IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 1/15 (Ind 2/14) McLean
CRIMINAL APPEAL 3/15 (Ind 6/14) Ramoon
CRIMINAL APPEAL 11/15 (Inds 2 & 6/2014)
C00374/14

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

and

McLean & Ramoon & Myles

Appellants

BEFORE:

The Rt Hon Sir Bernard Rix, Justice of Appeal
The Hon Sir Richard Field, Justice of Appeal
The Rt Hon Sir Alan Moses, Justice of Appeal

Appearances: for appellants: James H McLean, Nick Hoffman/Priestleys), Jonathan M Ramoon, John Meghoo and Christopher Myles, Crister Brady (Brady Law). Cheryll Richards DPP for the Crown.

JUDGMENT

Revised from transcript of oral judgment 16 November 2015 and Approved
Released 13 January 2017

RIX, JA

1. These are the appeals against sentences for the offence of robbery of James McLean, Jonathan Ramoon and Christopher Myles, who on the 19th of January 2015 were sentenced by Mr Justice Quin to 12 years, 15 years and 10 years respectively following upon their guilty pleas for the offence of robbery.

2. In addition, James McLean and Jonathan Ramoon were sentenced to terms of 7 years and 12 years respectively for the offence of possession of an unlicensed

firearm. In both those cases, those sentences were for terms without licence. It follows that in their cases any success in respect of the sentence for robbery, as a result of their appeals today, would not result in any earlier release dates, as is accepted by counsel on their behalf.

3. The circumstances of the robbery, which I take from the sentence judgment of Mr. Justice Quin, were essentially as follows: The robbery occurred at 8:00 am on 1 January 2014 at the Diamonds International Jewellery Store on North Church Street, a well-known and prominent store immediately opposite the dock at which visitors arriving at George Town from liners make their landfall in this island.

4. Four men were involved, of which one man, who was Myles, was the get-away driver, remaining in the get-away car. The whole event could be reviewed on CCTV footage.

5. The appellant Ramoon was the first to enter the store, his face masked and carrying a gun. He ran towards the security guard and pointed his gun into the upper chest or lower neck area of the guard's body. He told the security guard to put his head to the ground, and he forced the security guard to the ground. He grabbed hold of the guard's neck and dragged him further inside the store and stood in the centre of his lower back. He held the guard down, holding the gun to the guard. The next to enter is a still unknown fourth robber.

6. The appellant McLean was the third robber to enter the store. He was carrying a hammer. While Ramoon held the security guard down, McLean went through the store using the hammer to smash the glass showcases containing the jewellery. The unknown fourth robber then selected items of jewellery to be stolen out of the smashed cases, and he placed items in a yellow bag which he had brought with him into the store.

7. There were a number of employees in the store. The CCTV footage confirms that the robbery lasted just under a minute and a half. Having stolen the jewellery, the robbers fled from the store to the green Honda Civic where the appellant Myles was waiting for them to make good their escape.

8. They would probably have made good their escape but for the quick action and courage of the Commissioner of Police, David Baines, who was off duty that morning and happened to be in the vicinity and saw the robbers leaving the store. His immediate reaction was to drive his vehicle into the car park beside the store, and he struck the green Honda Civic and attempted to push it backwards into a wall in order to trap all four robbers; however, before that could be achieved, the Honda Civic crashed into another parked car and the four robbers alighted and began to run off.

9. Commissioner Baines drove after them, struck two of them and managed to trap one, namely the appellant Ramoon. Ramoon was trapped under the Commissioner's vehicle and was ordered by the Commissioner to stay where he was pending a call for an ambulance and the fire brigade.

10. Meanwhile, the head of security for the Diamonds store also gave chase to the robbers and apprehended one of them. The robber punched the head of security on the left cheekbone and threatened to kill him, and there was a struggle, during which the head of security received scratches to his face and his neck.

11. A member of the public, who has wished to remain anonymous, also ran to assist and apprehended one of the robbers. He was punched in the face by the robber, and in the ensuing struggle, his arm was dislocated from the shoulder and he had to be taken to hospital, where his arm was put back in place. Another brave member of the public, who also wishes to remain anonymous, also assisted in the apprehension of the robbers. For his pains he was kicked so hard to the left side of his head that he was caused pain and deafness in his left ear for about 15 minutes.

12. Those two members of the public also ran to give assistance and apprehended the appellants Myles and McLean, who were held in a struggle with the members of the public sitting on them and holding them down until the police arrived to take them into custody. It was then discovered that the appellant McLean had a pillow under his clothes in order to alter his physical appearance. All three appellants were disguised with masks or balaclavas over their face. The fourth robber, identity still unknown, escaped and has not been traced. So it was that the three appellants, who appeal today, were all apprehended at the scene red-handed, as the expression goes.

13. The firearm involved, a .38 Smith and Wesson revolver, containing five live rounds and one spent shell casing, was recovered close to the area where Ramoon had been trapped under the Commissioner's Chevy. The firearm was examined and found to be an operable firearm, in good working order. It was, therefore, a lethal-barrelled weapon within the meaning of the Firearms Law. None of the three appellants held firearms licences.

14. The yellow bag in which the stolen jewellery had been placed was dropped during these events and so almost all of the jewellery was recovered. It was subsequently valued at just under $815,000. The items were all diamond jewellery of one or another kind. Three diamond rings worth some $4,000 remain unrecovered.

15. A car key was also discovered which matched a parked rental car, later recovered from Watler's car park on School Road, some three tenths to half a mile from the store, and this was the switch vehicle which had been hired and parked so that the robbers could abandon the previously used green Honda Civic and make their escape in an unrecognisable car.

16. The judge's sentencing judgment proceeded after a statement of these facts as follows. First of all, he set out in detail the submissions by way of mitigation made in respect of each of the three appellants. The judge then considered the law, both the statutes which states the offences and the penalties for them, the minimum penalties for them in the case of the firearms offences, and sentencing guidelines relating to robbery, in particular the judge mentioned the Chief Justice's Sentencing Guidelines for a first offence of robbery involving the use of a firearm which could attract a tariff of 14 years' imprisonment. The judge also referred to the sentencing guidelines produced by the United Kingdom (strictly speaking England and Wales) Sentencing Guidelines Council in relation to robbery which go back to July 2006.

17. The judge found that Part One of the Guidelines did not fit with the professionally planned commercial robbery constituted by the facts which we have outlined and that the case therefore fell within Part Two of the Guidelines dealing with professionally planned commercial robbery.

18. The judge mentioned a number of authorities. He thought that the case of *R v Thomas & Others* [2012] 1 Cr.App.R (S) 43 was the closest in its facts other than for two important matters which he emphasised, which is that in *Thomas* shots were actually fired from the firearm or firearms involved and the value of the jewellery stolen at £40 million was considerably more than the value of the jewellery in the present case. However, the judge noted many striking similarities in the significant planning, in the attack on a jewellery store, in the use of a firearm by the robbers to execute the robbery, in the use of face masks to conceal their identity and in the subjection of staff and members of the public to a terrifying experience.

19. The judge then turned to aggravating factors, which he identified. He emphasised the significant planning, the fact that each of the four robbers had a specific role, that this was a classic joint enterprise in which the four robbers had played their own separate and significant roles. In prosecution of their single unlawful purpose, he emphasised the wearing of disguises, not only on the faces of the robbers but also in the case of McLean in respect of the pillow that had been hidden in his clothing to disguise his true size and shape. He also mentioned the fact that each of them were wearing gloves to prevent the transfer of any fingerprints or DNA. He mentioned the high value of the items stolen, which was in excess of the theft of $500,000 of cash at the CNB robbery which was otherwise the highest value robbery which had taken place on these islands.

20. He emphasised as the single most aggravating factor the use of a loaded revolver to assist in the robbery, which had been pointed at the security guard and used to instill a high degree of fear amongst the staff and customers. Yet another aggravating factor was that many of the victims, the members of staff and the members of the public were vulnerable. There were young girls and expectant mothers there experiencing fear, terror and trauma as was apparent from the CCTV footage.

21. The situation was exacerbated, said the judge, by the fact that innocent tourists were coming off the cruise ships at that very moment to shop and to see the islands. The judge emphasised the effect that this robbery on a new year's morning could have on the tourists who had just disembarked from the cruise ships and how news of this gun-related criminal activity could have a very damaging effect on the tourist industry of these islands.

22. The judge did not hold against the appellants their failure to reveal the identity of the unknown fourth robber as a matter of aggravation, but he did say that it went to dilute the sincerity and genuineness of the robbers' professed remorse. He also noted the absence of any voluntary return of the three missing rings.

23. In conclusion, the judge emphasised that whatever was indicated in cases concerning serious robberies in the jurisprudence of the United Kingdom, cases such as *Thomas* and other cases which the judge had mentioned in his judgment, it nevertheless had to be appreciated that in a small territory such as the Cayman Islands, with a population only one thousandth of the size of England and Wales and a land mass massively smaller than the United Kingdom, it had to be taken into account that a very serious robbery of this kind could have and would have a much more damaging effect. He also emphasised what Lord Judge CJ had said in *Thomas* that the "fact specific nature of the criminal activity involved in each offence remains the paramount consideration."

24. He then briefly reviewed the aggravating features and concluded that the starting point in his view was 14 years, being consistent with the Chief Justice's guidelines in the Cayman Islands and also consistent with the figure of 15 years or thereabouts which is mentioned in Part Two of the SGC Guidelines.

25. He then considered the case of each appellant, and in the case of the appellant Ramoon, who had nine previous convictions, including one for possession of an unlicensed firearm, for which he had previously been sentenced for a seven year minimum sentence, that in his case a starting point of 19 years' imprisonment for robbery and 14 years' imprisonment for possession of an unlicensed firearm should be the tariff. He reduced them on the grounds of the pleas of guilty to the ultimate sentences which we mentioned at the beginning of this judgment.

26. In the case of the appellant McLean, he considered that the 14 year starting point should be raised to 16 years. Although it was not possible to identify the ring leader in this robbery, the judge was nevertheless able to conclude that McLean had played a major role in it. So 16 years was the sentence subject to the guilty plea in the case of McLean.

27. In the case of Myles, his sentence, before taking into account a guilty plea, was one of 12 years, in other words a reduction of two years in his case from the starting point of 14 years. It is clear from what the judge had said about both aggravating and mitigating features that in the case of Myles he took full account of the fact that Myles had on his plea come to the robbery only at the last moment. He had been enrolled only the previous evening for a promise of cocaine at a party that previous evening, and he had not, therefore, entered in the same way as the others into the detailed planning of the offence. He was the get-away driver and therefore his knowledge of the planned use of the firearm was not equivalent to those of the other two appellants.

28. Turning to the discount for the guilty plea, the judge had previously set out the history of the chronology of these proceedings leading from the time when the case first came before the Grand Court on the 17th of January 2014 down to the various pleas of the three appellants, and the judge concluded, by reference to what is said in the SGC Guidelines about the timing of pleas of guilty, that he was entitled to withhold a maximum discount of one-third for a plea of guilty and considered that in the circumstances of this case a discount of plus or minus 20 percent was applicable to each of the appellants. Therefore, in the case of Ramoon, the 19 years was reduced to 15 years; in the case of McLean, the 16 years was reduced to 12 years, and in the case of Myles, the 12 years was reduced to ten years.

29. On this appeal, the submissions which have been made on the part of the three appellants have been essentially as follows: On behalf of McLean, Mr. Nicholas Hoffman has submitted that the judge took no account of McLean's relative youth at the age of 22 years at that time -- the other two appellants were older -- and that the judge had made no allowance either for the slight previous convictions - only two, one for ganja and the other one for failing to surrender. He submitted that the judge had taken no account whatsoever of those matters. He submitted that jurisprudence suggested that considerable allowance at least could and he submitted should in this case be made for McLean's relative youth, and he also submitted that the discount of 25 percent allowed in his case, from 16 years down to 12 years, was inadequate and should have been a full one-third.

30. We take full account of those submissions, but we reject them. It is quite clear from the jurisprudence which exists, and some of which has been cited in the DPP's skeleton argument, that when one gets to offending of this seriousness, relative youth accounts for little. Indeed, the jurisprudence which emphasise the importance of taking account of the youth of an offender is jurisprudence which is

really talking about young offenders, really young offenders, teenage offenders, and in particular those who are committing relatively to the offences involved in this case far less serious crimes and in particular crimes which are first offences.

31. It is not true either that the judge took no account of the youth and lack of serious previous convictions of the appellant McLean. The judge refers specifically to those matters for instance at paragraph 55 of his judgment where he says: "In mitigation the defendant McLean relies on his early guilty plea, his young age, his heartfelt remorse and the fact that he has only two minor convictions." As for the discount of 25 percent allowed to McLean, it seems to us that that was, if anything, a generous discount in circumstances where the matter first came before the Grand Court on the 17th of January 2014 and McLean only pleaded guilty on the 24th of July 2014, although some six weeks earlier, on the 5th of June 2014, at a time when the court set a trial date for the 15th of September 2014 and on a date when the appellant Ramoon pleaded guilty to both counts, McLean asked the court to preserve any credit in relation to an indication of a possible early guilty plea while he took instructions.

32. We would, therefore, dismiss the appeal of McLean.

33. In the case of the appellant Ramoon, Mr. John Meghoo submitted that the case of Thomas was not a good exemplar for the judge to have taken; that a much better exemplar was the case of Tamasa in which sentences of 12 years were handed down. That was the CNB bank robbery, the largest previous robbery for which sentences were given in these islands. And, indeed, Mr. Meghoo went so far as to submit that in terms of the UK guidelines for robbery, this was not a Part Two robbery at all, not a carefully planned commercial robbery, but an unsophisticated smash and grab, a stupid, unsophisticated hopeless kind of robbery.

34. He also submitted that the allowance of something in excess of 20 percent granted in respect of Mr. Ramoon's guilty plea was not sufficient. His ultimate submission was that accepting a starting point of 14 years, there should not have been any uplift from that starting point and that there should have been a discount of a full one-third for the guilty plea making a final sentence of some nine years or less.

35. In our judgment, one only has to recite that ultimate submission of Mr. Meghoo to see how totally inappropriate such a sentence would be for the very serious robbery whose aggravating features have been made clear in this judgment and in particular in the case of Mr. Ramoon, who even if he was not the leader of this gang, nevertheless clearly played a leading role in the robbery. He was the man with the gun. He was the man first into the diamond store. He was the man who had been assigned the role or had assigned to himself the role of taking on the security guard and neutralising him with violence and the threat of the weapon which was used to make good a threat to kill him. He also had very serious previous convictions, including the specially important previous conviction of the possession of an unlicensed firearm on a previous occasion.

36. In our judgment, the submissions made by Mr. Meghoo cannot be accepted. It is true that *Thomas* was a more serious offence, both because shots were fired and because of the £40 million of the value of the jewellery which were taken, as the judge himself pointed out; nevertheless, that was a case in which sentences of between 23 years and 16 years were handed down for the various participants in that robbery.

37. We also considered that the judge was perfectly entitled to consider that this was a much more serious robbery than the CNB robbery for the reasons which he emphasised for the considerable violence which was meted out not only to the security guard and to the head of security but also to two members of the public who sought to do their public duty by trying to assist in the apprehension of the robbers and also in the significance of the very public situation in which this robbery took place on the main street right in front of the cruise liner arrival terminal with members of the public arriving at that very moment.

38. So we also consider that the discount of in excess of 20 percent was again generous to the late plea in this case. It was submitted in respect of the late plea that difficulties with the change of counsel and a proper appreciation of the advice which changed counsel could provide was necessary before a full understanding for the purposes of a plea could take place.

39. But the fact remains in the case of all three of these appellants that they were caught red-handed. They knew the part that they had played in the robbery. Whatever might have been their concern about being implicated in the use of a firearm, a matter of particular importance to the case of the appellant Myles, to

which we are about to come, they knew of their role in the robbery and there was nothing to stop them pleading guilty to the robbery at an early stage on whatever basis of plea they wished to make, which would have fully protected themselves even if for a while the Crown had difficulties with any particular basis of plea.

40. We come finally then to the third appeal, that of Myles. We have already remarked that the judge in his case was prepared to go below his starting point of 14 years and to go down to 12 years. The submission of Mr. Crister Brady on his behalf was that in his case there was an absence of a knowledge of a firearm. He submits that that was not properly reflected in the sentence. He also submitted that his discount for guilty plea should have been more than the figure of almost 20 percent which he received. He submitted that in his case Myles was in particular difficulties about pleading guilty while he sought to persuade the Crown, successfully in the end, that the firearm charge could be left on the file rather than with a plea of guilty. But the truth of the matter is, as we have already remarked, that there was nothing to stop him from pleading guilty to the robbery in which he had clearly been involved on a basis of plea which would have protected his submission that he was ignorant of the use of the firearm and that would have protected him while discussions continued with the prosecution. In his case, he did not plead guilty until the 7th of August 2014. Moreover, Myles had bad antecedents, although possibly not quite as bad as those of Ramoon.

41. We consider that the judge fully took account of all the respective matters of aggravation and mitigation. We consider that he was fully entitled to start with a starting point of 14 years reflecting the guidelines both here and in the United Kingdom. He was fully entitled to consider that this very serious robbery should be marked in the case of, at any rate, the two most serious offenders in the gang by raising the tariff in their case above that of 14 years. He took account of the different situation of Myles, and he gave what we consider to be a generous discount in the case of all three appellants for their late pleas of guilty. For these reasons, the appeals of all three are dismissed.