he continued to strangle her he pushed her hard on to the sofa, which caused her head to hit the wall beside the sofa. Cook then got on top of Rodriguez and began to strangle her using both hands. Rodriguez was able to film some of what happened at this stage on her mobile phone. That footage was available to the sentencing judge and it has been available to us. Cook was shouting obscenities as he strangled Rodriguez, spittle dripping from his mouth on to her. She was able to push Cook off, even though he was much bigger and stronger than her, and she ran to the bathroom where she took photographs of the reddening to her neck.

- 8 Rodriguez heard Cook leaving the address. She assumed that he would be going to Uxbridge station. She picked up her baby daughter and made her way to the station. That was where Cook had gone. Rodriguez told station staff what had happened. They called the police who were able to arrest Cook from the train. When interviewed he made no comment.
- 9 On 8 November 2022 he appeared at the Magistrates' Court. He elected trial and was sent to the Crown Court. No indication was given in relation to eventual plea. On 24 November 2022 Cook was tried at the Magistrates' Court for the offence of common assault which occurred on 6 June 2022, the offence to which we have already referred. He was convicted by the Magistrates after a trial.
- 10 On 6 December 2022 Cook appeared in the Crown Court at Isleworth for a PTPH, charged on a single count of intentional strangulation in respect of the events of 6 November 2022. He pleaded guilty and sentence was adjourned. On 7 February 2023 he was sentenced to 15 months' imprisonment. Given his age at the date of conviction, that custodial term should have been expressed as 15 months' detention in a young offender institution; we shall have to deal with that error whatever the outcome of the appeal.
- 11 In her sentencing remarks, the judge set out the circumstances of the strangulation. She identified the breach of bail, the presence of the child and the previous episode of strangulation as aggravating factors. As mitigation she noted Cook's youth and the fact that he was seeking assistance in custody in relation to anger management. In the course of the sentencing hearing, the judge had been referred to short press reports of other cases of intentional strangling which had been sentenced in other Crown Courts. She noted that these were of limited assistance though, in truth, they were of no assistance at all. However, at the invitation of the parties she also considered the Sentencing Council guideline in relation to assault occasioning actual bodily harm. She observed that strangulation appears in that guideline as a high culpability factor. At some point it was submitted to her that by reference to that guideline harm fell into Category 3. She said that she disagreed with that proposition. In sentencing, the judge said that the incident will have caused "enormous upset to Rodriguez", a conclusion she drew in part from the footage downloaded from Rodriguez's mobile phone. The judge concluded that the sentence after trial would have been 20 months' custody. Since the plea of guilty was indicated at the PTPH, the appropriate reduction was 25 per cent. That led to the eventual sentence of 15 months' custody.
- 12 Cook's application for leave to appeal against sentence has been referred to the full court by the Registrar. Because this is a new offence without any guideline, and without any previous assistance from this court on the proper approach to sentencing for the offence, we shall give leave. We shall thereby be in a position to give such general guidance as we can in relation to the appropriate level of sentence pending any consideration by the Sentencing Council. We observe that it is most unlikely that the Sentencing Council will apply its mind to this offence at any time in the immediate future.
- 13 The grounds of appeal rely on the proposition that the judge properly sentenced by reference to the guideline in relation to assault occasioning actual bodily harm, but she then fell into error in her application of that guideline. She was correct to find that the offence was of high culpability, but she miscategorised the level of harm. Rodriguez had suffered no more than some level of physical or psychological harm. Thus, harm fell into Category 3. The assault guideline provides a starting point of 36 weeks' custody for a Category 3A case with a category range of up to 18 months. It was argued in the written grounds that the appellant's sentence should have been based on this starting point. Mr Kiffin, who appeared

for the appellant in the Crown Court, and appears before us today, developed his argument along those lines. It is not necessary to rehearse his oral submissions any further.

- 14 We are satisfied that the proposition on which the appeal is based is misconceived. The judge was entitled to have some regard to the guideline in relation to assault occasioning actual bodily harm. Intentional strangulation, by definition, involves an assault. The maximum sentence for both offences is the same, namely five years' imprisonment. However, the judge was neither required, nor entitled, to do anything more than have some regard to the assault guideline. As we have explained, the offence of intentional strangulation does not, as an element of the offence, include any element of physical or psychological harm. To seek to set the starting point for the offence by reference to actual harm is wrong in principle.
- 15 We shall set out the proper approach to sentencing any offence of intentional strangulation. In the light of that, we shall consider whether the sentence imposed by the judge was manifestly excessive.
- 16 In view of the inherent conduct required to establish this offence a custodial sentence will be appropriate, save in exceptional circumstances. We consider that ordinarily that sentence will be one of immediate custody. The starting point will be 18 months' custody. In this instance the offender was a man, and the victim was a woman. As we have noted, the offence is much more often committed by a man against a woman, however the starting point will be the same irrespective of the gender of the perpetrator. The starting point may be increased by reference to the following factors, this list not being exhaustive:
- (i) History of previous violence. The significance of the history will be greater when the previous violence has involved strangulation.
 - (ii) Presence of a child or children.
 - (iii) Attack carried out in the victim's home.
 - (iv) Sustained or repeated strangulation.
 - (v) Use of a ligature or equivalent.
 - (vi) Abuse of power.
 - (vii) Offender under influence of drink or drugs.
 - (viii) Offence on licence.
 - (ix) Vulnerable victim.
 - (x) Steps taken to prevent the victim reporting an incident.
 - (xi) Steps taken to prevent the victim obtaining assistance.

Statutory aggravating factors will apply:

- (a) Previous convictions, having regard to (a) the nature of the offence to which the conviction relates, and its relevance to the current offence; and (b) the time that has elapsed since the conviction.

- (b) Offence committed whilst on bail.
- (c) Offence motivated by or demonstrating hostility based on any of the following characteristics, or presumed characteristics of the victim, disability, sexual orientation, or trans-gender identity.

17 The Sentencing Council overarching principles in relation to domestic abuse are likely to be relevant when sentencing for the offence of intentional strangulation. As the guideline makes clear, domestic abuse offences are to be regarded as particularly serious. The aggravating factors at paragraph 11 of the overarching principles will apply in every case of domestic abuse. As set out at paragraph 13 of that guideline: "Provocation is no mitigation to an offence within a domestic context, except in rare circumstances." Mitigating factors will include:

- (i) Good character.
- (ii) Age and immaturity.
- (iii) Remorse.
- (iv) Mental disorder.
- (v) Genuine recognition of the need for change and evidence of the offender having sought appropriate help and assistance.
- (vi) Very short-lived strangulation from which the offender voluntarily desisted.

Again, this list is not exhaustive.

18 Finally, since this offence does not have a specific sentencing guideline, the Sentencing Council Overarching Principles' Guideline will apply. The aggravating and mitigating factors which we have identified as being relevant to this offence are drawn substantially from that overarching guideline. When sentencing for this offence, reference must be made to the guideline to check if a particular factor applies given the circumstances of the case in question.

19 Applying those principles to the facts of this appeal, this is a case where the statutory aggravating factor of offending whilst on bail applied. The particular aggravating factors which arose in relation to the appellant's offence were: history of previous strangulation of the same victim; presence of a child; attack in the victim's home; abuse of power. Though the strangulation in this case was not momentary it was not of such duration as to require an increase in the sentence to reflect the duration of the attack. The fact that the strangulation occurred in the context of domestic abuse emphasises the seriousness of the offence though no additional aggravating factors within the overarching principles in relation to domestic abuse were present. All of these matters required a significant uplift from the starting point of 18 months. We consider that the judge would have been entitled to increase the starting point to 30 months.

20 The principal mitigating factor was the appellant's age. He was 20 at the time of the commission of the offence. Although there was no specific evidence of particular lack of maturity on his part, it is well recognised that adulthood, namely the age of 18, should not be regarded as a cliff edge for the purposes of sentencing. (See *R v Clarke* [2018] EWCA

Crim 185 at [5]). The appellant was entitled to some reduction on account of his age; he was not to be treated as if he were a mature adult. The judge took account of the appellant having sought assistance in custody in relation to anger management, though the evidence of this was limited, with no reference to it in the pre-sentence report.

- 21 Applying an appropriate reduction for age the sentence before any reduction for the plea of guilty should have been 24 months. The reduction for the plea of guilty was 25 per cent. We consider, therefore, that the proper sentence would have been 18 months' detention in a young offender institution. The judge, who was not given the assistance we have been given, imposed a sentence of 15 months' custody. Self-evidently that sentence was not manifestly excessive. Applying the principles set out in this judgment it was, if anything, lenient.
- 22 The sentence imposed was one of 15 months' imprisonment. Given Cook's age that sentence was unlawful. The only action we take on this appeal is to quash that sentence and substitute for it a sentence of 15 months' detention in a young offender institution. Other than that, we consider that an immediate custodial sentence was entirely appropriate. The judge's sentence was not manifestly excessive. The appeal is 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