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Neutral Citation Number: [2024] EWCA Crim 1578

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT BRADFORD

MR RECORDER JACKSON 13BD0989423

CASE NO 202400392/A2

Royal Courts of Justice
Strand
London
WC2A 2LL
Friday 6 December 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE GARNHAM

RECORDER OF LIVERPOOL
HIS HONOUR JUDGE MENARY KC
(Sitting as a Judge of the CACD)

REX

V

NATHAN FOSTER

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MR A SHAKOOR appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE GARNHAM:

1. On 28 December 2023, in the Crown Court at Bradford, the appellant pleaded guilty to five charges: making threats with a bladed article in a private place (count 1); damaging property (count 2); false imprisonment (count 3); assault occasioning actual bodily harm (count 4) and making a threat to kill (count 5).
2. On 4 January 2024, before Mr Recorder Jackson KC, the appellant (then aged 31) was sentenced to an extended sentence of 10 years, that being 5 years 8 months custody with an extended licence of 4 years 4 months on count 3, 12 months concurrent on count 4; 3 years concurrent on count 5 and no separate penalty on counts 1 and 2. He was also made subject to a restraining order that prohibited him until further order from contacting the complainant by any means, except for making indirect contact with the complainant through his solicitors and/or through Social Services or as otherwise permitted by the Family Court, and then solely for the purposes of arranging contact with his children, and from entering the area around the complainant's present address or within 100 metres of any other address or street at which the complainant is known or believed to be living or residing. He now appeals against sentence by leave of the single judge.
3. The facts can be summarised as follows. The complainant (who we will refer to as "S") was the appellant's ex-partner. They had been in a volatile relationship for about 9 years and had three children together, twins then aged 7 and another child then aged 3.
4. At around 8.00 pm on 23 November 2023, the appellant attended the complainant's home address to see the children. The complainant would regularly permit the appellant to

attend at her house to see the children. Whilst at the house that evening, the appellant became argumentative, making accusations that the children were not his. He left the house later that evening. The complainant then put the children to bed and went to sleep herself. The twins were sleeping in their room at the rear of the property and the youngest child shared a room with the complainant at the front.

5. At around 1.30 am on 24 November, the complainant was awoken by the sound of banging at her window. The appellant had climbed scaffolding to the front of the property in order to talk to her. He was speaking normally and so she let him into the house via the front door. All the children had woken as a consequence of the appellant banging at the window and all had gone into the complainant's bedroom. The appellant followed the complainant back upstairs to the bedroom, where his attitude changed. He became aggressive and extremely violent. At some point, he went back downstairs and locked the doors to the house so that no-one could leave. The appellant began making threats towards the complainant, to the effect that he would punch her in the face and slap her around. He was red faced and screaming at the complainant and began hitting her over the head and face. The children tried to intervene to protect their mother.
6. The complainant attempted to leave the room but the appellant grabbed her and threw her onto the bed. The complainant described how the children were screaming and crying and that she was sure that the appellant would beat her to death in front of them. On a number of occasions the appellant stated that he would stab and kill the complainant in front of the children. The complainant was screaming and crying for help so the appellant placed his fingers down her throat to try to stop her. During the course of the

assault the appellant went to the kitchen and retrieved a 6-inch kitchen knife. The appellant pinned the complainant down and held the knife to her throat, saying that he would stab her in front of the children. The children were screaming and begging the appellant not to stab their mother. The complainant described how she thought she was going to die. She asked the appellant to stab her downstairs so that the children would not have to see her die.

7. The incident had gone on for about 2½ hours when the complainant begged the appellant to allow her to use the lavatory. The appellant refused and demanded that she wet herself instead. As the complainant tried to leave the room, the appellant followed her. He grabbed her hair and her shoulders to try and drag her back. At this point the complainant realised that the front door was locked so she ran into the living room. The appellant again grabbed hold of her and threw her to the living room floor. She landed partially on the floor and partially on the sofa. One of the twins stood between the appellant and the complainant. In the course of the incident, the appellant had smashed the complainant's mobile phone to prevent her from calling the police.
8. There came a time when the appellant decided to go to another room. The complainant took the opportunity to climb through a small window in the living room, fleeing the house but having to leave the children behind. She tried to ask members of the public for help and made her way to her aunt's house to telephone for further assistance. She saw a police car in her aunt's road and asked them for help. The officers immediately attended the complainant's address to retrieve the children. The appellant was no longer there.

9. The children were frightened and told the officer that the appellant had tried to kill their mother saying he had got a knife. They said he had “tried cutting my mum up” and that he was “punching my mum.” They repeated the threats they had heard the appellant make in the course of the incident including, “Daddy said he would chop off mummy’s head and put it in the toilet.”

10. The complainant had sustained injuries to her head, behind her ears, her neck and on her arms. In a witness statement she described how the incident had left her and the children horrified and scared to go back to their own home. She described living in fear of the appellant, not wanting him anywhere near her. She stated that she would remember the events for the rest of her life and she believed that the children were emotionally scarred for life.

11. The appellant was arrested and interviewed. He admitted slapping the complainant three times over the head and making threats to kill her, stating that an earlier argument had occurred in which the complainant was taunting him over another woman. He said that he had snapped and hit the complainant around the head and the ears. He denied using a knife or threatening the complainant with a knife. He admitted that the children were present and had witnessed the incident.

12. The appellant had ten previous convictions for ten offences between 12 October 2006 and 23 March 2012. They included battery and aggravated burglary. He also had a warning for assault occasioning actual bodily harm in 2006.

13. In sentencing the appellant, the judge described the incident as “protracted, lasting as it did 2½ hours.” He said the appellant’s conduct towards S was degrading and humiliating. He said the appellant used his greater physical force to dominate and control S “in to submission”. He said that S and her children had been left horrified and scared to go back to the house. He concluded that the incident had had a lasting impact on S. He was satisfied that the children were terrified at the time and that the incident had a lasting psychological and emotional impact upon them.

14. The judge said that he took as a starting point for the lead offence, namely the false imprisonment, a term of 8½ years, which he discounted for the guilty plea to 5 years and 8 months. He said the starting point for the threats to kill was 4½ years, which would be discounted by a third to reflect the plea. For the assault occasioning actual bodily harm, he imposed a sentence of 18 months reduced to 12 months and the latter two sentences were made concurrent with that for the false imprisonment. For the other offences he imposed no separate penalty.

15. When considering dangerousness the judge referred to the appellant’s earlier offence of aggravated burglary in 2011. He acknowledged that there was a significant interval of time since that offence during which the appellant had not been in trouble for such serious offending. Nonetheless, he said he was satisfied that the appellant met the criteria for dangerousness and that an extended sentence was appropriate. He imposed an extended licence of 4 years 4 months in addition to the 5 years and 8 months for the principal offences.

16. The Crown Court sentenced the appellant without a pre-sentence report. The single judge directed that a report be prepared and we had the benefit of seeing it and reading it. The author of that report assessed the appellant as posing a high risk of serious harm towards S, a high risk of serious harm towards his own children and a high risk of serious harm towards any future female partners and, should they have children, a high risk of harm towards them.

17. The appellant was represented before us by Mr Shakoor, who advanced his submissions with considerable care and skill. We are grateful for his assistance. He advanced six grounds of appeal on the appellant's behalf:

1. The judge erred in finding the appellant *dangerous*.
2. The decision to impose an extended sentence was wrong in principle.
3. In any event, the extended licence period was manifestly excessive.
4. The custodial element of the sentence for false imprisonment was manifestly excessive.
5. The length of the restraining order was disproportionate and
6. Prohibition 2 of the restraining order was disproportionate and ambiguous.

18. It is convenient to deal with ground 4 first. The appellant contends that the custodial sentence for false imprisonment was manifestly excessive. The judge correctly identified the false imprisonment as the lead offence. He was right to seek to fix upon a sentence for that offence which also covered the criminality involved in the threats with a bladed article, damaging property, assault occasioning actual bodily harm and the threats to kill.

19. In reaching the figure of 8½ years, the judge had particular regard to the decision of this Court in *Attorney-General's References Nos 92 and 93 of 2014* [2014] EWCA Crim 2713, a case in which the Court held that a 5-year starting point was unduly lenient and 10 years was appropriate. That case is an important decision as to the approach to sentencing in cases of kidnap, false imprisonment and blackmail. But it is essential to bear in mind that cases such as this are all highly fact specific. The Court in that Attorney-General's Reference case said that relevant factors in assessing the gravity of cases of this type included the length of the detention, the circumstances of the detention, including the location and any methods of restraint, the extent of any violence used, the involvement of weapons, whether or not demands were made of others, whether or not threats were made to others, the effect on the victim and others, the extent of the planning involved, the number of offenders involved, the use of torture or humiliation, whether or not what was done arose from or in furtherance of previous criminal behaviour and any particular vulnerability of the victim whether by reason of age or otherwise.

20. The aggravating features in the Attorney-General's Reference case, which led to the starting point of 10 years' imprisonment, were that more than one offender was involved, the offences were pre-planned and persistent in execution, the offending involved kidnapping, prolonged detention (10 hours in all) and demands by way of blackmail, the fact that there were repeated threats of extreme violence to the victim and his family with resultant fear and distress and the effect that the offending arose out of unlawful drug dealing.

21. In the present case, it is right to say that the offending was not related to other criminality

such as drug dealing. The violence was not extreme and did not involve torture. No threats were made to anyone other than S. There was no evidence of planning and there was only one offender involved. There was also no blackmail. Nonetheless, there were a number of very significant aggravating features, including the length of the detention (about 2½ hours), the fact that the detention was in the victim's own home and involved both S and her children, the methods of restraint, namely the fact that the doors of the victim's own house were locked against her, the fact that the appellant controlled S's movements by violence, by the threats of much greater violence and by threats to kill, the fact that S and her children suffered very significant distress and have developed significant psychological sequelae and S suffered some physical injury, and the fact that the violence involved humiliation.

22. Furthermore, in our judgment, it can fairly be said that this incident amounted to a serious form of domestic violence - a man attacking, imprisoning and threatening his ex-partner and their children in the woman's own house. In *R v Bowskill* [2022] EWCA Crim 1358 (another kidnapping case), this Court made reference to the Sentencing Council's Overarching Principles on Domestic Abuse and emphasised that in recent years the understanding of domestic abuse and controlling and coercive behaviour has moved on. The Court pointed out that:

“As the sentencing guidelines now make plain, the fact that an offence, including necessarily that of kidnap, occurs in the domestic context, and in particular, in the context of an abusive personal relationship, will be an aggravating factor; indeed it is likely to be a seriously aggravating factor, rather than a factor to be deployed or relied on in mitigation.”

23. In *R v Stanley* [2023] EWCA Crim 275, this Court dismissed an appeal against an extended sentence of 11 years (7 years' custody and 4 years extended licence) in the case of a man aged 31 who persuaded a woman aged 17 to get into his car, who then drove her to his home and forced her into his home. Of particular significance the Court held there was the fact the appellant's actions were planned, part of the incident involved the appellant choking the victim and the fact that the victim was "comparatively vulnerable".

24. This case too turned on its particular facts but the importance of the victim's vulnerability is properly to be underlined. In the present case, the primary victim was a vulnerable woman in her own home but three young and vulnerable children were also seriously impacted. In our judgment, against that background, the judge was entitled to conclude that a starting point of 8 years 6 months for the false imprisonment, reflecting, as it did, the totality of the offending, was perfectly proper and cannot fairly be regarded as manifestly excessive. We would add that, in our view, count 1, making threats with a bladed article in a private place, should have attracted a separate, albeit concurrent, sentence. That was a serious offence in itself and should have been marked with a discrete sentence.

25. Viewed in the round, the appellant's conduct on 24 November 2023 was appalling. The offences he had committed were extremely serious. The harm, especially the psychological harm occasioned to S and the three children was significant. The appellant had some history of violence, notably the aggravated burglary in 2011. In our judgment, the judge was entitled, on the material before him, to conclude that the appellant's satisfied the criteria for dangerousness. The pre-appeal report with which we have been

provided only serves to underline the threat posed by the appellant. We have no hesitation in dismissing the first and second grounds of appeal. The judge was right to find that the appellant was *dangerous* and the decision to impose an extended sentence was entirely justified.

26. Furthermore, in the light of the appellant's previous if now somewhat elderly previous convictions and the contents of the pre-appeal report and the facts of this case, we see no ground for complaint in the period of the extended licence. For the same reasons, we also reject the appeal against the length of the restraining order.

27. We can see some room for criticism of the terms of the second paragraph of the restraining order by which the appellant is prohibited from entering the area shown on a particular map or "within 100 metres of any other address or street at which [the complainant] is known or believed to be living or residing". We would amend it to read "or within 100 metres of any other address at which [the complainant] is known or believed by the appellant to be living or residing". Accordingly, this appeal is allowed but only to the extent of that one amendment to the second paragraph of the restraining order. All other grounds of appeal are dismissed.

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

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