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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 1536



No. 202101531 A2

Royal Courts of Justice

Tuesday, 6 October 2021

Before:

LORD JUSTICE EDIS

MR JUSTICE TURNER

HER HONOUR JUDGE KARU
(RECORDER OF SOUTHWARK)

REGINA
V
SHAUN COOPER

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Official Court Reporters and Audio Transcribers

5 New Street Square, London, EC4A 3BF

Tel: 020 7831 5627 Fax: 020 7831 7737

CACD.ACO@opus2.digital

MR M. McCARTHY appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE TURNER:

- 1 On 13 May 2021 in the Crown Court at Shrewsbury the appellant, aged 22, was sentenced in respect of two offences of conspiracy to commit burglary and theft, respectively. He was sentenced to four years' imprisonment for the first count and three years concurrent on the second, making a total of four years. He appeals against his sentence with leave of the single judge, which is limited to just one of the three grounds upon which leave was initially sought. The appellant has not renewed his application for leave to appeal on the two grounds of appeal in respect of which leave was refused.
- 2 There were two co-accused: Matthew Alcock, aged 33, who was sentenced to 26 months' imprisonment and Leon Wright, aged 26, who was sentenced to 29 months' imprisonment on Count 2 alone. The conspiracies related to four burglaries, all of which took place in Shropshire in April 2019. The main purpose of the burglaries was the acquisition of the keys to high value cars which had been left on the owner's driveways. Count 1 related to the burglaries and Count 2 to the thefts of the vehicles. These types of offences are sometimes referred to as "Hanoi burglaries", which is the name of the first police operation directed towards combating them.
- 3 Overnight on 4/5 April 2019 Peter Leftwich secured his house in Amber Hill, Shrewsbury before going to bed. He woke in the morning to find his front door lock had been snapped and his car keys were missing, along with his mobile telephone, laptop computer, wallet and a watch which had been a gift from his wife. His Audi Q5, which had been parked on his driveway outside, was now missing. The burglary was committed by the appellant and Alcock. Cell site evidence had shown them moving from their houses in Birmingham to the burgled address and back again. The car was left in Shrewsbury until later on 5 April when Alcock returned to bring it back to Birmingham on cloned number plates.
- 4 Two nights later on 6/7 April another house in Shrewsbury was targeted by the appellant. Carol Taylor was at home in Paxton Place, together with a friend Amanda Reeve. Both had parked their cars, an Audi Q2 and an Audi A1, on the driveway before going to bed. The next morning they discovered that the cupboard where the car keys were kept had been opened and both cars, with a total value of £30,000, were missing.
- 5 About two hours later the appellant was at an address in Sulby Drive, Leegomery. Peter Pythian was at home with his wife and his children, aged 6 and 9, when their house was burgled, access having been made through the backdoor. Four iPads and a laptop computer were stolen, together with a Mercedes motorcar worth £14,000.
- 6 The Audis from Paxton Place and the Mercedes from Sulby Drive were, again, initially left locally. Their number plates were changed and later on 7 April the appellant, Wright and one Ashley Atkins travelled from Birmingham to collect them. The Audi Q2 was then stored close to Wright's house. There was telephone conversation between Wright and Ashley Atkins discussing a sale price for that car.
- 7 The final burglary took place in the early hours of 11 April on Westwood Drive in Shrewsbury. Oliver Price and his wife went to bed having left the house secure. In the morning they discovered that the locks to the front door had been damaged and drawers had been searched within the house. A handbag containing a purse with bank cards was stolen, together with the car keys which had been on the worktop. A Mercedes C46 worth £39,000, also containing golf clubs and sports gear, was missing from the driveway. Alcock and the appellant had committed this burglary.

- 8 On 16 April Ashley Atkins was driving the appellant and two others around Shrewsbury at 2 o'clock in the morning. Police investigating the burglaries pursued their car and in attempting to avoid arrest Atkins drove into the River Severn where he drowned. The appellant and the others managed to swim to safety. The three defendants were subsequently arrested and made no comment in interview.
- 9 An optimistic pre-sentence report recommended a non-custodial sentence, observing that the appellant had made good progress in serving a custodial sentence of two and a half years in respect of other offences committed in September 2018, comprising one offence of burglary and two of theft. Two vehicles had been taken, of which one to a value of £15,000 had never been recovered. This was relatively small scale offending in comparison to those offences committed seven months later which form the subject matter of the appeal.
- 10 In passing sentence the judge observed that the burglaries involved not only the taking of the car keys and the cars from the drives to a total value of £110,000, but also the invasion of people's homes and the theft from within those homes of items belonging to the owner and on one occasion belonging to children. Each burglary would be category 1 under the burglary guideline to take into account that the occupiers were home, a significant amount of planning went in to identify the properties where expensive cars were parked in the drive and the burglars must have gone equipped. Within the scope of the conspiracy a larger group of people were involved at various stages. The starting point for a category 1 burglary was three years, but here there were four burglaries. The aggravating features caused the judge to move from the starting point on count 1 to five and a half years' imprisonment, thereafter reduced to five years to take into account the factors of delay in the matters coming to court, the appellant's progress in serving his first custodial sentence and COVID conditions in prison. The appellant did not plead guilty until the trial date and, therefore, a ten per cent reduction was allowed, bringing the sentence down to four years and six months. The judge made a further and final reduction to reflect the fact that the offences had been carried out before the sentence had been passed in respect of the September 2018 offences. Having considered that had he been sentenced for all of the offences together the sentence of six and a half years would be appropriate, he deducted from this in full the two and a half years which had been imposed in respect of the different offences.
- 11 The ground of appeal which was considered is that the judge gave insufficient credit for the appellant's age, the age of the offences, the potential effect upon him of returning to custody where he did well and general mitigating features. Counsel before us has succinctly identified the focal point of his appeal relating to a contention that the sum of six and a half years in respect of all offending taken together, both in respect of matters before us and matters that were previously dealt with, is excessive. Where an offender is still serving a determinate sentence and the offences for which he falls to be sentenced were committed before the original sentence was imposed, the totality guideline requires the court to:
- "consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all of the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence."
- 12 Although the appellant in this case, having been released eight months previously, was not serving the earlier sentence at the time of this sentence for the offences in respect of which he appeals before this court, we consider that the judge on the facts of this case was entitled to adopt a broadly similar course. The most he could realistically have deducted was the entirety of the earlier sentence and this is what he did. Indeed, this may be considered to

have been a generous approach, bearing in mind that the two tranches of offending had been separated by seven months and the later offences were committed when the appellant was serving a Community Order of one hundred hours of unpaid work for going equipped to steal a motor vehicle and in respect of which he was later found to be in breach.

- 13 The central issue, therefore, is whether the judge's assessment of the sentence which would have been passed if the court had dealt with all of the offences at the same time was wrong. We do not consider that it was. The court has long recognised the seriously aggravating features inherent in the perpetration of so-called Hanoi burglaries. Where, as here, the offending is persistent, there was a sophisticated degree of planning and high value vehicles, long deterrent sentences are to be expected. Bearing in mind the additional criminality involved in the offences committed on the earlier occasion in this case, no complainant could be made of the judge's notional six and a half year assessment of the total which would have been imposed had all the offences been dealt with together. We are pleased to note that the appellant has made progress since his release from custody, but this factor together with all the other factors relied upon in mitigation are insufficient to render the sentence below manifestly excessive. This appeal is dismissed.
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CERTIFICATE

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This transcript has been approved by the Judge.