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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
(SITTING AT SWANSEA CROWN COURT)  
[2021] EWCA Crim 1277



Case No: 202101678/A2

The Law Courts  
St Helen's Road  
Swansea  
SA1 4PF

Friday 30 July 2021

Before:

LADY JUSTICE NICOLA DAVIES DBE

MRS JUSTICE JEFFORD DBE

MRS JUSTICE STEYN DBE

REGINA

V

ALEC BUTT

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MR P MENDELLE QC appeared on behalf of the Appellant.

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

(Approved)

LADY JUSTICE NICOLA DAVIES:

1. On 24 March 2020, in the Crown Court at Bristol, the appellant was convicted of the offence of wounding with intent and on 10 May 2021 was sentenced by the trial judge, HHJ Patrick, to 7 years and 9 months' imprisonment.
2. He appeals against sentence with leave of the single judge.

The facts

3. On 28 December 2019 the appellant was waiting for the victim, his estranged wife, Anna Butt, to emerge from the shop in which she worked. He wore a hooded top and had covered his face. He was carrying a hammer and a screwdriver. The victim left the shop at about 5:00 pm, the appellant moved towards her, lunged with the weapons in his hand and struck her. She hit her head on the wall. They struggled and fell to the ground and there the appellant struck the victim on the front of her head with a hammer. He attempted to land more blows but the victim grabbed at his arm to impede his swing. The victim was able to take the screwdriver from the appellant and throw it under a car. The appellant put his hand over her mouth to stop her screaming for help and she bit his finger. The victim also managed to pull the covering from the appellant's face and shouted out that she was being attacked by her ex-husband. Witnesses contacted the police as the struggle continued. Eventually the victim was able to take the hammer from the appellant and she hit him on the back of the head with it. She ran into a nearby shop as the appellant got into his car and left.
4. Police located the appellant in his car at around 18:45 and arrested him. He replied, "I was attacked by her, she hit me on the head with a hammer." The appellant was taken to hospital for treatment for his injuries to his finger and two small lacerations and lumps to the back of his head.
5. As to the victim's injuries, she was found to have a 1 cm laceration to the right side of her scalp which had bled heavily. She had grazes with bruising and swelling around her right eye and jaw, and bruising and swelling to her right wrist. A CT scan revealed a scalp haematoma. The injuries suffered by the victim were consistent with at least two hammer blows to the head. The marks on her arms were scratch-type injuries and other defensive injuries were also present.
6. The appellant had been involved in planning prior to the incident. On 17 December 2019 he had used his mobile phone to search the internet for terms including, "DNA" and "Can you recover DNA from ashes". On 26 December 2019 he searched for "camouflage", "camouflage netting" and "skin camouflage".
7. When interviewed by the police the appellant sought to blame the victim for overreacting when he approached her to speak about the division of furniture from their former matrimonial home.
8. Before the judge was a victim impact statement. The victim stated that she was absolutely terrified during the attack. When she realised the identity of the attacker, it confirmed

what she already knew: namely that she had real fears that the appellant would do something like that, a fact she had reported to the police in 2019. The victim returned home bearing visible injuries from the attack which she had to explain to her 10-year-old twin daughters. In the days following the attack the victim was very nervous and had concerns as to the safety of her own home. Nightmares and flashbacks are a part of her life. Her confidence is undermined and the effect has been such that she has sought medical assistance. An overriding concern of the victim is for her daughters and the effect of her anxiety upon them.

9. The author of the pre-sentence report stated that the appellant continued to deny responsibility for the incident, was attempting to blame the victim and minimise his personal responsibility. The appellant was assessed as possessing the propensity to cause a high risk of serious harm to the victim. The author also stated that their daughters are at risk of physical harm should they be involved in the crossfire between the appellant and the victim.
10. In sentencing the appellant (then aged 71) the judge treated him as a man of good character. The judge stated that he was sure of the following facts. The appellant was angry at the decision of the victim to separate from him. In November 2018 he punished her for that decision, confiscating her car and threatening to take away her credit card. In December 2019 the appellant rented an unfurnished property near the family home which he loved. At the same time, the victim told him she had formed a relationship with another man. The combination of the loss of his home and his former wife being in a new relationship fuelled the appellant's resentment, jealousy and anger, as a result of which he hatched a plot to violently punish the victim.
11. The judge stated that it was obvious that the appellant had been plotting the attack over the course of days. The judge was not persuaded it was the appellant's intention to kill his ex-wife, but he was sure that he intended to badly hurt her. That was evidenced by previous threats he had made to her. The internet searches demonstrated that the appellant had thought about destroying evidence, creating a false trail and preparing a false defence.
12. The judge concluded that the appellant's plans crystallised when he discovered his ex-wife's working pattern over the Christmas period. The appellant had walked past the shop in the afternoon to check that the victim was at work. He returned home and changed from his usual clothes, disguised himself in a hoodie and mask and armed himself with a hammer and screwdriver. He waited in the dark of a car park behind the work premises of the victim.
13. The judge described the attack as "sustained and persistent"; the appellant was the aggressor. Having left the scene, the appellant disposed of the hoodie and the mask and sought to avoid arrest by not returning home. The appellant had plotted his defence and had lied to the police on arrest, in interview and in his evidence to the jury.
14. In addressing the Definitive Guideline, the judge found that the sustained and repeated assault was on a person who was particularly vulnerable because of personal circumstances. The injury, whilst unpleasant, was less serious in the context of the index

offence. The judge found there was a significant degree of premeditation, the offence was carefully planned, the appellant plotted to attack his wife in a dark secluded place, he dressed to mask himself and took to the scene two weapons, which he plainly intended to use to cause more serious harm than in fact occurred, and thereafter he disposed of evidence. The judge also found that to some extent the appellant exploited contact arrangements with the child in order to commit the offence in that because of his contact with his children he knew where his ex-wife would be and when. The judge found that there was no lower culpability features, the offending was aggravated because this was an attack on his ex-wife, the mother of his children, and for them there are lasting effects. The judge stated that all these features ordinarily would lead to a sentence at the top end of the relevant bracket. The judge placed the offending in Category 2 of the relevant Guideline.

15. As to mitigation, the judge took account of the appellant's age (71), his good character and the fact that this would be his first prison sentence. A year was discounted for the appellant's mitigation and what the judge described as a modest further reduction because he would feel socially isolated in custody.

#### Grounds of appeal

16. The judge wrongly found:

1. that the victim was targeted because she was vulnerable;
2. that the appellant exploited the contact arrangements with the children;
3. the judge failed to find as a mitigating factor that this was an isolated incident.

17. The judge's determination that this was a Category 2 offence was on the basis of greater culpability but lesser harm. The starting point within Category 2 is 6 years' imprisonment with a range of 5 to 9 years.

#### Ground 1

18. Having determined that this was a case of lesser harm, it is contended on behalf of the appellant that the judge misdirected himself when finding that the victim was vulnerable. Had the judge correctly directed himself, he would have concluded that the victim was not targeted because she was vulnerable, she was targeted because she was the appellant's ex-wife and because the appellant was resentful, jealous and angry. Further, the victim was not vulnerable in any accepted sense of the word, she was a woman of full age and understanding, a graduate, a mother of twins and a part-time worker. In relying upon the authority of *R v Moloney* [2015] 2 Cr App R (S) 32, in which the appellant had attacked his pregnant partner, the Court of Appeal held that the judge was wrong to say that he targeted her because she was vulnerable, he had attacked her because he was angry, although she was also vulnerable.

## Ground 2

19. The essence of this ground of appeal is that the appellant had been due to have the children with him that day but had changed it so the attack took place when the children were safely at home. It is contended that the judge was wrong to find that in not having the children, the appellant had exploited the contact arrangements because taking advantage of the children being absent is not what the Guideline envisages.

## Ground 3

20. The judge wrongly failed to take account as a factor reducing seriousness or as one of mitigation that this was an isolated incident. The essence of these grounds is that the judge, in erring as described, wrongly placed the offending at the top of Category 2. It is conceded that Category 2 was the appropriate category within the Definitive Guideline.

## Discussion and conclusion

21. This was an attack which had been carefully planned by the appellant. He had carried out research relating to offending in the dark and had identified where and when the attack would take place. In his findings as to premeditation and the nature and extent of the attack, the sentencing judge had the advantage of having heard the evidence at trial. He was very well placed to assess that evidence and its effect upon the assault and the intentions of the appellant. He had seen the victim and read her personal statement, which evidenced the significant effect which the attack has had both upon herself and her 10-year-old daughters. The judge rightly described this as a “terrifying attack”, it was also sustained. The appellant, having armed himself with a hammer and a screwdriver, ruthlessly used one or more weapons upon the victim. It is to the victim’s credit that she felt able to fight back and thus avoid some of the injuries which could have flowed from the attack.
22. In our judgment, when considering the categorisation of the offence within the Definitive Guideline, the sustained and repeated assault on the victim would be a factor indicating greater harm. We accept that the injuries sustained by the victim were less serious in the context of the offence, indicating lesser harm. As to higher culpability, there was a significant degree of premeditation, two weapons were used, we find there was an intention to commit more serious harm than actually resulted from the offence. Present were other factors increasing the seriousness of the offence, namely the location and timing of the offence, the ongoing effect upon the victim, the successful attempt to dispose of evidence, exploiting contact arrangements with a child to gain knowledge of the whereabouts of the victim. As to the mitigation, the appellant has no previous convictions and was treated by the judge as a person of good character. The judge also took account of the appellant’s age.
23. Given the factors identified, there is no issue: this offending fell within Category 2. We accept that the targeting of this victim was triggered by the anger of the appellant towards his ex-wife. As such we accept she was not specifically targeted because she was vulnerable.

24. As to ground 2 of the grounds of appeal, this does not represent the understanding of this court having read the judge's sentencing remarks and the prosecution sentencing note. We understand the judge's comments to mean that the appellant utilised the knowledge gained from contact arrangements with his children to identify a day and time when the victim would be at work. Mr Mendelle QC drew to the attention of the court that the victim had done no more than, by email, provide details of dates and timings when contact could take place. We accept the point, but the result was that the appellant knew when the victim would be at work. We bear in mind, as we have previously stated, that this was the judge who presided at the trial.
25. As to ground 3, namely that the judge paid no or gave insufficient weight to the fact that this was an isolated incident, we accept that it was an incident of one assault against what we are informed was a marriage of 18 years. It would appear from the content of the judge's sentencing remarks that there were threats in the past and action by the appellant, albeit no violence resulted.
26. In our judgment, the nature and extent of this offending, involving all the factors set out in paragraph 21 above, properly provided the basis for the sentence imposed by the judge. Whether or not the victim was targeted, or whether or not this was an isolated incident does not detract from the terrifying nature of the sustained attack upon a lone woman in the dark, a woman who continues to bear the scars, certainly mental, of this terrifying attack. In our judgment, it follows that the sentence passed was not manifestly excessive, it properly reflected the criminal conduct of this appellant. Accordingly, and for the reasons given, this appeal is 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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