No: 201705475/C5-201705476/C5-201705483/C5-201800185/C5
IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT CHESTER
(HHJ Hale)
Neutral Citation Number: [2019] EWCA Crim 454

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 8 March 2019

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE SWEENEY

HIS HONOUR JUDGE EDMUNDS QC
(Sitting as a Judge of the CACD)

R E G I N A
v
KARINE SOLLOWAY
KIMPTON MATIVENGA
PAUL SIMON PRIOR

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Mr S Csoka QC appeared on behalf of the **Applicant Solloway**
Ms S Wright appeared on behalf of the **Applicant Mativenga**

J U D G M E N T
(Approved)

LORD JUSTICE MALES:

1. On 14 November 2017, in the Crown Court at Chester, the applicants, Karine Solloway (now aged 60) and Kimpton Mativenga (33) were convicted of conspiracy to rob. They were sentenced by His Honour Judge Hale on 8 December 2017 together with the applicant Paul Prior (34), who had pleaded guilty at an earlier stage. Mrs Solloway was sentenced to 10 years' imprisonment, Mativenga to six-and-a-half years less credit for time spent on a qualifying curfew and Prior to an extended sentence comprising a custodial term of 10 years and an extension period of 3 years. Another defendant, Iain McGarry, had also pleaded guilty to conspiracy to rob and was sentenced to 8 years' imprisonment.

2. The applications now before the court, following refusal of leave to appeal by the single judge, are as follows. Karine Solloway renews her application for leave to appeal against both conviction and sentence. Kimpton Mativenga renews his application for leave to appeal against conviction. Paul Prior applies for an extension of time in which to renew his application for leave to appeal against sentence. We grant the extension of time and will consider the application for leave to appeal on its merits.

The robbery

3. These applications arise out of a robbery which occurred on 6 October 2016 at 10.00 pm. Priya McKendrick and her daughter Scarlett, aged 17, were at their home address in Alderley Edge in Cheshire watching television in their nightwear. Mrs McKendrick's husband, Robert, was away. Three masked men wearing black clothing burst into the house, gaining entry through the back door. The men were Prior, Mativenga and

McGarry. The three men knew Priya's and Scarlett's names. They bound the women's hands with plastic cable ties which they had brought with them for the purpose. They covered their eyes with blacked out goggles and their ears with ear defenders so as to deprive them of sight and hearing. They threatened them with consequences if they resisted, saying that it was the last warning. Their mobile telephones were taken from them and the land line telephones were disabled. The hardware for the house CCTV system was removed. Mrs McKendrick and her daughter were shepherded around the house and separated from each other. At one point cling film was stretched over Mrs McKendrick's face for a short time so that she could not breathe properly. At another time she heard her daughter scream in a separate room. That happened as one of the three intruders had moved her legs apart as if to assault her sexually. The judge accepted that this was not in fact done with any sexual intent although, tied up and vulnerable as she was, Scarlett understandably thought that she was about to be raped. That in particular must have been terrifying for Scarlett, while for Mrs McKendrick to hear her daughter screaming in another room added significantly to her own ordeal. For part of the time Mrs McKendrick and Scarlett had their mouths covered in duct tape. They were fearful for their lives.

4. The three men remained in the house for about three-and-a-half hours, during which they stole around £100,000 worth of property, including jewellery and various electrical items. They did not take any of the expensive cars parked outside but only because they had previously ascertained that these were not owned by the McKendricks but were subject to a finance agreement.

5. One of the intruders, Prior, was the leader and did most of the talking. At one point Mrs McKendrick asked him if the intruders were working for the Russians. She said this

because she knew about her husband's affair with Karine Solloway, to which we will refer shortly. Prior responded: "If you owe the Russians money, pay them first".

6. This was no ordinary burglary which went wrong when the occupiers were found to be at home. Prior and the other two had been watching the house for some time. The offence of which Karine Solloway and Kimpton Mativenga were convicted and to which Prior and McGarry pleaded guilty was conspiracy to rob. The prosecution case was that there was an agreement between all four defendants, not merely to steal from the house, although there was an alternative count of conspiracy to steal, but to rob Mrs McKendrick and her daughter, that is to say to use or threaten force upon them. It was not bad luck that they happened to be at home, they were meant to be there and to be terrorised as they were. Indeed, although in the event the drugs were not used, McGarry had confirmed to Prior, before the robbery, that he had with him stupefying drugs, including morphine and diazepam with which to sedate the occupiers of the house if necessary.

The background

7. To understand the background to what occurred it is necessary to go back some years to an affair between Mr McKendrick and Karine Solloway which ended in 2013. He had been a wealthy and successful businessman with interests in African countries but by the time the affair ended he was being investigated by the Financial Conduct Authority and was subject to a freezing order. In order to assist him with his legal costs Mrs Solloway lent him, while their affair was ongoing, substantial sums of money, running into hundreds of thousands of pounds, although the precise figure was in dispute. She was a business woman of Russian origin with dual Russian and United Kingdom nationality.

8. They had met at a party at the Russian Embassy and had began an affair during which

Mr McKendrick spent much of the week with Karine Solloway in London and the weekends at home with his wife and children. It was Mrs Solloway's evidence in interview - she did not give evidence at the trial - that he had promised to leave his wife for her. In the event, however, the affair ended acrimoniously and violently. They had a fight after drinking and in interview Mrs Solloway produced a photograph of her bloodstained face and referred to there having been blood on the carpet.

9. After the relationship ended Mrs Solloway sought to recover the money which she had lent to Mr McKendrick by legal proceedings. However, she was discontented with the slow place of those proceedings and with the fact that, as she saw it, Mr McKendrick did not take seriously an offer of mediation. She was determined to get her money back by other means. That was what led to her contact with Paul Prior, a former soldier who held himself out as providing security services.

Karine Solloway – conviction

10. In the case of Mrs Solloway, the issue for the jury was whether there was a previous agreement between her and Prior that a robbery was to take place at the McKendricks' home. There was no suggestion that she had any contact with any of the other defendants. Her case was that although she had engaged Prior to investigate Mr McKendrick's assets and undertake surveillance with a view to recovering the money she had lent him, he had used the information she had given him about the location of the house and the fact that Mr McKendrick was wealthy for his own ends and on his own initiative without any agreement with her. Her case was that she had only become aware of the robbery after the event.

11. In Karine Solloway's case the sole ground of appeal against conviction relates to the closing speech made by Mr Andrew Ford on behalf of the prosecution. The complaint is

that the speech made derogatory and stereotypical remarks about Russians, referring melodramatically to spillage of blood and emphasising the bloodstained photograph of Karine Solloway after her assault at the hands of Mr McKendrick. It is said that these inappropriate comments prejudiced, or may have prejudiced, the jury against her and that as a result her conviction is not safe.

12. We have read the entirety of the prosecution closing speech of which complaint is made. It began by a referring to that part of Mrs Solloway's interview in which she described her fight with Mr McKendrick and said that the "carpet was all over in blood" and that her injuries could be seen in her photograph, which was shown to the jury - they had of course already seen it in the course of the trial. She had sent the photograph to Mr McKendrick to show him what he had done to her with the question, which can reasonably be regarded as a threat: "Do you want me to turn your life into this?" Mr Ford continued his speech as follows:

> "You have seen her description. 'Blood all over the carpet.' Russian history, and Russia of which I am a fan - it is full of drama. Uprising and the spillage of blood. If you go to St Petersburg - you may have been - it is fabulous. You can see the Church of the Spilled Blood. It is brilliant. It is the upside-down 'Cornetto church' like the one in Moscow.
>
> In my short remarks at the end of this case, a case full of characters and full of drama, I pay tribute to that history of Russian drama and I have drafted a play. I have written it, although the true author is a silent architect. Listen to His Honour deal with the question in law of silence and when a suspect remains silent and avoids the witness box. She does not have a speaking part in my play; you have seen that. She stayed there. Like all dramas, there is a baddie. It is Robert McKendrick. Like all baddies, he has got questionable morals and he is attracted to money and followed by trouble ..."

13. The speech continued in similar vein, attributing nicknames to witnesses and others, so that the applicant became the silent architect, treating them as a cast of stock characters and describing the events of the case as scenes in a play which Mr Ford had written.

However, it is fair to say that the express references to Russians as concerned with the spillage of blood were limited to these opening remarks.

14. In summing-up, after the conclusion of speeches, the judge warned the jury against allowing emotion or stereotyping to affect their deliberations. In explaining his role he said to them that:

> "Unlike the speeches of Counsel, I am not arguing for one thing or the other and I have not got to engage in flourishes of this that and the other to keep you interested."

15. A little later he said that:

> "You must base your conclusion on the evidence, not sympathy for the victims, not sympathy for the plight of either of the defendants or emotion on behalf of one party or the other, and certainly as Mr Csoka quite rightly said, not on any perception of stereotype. She is Russian, therefore ...It would be wholly wrong for you to act on that basis. You look at the evidence."

16. The judge was also careful to say to the jury that the remark made by one of the robbers, "If you owe the Russians money, pay them first" was something Prior might have said even if he was acting on his own initiative and was not evidence that Karine Solloway was behind the robbery.

17. Mr Ford, for the prosecution, has not attended this hearing but has submitted a respondent's notice together with an addendum addressing the criticisms of his closing speech made on behalf of Karine Solloway. He denies that it contained derogatory or stereotypical remarks about Russians and says that he adopted the dramatic theme, making each witness a character in a play, in order to bring the case to life. He did not quite go so far as to say that some of his best friends were Russians but he did emphasise

his personal admiration for Russian history and culture.

18. In our judgment the opening remarks in the prosecution closing speech which we have set out were thoroughly inappropriate. We can accept that they were not intended to be derogatory, but the link between Russians and blood which the remarks conveyed was obvious, particularly when viewed in conjunction with the photograph of Mrs Solloway's bloodstained face which the jury had just seen. This was unacceptable stereotyping as the judge clearly recognised. Hence his warning to the jury not to think in terms that "She is Russian therefore ..."

19. Moreover, and without wishing in any way to discourage the use of legitimately inventive advocacy or vivid metaphor, to describe the events of this robbery throughout the closing speech as if the characters were characters in a play written by prosecution counsel seems to us to be ill judged to say the least. The theatre is a place for emotion, imagination and entertainment. The courtroom requires dispassionate, cool headed and rigorous analysis of evidence, taking care to ensure that emotion and sympathy play no part, as juries are routinely warned. Criminal trials have their own drama and this one had more than most, but we can see no justification for prosecution counsel to treat a serious criminal trial as if it were some kind of fictional melodrama. That was not likely to give the jury the assistance which they were entitled to expect and, while it is always important to avoid dullness, it is not the function of prosecution counsel merely to entertain.

20. That said, however, we are quite satisfied that the conduct of the prosecution speech does not arguably affect the safety of Mrs Solloway's conviction. The judge dealt with this by quietly disparaging the need "to engage in flourishes of this that and the other to keep you interested" which was clearly a reference to the approach which Mr Ford had

taken and would have been understood as such by the jury.

21. Although we do not have a transcript of the closing speech for the defence made by Mr Simon Csoka QC, it requires no imagination to conclude that he had some stern things to say about stereotyping of Russians by the prosecution. It appears that he did not hold back. Those criticisms of Mr Ford's speech were firmly endorsed by the judge in what can only be viewed as a rebuke to the prosecution ("certainly, as Mr Csoka quite rightly said, not on any perception of stereotype. She is Russian therefore... It would be wholly wrong for you to act on that basis. You look at the evidence"). In view of this endorsement of Mr Csoka's comments in his closing speech, which no doubt were fresh in the jury's mind, it was possible for the judge to deal with this issue shortly but nevertheless clearly.

22. In our judgment, the course adopted by the judge was sufficient to ensure the avoidance of any prejudice although some judges might have gone further: intervening straightaway, sending the jury out, reading the riot act to counsel and giving a strong direction to the jury there and then before the speech proceeded further. While that may have been a preferable course, there is no reason to suppose that the jury could not be trusted to comply with the firm and clear direction which the judge did give.

23. Mr Csoka emphasised his submissions in support of the application by reference to the fact that shortly after the jury were sent out, there took place the Lord Major's Banquet in the City of London at which the Prime Minister made some observations about the interference of the Russian government in events in this country. Those did not come to the attention of counsel and nothing was said about them to the jury. In our judgment, it was not necessary for anything to be said. The jury were focused on the events of the alleged conspiracy to rob with which they were concerned. There was no suggestion of

any involvement by the Russian government in those events and it is, in our judgment, not credible to think that the jury's deliberations would have been affected by the unrelated comments made in the course of the Prime Minister's speech.

24. Moreover, the prosecution evidence against Karine Solloway was damning. There were numerous texts and WhatsApp messages passing between her and Prior which, although not referring in terms to any robbery, appeared to be in carefully coded language. Not only their content, but also the timing of contact between them was significant, suggesting extensive planning beforehand and prompt reporting afterwards. To take a few examples, there was a reference before the robbery to starting "the final phase" with regard to "the expensive payment that was due". At 5.03 am, on the morning immediately after the robbery, Prior sent a message which simply stated "Done. On way home". That can only have referred to the robbery. There was nothing else which he had done that night. It was followed by a 14 minute telephone call to Mrs Solloway, who was in Moscow at the time, at 7.04 in the morning. After she returned from Moscow she was involved in the disposal of the stolen goods and received some of the proceeds. It was clear that Mrs Solloway was extremely bitter towards Mr McKendrick, not only as a result of the money which he owed her but also the violent way in which their affair had ended. All of this was powerful evidence of her involvement in the robbery. Moreover, she had chosen not to give evidence and therefore had not provided any innocent explanation of her communications with Prior or to dispel the strong evidence of motive which emerged from her interview.

25. Accordingly, the application for leave to appeal against conviction is refused.

Kimpton Mativenga - conviction

26. We deal next with the application by Kimpton Mativenga for leave to appeal against his conviction.

27. He accepted that he was one of the intruders and was present in the house throughout, but he denied any prior knowledge of the plan to commit a robbery and claimed that he played no part in it. His evidence was that he had previously worked as a doorman and had been recruited by Prior because "two muscle guys" had pulled out. He accepted, therefore, that he had been recruited as replacement muscle. He said that he had been told to tell his partner that he was going to do some security work and that his understanding was that the reason for the trip to Alderley Edge was to assess the safety of the village for a high profile potential house purchaser. Nevertheless he accepted that on the way he was equipped with black clothing which Prior had paid for, that he entered the house with the other two in order to collect money which was owed, that he entered through the back door with Prior wearing goggles and that he was present when the ear defenders were put on Mrs McKendrick and her daughter and they were tied up with plastic cable. He said that he was in the room where Scarlett was then put and remained with her. He agreed that he was also wearing goggles and that he pulled up the turtle neck of his jumper to cover his face. Despite this, he maintained that he played no part in the robbery, saying that he was intimidated by Prior. He said that he was scared for his life but too scared to leave even though no direct threat had been made to him.

28. In his case there are four proposed grounds of appeal against conviction. The first ground is that the legal directions given by the judge as to the mental element for participation in a conspiracy were unclear and incomplete. The judge prepared written

legal directions for the jury which left the case against Mativenga in two ways. The first aspect for the jury to consider was whether he went to the house knowing that Prior and McGarry were planning to rob (or so far as the alternative count of conspiracy to steal was concerned, to steal) and that he had agreed to take part in what they were planning to do. The second aspect was whether, even if he was not a party to the conspiracy beforehand, he became a party in the house when a time came when he did realise that the other two intended to steal by the threat or use of force and thereafter did anything to assist them to achieve that end. The judge contrasted taking part in the robbery with being in effect a shocked bystander who did nothing to assist the robbers to achieve their goal.

29. Ms Samantha Wright, who appeared for Mativenga, submitted to the judge that this did not deal sufficiently with the mental element necessary for conspiracy to rob and as a result the judge added to his direction to include the need for the applicant to be acting dishonestly in giving any such assistance.

30. Ms Wright submits now that by his presence Mativenga must have been assisting the other two, as his presence would have added to the fear in which the victims were put, so that he may have unintentionally committed the *actus reus* of the offence without having any *mens rea* and that a separate direction was needed to deal with this. However, unintentional assistance in this way was clearly not what the judge was referring to when he made the contrast between taking part in the robbery and being in effect a shocked bystander who did nothing.

31. In our judgment, in the context of this case, the direction given by the judge was adequate. The real issue in this case was whether the applicant had been recruited as a replacement "muscle guy" to take part in the robbery with advance knowledge of what

was going to happen, as demonstrated by his clothing, his wearing of goggles and the concealment of his face. It was clear that the question for the jury was whether he had agreed to take part in this robbery either in advance, or alternatively once he found himself in the house. The evidence against him was strong. No further legal direction about his mental state was required. That had the potential only to over complicate matters.

32. The second proposed ground of appeal is that the judge was wrong to leave to the jury an alternative defence of duress. This was not part of the applicant's own defence and it is suggested that it rendered the directions unclear. We do not agree.

33. Mativenga had said repeatedly in evidence that, to the extent he assisted the other two intruders, he was acting in fear of Prior – in fear, as he put it at one stage, for his life. That was his explanation for not leaving the house once he realised what was going on if, as he said, he was really ignorant of what the other two intended. Once that evidence was given, it was for the judge to determine whether duress needed to be left to the jury. The fact that this was not part of the defence case and even that the defence did not wish such a defence to be put did not affect the judge's duty to consider the point. If he had not done so, it is entirely possible that this court would be faced with an argument, perhaps from different counsel newly instructed, that he ought to have. It was appropriate to give the jury help on the relevance of Mativenga's evidence about the fear in which he claimed to be acting.

34. It would certainly have been preferable if the judge had given warning that he proposed to raise this issue before speeches so that counsel could deal with the point. We understand that this was not done. However, it is not suggested that Mativenga would have had a defence of duress and indeed Ms Wright avers that he would not. In our

judgment, therefore, the failure to do so does not affect the safety of Mativenga's conviction. We do not accept that the reference to duress obscured the real defence in this case that Mativenga was not a party to any conspiracy.

35. The written direction which the judge gave the jury on duress was correct. It is true that there was some confusion, perhaps because the judge misspoke, in the course of his oral directions, but this was properly clarified and it was explained, in clear terms to the jury, that they should follow the written direction.

36. Although this is not a ground of appeal, we record our surprise that even though written directions were given there was no route to verdict provided for the jury in this case. They would no doubt have been assisted by having one. Such a route to verdict document should have been provided in a case such as this, as indeed it should be provided in all save possibly the very simplest cases. Again, however, that does not affect the safety of Mativenga's conviction.

37. The third proposed ground of appeal concerns a comment made by the judge in the course of summing-up. The judge referred to the absence of any forensic connection between Mativenga and the house, even though his evidence had been that he was not wearing gloves. The judge continued:

> "Now that you may think is important, because as I say, he left no fingerprints at all, yet on any view he touched the ID card, he touched the water bottle, on any view, on his own account, but no fingerprints."

38. The complaint is that this suggested that Mativenga had been lying when he said he was not wearing gloves in a case where his credibility was important, that this was not a point which had been made by the prosecution, and that the judge was wrong to have

introduced it.

39. There is nothing in this point. It was clarified before the jury, at the conclusion of the summing-up, that the items which Mativenga accepted having touched had not been forensically examined. The judge warned the jury at the outset of his summing-up that if he made comments, those comments were for the jury to consider and, if they thought right, to reject. This was, at most, a peripheral point. The jury would have been well aware that it was for them to make their own decision about Mativenga's credibility.

40. Finally, it is said that there were two irregularities in the course of the trial which, taken together, rendered the conviction unsafe. The first of these concerns a prosecution witness, Kenrick Glasgow, who gave evidence about a visit to Alderley Edge after the robbery with Prior, who had engaged him to carry out surveillance on Mr McKendrick. During cross-examination of Glasgow on behalf of Mrs Solloway, Mr Csoka asked the witness if he was an honest man. He said that he was. Mr Csoka then said to the judge, in front of the jury, that he had a document which he would like to put to Glasgow. The document (Glasgow's antecedents) was then handed to the judge who, after looking at it, asked prosecution counsel whether he had any objection to the last entry being put, that entry being a conviction for aggravated burglary in 1992. Mr Ford said that any objection would be based on the age of the conviction but withdrew the objection when the judge said that this could be taken into account by the jury.

41. Ms Wright submits that the evidence of Glasgow was helpful to Mativenga because Mativenga's case was also that he had been merely engaged for the purpose of surveillance. The argument is that if this was why Glasgow was recruited, it may also have been why Mativenga was recruited. She submits that it undermined Glasgow's evidence and therefore Mativenga's case for evidence of Glasgow's conviction to be

adduced and that this was done in an irregular way. She submits that the question: "Are you honest?" should not have been asked as a prelude to adducing evidence of the conviction without a timely application to adduce such evidence beforehand.

42. We agree that the question should not have been asked. It was entirely predictable that the witness would give an affirmative answer when asked if he was an honest man and it appears that Mr Csoka was armed with the antecedents in order to refer to them immediately when that answer was given. There was, in our judgment, no justification for introducing the conviction in this way. If it was desired to adduce it, an application should have been made in advance so that the judge could consider whether the conviction was admissible under section 100 of the Criminal Justice Act 2003 and other parties affected could make appropriate submissions. This should have been done in accordance with the timetable set out in the Criminal Procedure Rules or court order made at the PTPH. If for any reason why this could not be done or if, which was not the case here, the application to adduce the conviction arose out of something said by the witness unexpectedly, the point should at least have been raised in the absence of the jury before the "Are you honest" question was asked. Once it was asked and Mr Csoka had said there was a document that he wanted to put to the witness, it was too late to undo any damage.

43. In view of this criticism of Mr Csoka's question, we invited him to comment upon it although it was not of course a point which would affect his client. In the event, Mr Csoka had not seen Mativenga's grounds of appeal and had therefore not been aware of the criticism of this question until it was made in the course of oral submissions by Ms Wright. He could not recall, perhaps not surprisingly, the circumstances in which the question arose and said that he would not have asked the question as a means of

adducing the conviction without first raising it with the judge. While we are prepared to accept this, it remains unfortunate, in our judgment, that the matter occurred as it did.

44. However, we cannot see that the adducing of this old conviction of the witness Kenrick Glasgow did any real damage to Mativenga's case. Certainly, in our view, it has no effect on the safety of his conviction. Glasgow's evidence was at most of very peripheral assistance to Mativenga's case. He, unlike Mativenga, had not attended at the house while the robbery was undertaken. Their respective roles were not comparable. His evidence could shed no real light on Mativenga's role some time previously. All that the jury were told was that Glasgow had a conviction for aggravated burglary in 1992, some 25 years ago, with no suggestion of any more recent conviction. That will have carried very little, if any, weight. We say nothing about whether the conviction was admissible under section 100.

45. Finally, complaint is made about the way in which the judge dealt with the fact that Mativenga answered "no comment" to all questions in interview. It appears that, while he was awaiting interview, the police had, somewhat surprisingly, permitted a visit by the father of his partner, who was a retired police officer. He gave an account to this visitor which corresponded to his evidence at trial. Accordingly, it could not be suggested that he had later invented his story. In those circumstances, the judge directed the jury to ignore the fact that he had not answered questions in interview despite the caution that failure to answer might harm his defence.

46. It is suggested that the judge's direction was unclear because of a comment to the effect that if he were to give a fuller direction, it would need to be hedged about with qualifications. We disagree with that submission.

47. Finally, Ms Wright relies on what she says is the cumulative effect of all these grounds

as showing that the conviction is unsafe. Whilst there may be such cases, where grounds not sufficient in themselves have a cumulative effect, that is not the position here. For these reasons the application for leave to appeal against conviction is refused. The conviction is entirely safe.

Karine Solloway - sentence

48. We turn to the applications for leave to appeal against sentence. We deal first, with the application by Karine Solloway.

49. The judge sentenced Mrs Solloway on the basis that she knew that the robbery was going to take place and had been planning it with Prior as well as supplying him with money and that she had been involved in the disposal of the stolen goods and the receipt of some of the proceeds but that she had not "necessarily anticipated any of the aggravating features of the offence set out in the guideline". The guideline to which he was referring was the robbery guideline for robbery of a dwelling, although this was of course a sentence for conspiracy to rob. By reference to that guideline the judge characterised the robbery as being in category 1A, which has a starting point of 13 years' imprisonment and a range of between 10 and 16 years.

50. There could be no quarrel with that characterisation of the robbery but the submission on behalf of Mrs Solloway, before the judge and again before us, was that she should not have been sentenced on that basis as she did not know the number of people who would be involved, what violence they intended to use or what they were intending to take. The judge rejected that submission, saying that Mrs Solloway had set the ball rolling, expecting a robbery to take place in the house, knowing that it would be occupied and planning for that outcome. Nothing had happened which was so extraordinary as to be outside what she had contemplated and accordingly she should be sentenced by

reference to a category 1A robbery, albeit not aggravated by any of the particularly aggravating features which were applicable in the case.

51. The offence of which Mrs Solloway was convicted was conspiracy to rob. That in itself involves an intention that force should be used or threatened on the victim if necessary. The judge was entitled to find that Mrs Solloway knew and intended that Mr McKendrick's wife and daughter would be present in the house and that he himself was away. She intended that they be threatened at least with violence, even if she did not know or perhaps did not care the precise form which such violence would take. That was what made it a conspiracy to rob and not merely to steal. It would be surprising if she did not know that there was to be more than one robber. It was a case involving significant planning, where very high value goods were targeted. The robbery would inevitably cause, and did cause, at least serious psychological harm to the victims present in the house at night.

52. These features alone are sufficient to make this a category 1A case, that is to say a case of high culpability and serious harm. In addition there were multiple aggravating factors: the prolonged nature the event; the restraint and degradation of the victims; the attempt to conceal the robbers' identities and the presence of a child at home. If the judge had taken these factors into account as affecting Mrs Solloway, they would have required a substantial increase from the starting point of 13 years. However, it is apparent that, as the judge said, he did not take these into account and did not increase the starting point above the 13 year level. Instead, he took the starting point in the guideline of 13 years and reduced it to 10 years, in order to take account of the applicant's personal mitigation, good character, exemplary work record and the way in which others had spoken well of her. This was a substantial discount. If anything it was generous. The application for

leave to appeal against sentence is refused.

Paul Prior - sentence

53. The sentence imposed on Paul Prior was an extended sentence, comprising a custodial term of 10 years and a licence period of 3 years. The judge described Prior's culpability as "very high", with the only point in his favour being that there was no obvious weapon such as a gun or a knife and no physical injury to the victims over and above what was involved in their physical restraint. Nevertheless, Prior had recruited McGarry to go with him, knowing that McGarry had stupefying drugs with him and the means to deliver them and being prepared to use them if necessary. The judge described the robbery as being well planned with a degree of ruthlessness. Prior was the organiser and director. It had resulted in severe psychological harm to the whole McKendrick family and has resulted in them having to leave their home. Further, while Mrs McKendrick had attempted to sustain a relationship with her husband after learning of his affair with Karine Solloway, the robbery brought those attempts to an end and the couple are divorcing.

54. Prior's background was that he had served in the Army undertaking tours of duty in Iraq and Afghanistan and was diagnosed with post-traumatic stress disorder. That lead to his discharge from the Army in 2011. He had convictions from 2009 and 2010 for possessing an offensive weapon in a public place and resisting a constable, for which, in each case, he received a community penalty and a caution for assaulting a constable in 2011. However, these were relatively minor. It appears that he was something of a fantasist who held himself out as a former member of the SAS who was trained in covert surveillance and counter terrorism work. The pre-sentence report and addendum before the judge assessed him as posing a significant and continuing risk and noted that,

although pleading guilty, he sought to minimise his role.

55. Prior was not represented at the hearing before us, but we have considered the written submissions made by his counsel which contend that the custodial term of 10 years was too high and that the judge should not have passed an extended sentence.

56. The custodial term of 10 years represented an uplift of 2 years from the starting point of 13 years, to which full credit of one-third was then applied in order to reflect the guilty plea at the first opportunity. In view of the aggravating features in this case, to which we have already referred, we can see nothing wrong with that custodial term even after allowing for mitigation to take account of the applicant's service in Iraq and Afghanistan. Nor is there any basis for contending that the judge was not entitled to find the applicant "dangerous". The circumstances of this appalling offence, together with a degree of mental instability, fully justify that finding. While it is true that the applicant's mental instability is the result of his post-traumatic stress disorder, sustained as a result of his service on active duty in the Armed Forces, we do not accept that this makes it unduly harsh or unfair to find him to be dangerous. The assessment of "dangerousness" is concerned with risk to the public. It is not surprising that the judge found that he poses such a risk.

57. We must mention one final point. Having passed sentence the judge explained the effect of the sentence as being that the applicant would have to serve two-thirds of the custodial term of 10 years, after which he would be released on licence. That was an error. The true position, when there is an extended sentence with a custodial term of 10 years or more, is that a defendant must serve two-thirds of the custodial term after which he will be eligible to be released on licence but whether he is released will be a matter for the Parole Board to consider in the light of the risk which he then presents - see

section 246A of the Criminal Justice Act 2003.

58. It is submitted in writing on the applicant's behalf by Mr Gerard Doran that the custodial element of the sentence should be adjusted to give effect to the judge's understanding of the sentence which he had passed, that understanding reflecting the judge's true intention. Reference is made to R v B [2015] EWCA Crim 1295; [2015] 2 Cr App R(S) 78, where it appears that the judge made a similar mistake. Dealing with the point in a single sentence at paragraph 14, Supperstone J said:

> "... we think the sentence should be adjusted so that the sentence should have the effect that the judge intended."

59. As a result, the court reduced the custodial element of the extended sentence to 9 years and 9 months.

60. We do not regard R v B as establishing any general principle as to the course to be taken when a judge makes a mistake in describing the effect of a sentence which he has passed. In general, it is to be assumed that the judge has passed the sentence which he intended to pass and, unless that sentence is wrong in principle or manifestly excessive, it should stand.

61. The sentence in this case is neither wrong in principle nor manifestly excessive. Moreover, if the Parole Board determines that the applicant does not present a risk after he has completed two-thirds of the custodial term, he will be released in accordance with the judge's understanding. However, if he does continue to present a risk, it is appropriate for the protection of the public that he should not be released at that stage.

62. Accordingly, the application for leave to appeal against conviction is refused.

Disposal

63. In the result therefore, for the reasons we have given, the application by Paul Prior for an

extension of time is granted but otherwise all applications by all applicants are refused.

64. This judgment may be cited.

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

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