

[2020] EWCA Crim 603

No: 202000528/A3

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 30 April 2020

(VIRTUAL COURT)  
B e f o r e:  
**LADY JUSTICE CARR DBE**

**MR JUSTICE SWEENEY**

**MR JUSTICE GOOSE**

R E G I N A

v

**JORDAN MITCHELL**

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**Mr G Hillman** appeared on behalf of the **Appellant**

**J U D G M E N T**

LADY JUSTICE CARR:

Introduction

1. On 16 January 2020, in Derby Crown Court, the appellant, who is now 32 years old, pleaded guilty to a single offence of robbery contrary to section 8(1) of the Theft Act 1968. On 22 January 2020 he was sentenced to a term of 4 years and 8 months' imprisonment.
2. This is his appeal against sentence brought with limited leave.
3. The Facts
4. The robbery took place at around 11.45 am on 9 December 2019 in the car park at the Go Outdoor store on Ascot Drive in Derby. As happened every week, a G4S security van arrived to pick up cash from Go Outdoors. Normally over £10,000 would be collected.
5. A Mercedes vehicle bearing false number plates was already in the car park, with the appellant in the front passenger seat and an unknown accomplice in the driver's seat. As the driver of the security van returned to the store carrying a cashbox the appellant, with his face partially covered, left the Mercedes. He approached the driver and, holding a hammer aloft, shouted at him to drop the cashbox. The driver tried to escape but the appellant pursued him. In the chase the driver stumbled and hurt his knee. Eventually he threw the cashbox at the appellant, causing the appellant a slight facial injury. The appellant made off in the waiting Mercedes with the contents of the cashbox which amounted to just over £5,000. The Mercedes was later found crashed nearby. A second vehicle was then used to take the appellant and the accomplice away from Derby.
6. The appellant had nine previous convictions for 12 offences committed between 2003 and 2012, including for assault and affray. In October 2012 he was sentenced to 64 months' imprisonment for another offence of robbery.
7. Sentence
8. The Judge sentenced the appellant for the purpose of the Sentencing Council Guideline for Robbery ("the Guideline") on the basis that the offence was a professionally planned commercial robbery involving planning, sophistication and organisation. She placed the offending in category 2B, with a starting point of 5 years. She raised that to 7 years before affording credit for guilty plea by reference to the aggravating features of the appellant's previous conviction for robbery and the fact that the robbery occurred in a public place where members of the public were present. There was no pre-sentence report, and we agree that one was not necessary.
9. Grounds of Appeal
10. Mr Hillman for the appellant submits that the Judge wrongly treated this as a professionally planned commercial robbery. Reference is made to the facts of the case in R v Aaron McKellar [2018] EWCA Crim 2208, where this court accepted without demur that the facts of that case fell to be treated as a street/less sophisticated robbery.
11. However, the principal ground which he advances is that the Judge erred in increasing the sentence by 40% in light of the appellant's previous convictions and that this was

offending in a public place. It is submitted that the fact that this offence occurred in a public place should not have resulted in any uplift. The reference to "location of the offence (including cases where the location of the offence is the victim's residence)" as an aggravating factor in the Guideline is aimed at offending in a closed location only, such as a shop or private place where those present might be more affected. It is submitted that offending in a public place is included within the starting point for this type of offending. The one previous offence of robbery is accepted as an aggravated factor but a 40% increase is said to be too high.

12. Analysis

13. For a non-dwelling robbery the Guideline provides two categories: street/less sophisticated commercial robberies and professionally planned commercial robberies. It states that the first category refers to "robberies committed in public places, including those committed in taxis or on public transport. It also refers to unsophisticated robberies within commercial premises or targeting commercial goods or money." "Significant planning" is identified as an aggravating factor. The second category refers to "robbery involving a significant degree of planning, sophistication or organisation".
14. Where to place offending for the purpose of the Guideline in any given case is an exercise to be carried out on the particular facts of each case. There may be very little difference in outcome whichever non-dwelling category of the Guideline is chosen, not least since significant planning is identified as an aggravating feature of street/less sophisticated commercial robberies. There is little to be gained from comparison with the facts of other cases. In R v Aaron McKellar (supra), for example, there was no waiting, no false number plates or a second car.
15. Here, the Judge considered which part of the Guideline was most appropriate with care, amongst other things, adjourning the sentencing exercise for written submissions on the question. In our judgment, she was fully entitled to conclude that the offending fell to be treated as professionally planned commercial robbery: this was an attack on a G4S van, known to be carrying cash, with significant planning. The appellant lay in wait in the car park, with a claw hammer, knowing roughly what time the van would attend. The Mercedes in which he waited carried false number plates. The appellant attempted to at least partially conceal his face. A second getaway car had been arranged. The correct category within the Guideline was used - this was not a street robbery case.
16. Against a starting point therefore of 5 years, we turn to consider the uplift of 2 years for aggravating features. Beyond the appellant's guilty plea there was nothing by way of substantial mitigation. The Judge was aware of the appellant's young family.
17. We do not accept the submission that the reference to "location" as an aggravating factor in the Guideline is limited to a closed location. The Judge was entitled to treat the fact that the offending took place in a public car park as an aggravating factor, given the risk of exposure to members of the public, in the middle of the day, close to shops. The previous robbery, although occurring 7 years previously, carried a custodial sentence of over 5 years and was nevertheless a significant factor. It was, of course, also by no

means the appellant's only previous conviction.

18. We have reached the conclusion for these reasons that, whilst the uplift was undoubtedly severe, it did not result in a sentence that was manifestly excessive. The appeal will be dismissed. We do not end without expressing our thanks to Mr Hillman for his helpful and clear submissions.

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