

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/02886/A3



[2023] EWCA Crim 230
Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 8th February 2023

B e f o r e:

LADY JUSTICE WHIPPLE

MRS JUSTICE CUTTS DBE

THE RECORDER OF NORWICH
(Her Honour Judge Alice Robinson)

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

K K

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Non Counsel Appeal

J U D G M E N T



LADY JUSTICE WHIPPLE:

Reporting Restrictions

1. The Crown Court imposed an order under section 45 of the Youth Justice and Criminal Evidence Act 1999 with regard to the appellant in the following terms, which we repeat and which remain in force in this court:

"No matter relating to [the appellant], a person concerned in the proceedings, shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings, and in particular:

(a) his name,

(b) his address,

(c) the identity of any school or other educational establishment attended by him,

(d) the identity of any place of work, and

(e) any still or moving picture of him"

Introduction

2. The appellant was born on 9th February 2006. He committed certain offences, which we shall detail shortly, on 27th August 2021, when he was 15 years old. He pleaded guilty to counts 1 and 2 (robbery) on 3rd December 2021, and to count 4 (section 20 wounding) on a basis of plea which was acceptable to the Crown on 28th March 2022. The indictment also contained a count of wounding with intent, contrary to section 18 of the Offences against the Person Act 1861. That was charged as count 3, but was not in the event proceeded with.

3. On 5th September 2022 in the Crown Court at Manchester, the appellant (then aged 16 years and seven months) was sentenced by His Honour Judge Cross KC. The judge took count 4 as the lead count. He imposed a term of 27 months detention, pursuant to section 250 of the Sentencing Act 2020 on count 4. He imposed concurrent sentences of the same term

on each of counts 1 and 2 (robbery). The total sentence was therefore one of 27 months' detention.

4. The issue which now arises in this appeal is the lawfulness of the sentence in relation to count 4. The appeal proceeds with the leave of the single judge limited to the correction of any technical defect found to exist in relation to the sentence on count 4, following a note from the Criminal Appeals Office questioning the validity of that sentence.

The Facts

5. Given the narrow scope of this appeal, we shall set out the facts in summary only. At around 6:30 pm on 27th August 2021, Complainant 1 ("C1") was waiting for a tram at Trafford Bar Metrolink stop with his friend when he was approached by the appellant and three other males. There were exchanges between members of the group and C1. The group initially started to walk away before returning to C1. One of the group (not the appellant) told C1 to give him all his stuff or he would be stabbed. That group member showed C1 that he had a knife in the waistband of his trousers. That group member then took C1's phone from his hand. The other males crowded around C1 and took other items, including a Casio watch and a silver chain. (Count 1, robbery).

6. At about 7.30 pm on the same day, the second complainant ("C2") boarded a tram at East Didsbury. As C2 was sitting on the tram waiting for it to depart, the appellant's group got onto the tram and made their way over to him. The appellant went to C2 and asked him for the time. The appellant then put his arm around C2 in a friendly manner whilst the other three males in the group approached. The appellant then grabbed C2's phone, but C2 managed to pull away. The three other males then crowded around C2. Another member of the group gestured towards that person's waistband, displaying the handle of a knife. There was a struggle between one of the other group members and C2, while the others crowded

around. The struggle spilt out of the tram and onto the platform. Whilst on the platform, C2 backed away from the males before he was knocked to the ground by the appellant. At the same time, one of the other group members removed the knife from his waistband and stabbed C2 in the chest. C2 managed to get to his feet. He tried to escape, but was pursued by the whole group. The appellant grabbed C2 and pulled him to the ground. C2 got to his feet, punched the appellant in the face, which allowed C2 to run away down the platform. The group, including the appellant, pursued C2 down a ramp. C2 fell at the bottom of the ramp and one of the group members (not the appellant) stamped on C2 several times, while the appellant watched. C2 then managed to get back up and escape over a barrier, at which point the whole group (including the appellant) ran away. These events give rise to count 2 (robbery) and to count 4 (unlawful wounding).

7. We note that in his sentencing remarks, the judge referred to the unlawful wounding as count 3, but it is clear, having regard to the case papers, that the unlawful wounding was in fact count 4.

The Appeal

8. The appellant appealed against his sentence. He originally advanced four grounds of appeal challenging the length of sentence as manifestly excessive. He argued that the judge should have imposed a Referral Order, as had been recommended by the Youth Offending Team, alternatively, a Detention and Training Order within the maximum permitted term of 24 months. The single judge refused leave to argue those grounds, and the application for leave in relation to those grounds is not renewed. However, the single judge granted leave to appeal in order to correct a technical issue with the sentence on count 4, as we have already indicated.

9. Section 249 of the Sentencing Act 2020 states that a sentence of detention under section

250 of that Act is available when a person aged under 18 (as the appellant was) is convicted on indictment of an offence which is listed in the table contained within that section. An offence under section 20 of the Offences against the Person Act 1861 (that is unlawful wounding, the offence which was charged as count 4 in this case) does not fall within that table. The sentence of detention under section 250 would be permissible in respect of counts 1 and 2 in this case (robbery, contrary to section 8(1) of the Theft Act 1968), being punishable with imprisonment for at least 14 years (noting that the table set out in section 249 of the Sentencing Act 2020 expressly extends to offences punishable with imprisonment for at least 14 years: see section 249(a)(ii)).

10. We have had regard to *R v Carol* [2004] EWCA Crim 1367, which considered the possibility of detention for a young offender convicted of a number of offences in circumstances where a sentence of detention (then under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, the predecessor to section 250 of the Sentencing Act 2020) was only available for some of the offences. The Court of Appeal said that the judge should sentence under section 91, where available, and make the order of "no separate penalty" in respect of other offences which did not qualify for detention. We are satisfied that we should adopt that approach here.

Disposal

11. We allow this appeal to the extent of quashing the sentence on count 4 and imposing in its place "no separate penalty". That leaves intact the sentence of 27 months' detention in relation to counts 1 and 2, which sentences are to be served concurrently with each other. We order count 3, which was a charge of wounding with intent contrary to section 18 of the 1861 Act to lie on the file.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
