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No. 2019/00652/A4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 24th July 2019

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(The Lord Burnett of Maldon)

MR JUSTICE EDIS

and

MR JUSTICE GARNHAM

R E G I N A

- v -

STUART WIGLEY

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Mr N Goss appeared on behalf of the Appellant

J U D G M E N T
Approved

Wednesday 24th July 2019

THE LORD CHIEF JUSTICE: I shall ask Mr Justice Garnham to give the judgment of the court.

MR JUSTICE GARNHAM:

1. On 21st January 2019, in the Crown Court at Southwark, the appellant, Stuart Wigley, changed his plea to guilty to offences of robbery and possession of an imitation firearm. He was sentenced to six years' imprisonment for the former and eighteen months concurrent for the latter.

2. He now appeals against sentence by leave of the single judge.

3. The facts can be shortly stated. The appellant had been employed for a short time at the Park Lane Casino next door to the Hilton Hotel on Park Lane. His employment came to an end in September 2015.

4. On 1st June 2017, shortly after 11am, the appellant entered the Hilton via the back entrance. He made his way to a stairwell adjacent to an internal door which connected the hotel to the casino but which was not accessible to hotel guests. An authorised member of staff made to let herself into the casino, but there was a delay before the door opened for her. Seeing this, the appellant hurried down the flight of stairs to try to enter the door before it closed behind her, but he was too slow and the door shut before he could get in.

5. Five days later, on 6th June, shortly before 10am, the appellant, heavily disguised, entered through the main entrance to the casino from Park Lane and proceeded upstairs, past

reception on the first floor. He had his face covered by a balaclava or ski mask. A driver at the casino, who was stood by the reception area, shouted at him and followed him up a flight of stairs. The appellant made a movement with his hand, which led the driver to believe that he had a weapon on him, although he did not see anything. The police were called.

6. The appellant then made his way to the second floor gaming area, where a number of casino employees were working. On seeing the man in the ski mask enter, many of those in the casino fled in panic. The appellant went straight up to the cashier's counter, where a Mr Jamie Porteous was sitting. Mr Porteous looked up and saw the appellant wearing the mask. The appellant jumped over the counter towards him. Mr Porteous rolled back and fell off his chair and onto the floor. The appellant went straight to the three drawers in the cash desk, where the cash was kept. He helped himself to £36,000 in cash from the till and put the money into a black bag he had brought for the purpose. He ignored a wad of £5 notes. It was said that that was intentional because they were numbered bills which might have been more easily traced. He then jumped back over the counter.

7. He left the casino through a connecting door on the second floor to the Hilton Hotel. He was pursued by members of staff. Once outside the hotel, he retraced his steps to Hyde Park Corner underground station, stopping to remove some items of clothing so as to change his appearance. A security guard, who had been alerted to what had happened and who was following the appellant, saw him discard his black balaclava and a boiler suit. The appellant put on instead a baseball cap. He also had what turned out to be an imitation firearm: a silver coloured pistol with masking tape around the handle and trigger. He had not needed to produce that weapon to carry out the robbery.

8. The security guard saw the appellant put the discarded clothes into a rubbish bin and

followed him to the underground station where he made for the westbound Piccadilly line. The security guard went back to the bin, called the police and waited for them to arrive. Inside the bin, they found a black sock containing a silver imitation firearm with silver tape around the handle, a rucksack and an umbrella.

9. The appellant was arrested subsequently. He declined to comment when he was interviewed.

10. In sentencing the appellant on 21st January 2019, the judge noted that he was nearly 41 years of age and had no previous convictions. He had only just pleaded guilty to the offences, which had taken place on 6th June 2017. He had been interviewed on 17th August 2017 and again on 26th October 2017, and had made no comment. On 14th June 2018, he had submitted a defence statement setting out an alibi for the time of the robbery and he made a considerable number of information requests. He said that he had been driving his white transit van in the area at the same time as the robber was using the underground. The prosecution was tasked with investigating ANPR traces relating to that vehicle. Very considerable additional work and delay had been occasioned by the appellant's groundless requests for information.

11. The judge observed in his sentencing remarks that at some stage before 1st June 2017 the appellant had formed the intention to rob the casino, where he had previously been employed, and so he targeted it. The offence was committed shortly before 10am, when he knew that the casino was most likely to be quiet. He was heavily disguised. He had been seen by the casino driver making a movement which had led the witness to believe that he had a weapon. Once inside the main area of the casino, his presence was sufficient to send everyone fleeing in panic.

12. The robbery guidelines of 1st April 2016 applied. It was agreed that this was a professionally planned, commercial robbery. The judge said that the appellant had acted alone. Although he had not in fact produced the imitation firearm to threaten violence, he had taken it with him to produce should the need arise. The threat was implicit. The judge said that the court had to mark his culpability on the basis that he had the imitation firearm and was not simply pretending that he had a weapon. That made the offending more serious than that of an individual who took no weapon, imitation or otherwise, with him. It justified a higher starting point.

13. In mitigation, there was evidence of the appellant's good character and the impact his sentence would have on his family. The court had determined that a pre-sentence report was not necessary – a view with which we agree. The court dealt with him on the basis that there was only a low risk of re-offending.

14. The judge said that it was necessary to consider why a man of good character should suddenly, at the age of 39, commit such an offence. The court noted that the appellant was about to undergo exploratory surgery as it was suspected that he might have a terminal illness. Happily, that was not the situation. The court had struggled to understand how that factor could seriously have motivated him to commit this offence.

15. Applying the guidelines, the judge said that this was a category 2B case, with a starting point of five years' custody and a range of four to eight. The judge adopted a starting point of seven years, and then gave credit of what amounted to fourteen per cent, producing a sentence of six years' imprisonment for the robbery. For possession of the imitation weapon, as we have said, he imposed a concurrent term of eighteen months' imprisonment.

16. The appellant, who is represented before us this morning by Mr Goss, seeks to appeal against the sentence on three grounds.

17. First, it is said that the judge was wrong to use the imitation firearm as an aggravating element, when the firearm was subject to a separate count and was sentenced separately. Mr Goss says that there was no threat of violence with the weapon. The need to use it did not arise. The approach taken by the court, it is said, amounted to double counting.

18. Second, it is said that the categorisation of the offence was wrong. Mr Goss argues that the offending was one of lower culpability; there were no overt threats of violence and no weapon was produced. It is said that this should have been a 2C, not a 2B case.

19. Thirdly, it is said that the judge unreasonably discounted mitigation advanced on behalf of the appellant.

20. In our judgment, the judge's approach to categorisation was correct. There had been a threat of violence, but no weapon was produced. It was present on the appellant's person, but did not need to be deployed because the appellant's masked appearance was sufficient to cause fear and panic. There was some significant psychological harm caused to the cashier as a result of the incident. We agree with the sentencing judge that this was a 2B case.

21. It is said that the judge was wrong to use the imitation firearm as an aggravating feature, when the firearm was subject to a separate count and was sentenced separately. But in our view the judge was entitled to impose a concurrent sentence for the firearm offence. The judge properly reflected the totality of the offending, including the firearm offence, in the one

substantive sentence.

22. Another possible argument has been canvassed, namely that the firearm offence was used to justify treating this as a category 2 case, and then to justify the increase from the starting point. In our judgment, however, although the firearm puts this case into category 2B, it is also part of the relevant circumstances to be considered in deciding where it sits within that category. The circumstances were serious, even in category 2 terms: there was careful planning; a substantial amount of money was stolen; and an imitation firearm was carried in case it was needed. In our view, the judge was entirely justified in saying that this case fell in the upper part of the 2B bracket and in fixing on seven years as the starting point for the offending. The judge then acknowledged and took into account the personal mitigation, including the appellant's good character, the likely impact of the sentence on his family, and the possibly relevant factor of the potential diagnosis.

23. The focus of this court's concern is on whether the final sentence was manifestly excessive. The judge might have reached the figure of six years by making a deduction of nine months (or a little over 10%) to reflect the appellant's guilty plea and then a further deduction of three months for the other mitigation. But, however it was done, what is critical, in our view, is that the final sentence of six years' imprisonment was not manifestly excessive.

24. Accordingly, the appeal is dismissed.

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