Neutral Citation: [2024] EWCA Crim 416
IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE 202400510/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 12 April 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE LAVENDER

MRS JUSTICE FOSTER

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REX
V

CREDDY THOMAS MARSHALL TAYLOR

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MS J FAURE-WALKER appeared on behalf of the Attorney General.
MR B WHITTINGHAM appeared on behalf of the Offender.

J U D G M E N T

1. LADY JUSTICE MACUR: On 12 January 2024, Creddy Taylor ("the offender") was convicted of aggravated burglary, contrary to section 10(1) of the Theft Act 1968. He was sentenced to 4 years' imprisonment. This is the application of His Majesty's Solicitor General, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer that sentence which he regards to be unduly lenient. We grant leave.

The Facts

2. On 25 July 2023, the offender and three others, whose identity are unknown, arrived in a car at the rear of a property which had been obviously targeted in the belief that high value items would be present, as is apparent from the contents of the offender's signed Defence Statement served prior to trial. Three of the car occupants, one of whom was the offender, were observed by the young female occupant of the property, then 25 weeks pregnant, to climb over several garden fences moving towards the house. They were wearing face coverings and had a machete. She said that she was in fear of her life and fled, barefoot, with her dog, her bag and car key without locking the front door behind her. She drove away and tried to call 999 but dropped the call in her panic. She and her partner have decided not to return to live at the address following the burglary.
3. Items stolen included Rolex watches, designer clothing and bags. It appears that there is a dispute about the authenticity and value of the items stolen but, in this context, we consider this to be an unnecessary diversion. The burglars smashed the patio door with two bricks. They left the same way that they had arrived shortly afterwards but not before they had made an untidy search upstairs in the property.
4. The offender was identified from blood found within the house. He was arrested on

29 July 2023. During interview under caution, he made no comment to some questions, said he could not remember what he was doing that day and said that at one point he could not have gone to an area because he was "on a tag".

5. At a plea and trial preparation hearing on 29 August 2023, the offender pleaded not guilty to aggravated burglary, but guilty to the lesser charge of burglary, contrary to section 9(1)(b) of the Theft Act 1968. He denied he was carrying the machete during the incident or that he was aware of any other person in the group having such a weapon . He gave evidence to this effect at trial which was obviously rejected by the jury in light of the guilty verdict returned.
6. The offender had numerous previous findings of guilt and convictions. These included offences of shoplifting from 2014; battery in 2016, 2017 and 2018; assault occasioning actual bodily harm in 2016; common assault in 2016 and 2017; assaulting a constable in 2016; attempted burglary of a dwelling in 2017 and 2019; criminal damage in 2017; unlawful wounding in 2017; violent disorder in 2018; going equipped for theft in 2019; robbery in 2019; handling stolen goods in 2019, 2020 and 2023, and burglary of a dwelling-house in 2021.
7. He had been sentenced to 18 months' detention on 3 March 2023 for the two burglaries which he committed in January 2021 but then released subject to home detention curfew. He was remanded into custody for the extant offence, but subsequently 'recalled' to prison for the sentence imposed in March 2023. On 11 August 2023, he was sentenced to 14 months' imprisonment for an offence of possession of a mobile phone inside prison, contrary to section 40d(3b) of the Prison Act 1952.

The Sentence

8. The sentencing remarks record the pertinent fact that the trial judge (Mr Recorder Hawks) acknowledged that the jury had determined that the offender had the machete himself or was very well aware that somebody else did. He went on to say:

> "I suspect that the reason you had that weapon jointly with you was, in the event of somebody actually being in the house, so they could be threatened. It seems to me there is no other purpose in taking an item of that sort to a burglary."

9. He nevertheless considered the offence to fall within category 3B harm and culpability of the relevant guidelines. This meant a starting point of 4 years' custody but it was:

> "… a bad case of its sort, involving the targeting of this house and it has obviously had a very bad effect on that lady; one could see that yesterday when she gave evidence."

10. The judge indicated that the sentence would have been 5 years' imprisonment but would be reduced to 4 years' custody in light of the offender's recall to prison and being aged only 21.

This Appeal

11. Ms Faure-Walker, on behalf of His Majesty's Solicitor General, submits that the judge was wrong to place the offence within category 3 harm. In doing so, he had ignored or failed to give sufficient weight to the category 1 indicators that were present, namely:

    (a) Person was present on the premises at the start of the incident and only left because she was in fear of her life.

    (b) The theft of the property caused a substantial degree of economic loss regardless that there was now a dispute as to the value of the goods stolen. The court must

consider not only the harm caused but that which was intended to be caused and that which the offence might foreseeably have caused ; see section 63 of the Sentencing Code. The offender clearly intended to steal high value goods and cash.

(c) There was a substantial impact on the victim (see excerpt of sentencing remarks above) and in that she moved out of the address and did not return.

Further, there was at least moderate damage to the property in that the patio glass was smashed to gain entry and this was an indicator of category 2 harm.

12. Ms Faure-Walker argues that the judge was wrong to find that the offence fell within category B culpability. A significant degree of planning or organisation was demonstrated by the fact that:

(a) the property was targeted in the belief there would be high value items inside;

(b) the offender's evidence was that he had been contacted via social media by others in advance;

(c) the offender brought with him tools to effect entry;

(d) four people attended in the vehicle, one as a driver, one remained behind when three entered into the property.

(e) The entry into the property and exit were within short time frame and could indicate a plan as to what should be stolen.

(f) a weapon was brought to the scene.

13. The starting point for a category 1A offence, which categorisation Ms Faure-Walker contends is appropriate in this case, is one of 10 years' imprisonment, with a range of 9 to 13 years. Alternatively, if there was some but not significant planning, indicating a category B culpability, the applicable starting point would be 8 years' custody and the

range of 6 to 11 years. She submits, that the only category 3 factor present, that there was no actual violence used nor threatened was only by reason of the fact that the occupant had fled before any such was necessary or utilised.

14. Ms Faure-Walker argues that there were additional aggravating features that should have led to an increase from the starting point. We do not refer to all of those factors listed in the written Reference, for some are undoubtedly, as she realistically concedes in oral submissions and discussion with the Bench, factored into either the aggravated offence itself or the categorisation for which she contends. However, she does highlight the offender's numerous previous relevant convictions and that this offence was committed whilst on licence.

15. She submits that other than young chronological age there is no indicator of immaturity and therefore the sole mitigating feature available to the offender does not outweigh the aggravating features in the case. Furthermore, there was no reason to reduce the sentence on account of the offender having been recalled to prison rather than serving time on remand which would otherwise have counted towards sentence.

16. Mr Whittingham, on behalf of the offender, argues that the sentence is not unduly lenient. He submits that, when analysed, the learned Recorder had an informed vantage point because he presided over the trial and we should read into the fact of the sentence itself that he had formed views as to culpability and harm that were properly available to him.

17. Specifically, Mr Whittingham suggests, the judge did not reject the contention that the offender believed the address to be empty at the time. He was able to assess the extent of the offender's maturity and intellect generally as he had given evidence. Further, he submits, the Recorder was well placed to determine categorisation of harm in this case having observed the complainant at length. The judge's remarks that: "I don't sentence

you on the basis that you were at the bottom of the offence, but [that] you took part in it...” are consistent with the respondent’s account at trial that he played a more limited role in the offence which was planned and organised before he came into the enterprise. This was not opened as a high culpability case. Prosecution counsel conceded culpability fell somewhere within the bottom of culpability A and the top of culpability B.

18. The measure of planning fell far short of *significant*. The address was not empty as envisaged. The tools brought by the offender were ineffective in securing entry and items taken were limited to those which could easily be carried off. Alternatively, the offender’s involvement was providing local knowledge to an enterprise which was planned and initiated before his involvement began and whatever the level of planning generally an assessment of the offender’s culpability must surely reflect his more limited role.

19. The judge’s assessment of harm was appropriate. No violence was used or offered. The complainant’s significant fear and distress at the time of the offence was tempered by the absence of any evidence of lasting harm and by the fact that her flight from the address precluded the possibility of any direct physical harm. The property was not subject to vandalism or damage but only limited disruption.

20. The contention that the offender intended to steal high value items cannot justify the wholesale departure from an appropriate lower starting point. In the alternative, the level of harm justified a notional starting point at the bottom of the category 2 range because category 2 factors were outweighed by those from category 3 and because the fact that the occupier was briefly present at the outset was mitigated by the defendant’s belief that no such risk would arise.

21. The final sentence appropriately balanced the aggravating and mitigating features, the

notional starting point of 5 years before mitigation evidenced a reasoned consideration of the aggravating features of the case. Appropriate weight was given to the mitigating features justifying the downward adjustment applied. The downward adjustment reflected the offender's age and personal circumstances, the continuing difficulty prison conditions in the prison estate were a factor which should properly have been taken into account when imposing a custodial sentence (see R v Ali [2023] EWCA Crim 232, at paragraph 22).

Discussion

22. The sentencing remarks are not as well structured as they might be but we are able to deduce the very significant indication that the offender was at least in joint possession of a machete, taken to the scene for the use, if necessary, of terrorising the occupants of the property. This does not mean that the offender was aware that the house was occupied but it does undermine Mr Whittingham's submission that the judge apparently accepted that he did not believe that it was. Further, we find it significant not only in assessment of intention to execute the burglary regardless of any occupants being present but also the degree of planning involved and the targeting of a prospectively high-worth property.
23. The impact upon the complainant who was present at the outset of this burglary and made her escape is obvious and acknowledged in somewhat muted terms by the judge. It is evidence that there was a significant impact upon the complainant's sense of emotional well-being that she and her partner decided not to return to live in the premises.
24. In these circumstances, and absent any clear explanation within the sentencing remarks, we are compelled to conclude that the judge was wrong in his categorisation of the offending which led him into significant error in the sentencing exercise. Regardless of

any argument of the value of the items stolen, the judge said he proceeded on the basis that the offender and his co-offenders believed the property to contain items of high value. We reject Mr Whittingham's submission that the information provided by the offender in his Defence Statement to this effect is irrelevant to a finding of the offender's culpability.

25. We accept that the harm fell between categories 1 and 2, namely substantial, emotional or other impact on the victim, that the young vulnerable occupant would have been present in the premises if she had not observed the offenders heading towards the property and, at the very least, theft or damage to property causing a moderate degree of loss to the victim and moderate damage or disturbance caused to property. The fact that no violence was used or threatened has limited value in light of the judge's finding as to the intended use of the machete if needs be.

26. The level of culpability is, we find, amply demonstrated by the planning that did take place. There is no basis for the submission that the offender's junior role meant he was not a party to the planning. On the contrary, he accepted that he had been approached to provide local knowledge.

27. Giving the benefit of any doubt in the judge's sentencing remarks in relation to the categorisation of harm and culpability to the offender, we nevertheless conclude that the correct starting point should have been at least 8 years, whether by virtue of finding the offence to fall within category 1B or category 2A of the sentencing guideline.

28. We have regard to the offender's chronological age and apparent emotional maturity, in accordance with the general guideline on Overarching Principles applicable in the Sentencing of Young Adults, not only in relation to the extant offending but also the adverse weight to be afforded to the previous findings of guilt. However, the offender's

previous convictions and that the offence was committed on licence are undoubtedly aggravating factors. Further, the fact of the offender's recall to prison rather than him serving time on remand should not have led to a reduction in sentencing.

29. Drawing all of these strands together and despite Mr Whittingham's best endeavours, we intend to exercise our discretion to resentence the offender. The least possible sentence commensurate to the facts and balancing aggravating and mitigating features is one of 8 years' imprisonment.
30. The sentence of 4 years will be quashed and substituted with a sentence of 8 years . The victim surcharge order is to be in the sum of £228.

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