

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

ON APPEAL FROM THE CROWN COURT AT LEWES

HHJ GOLD KC

CASE NO 202401207/A4-202401209/A4

Neutral Citation Number: [2024] EWCA Crim 1329

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 22 October 2024

Before:

LORD JUSTICE HOLGATE

MRS JUSTICE STACEY

SIR NIGEL DAVIS

REX

V

BARRY BROWN
DANIEL ANDREW KENT

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR J BULL appeared on behalf of the Appellants.

J U D G M E N T

LORD JUSTICE HOLGATE:

1. On 4 March 2023, both appellants, Daniel Kent and Barry Brown, appeared before Lewes Crown Court at a plea and trial preparation hearing. Kent pleaded guilty to an assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861 and having an offensive weapon (an extendable baton), contrary to section 1 of the Prevention of Crime Act 1953. Brown pleaded not guilty to the assault. Both appellants pleaded not guilty to violent disorder, contrary to section 2 of the Public Order Act 1986. On 20 November 2023, both appellants changed their pleas on the violent disorder to guilty and Brown also changed his plea on the assault to guilty. On 3 November 2023, on a separate indictment, at a plea and trial preparation hearing in the same court, Kent pleaded guilty to burglary by entering a non-residential building with intent to do unlawful damage.
2. On 1 March 2024, HHJ Gold KC sentenced Kent (then aged 28) to imprisonment for a total term of 48 months, comprising 36 months for the violent disorder, 12 months concurrent for the assault and 12 months consecutive for the burglary. On same day the judge sentenced Brown (then aged 41) to imprisonment, for a total term of 36 months, comprising 36 months for the violent disorder and 12 months concurrent for the assault.
3. The appellants' appeal against sentence with the leave of the single judge, who also granted the short extensions of time necessary for their applications for leave.
4. On 20 February 2023, a co-accused, Callum Shaw, pleaded guilty to causing grievous bodily harm with intent, violent disorder, possession of a bladed article, burglary, and

breach of a suspended sentence order. On 26 February 2023, he was sentenced by the same judge to an extended determinate sentence of 17 years, comprising a custodial term of 12 years and an extended licence period of 5 years.

5. The appellants and the co-defendant, Callum Shaw, were all members of the Hells Angels Motorcycle Club. Kent and Shaw are “full patch” members of the Windsor Chapter and had been for around 5 years.
6. At around lunchtime on 8 October 2022, there was an incident involving members of the Vikings Motorcycle Club and two Hells Angels trainees (or “prospects”) at Milford Services in Surrey. That resulted in an assault and the theft of a jacket from one of the “prospects”. There followed a meeting of the Hells Angels Windsor Chapter in Slough, following which a number of them left and headed towards Portsmouth (the location of the Vikings’s clubhouse). Their motivation was to exact revenge for the incident earlier that day. Throughout the events that followed, this group of Hells Angels travelled not on motorcycles but in three vehicles, a van, an Audi car and a taxi belonging to Brown. This was to maintain an element of surprise when they encountered the Vikings.
7. At about 5.40 pm a group of Hells Angels broke into the Vikings’ clubhouse in Portsmouth, during which damage was caused and jackets stolen. CCTV footage showed seven Hells Angels, including Kent and Shaw, using a crowbar to force open the door.
8. The Hells Angels, including Shaw and Kent, then travelled east to Worthing to seek out the Vikings. Over 20 Vikings members were at a public house in Worthing. Their

motorcycles were outside. The Hells Angels drove past the pub in the van, Audi and taxi.

9. When the Vikings' meeting finished, six of their members left on motorcycle and stopped to the north of Worthing adjacent to shops on Findon Road, the A24. At about 6.35 pm dash cam footage from an Amazon delivery vehicle shows the Hells Angels' vehicles arriving at high speed to stop where the six Vikings had parked in order to mount a surprise attack. Three of the Vikings managed to ride off immediately but the remaining three, including the victim, Jack Worsfold, were not able to get away and were attacked. Mr Worsfold was attacked, initially by Shaw and then by the appellants. Kent brought the baton down onto the victim a number of times while he was lying on the floor and trying to protect himself. Brown stamped on and kicked the victim while he was on the ground with his shod foot. Fortunately, however, he was still wearing his crash helmet. Shaw thrust a blade into the victim's chest at least twice. The appellants and Shaw then made off.
10. Mr Worsfold sustained two stab wounds to his upper torso. His lung was punctured and one wound went close to the heart. There was also a large knife wound to the back of an arm. As well as the lacerations, he suffered a rib fracture, considerable bruising and a haemothorax.
11. Brown was arrested on 8 October. He gave "no comment" answers in two interviews. Kent was interviewed on 6 November and also made "no comment".
12. Mr Worsfold was unwilling to provide a victim personal statement.

13. Brown had two previous convictions for harassment in 2015 and breach of a restraining order in 2016. The judge treated these as being immaterial to the sentence he had to pass.
14. The author of the pre-sentence report said that Brown had taken part in this retaliation attack out of a misguided sense of loyalty to the Hells Angels group. He had belonged to the club for a long period and was aware of expectations created by their Code of Conduct. He had remained a member since the offence. But there had been no further offending. Brown was hoping to be re-employed as a gas service engineer. He expressed remorse for the victim. He was assessed as posing a medium risk of serious harm to the general public, although not an immediate risk.
15. Kent had no previous convictions and there has been no further offending. The pre-sentence report records Kent as saying that, although he had not been present at the incident at Milford Services, he saw it as one of his “family” getting hurt. They had not been acting under a code but were being “morally protective”. He had joined the Hells Angels in 2020. The members looked out for each other. He said that it was not unusual for him to carry an extendable baton, as it was possible to be attacked. He admitted striking the victim several times. He expressed no empathy for the victim and had to be prompted to say that he regretted that the incident had gone as far as it had.
16. The author of the report referred to the possibility of potentially undiagnosed conditions of ADHD and PTSD which might have affected Kent’s offending behaviour. On 11 January 2024, the author contacted Kent to ask him whether he wished to be assessed

by a mental health expert. The sentencing hearing was not due to take place until March. Kent declined the offer, as he did not want the sentencing to be delayed, although the probation officer explained that the assessment could be available by 16 February. Ultimately the author of the pre-sentence report concluded that Kent's allegiance to his group appeared to come above everything else, including adherence to the law. His participation with the weapon showed that he went to the incident with the intention of committing violence. He was assessed as posing a medium risk of further serious violence.

17. In his sentencing remarks, the judge said that both appellants had participated in the offending with their eyes wide open and aware of the consequences if they were to be prosecuted. The group had set out for Portsmouth to reap revenge. The extensive damage at the Portsmouth premises and the items stolen from there were not regarded as sufficient retribution. The group learned of where the Vikings were in Worthing and followed them there. They then followed a smaller group to the Findon Road location and attacked an even smaller number of men, three.
18. The judge took into account the pre-sentence reports, the references, medical material and mitigation. We have done likewise. The judge said that after a trial, the sentence for each of the appellants for the most serious offence (the violent disorder) would have been 40 months, which he reduced to 36 months for the late guilty pleas. He then went on to impose the other sentences to which we have referred.
19. We are grateful to Mr James Bull for his written and oral submissions on behalf of both appellants. In summary, he submits:

- (1) The judge's decision to impose on Kent a consecutive sentence for burglary was wrong and manifestly excessive. The approach taken was inconsistent with the judge's passing of a 3-year concurrent sentence on Shaw for his participation in the burglary. The 12-month sentence for burglary in Kent's case should have been imposed to run concurrently;
- (2) In relation to both Kent and Brown, the judge wrongly mischaracterised the violent disorders as falling within category 1A. Instead, as set out in the written grounds of the appeal, the offence should have been treated as falling within category 1B. However, in his oral submissions Mr Bull submitted to us that the correct categorisation should have been 2B, in accordance with the submission which the prosecution had made to the sentencing judge. He added that this was not a case where a group had targeted individuals so as to fall within category A. Instead, seven Hells Angels had targeted a group of six Vikings, and the sentence should have been 36 months before allowing for mitigating factors and the guilty pleas;
- (3) If ground 1 is upheld in relation to Kent's sentence, then because Brown had only been convicted for violent disorder and assault and had not participated in the burglary, his overall sentence should be reduced to maintain appropriate parity with Kent;
- (4) If the court were to reduce the sentence in Brown's case to 24 months or less, it is asked to consider suspending the sentence.

Discussion

20. Starting with ground 1, in our judgment, applying the guideline on totality, there was

nothing wrong in principle in the imposition on Kent of a consecutive sentence for the burglary. Although revenge against the Vikings was the motivation for all of the offending, the burglary was a distinct offence, in a different location and at a different time.

21. There is no criticism of the treatment of this offence as falling within category 1A of the guideline on non-domestic burglary with a starting point of 2 years. The judge reduced the sentence to 12 months, which we consider adequately allowed for mitigation and totality.
22. When the judge sentenced Shaw, he treated the section 18 wounding as falling into category 1A and hence by far the most serious offence in his case. He said that he would impose an overall sentence on that count which reflected the overall offending and the concurrent sentences for the other offences. This meant, of course, that the concurrent sentences aggravated the sentence on the section 18 count. He said that the overall sentence, after trial, would have been 16 years, which he then reduced by 25 per cent for a relatively early guilty plea. But similarly, if the judge had passed a concurrent sentence for the burglary in Kent's case, it would have aggravated whatever was the appropriate sentence for the violent disorder and assault. Whichever approach was taken in Kent's case, the test is whether the overall sentence was just and proportionate to his overall offending. In our judgment, there is no merit in this first ground of appeal.
23. We turn to ground 2. According to counsel's note of the sentencing remarks, the judge placed the violent disorder in category 1A. However, the transcript contains no reference

to category 1A, or indeed to any other category. Mr Bull accepts this morning that we should proceed on that basis. If, as the grounds of appeal accepted, the offence had fallen within category 1B, the starting point would have been 3 years' custody with a range of 2 to 4 years. We note that the prosecution suggested to the judge category 2A for Shaw and category 2B for Kent and Brown. We also note that there is a significant degree of overlap between category ranges and the guideline to allow for the sentencing judge to reflect a variety of circumstances and matters of degree.

24. In our judgment it is unrealistic to assess this offending as simply an attack by seven Hells Angels on six Vikings. As the CCTV shows, three Vikings were able to make off very rapidly when the Hells Angels arrived on the scene. In reality, this was an attack by a group of seven on the remaining three individuals - they were targeted. In particular, Mr Worsfold was set upon by three men at the same time. That attack was targeted. It fell within category A culpability. On the other hand, we do not consider that the offence involved category 1 harm. The incident resulted in serious physical injury, fear and distress but there were not multiple category 2 factors so as to bring the case within category 1 harm. Therefore, the offence fell within category 2A, with a starting point of 3 years with a range of 2 to 4 years. That happens to correspond to the figures accepted in the grounds of appeal.

25. There were undoubtedly aggravating features. This was a revenge attack, it involved planning at the outset and then persistence to track down the Vikings. It occurred in a busy public area. There was a significant use of violence, specifically the extendable baton, kicking and stomping. The assault fell within category 2A, with a starting point of

8 months within a range between 36 weeks and 2½ years. The offending overall merited a sentence for the violent disorder and assault of 48 months before allowing for mitigation. The judge adequately allowed for mitigation by his reduction to 40 months before giving 10 per cent credit for the late guilty pleas. Accordingly, we do not accept the submissions made in support of ground 2.

26. It follows from our rejection of grounds 1 and 2 that grounds 3 and 4 fall away.

27. Accordingly, both appeals against sentence are dismissed.

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

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk