IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT LINCOLN
MR RECORDER ALLAN 32D90586221

CASE NO 202304351/A2

[2024] EWCA Crim 1205

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 5 September 2024

Before:
LORD JUSTICE MALES

MRS JUSTICE MAY

MR JUSTICE BRYAN

REX
V
DANIEL PLACKETT

MS L SUMMERS appeared on behalf of the Appellant.

A P P R O V E D J U D G M E N T

MR JUSTICE BRYAN:

1. On 20 September 2021, having pleaded guilty before the Lincoln Magistrates' Court, the appellant (then aged 32) was committed for sentence pursuant to section 14 of the Sentencing Act 2020, in respect of an assault by beating of an emergency worker (PC Keat) and assault occasioning actual bodily harm upon a bar manager Shelly Taylor, and pursuant to section 20 of the Sentencing Act 2020 in respect of an offence of obstructing a police constable in the execution of his duty (as officers sought to arrest the appellant for the assault on Ms Shelly Taylor).

2. On 15 November 2023, as set out below, in the Crown Court at Lincoln (Mr Recorder Allan) sentenced the appellant (then aged 34) in respect of the assault occasioning actual bodily harm upon Shelly Taylor to a suspended sentence order of 12 months' imprisonment suspended for 12 months with an electronically monitored curfew requirement (from 9.00pm to 6.00am) for 90 days and a Rehabilitation Activity Requirement for 10 days, with a concurrent suspended sentence order of 1 month in respect of the assault by beating an emergency worker (PC Keat), and of 2 weeks in respect of the obstruction of a constable in the execution of his duty.

3. The appellant was also ordered to pay compensation of £2,000 to each of Shelly Taylor and PC Keat.

4. The appellant's co-accused (Steven Rogers), pleaded guilty on re-arraignment to causing grievous bodily harm with intent to prevent unlawful arrest and was sentenced to 32 months' imprisonment.

5. The appellant appeals against sentence in relation to the compensation orders only by leave of the single judge.

6. Turning to the facts of the appellant's offending, on 17 September 2021, the appellant and his brother (Rogers) attended the funeral of their grandmother. By the end of the evening they were intoxicated. At some time during the evening the defendants were in the Black Bull public house in Welton, Lincolnshire. The bar manager was Shelly Taylor, who knew the appellant as a regular to that public house. Initially she described him as appearing relatively sober and coherent. However, after the appellant had been there for about 2 hours, Ms Taylor was told there was a fight taking place outside involving the appellant. She therefore went outside intending to stop any incident taking place. The appellant did not respond well to Ms Taylor's intervention and became abusive towards her calling her a "fat cunt" and a "fat slag". That resulted in Ms Taylor informing him that he was banned from the pub. The appellant's response was to head-butt Ms Taylor to the nose. She immediately felt her nose crack. Someone else

stepped in before the appellant ran off. Ms Taylor suffered bleeding and cuts to her nose which she later found was indeed broken.

7. The police were contacted. PC Martin Schofield was on duty that evening. He made inquiries and was told the appellant could be found at the Sports and Social Club on Rylands Road in Welton. Officers attended and approached a group of three or four males, which included the appellant and Rogers, and attempted to engage them in conversation. They were met with continuous argument. The officers repeatedly stated they wanted to speak with the appellant but there was no co-operation from the males who were clearly intoxicated. There was reference to the fact they had been to a funeral earlier in the day. The appellant was identified and PC Schofield arrested him on suspicion of assault. The males remained uncooperative and the appellant began running away. He was apprehended by PC Schofield, who attempted to detain him and managed to secure a handcuff to his right wrist. The appellant continued to pull away and continued to say that he had been at a funeral all day and had done nothing wrong. The other males with him supported that assertion. The appellant continued to struggle but was finally handcuffed and restrained against the bonnet of a car. The Police Officers remained calm, asking to be allowed to do their job, while the appellant continued to deny responsibility for any wrongdoing and carried on struggling.

8. Rogers then became involved in pleading with the Officers, also asserting that his brother had done nothing wrong. He then began videoing the incident, putting his telephone directly in the officers' faces. Assistance was requested by the Officers. As the Officers attempted to manoeuvre the appellant, he headbutted PC Keat in the face. The appellant was then taken to the ground and further arrested for assaulting an emergency worker. No great injury was caused to PC Keat at the time although the injury was painful and caused immediate bruising to him. PC Schofield and PC Keat continued to restrain the appellant while awaiting other Officers to come and assist. The appellant was shouting to Rogers to get them off him. Rogers then kicked PC Keat in the face with great force, causing significant bleeding. His nose was pushed to the side and his eye was immediately swollen. He briefly lost consciousness and had to be laid on the floor before being taken by ambulance to hospital having sustained serious injury.

9. The appellant had three previous convictions for six offences between 1 February 2019 and 17 November 2020. These included offences of resisting/obstructing a constable, assault by beating an emergency worker (twice) and driving with excess alcohol, for which he was fined on 23 May 2019. He also had a reprimand for common assault in 2004 and cautions for using threatening abusive/insulting words or behaviour with intent to cause fear or provocation of violence in 2011, and battery in 2013.

10. There was a victim personal statement before the Court from Shelly Taylor dated

7 October 2021, so a few weeks after the incident. Ms Taylor stated that at the time of her statement, she was suffering permanent headaches and she had been in pain since the assault. She felt like her nose was permanently blocked. She struggled to breathe and, as a result of her injury, had to take time off work which was the first time in some 10 years' working. She still required further treatment and appointments due to the injury being infected and she reported the injury caused her aches and pains shortly after the incident. It is also clear that the incident was causing her continued distress at that time as she also stated:

> "When I'm at work and it comes to closing up, which I often do, I feel nervous in case someone is there and I find myself the victim of something else."

And that:

> "I'm also on edge when at work in case anything similar happens and I have to intervene again. I feel genuinely concerned that I could be the victim of another assault just from doing my job and trying to help."

There was also a victim impact statement of PC Keat, also dated 7 October, but that addressed the offence committed by the co-accused, Rogers.

11. In the prosecution opening of the facts no mention is made in relation to compensation, and compensation is not addressed, either in relation to Ms Taylor or PC Keat, albeit the details of their injuries and the effect upon them from the respective offending as set out in their respective personal impact statements are recounted. We also have a transcript of the mitigation by counsel to which we have had regard. It contains reference to the fact that the appellant was only being sentenced in respect of the headbutt to PC Keat, and that PC Keat did not describe any physical injury but noted being in some pain. It was identified that the appellant had essentially now stopped drinking and in the time since spending 5 months on remand in prison he had turned his life around and obtained a full-time job, where he earns about £1,600 per month and some 2 years having passed before sentence and without the commission of any further offence.

12. The Learned Judge asked about his employment and what savings he had. He identified that he had been employed as a plasterer for many years, living with his mother and stepfather, during which time he paid for upkeep in the house and it was said that he had savings of £200.

13. In his sentencing remarks and after imposing the curfew and the rehabilitation activity requirement conditions in respect of the suspended sentence of 12 months' imprisonment, in relation to the assault of Ms Taylor, the Learned Judge said as follows in relation to compensation:

> "I am going to decline the suggestion of the probation service that you perform unpaid work at the weekend, and that is because I am going to punish you and seek to achieve some token compensation for the victims in this case by way of a compensation order. Noting, as I say, you are in full-time employment with a long employment history, were living at home with no dependents and not drinking alcohol for some time. Therefore, I will impose a compensation order for the benefit of Shelly Taylor in the sum of £2,000 and a second compensation order for the benefit of Police Constable Keat in the sum of £2,000. Those orders will be payable each of the sum of £100 per month, that is for each of the two orders. Those instalments to last for 20 months, the first payment to take place on 1 February of next year. That will give you time to put your finances in order, to get through Christmas and to start making payment. If you have to work at weekends, then as a qualified plasterer, I see no reason why you can't do that, particularly when I have not imposed unpaid work as part of that. So that will be the second part of the sentence upon you."

14. Before making the compensation orders, the Learned Judge had not expressly asked defence counsel to address him on the appropriateness of making compensation orders or the amount having regard to the injuries of and impact upon the victims and the means and ability to pay by the appellant, albeit that, as already noted, the Learned Judge had some information from the victim impact statements and what he was told during the course of mitigation in relation to the means of the appellant.

15. The grounds of appeal in relation to which compensation orders in respect of which permission was granted are as follows:
    (1) The amount of £2000 to each victim commensurate was not commensurate with the injuries sustained.
    (2) The judge did not invite submissions on the issue of compensation and did not take sufficient account of the appellant's means.
    (3) The judge did not give reasons for making a compensation order in the respective sums.

16. Section 135 of the Sentencing Act 2020 provides, in material respects, as follows:

> "Making a compensation order
> (1) A compensation order must specify the amount to be paid under it.

> (2) That amount must be the amount that the court considers appropriate, having regard to any evidence and any representations that are made by or on behalf of the offender or the prosecution...
>
> (3) In determining—
> (a)whether to make a compensation order against an offender, or
> (b)the amount to be paid under such an order, the court must have regard to the offender's means, so far as they appear or are known to the court."

17. In *R v York* [2019] 1 Cr App R(S) 41, this Court identified the principles applicable to the imposition of compensation orders. Mrs Justice Elisabeth Laing (as she then was) in giving judgment of the Court at [19] stated as follows:

> "...it seems to us that six principles are relevant. First, an offender must give details of her means. Second, before making compensation order, a judge must enquire about, and make clear findings about the offender's means. Third, before making a compensation order the court must take into account an offender's means. Fourth, a compensation order should not be made unless it is realistic, in the sense the court is satisfied that the offender has or will have the means to pay that order within a reasonable time. Although a compensation order based on the repayment period as long of 100 months has been upheld, it has been said that while a repayment period of two or three years in an exceptional case would not be open to criticism, in general, excessively long repayment periods should be avoided. Fifth, a court should not make a compensation order against an offender without means on the assumption that the order will be paid by somebody else, for example, a relative. Finally and sixth, it follows that it is wrong to fix an amount of compensation without regard to the instalments which are capable of being paid by the offender and the period over which those instalments should be paid but rather to leave those questions for the Magistrates to sort out."

18. In this regard, there is also helpful guidance from the Sentencing Council in the explanatory material section of the Magistrates' Court Sentencing Guidelines in relation to compensation ("the Compensation Guideline"), which we consider is also of some assistance in the context of making of compensation orders in the Crown Court. In relation to the section "Fines and Financial Orders", it is provided in the "Introduction to Compensation", amongst other matters as follows:

"1. The court must consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence.... The court must give reasons if it decides not to order compensation (Sentencing Code, s.55).
...

4. Subject to consideration of the victim's views *(see paragraph 6 below)*, the court must order compensation wherever possible.

5. Compensation may be ordered for such amount as the court considers appropriate having regard to any evidence and any representations made by the offender or prosecutor. The court must also take into account the offender's means (see also paragraphs 9 -11 below).

6. Compensation should benefit, not inflict further harm on, the victim. Any financial recompense from the offender may cause distress. A victim may or may not want compensation from the offender and assumptions should not be made either way. The victim's views are properly obtained through sensitive discussion by the police or witness care unit, when it can be explained that the offender's ability to pay will ultimately determine whether, and how much, compensation is ordered and whether the compensation will be paid in one lump sum or by instalments. If the victim does not want compensation, this should be made known to the court and respected.

7. In cases where it is difficult to ascertain the full amount of the loss suffered by the victim, consideration should be given to making a compensation order for an amount representing the agreed or likely loss. Where relevant information is not immediately available, it may be appropriate to grant an adjournment if it would enable it to be obtained.

8.The court should consider two types of loss:

- financial loss sustained as a result of the offence such as the cost of repairing damage or, in case of injury, any loss of earnings or medical expenses;
- pain and suffering caused by the injury (including terror,

> shock or distress) and any loss of facility. This should be assessed in light of all factors that appear to the court to be relevant, including any medical evidence, the victim's age and personal circumstances.
>
> 9. Once the court has formed a preliminary view of the appropriate level of compensation, it must have regard to the means of the offender so far as they are known. Where the offender has little money, the order may have to be scaled down or additional time allowed to pay; the court may allow compensation to be paid over a period of up to three years in appropriate cases."

19. In section 2 of the Compensation Guideline entitled "Suggested starting points for physical and mental injuries", there is a table with suggested starting point of compensating physical and mental injuries commonly encountered in Magistrates' Courts. In relation to physical injuries to the nose, £1,000 is suggested in respect of an undisplaced fracture of a nasal bone (Ms Taylor's physical injury) and £2,000 in respect of a displaced fracture requiring manipulation. So far as mental injury is concerned, there is a suggested starting point of £500 for temporary mental anxiety including terror, shock and distress that is not medically verified or £1,000 for disabling mental anxiety lasting more than 6 weeks which is medically verified.

20. In *Rex v Duane Walker* [2024] EWCA 772 at [29], this Court drew attention to the Compensation Guideline and the fact that the Court must take into account the offender's means and the need to ensure a sufficient inquiry is undertaken as to the means of the Applicant and the Applicant's ability to pay compensation and within what timescale, and the importance of the sentencing Court having as much evidence as possible as to the nature and extent of the injuries caused to the victim.

21. In similar vein in *R v Phillips (Mark Adrian)* [1988] 10 Cr App R(S) 419 at 421, Steyn J (as he then was), giving the judgment of the Court, identified that satisfying the requirements the offender has the financial resources to pay compensation, either immediately or within a period of time, "almost inevitably involves an enquiry" which presupposes that an enquiry is made of defence counsel by the judge (as contemplated in *R v York*) putting them on notice that a compensation order is being considered which may include an indication as to the provisional figure, so as to elucidate submissions both as to means and as to the appropriate figure (as was envisaged to be an appropriate approach in the case of *R v Phillips*).

22. The Court can also have regard to any other information which would include the Judicial College Guideline for the Assessment of General Damages in Personal Injury Cases, 17th Edition (the "Judicial College Guideline"). In relation to an undisplaced fracture of the

nose, the guideline figure is between an amount of £2,080 and £3,080, with a range of a few hundred pounds to £840 in the case of minor injuries..

23. Turning then to the appellant's grounds of appeal, it is first submitted by Ms Summers on the appellant's behalf that the amount of £2,000 to each victim is not commensurate with the injuries sustained. The Applicant headbutted Ms Taylor to the nose causing it to break but there is no evidence before the Court that the fracture was displaced requiring manipulation. She identifies the Compensation Guideline which, as we have identified, suggests a starting point for an undisplaced fracture of the nasal bone of £1,000. Of course equally the figure in the Judicial College Guideline is higher between approximately £2,000 and £3,000.

24. Ms Summers suggests that the appropriate figure in respect of Ms Taylor would be in the region of £1,000. However, she accepts that regard could be had to other guidelines as well. However, it is also apparent from Ms Taylor's victim personal statement that she suffered at least temporary mental anxiety in respect of which a figure of £500 is suggested in the Compensation Guideline in the absence of mental verification. It is regrettable that an up-to-date victim personal statement was not obtained at the time of sentence, as that might have provided evidence as to whether Ms Taylor had suffered mental anxiety over a longer period (which would have justified a higher figure). However, on the evidence that was available to the Learned Judge, we consider that the provisional compensation figure of £2,000 was entirely appropriate to reflect Ms Taylor's physical and mental injuries.

25. The Applicant head-butted PC Keat to the nose. As we have noted, he described feeling pain but states he did not bleed. The nature of an injury such as head-butting is a particularly unpleasant injury and can easily cause both a fracture and a displaced fracture. Thankfully, it did not occur in this case. Regrettably, PC Keat went on to receive facial injuries as a result of being assaulted by the co-defendant, Steven Rogers. It was accepted by the prosecution that the appellant did not cause those serious injuries which were outlined in the medical evidence and photographed. He was therefore sentenced on this basis by the Learned Judge. It follows that the appellant was not being sentenced on the basis that he caused the more serious injuries (as to which see *R v Duane Walker,* supra) and the Learned Judge did not do so.

26. The starting point is that compensation should be ordered if a defendant has the means to pay compensation. Whilst we consider that there is force in Ms Summer's submissions that a lesser compensation figure was appropriate in circumstances where PC Keat did not sustain the fracture of his nose, that does not mean a compensation order should not have been made for what is an unpleasant injury. We consider that a provisional compensation figure of £700 would have been appropriate rather than £2,000 that was

ordered.

27. The next ground of appeal is that the Learned Judge did not invite submissions on the issue of compensation and did not take sufficient account of the Applicant's means. It is clear from section 135(2) of the Sentencing Act 2020 (and the authorities which we have identified) that the Learned Judge should have made inquiry of defence counsel in relation both the amount of the compensation and as to the appellant's means to pay such compensation.

28. However, whilst the Learned Judge did not specifically invite submissions on the issue of compensation, it is clear and must have been clear to the defence at the time, that compensation was being considered by the Learned Judge (as it should be in every such case). In this regard it is acknowledged that enquiry was made in respect of the appellant's savings (£200), and more pertinently he was informed that the appellant earns £1,600 per month. It is said however that the Learned Judge did not take account of and did not make clear findings about the appellant's means. It is said that if the Learned Judge had invited the submissions in respect of compensation and means, submissions as to the appellant's limited means would have been made as well as ensuring any amount ordered was commensurate with the injuries sustained. We note however, that there have been no submissions before us either in writing or orally that the appellant is unable to pay the compensation that was ordered.

29. We consider that it would have been better if the Learned Judge had specifically invited submissions on the issue of compensation, which could have been facilitated either by indicating provisional figures that he had in mind (such as by reference to the Compensation Guideline or the Judicial College Guideline) or by inviting submissions in relation to the same. Equally, a more detailed enquiry into an offender's means would normally be appropriate, together with a clear finding as to such means.

30. However, we are satisfied that the Learned Judge did have sufficient information before him in relation to means so as to identify the amounts that were appropriate having regard to the appellant's means, and as to an appropriate timescale for payment.

31. In such circumstances, we do not consider the Learned Judge erred in principle in relation to the making of compensation orders based on the information he had as to the appellant's means.

32. The third ground of appeal is that the Learned Judge did not give reasons for making a compensation order in the terms made and did not explain why he reached the figures he did and why each victim was to receive the same amount of compensation notwithstanding the injuries caused were very different in terms of their severity.

33. A sentencing judge should always give reasons for the sentence he passes under the Sentencing Act and that applies as much to a compensation order as to any other aspect of the sentence. However, in the present case, it is clear enough that the Learned Judge considered the appellant had the means to pay, as he was in well-paid employment and could do so within the timescale he envisaged, and we consider that he was entitled to reach that conclusion. For the reasons we have identified however, we consider that the compensation order in the case of PC Keat was higher than it should have been and that the amount of compensation ordered in relation to him was manifestly excessive.

34. We cannot but feel that if the Learned Judge had made a more direct inquiry in relation to compensation, he would have been directed to and have regard to appropriate guidance and also that if he had undertaken the discipline of given express reasons for the amounts of compensation he was to order, he would have recognised the difference in the compensation order was appropriate in relation to each victim.

35. We have been told by Ms Summers that the appellant has been paying £200 a month from February 2024 (we assume half to each victim) so that the sum that had been paid to date is £1,400 (£700 to each victim).

36. In such circumstances, we dismiss the appeal in the case of Ms Taylor and quash the compensation order of £2,000 in the case of PC Keat, and substitute that with a figure of £700, with the consequence that no further compensation will be payable to PC Keat on the information that we have been told and that, in the case of Ms Taylor, the existing order whereby instalments are paid at £100 a month will continue and will continue for the remaining months as previously ordered.

37. To that extent only, the appeal in relation to compensation orders is allowed.