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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NOS 202300842/B4 & 202300867/B4

[2024] EWCA Crim 379



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday, 11 April 2024

Before:

LORD JUSTICE COULSON  
MR JUSTICE NICKLIN  
HIS HONOUR JUDGE MAYO  
THE RECORDER OF NORTHAMPTON  
(Sitting as a Judge of the CACD)

REX  
V  
BEN MURPHY  
GEORGE MURPHY-BRISTOW

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MR N FERRARI appeared on behalf of the Applicant Ben Murphy  
MR R BRENNAN appeared on behalf of the Applicant George Murphy-Bristow

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

## **LORD JUSTICE COULSON:**

### Introduction

1. The applicant Ben Murphy ("BM") is now 38. The applicant George Murphy-Bristow ("GMB") is now 29. They were convicted of robbery in February 2023 at the Crown Court at Basildon and were sentenced by the trial judge, Mr Recorder William Clegg KC to terms of imprisonment of 18 years and 13 years respectively. They renew their applications for permission to appeal against those sentences following refusal by the single judge. They require short extensions of time to be able to do so.

### The Facts of the Offending

2. On 27 September 2021, BM and GMB were involved in a serious robbery at Luxe Jewellers on Epping High Street. Shortly before midday, both men donned lifelike latex masks in order to look like much older men. They entered the jewellers and produced a hatchet-stye axe and a large knife. They said they had come to take "big watches". They took an employee, Oscar Strong, upstairs. They made him sit on an office chair where his hands were bound with cable ties. They told him that they would not harm him if he did what they said. One of them took Strong's Rolex watch which was valued at £15,000. They then began to search the upstairs of the premises.
3. A member of staff saw what was happening on CCTV and activated the alarms. This caused the building to fill with smoke. The applicants untied Strong who led them out of the store through the security doors.

4. On 8 November 2021, GMB was stopped by police on Canvey Island. Officers searched his vehicle and found a black leather holdall bag which contained unused white cable ties, a black metal hatchet axe, a large silver kitchen knife and two 'old men' latex masks. We have seen the photographs. Other knives and a crowbar were found in other parts of the car.
  
5. On 21 June 2022, BM and GMB were arrested in relation to the robbery at Luxe Watches. Their homes were searched but the Rolex was not recovered. Both men answered 'no comment' in their police interviews. They stood trial. They were convicted on 15 February 2023. We note that although there were originally applications by both men to appeal against their convictions, those applications have since been abandoned.

### The Sentencing Exercise

6. The learned and experienced Recorder described the raid as "well planned and the potential prize substantial". He noted that the current stock at Luxe Watches was insured for £2 million, although he accepted that the applicants had not anticipated a haul of quite that much. He concluded, however, that they had "expected to steal watches to a significant value, well into six figures."
  
7. He noted that BM had two previous convictions for conspiracy to rob or conspiracy to burgle, in both cases the target having been watches of a high value. Accordingly, this

made this robbery the third offence of a similar type for BM, which the Recorder said was a serious aggravating feature.

8. As for GMB, the Recorder noted that his record was not as bad as that of BM, but that it was he who had been found with the robbery kit in his car, with the clear intention of using it for further future theft. He said that that separate offence required a consecutive sentence.
9. By reference to the sentencing guidelines for a professionally planned commercial robbery the learned Recorder put this in Category A1. He said that culpability was Category A because of the presence of the knife and the axe, and that harm was Category 1 because very high value goods had been targeted. Category A1 has a 16-year recommended starting point and a recommended range of 12 to 20 years.
10. In relation to BM, the learned judge imposed a sentence of 18 years' imprisonment, the increase above the starting point being justified by reference to his two previous convictions for what the Recorder described as "comparatively like offences." For GMB the sentence imposed for the robbery was 12 years, with a consecutive term of one year in relation to the other offences concerned with the subsequent discovery of the robbery kit in his car.

### The Single Judge

11. The applications for permission to appeal against sentence were dealt with by the single

judge. He gave clear answers to the points raised on behalf of both applicants. The only response to his careful analysis has been the reactivation of these applications, albeit four and five days late respectively. We regard it as rather surprising, given the clarity of the single judge's reasons for refusing these applications, that no attempt has been made to grapple with what the single judge said, or any indication given as to how or why he might have been wrong. The impression is created of applications renewed, not because they have any real prospect of success, but renewed because they could be. That said, we acknowledge, as we did during the course of argument, that both Mr Ferrari and Mr Brennan have appeared before us this morning pro bono. We are extremely grateful to them for so doing, and for their assistance in addressing the points raised in these renewed applications.

### The Grounds of Appeal

12. Each applicant advances three grounds of appeal. Grounds 1 and 2 are common to each and concern aspects of the learned Recorder's categorisation by reference to the Sentencing Guidelines. BM's third ground of appeal concerns the alleged disparity between his sentence and that imposed on his brother, GMB. GMB's third ground is a complaint that the judge failed to have regard to the fact that the robbery was a failed attempt, rather than a completed offence.
  
13. We deal with the two common grounds first, before dealing with the separate grounds advanced by each applicant.

## Ground 1: The Value of the Stock

14. The first complaint made by both BM and GMB is that the Recorder erred in taking into account the current insured value of the stock at Luxe Watches (£2 million). It was submitted that no figure as to the actual value of the watches on 27 September 2021 was provided, and that the only watch that was actually stolen was worth £15,000. It was submitted that the learned Recorder therefore erred in taking into account the current insured value of the total stock.
15. The first answer to that complaint is that, on analysis, the learned Recorder did no such thing. Indeed, although he referred to the current insurance value of the stock, he was quick to say that he accepted that the applicants had not anticipated stealing watches of that value. He therefore did not take into account the £2 million figure. What the learned Recorder did do was to conclude that, in all the circumstances, the applicants expected to steal watches to a significant value, well into six figures. That approach, arriving at an anticipated value that was something like 10 per cent of the actual insured value figure of £2 million, gave the applicants a very significant benefit of the doubt.
16. Furthermore, the learned Recorder had presided over the trial. He had heard evidence about the planned nature of the robbery, the targeting of this particular shop and the initial express demand for "big watches". He was aware that BM had committed the same serious crime twice before, and how that showed how easy it was to dispose of luxury watches on the black market. He was therefore quite entitled to come to the conclusion that the applicants expected to recover watches worth a total well into six

figures.

17. To the extent that the written arguments pressed upon us, as part of the 'value' argument, that the sentencing exercise should have been limited to the Rolex watch taken from Mr Strong, we reject it. As we have said, the applicants had gone into the shop and demanded "big watches". They were certainly not limiting themselves to the watch worn by Mr Strong. If that had been the limit of their ambition they would have left once they had recovered that watch and not looked for other watches upstairs. The applicants may have been disappointed that that was the only watch they actually took, but that result was nothing to do with them, and all to do with the sophisticated security system they had not anticipated.

18. For all those reasons therefore ground 1 of the renewed application for permission to appeal is refused.

#### Ground 2: Categorisation

19. This was the principal area of oral debate this morning. As we have said, the learned Recorder put this in Category 1A (harm). He said that Category 1 harm was made out because, in accordance with guidelines, the applicants had targeted very high value goods. As to culpability, the learned Recorder put this into Category A, (high culpability), because of the production of the two bladed articles to threaten violence.

20. We consider that, notwithstanding the arguments carefully advanced by Mr Ferrari and

Mr Brennan, this categorisation was entirely correct. There cannot be any serious argument that culpability was in Category A. Amongst the indications of high culpability is the production of a bladed article to threaten violence. That is what took place in this case. The fact that the axe and the knife here were not actually used is irrelevant. It is the threat of violence that they represent that matters. It seems to us therefore that culpability plainly fell within Category A.

21. As to harm, the complaint appears to be that this should not have been placed in Category 1 because only a single watch was stolen, and there was no other physical harm inflicted on either Mr Strong or anyone else. Again, we would respectfully suggest that this submission is based on a misreading of the sentencing guidelines. An offence falls into Category 1 harm if very high value goods are "targeted". So what matters is what the applicants intended to take, not what they got away with. That is why the guidelines use the word "targeted": otherwise the sentence in any robbery would turn solely on the happenstance of what the robbers actually recovered, not what they had planned to take.

22. We were referred to the decision of this court in R v Khan [2017] EWCA Crim 440 which was a case concerning a bank robbery where two staff members suffered some physical injury. Comparisons were made with the present case and the sentences imposed here. However, we take the view that the factual situation in Khan was entirely different to this case, and note in particular that the defendant in Khan was a young offender. The case is therefore of limited assistance, even as a comparator. But we make plain that the fact that there was no physical or psychological harm in this case is irrelevant to categorisation, since that is only one indicator of Category 1 harm and, as we have said,



another indicator, which was present, was the targeting of very high value goods. Moreover, we note that, at [17] of the judgment in Khan, this court emphasised, just as we have done, that what mattered is the ‘targeting’, not the result. There, the premises was the branch of a high street bank “where they [the robbers] believed that substantial quantities of cash would be present”. It seems to us that the same considerations apply when the targeted premises is a high-end luxury watch shop.

23. The final argument in relation to categorisation was a more general one. It was submitted orally that, even if this offence fell within Category A1, it was towards the lower end of the recommended range of 12-20 years. Again, it was said that the absence of physical injury was an indication of that. However, it seems to us that the issue of where within the range the offence fell was primarily a matter for the learned Recorder. He had presided over the trial. He found that the offence fell slap bang in the middle of Category A1, so used a starting point of 16 years. This court is not in a position to disagree with that. On the contrary, it seems to us that, in view of the factors that we have indicated, the Recorder was quite entitled to reach that view. That means of course that his starting point was that recommended in the guidelines.

24. For those reasons, we reject ground 2 of the renewed application for permission to appeal.

### Ground 3 (BM): Disparity

25. BM complains that there was an unjustified disparity between his sentence and the sentence imposed on his brother.

26. We accept at once that the difference of six years was significant, but in our view that difference was fully explained by the learned Recorder and was justified. The learned Recorder pointed out that BM had two previous convictions for stealing luxury watches and made the point about how easy it was to dispose of them on the black market. The previous convictions were therefore a seriously aggravating factor.

27. As we have said, the category range for an A1 offence is between 12 and 20 years' custody with a starting point of 16 years. So the 18 years taken by the judge for BM was not only within the recommended range but it was up just two years from the starting point. That uplift was justified by reference to those previous convictions. So the sentence was entirely in accordance with the guidelines. As we indicated to Mr Ferrari during the course of argument, if emphasis was placed on the fact that GMB only received a sentence of 12 years for the same offence, that may indicate that GMB was dealt with generously by the learned Recorder, rather than suggesting that the sentence imposed on BM was excessive.

28. For those reasons therefore, the third ground advanced by BM is refused.

### Ground 3 (GMB): Failed Attempt

29. The final ground of appeal by GMB was that the judge failed to reflect in his sentencing remarks that this was a failed attempt to steal a large number of watches, and that there should have been some discount to reflect that.

30. As indicated to Mr Brennan during the course of argument, we do not accept that submission. As the single judge correctly pointed out, this was not a failed attempt. The mere fact that the applicants succeeded in stealing only one watch, rather than the many that they had targeted, was due to the quick thinking of the staff at Luxe Watches. It did not mean that this was a failed attempt.

Were the Sentences Manifestly Excessive?

31. It is appropriate, as it always is in any case with long terms of imprisonment, to stand back and to consider whether, in the round, these sentences were manifestly excessive. In our view, they were not. The offences involved a considerable amount of planning, including in particular the use of the latex masks. Furthermore the production of the weapons and the use of cable ties to restrain and detain Mr Strong and to prevent him from obtaining assistance meant that there was an unmistakable and real threat of serious violence throughout these events. The clear suggestion to Mr Strong was that if he did not do what the applicants wanted they would harm him.

32. So this was a serious robbery and significant sentences of imprisonment were always going to be required. The sentences imposed by the learned Recorder were stern but entirely in accordance with the guidelines, as we have explained. They were not wrong in principle. They were not manifestly excessive.

33. For all these reasons therefore these renewed applications for permission to appeal

against sentence are refused. In those circumstances the requested extensions of time (albeit short) are also refused.

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

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