

No: 95/7154/Y5

IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London WC2

Friday 26th April 1996

B E F O R E :

LORD JUSTICE KENNEDY

MR JUSTICE HOLLAND

and

HIS HONOUR JUDGE MARTIN STEPHENS QC  
(acting as a judge of the CACD)

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R E G I N A

- v -

FRANK RIOLFO

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MR J DAVIS (solicitors advocate) appeared on behalf of the  
Appellant

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JUDGMENT  
(As Approved by the Court)

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Crown Copyright  
Friday 26th April 1996

JUDGMENT

LORD JUSTICE KENNEDY: On 13th October 1995, in the Crown Court at Northampton, the appellant pleaded guilty to two offences of blackmail, and was sentenced to eight years' imprisonment in respect of each count, those sentences to be served concurrently, and a confiscation order was made in the sum of £1,740. He now appeals against sentence by leave of the Single Judge.

On 13th January 1995 the appellant telephoned a Tesco supermarket and made a blackmail threat. The threat was that food had been contaminated with, amongst other things, the AIDS virus. He made similar threats on subsequent occasions, and he also threatened to inform the press. This course of conduct extended from 13th January 1995 until 22nd April 1995.

It was a sophisticated operation. Apparently it had occurred to the appellant when he was using a card in order to pay for a purchase of petrol that it would be possible to use that form of payment to extract money from an organisation such as Tesco. For obvious reasons, we do not propose, in the course of this judgment, to explain how he came to the conclusion that it could be done. However, the sum that he had in mind to extract from Tesco was no less than £250,000, and his threats were very serious. He required the company to respond to his overtures, as is frequently the case in matters such as this, by placing advertisements in a newspaper, and they did that which he required of them.

By the use of the card which he came into possession of he did manage to obtain a total of £7,500. He obtained it by using the card no less than 73 times. Eventually, because, of course, the police had been alerted at the very outset, he was apprehended, but it was a difficult operation involving careful observations, and in this operation the appellant was assisted by his wife who, when the police closed the net, was arrested with him. It is only fair to say that she seems to have played a subordinate part entirely under his control.

It was, therefore, a very serious matter which the learned sentencing judge had to deal with, and the sentence which he imposed was wholly understandable. However, it is submitted to us on behalf of the appellant by Mr Davis

that he was a very unusual man. He had a totally good character prior to these series of offences. Indeed, he had worked hard throughout his life. He had been, for many years, in the Royal Army Medical Corps where he had been employed as a charge nurse. He had then worked in the pharmaceutical industry and had his own business, which unfortunately failed. He and his wife had the misfortune of a son being killed in car a accident, which clearly upset him very much, and he had a heart attack which had all added to the misfortunes in life which he had undergone.

However, at the end of the day, his conduct against the background of his own personal history was little short of incomprehensible. Here was a man who had led an industrious life and played a full part in the normal workings of society, behaving in a quite extraordinary fashion over a prolonged period of time. He, it is fair to say, did not, on any occasion, actually infect the produce of the supermarket, but he did inject an inert substance into certain produce in order to convince the supermarket that his threats were real. There were no toxins, but the fact that he did what he did made it clear that at the time he certainly intended what he said.

What is submitted to us by Mr Davis is that having regard to the fact that this man was, as can be seen from the medical history, suffering from serious depression at the time, having regard to the fact that he did not only plead guilty but was positively co-operative with the police when the matter was eventually unravelled to the extent that he explained to the police how to access the information on his computer which they required in order to bring the case fully home against him, having regard to the fact that there is here no risk of any further criminality by him of a like kind, and having regard to the fact that in the end no great damage was done to the supermarket either by means of the threats of exposure to the media being carried out or by means of toxins actually being injected into their produce, it was not necessary to impose a sentence as long as eight years' imprisonment.

Mr Davis has invited our attention to the decision of this Court in the case of Darling (1994) 15 Cr.App.R.(S.) 855, but he recognises that that case represents a degree of criminality rather lesser than that with which we are concerned. He has also invited our attention to the decision of this Court in Telford (1992) 13 Cr.App.R.(S.) 676. We have looked at both of those authorities.

We have been assisted by what he has had to say to us, and we have come to the conclusion that not least because this particular criminality does not have about it that aspect which is so frequently to be found in cases of this

kind - namely straightforward and obvious greed on the part of the perpetrator seeking to exploit what he perceives as a weakness in the system of the person who is to be exploited, but rather more, some element of really mental derangement - that we have come to the conclusion that the sentence imposed was somewhat too high. A substantial sentence there had to be, but the sentence of eight years is one which we propose to set aside, and we substitute for it a sentence of six years, and to that extent this appeal is allowed.