

# **Regina v Krzysztof Szutowski**

## **[2019] EWCA Crim 645**

Before: Mr Justice William Davis The Recorder of Liverpool His Honour Judge Goldstone QC (Sitting as a Judge of the CACD)

Friday, 22 February 2019

### **Representation**

Mr M Comer appeared on behalf of the Appellant.

### **Judgment**

The Recorder:

1 On 20 August 2018 at a plea and trial preparation hearing before the Honorary Recorder of Bristol, the appellant, aged 36, pleaded guilty to four offences of dwelling-house burglary, two of which were committed in January and February 2018 and two in July 2018. For each pair of burglaries he was sentenced to terms of three years' imprisonment concurrent on each. For each pair of burglaries the sentences were ordered to run consecutively, making six years in all. He appeals against sentence by leave of the full court, the single judge having refused leave.

2 The facts of the first pair of burglaries are as follows.

#### **Count 1**

3 At approximately 6.45 on the morning of 31 January 2018, James Phillips left his semi-detached home with all doors and windows locked. At about 2 o'clock in the afternoon, the police were contacted by vigilant neighbours who had seen two males get out of a car and soon after heard banging to the rear of the house. The police responded swiftly and by 2.15 it was confirmed that there had been a break-in. When the householder returned later that afternoon he discovered that there had been a messy search and items had been stolen to the value of just under £3,000. The appellant was later linked to the crime scene by blood which was recovered from smashed glass in a rear door.

#### **Count 2**

4 This related to the burglary of a two-storey semi-detached property in Bedminster. At 7.45 on the morning of 5 February the house was left locked and secured. When the householder returned shortly after 5.00 that evening he saw that a double glazed window in the kitchen had been smashed, there had been

an untidy search of the house and three jewellery boxes had been emptied of jewellery. In addition, a laptop computer and a pair of sunglasses had been stolen. Once again the appellant was linked to the scene of crime by blood at the point of entry and on a bed sheet.

5 Turning to the second pair of burglaries which were committed on 9 and 13 July. Count 3; On 9 July Mrs House left her home, the Old Wagon House in Bristol, at about 11.00 in the morning. Twenty minutes later a neighbour saw an unoccupied small vehicle on the driveway. When the householder returned at 4 o'clock that afternoon she discovered that her kitchen window had been damaged. A grandmother clock and a mirror, the combined value of which exceeded £4,000 were stolen. The appellant was linked to the scene of crime by CCTV footage which showed the registration number of the car which had been used to commit the burglary and which was to be used to commit the burglary in count 4 at 9 Hunstrete, Marksbury, four days later. This too was a burglary of an unoccupied dwelling-house. When the householder returned to the property about five hours having left it, he found that the first floor window above the porch roof had been forced open, all the bedroom drawers had been searched and there had been theft of a significant amount of jewellery, which had both real and sentimental value.

6 Later the same day the appellant was stopped driving the Ford Fiesta which had been linked to the two July burglaries. When his car was searched, he was found in possession of £500 and various tools, as well as the mirror stolen from the burglary on 9 July.

7 When the appellant was interviewed, he claimed not to be able to remember the burglaries and was unable to account for his blood that was found at the scene.

8 In passing sentence, the learned judge categorised the offences as falling within Category 1 of the Sentencing Council's Definitive Guideline for Dwelling-house Burglary. There were elements of greater harm, namely significant loss to the householders, particularly in sentimental terms, with untidy searches in two of the burglaries. There were elements of higher culpability and planning had been required in order to commit burglaries which were committed as far apart as the four with which we are concerned. It could also have been said that the burglaries committed in July were aggravated by the use of a car.

9 The starting point for a Category 1 offence is three years with a range of two to six years. The Recorder noted that the offending was aggravated by the fact that the first set of offences were committed within a very short time of the imposition of a community order for going equipped for theft. He therefore took as the starting point for each set of offences four years' imprisonment, which he reduced by 25 per cent to reflect the timing of the guilty pleas.

10 By grounds of appeal, it is argued by Mr Comer, who has appeared before us

today but who did not appear in the court below, that whilst the categorisation of the offences cannot be faulted and whilst the original criticism of the decision to impose consecutive sentences for the two pairs of offences is no longer maintained, nevertheless the overall starting point of eight years which the sentencing judge must have adopted failed to take account of personal mitigation, namely the fact that this was to be the appellant's first custodial sentence, the fact that in 2015 following a brain haemorrhage he had a breakdown and lost his marriage as a result, and the fact that these offences lacked many of the aggravating features which are so often present in dwelling-house burglaries, not least the fact that none of them were occupied at the time and that all were committed during the hours of daylight.

11 We think that there is force in the submission that the overall sentences failed to take sufficient account of the mitigation to which we have referred and offended against the principles of totality. As a result, we have concluded that the exercise resulted in a sentence which can properly be described as manifestly excessive. We remind ourselves that the sentencing guidelines to which we have already referred are for a single offence and we think that the justice of the case would have been met had the starting point for each set of burglaries been the starting point contained in the definitive guideline on the basis that the aggravating and mitigating features cancelled each other out, namely three years. After discount for plea, therefore, for each pair of burglaries the sentence would have been one of 27 months' imprisonment.

12 We therefore propose to allow this appeal by quashing all the sentences of three years' imprisonment and by substituting for them sentences of 27 months. As before, the sentences on counts 1 and 2 will be concurrent with each other, as will the sentences on counts 3 and 4, but each pair of sentences will run consecutively to each other, making a total of 54 months. To that extent this appeal is allowed.