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Case No: 201803629/A1, 201803531/A1 & 201803631/A1

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Date: Thursday, 8 November 2018

**B e f o r e:**

**LORD JUSTICE DAVIS**  
**MRS JUSTICE McGOWAN DBE**

**HIS HONOUR JUDGE KATZ**  
**(Sitting as a Judge of the CACD)**  
**REFERENCE BY THE ATTORNEY GENERAL UNDER**  
**S.36 OF THE CRIMINAL JUSTICE ACT 1988**

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**R E G I N A**

v

**KARIM HUSSAIN**  
**MICKELLE ALEXANDER**

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Computer Aided Transcript of the Stenograph Notes of  
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(Official Shorthand Writers to the Court)

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**Mr T Schofield** appeared on behalf of the **Attorney General**  
**Mr D Taylor** appeared on behalf of the **Offender/Applicant Hussain**  
**Mr T Hardy** appeared on behalf of the **Offender Alexander**

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**J U D G M E N T** (As Approved by the Court)

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## **LORD JUSTICE DAVIS:**

### Introduction

1. In this case the Solicitor General seeks to refer sentences imposed against two offenders on the ground that they are unduly lenient. Simultaneously, one of those offenders has sought leave to challenge the sentence imposed upon him on the ground that it is manifestly excessive.

### Facts

2. The background facts are these. The first offender is Karim Hussain. He is now 20 years old, having been born on 29 March 1998. He was 19 at the time of the relevant offending. The second offender is Mickelle Alexander. He is now 21, having been born on 13 July 1997. He was 20 at the time of the relevant offending.
3. On 29 June 2018, after a trial at the Crown Court at Croydon before His Honour Judge Ainley and a jury, the first offender was convicted of six offences of robbery, one offence of theft and four offences of fraud. The second offender was convicted after such a trial of seven offences of robbery, two offences of attempted robbery, eight offences of theft, one offence of attempted theft and four offences of fraud. Each of them was also acquitted on various other counts on the indictment.
4. In due course, on 3 August 2018, the first offender was sentenced by the trial judge to an extended sentence of 15 years, comprising a custodial term of 12 years and an extension period of three years. The second offender was sentenced to an extended sentence of 17 years, comprising a custodial term of 14 years with a like extension period of three years.
5. Put shortly, between late September and early December 2017, the offenders were responsible for what can properly be described as a campaign of robberies and thefts of handbags, targeting solitary women in the street, often of mature years, doubtless because they were viewed as easy targets and more likely to be carrying valuables and accessible handbags. The modus operandi employed by the offenders was to ride together on mopeds with disguised registration numbers which had been stolen for the specific purpose of committing the robberies, they wearing masks or helmets, and then having identified a suitable target they would ride towards the victims at speed and the

pillion passenger would then grab the victim's bag, using force or threats if necessary. The offenders also carried knives which they on occasion showed themselves as being prepared to produce if they could not steal the handbags without using threats of actual violence.

6. During this campaign, one victim, a 70-year-old woman, was left with a fractured shoulder; another sustained suspected rib fractures (although it subsequently emerged the ribs had not in fact been fractured); a grandmother, for example, was robbed in front of her grandchildren; and in one instance relating to the second offender a male victim had his wrist slashed with a knife, albeit by the accomplice accompanying him on that occasion. Further, once the offenders had stolen the handbags they would then fraudulently use bank cards found within them, as well no doubt as applying the cash they managed to take and disposing of any jewellery they also managed to take.
7. The details of the various offences can be summarised in this way. On 28 September 2017 a woman was walking down a road in Croydon when she was grabbed from behind by a male (who was the first offender). He was riding pillion on a moped driven by the second offender. In the ensuing struggle for the gold chain she wore around her neck, the first offender tore her blouse and she was pulled to the floor and the gold chain then ripped from her. As it happens, the victim managed to pull a ring from the first offender's finger which was later used to identify him.
8. A witness called Mark Laird valiantly intervened by striking the first offender with his back pack. The first offender's reaction was to produce a knife and the two then fled the scene on the moped. Mr Laird was subsequently to identify the first offender.
9. On 25 October 2017 the second offender was involved in the theft of a moped. That clearly was stolen for the specific purpose of committing robberies. In the event, on 26 October 2017 at 2.30 in the afternoon, a woman was walking home with her children along a road in the Croydon area. As it happened she had just withdrawn £5,000 in cash when she was approached by the first offender who dismounted the moped, walked towards the woman with a knife and demanded that she give him her bag before he made off on the moped.
10. On 2 November 2017 a woman was in her car in a street in Maldon. She was in a car park when the offenders approached on the moped which had previously been stolen on 25 October 2017. They grabbed her bag from the back seat of her car. The bag contained property worth over £5,000, including a necklace and bangles. As it happened, police officers had seen the moped soon after and there was a chase but the offenders got away.
11. Eight days later, there were a series of offences committed on 10 November 2017. The second offender on that date was involved in the theft of another moped, again stolen for specific use in robberies. Thereafter that day there were robberies. At 9.50 in the morning a 70-year-old lady was walking down the road towards the bus stop. She heard the sound of a moped and when she turned she saw the offenders, who were wearing black, approaching on the moped, that being the moped previously stolen. The first offender then pulled her handbag from her shoulder. She was dragged to the

ground in the process and suffered a fractured humerus. The two then sped off with the victim's handbag which contained bank cards and a small amount of cash. That was count 7 on the indictment. Later that day, the offenders fraudulently used the stolen bank cards at a particular store.

12. About an hour after this, the offenders targeted a woman in her early fifties walking along a particular road just before 11 o'clock in the morning. They were on the same moped. They rode up to her and the first offender grabbed her handbag. She was dragged across the road until she let go. The two then rode off towards an underpass and later discarded the handbag. All of the victim's bank cards and some £500 in cash had been stolen. The bank cards were then fraudulently used at the same store later that morning. It was this victim who suffered the chest injury that caused there to be concerns that she had fractured ribs.
13. Less than half an hour later that same day, the offenders robbed another lady of her handbag. She had been walking along a particular road when she was approached by the offenders on the same stolen moped. The first offender who had been riding pillion dismounted the moped and grabbed her handbag from her shoulder. During the struggle she was pulled to the ground.
14. Three days later the second offender was involved in a robbery of a 66-year-old lady. She had just picked up her grandchildren at around 3.30 pm on 13 November 2017 from school. She was walking along a particular road in the Croydon area when two men on a moped, one of whom was the second offender, approached her and took the handbag from her shoulder which contained bank cards. All this happened in the presence of the victim's grandchildren. She was left with bruises. Less than an hour later there was fraudulent use of the stolen bank cards.
15. On 19 November 2017 the second offender, using the like modus operandi, committed two thefts and three attempted or completed robberies with an accomplice (not the first offender). During that day's activities, the second offender and his accomplice had been seen with a Bowie knife and a brick. A few days before a moped had been stolen and that moped was used with altered vehicle registration numbers for the purposes of the offending occurring that day.
16. At 3.10 pm on that day, that is to say 19 November 2017, the second offender and his accomplice targeted yet another female victim. She was in the car park of a store in a particular road when the two approached her on the stolen moped and snatched her handbag from her shoulder. Either the second offender or his accomplice was holding a large knife at the time.
17. Just a few minutes later, at 3.15 in the afternoon, a man who suffered from a heart condition was sitting on a nearby park bench to rest. He had put down his bag on a bench next to him. The second offender and his accomplice then rode up on a stolen moped and stole the bag. As it happened, the bag in fact contained emergency medical heart equipment which the man required to have with him every day.

18. Some half an hour later the second offender, with his accomplice, then targeted another lone female. She was at Wimbledon Station when she felt a moped run into her on the pavement. The second offender and his accomplice attempted unsuccessfully to tug the handbag from her, causing her to fall to the ground. She was left with marks to her forearm.
19. Shortly after that, at around 4.30 pm, the second offender targeted another woman in Colliers Wood. He and his accomplice approached her from behind on a moped and made a grab for her handbag, spinning her around and then to the ground. She was then dragged along the ground, banging her head in the process before the two desisted. She was not in the event seriously injured, although very shaken.
20. Finally on that day, at around 5 o'clock, the second offender and his accomplice targeted another person, this time a man. He heard a moped approaching him from behind and then felt his shoulder bag being pulled. When the men (that is to say, the second offender and his accomplice) initially failed to take the bag off him, they both got off the moped. Each of them was carrying a knife. They shouted demands at the victim and he threw his bag at them. There was a struggle and the second offender's accomplice then struck the victim a blow with his knife when he had been holding up his arms to defend himself. He sustained a deep three centimetre wound to his left wrist. Further, both the second offender and his accomplice kicked or punched the victim whilst he lay on the ground.
21. A further offence occurred involving both these offenders on 26 November 2017 in the Croydon area. The victim again was a woman of mature years. The two approached her on a stolen moped. One dismounted and demanded that she hand over her handbag, which was then snatched from her and the two made off. Her cards which had been in the bag were then fraudulently used later that day.
22. Further offending was committed on 4 December 2017. On that date a woman was walking in Colliers Wood at around 7.40pm when the two offenders approached her, again on a stolen moped, and stole her handbag. A few minutes later, and just down the road, the two unsuccessfully attempted to steal a handbag from another woman using the same method. A few minutes again after that the offenders had more success, this time robbing a woman of her handbag as she left a store in Mitcham.
23. The most successful theft in terms of what the offenders succeeded in obtaining came shortly thereafter. The two came across a woman at a railway station in Mitcham. As it happens she was carrying £7,400 in cash and 5,000 Euros intended to fund a loft conversion and also had valuable bangles. In a matter of seconds, the pillion passenger (the first offender) grabbed it all and the two then sped off on the stolen moped.
24. Finally that day, at around 8 o'clock, at a shopping centre, a woman was approached by the offenders on a stolen moped and her handbag containing a passport and other travel documents and bank cards were stolen from her.

25. The first offender was arrested on 9 December 2017. He denied the offences in interview and made no comment to questions asked of him. The second offender was arrested in January 2018 and denied the offences when interviewed.

#### Sentencing in the Crown Court

26. Impact statements were put in from a number of the victims. The effect on them has been naturally very significant. One described how she was now afraid to go out. Another said she did not want to go out on her own. All described how upset and shaken they had been; and so on.
27. The first offender has a poor record having 10 convictions for 22 offences. Some of those offences include theft and like offences: many related to drugs offending. He was currently on licence at the time having received a substantial sentence in Swansea Crown Court for supplying drugs in 2016.
28. The second offender also had a poor record, he having 11 convictions for 25 offences of various kinds, many being drugs offences. It is right to say that neither of the two offenders have previous convictions for offending of this particular kind or seriousness and it seems that drugs played a significant part in their lifestyle.
29. Pre-sentence reports had been obtained in the case of each of them. Those were by no means flattering towards these offenders. A lack of real remorse was identified, indeed the first offender is still disputing his guilt. In each case the writer of the report concluded that there was a significant risk of reoffending and that each offender was dangerous for the purposes of the Criminal Justice Act 2003. In the case of the first offender there was, as acknowledged, a mistake in the report in that the writer of the report seems to have thought he, the first offender, had been involved in the incident comprising count 16 when the male victim had been stabbed and that, as is agreed, is incorrect. That mistake was, however, identified to the trial judge and he duly noted it.
30. The judge was addressed at some length by counsel for the prosecution and counsel for the offenders. He was duly referred to the sentencing guidelines and we will come on to deal with them shortly.
31. The judge started his sentencing remarks with these comments, which in our view were very much in point:

"The type of robberies with which this case is concerned are really quite easy to commit if you are a determined criminal. You steal a moped, you get a helmet because that helps disguise your appearance. You then go out driving, normally two handed, pull up behind a victim, normally a woman, not always, you grab the bag off that person using such violence as you need to do to get what you want, and you are off. In order to frighten or injure you may carry a knife or some other weapon. Easy to commit because it is over almost before the victim knows it has happened, and of course it comes out of the blue, but highly dangerous to members of the public, because of course who knows what is going to

happen to them. What if, in the instant, they resist? Or what if it is simply difficult to get their bag from them? Highly dangerous to the public and terrifying. The victim impact statements display that if it needs to be displayed. This type of crime must and will be deterred by lengthy prison sentences ... "

Entirely apposite language.

32. The judge then went on carefully and fully to summarise the facts relating to the individual counts in respect of which these offenders had been convicted. Having done so, he then said this:

"I have been addressed as to categorisation. I have already expressed a view about that, and it is plain that at least with some of these robberies, in their category they fall into the most serious type ... What I propose to do therefore, is to impose concurrent sentences in respect of each matter, but of course those concurrent sentences are higher than would otherwise be the case if they were standing alone, in order that the multiple offending and the immense criminality that these offences represent, can be appropriately represented by an appropriate sentence. And I will say at once, that as far as the most serious counts on these indictments are concerned, which are counts 7 and count 16, I consider that only an extended sentence is appropriate ... "

The judge then proceeded to impose the sentences which we have outlined above.

33. It is plain from his remarks made previously in discussion with counsel that the judge had taken as the relevant guideline, contained within the Definitive Guideline relating to robbery as issued by the Sentencing Council, the guideline relating to street and less sophisticated commercial robberies. By reference to that particular guideline, for Category 1A offending the starting point for one offence is eight years' custody with a category range of seven to 12 years' custody. For Category 2A offending the starting point is five years' custody, with a range of four to eight years' custody, and for Category 2B offending the starting point is four years' custody with a category range of three to six years' custody. For Category A, matters demonstrating high culpability include use of a weapon to inflict violence, production of a bladed article or firearm or imitation firearm to threaten violence and use of very significant force in the commission of the offence. For the purposes of harm, Category 1 among other things requires serious physical and/or psychological harm caused to the victim.
34. The judge had also been referred to the guideline relating to professionally planned commercial robberies. For Category 1A offending under that particular guideline the starting point is 16 years' custody, with a range of 12 to 20 years' custody. But the judge plainly had rejected reliance on that particular guideline, instead preferring to use the guideline relating to street and less sophisticated commercial robberies.
35. On behalf of the Solicitor General today, Mr Schofield has renewed the argument that the judge was wrong to take that particular part of the guideline and instead it is

suggested the judge should have deployed the guideline relating to professionally planned commercial robberies. Emphasis in this regard was put upon the significant degree of planning involved and suggested sophistication and organisation. There is no doubt that here there was planning and there is no doubt that here there was a campaign. However, we are of the clear view that in the circumstances of this case the judge was justified in adopting that part of the Definitive Guideline relating to street and less sophisticated commercial robberies. Indeed, in some ways these were a paradigm of street robberies: albeit of course accompanied by the use of stolen mopeds and a degree of planning. The circumstances of a case such as this are quite different from a case such as Attorney General's Reference (Kelly) [2016] EWCA Crim. 750, which was cited to us.

36. That being so, and so far as the first offender is concerned, the judge was entitled to take count 7 on the indictment as the most serious count which he faced. That, as we have said, involved dragging a 70-year-old woman along the ground so as to break her shoulder. That offending was certainly within Category A in terms of culpability, because of the use of very significant force, and it was Category 1 in terms of the serious harm caused.
37. Taken along with the targeting, the concealment by masks and helmets and the planning and so on, and allowing for such mitigation, primarily age, as was available, we consider that taking this count on its own a sentence after trial in the region of eight years might have been expected. In the case of the second offender, the judge, again entirely correctly, identified the most serious offence as that being contained in count 16: that is, the one where the male robbery victim had been stabbed. That, with the various aggravating factors involved, in our view taken on its own would have attracted a sentence of not less than 10 years and quite possibly more.

#### Appeal against sentence

38. In the circumstances we have recounted, we can take the first offender's application for leave to appeal on the ground that the sentence against him was manifestly excessive shortly. It was nothing of the kind. The contrary is unarguable. The judge was plainly entitled to make a finding of dangerousness, as he did. One only has to have regard to the circumstances of the repeated offending, coupled if need be with the contents of the pre-sentence report, to see that that is so. That report is not to be taken as entirely vitiated by the identified error relating to the first offender being said to be involved in count 16 when he was not. In our judgment, the judge was plainly entitled to conclude that there was a significant risk of serious violence and was entitled to impose an extended sentence as he did. As to the challenge, rather faintly advanced, as to the length of the custodial term, it is also plain that that cannot, given the totality of the offending, be described as excessive.

#### The Reference

39. The real point therefore is to consider the Solicitor General's argument with regard to this offending that there was, as is asserted, an unduly lenient sentence in the case of each offender. Mr Schofield on behalf of the Solicitor General has again drawn



attention to the degree of planning involved: in the sense of mopeds being stolen in advance for the very purpose of the subsequent robberies and number plates altered. He draws attention to the modus operandi; to the fact that there were two wearing helmets and masks; and he draws attention also to the various other surrounding offences in the sense of stolen cards being used fraudulently and so on. Considerable emphasis is also placed on the fact, as found by the judge, that the two would carry knives and were prepared to present them if need be and indeed on occasion did so. Moreover, so far as the second offender was concerned he was involved in an incident where his accomplice, if not him, actually used the knife to stab. At all events, it is clear that knives were carried with at least a preparedness to use them if needed.

40. The real thrust of Mr Schofield's argument, however, is that the judge failed sufficiently to reflect the totality of the offending. If the sentences with respect to count 7 and count 16 taken on their own were to be put at an appropriate level (and in fact he proposed a level rather higher than this court would have taken) he says that the resulting figure is much too short when one factors in all the other robberies and attempted robberies, thefts, frauds and so on.
41. On behalf of the offenders it is disputed that these sentences were lenient, let alone unduly lenient. That is a necessary logical concomitant of the first offender's argument that the sentence in his case was manifestly excessive. In so far as the second offender is concerned Mr Hardy on his behalf has in fact described the sentence imposed upon him as "harsh".
42. It cannot, at all events, be disputed that these offences were planned. However, we think it is stretching it to an unacceptable degree to describe this offending as sophisticated. In many ways what the offenders did was in a sense opportunistic, albeit they had indeed planned to rob lone women walking in the street using stolen mopeds for the purpose. But whether or not one chooses to describe this offending as significantly planned or sophisticated, what undoubtedly remains is that this offending was brazen and was in all instances terrifying.

### Conclusion

43. Moped robberies occurring in streets and involving the use or potential use of significant force are currently a menace in many urban areas. Such offending unquestionably has significant effects on the victims: usually, although not invariably, lone women walking in the street. Such offending also causes great concern and apprehension within the local community. It undoubtedly calls for stern punishment. In the present case, as we have said, there are numerous offences of that kind. Moreover there could be no credit for a plea in the case of either offender, as the trials were contested. All those factors need to be emphasised. But there are other matters also to be taken into account. First is the fact that, although both offenders have poor records, they do not have any previous convictions for offending of this kind or of this seriousness. It would be wrong to say that they have shown themselves thus far to be entrenched criminals, notwithstanding their poor records. Furthermore, the judge was required to take into account considerations of totality; and moreover it is particularly

important in our view to bear in mind, as the judge plainly did bear in mind, that the first offender was only 19 at the time and the second offender was 20.

44. An extended sentence of 15 years with a custodial element of 12 years and an extended sentence of 17 years with a custodial element of 14 years, on any view, taken on their own, are sentences of considerable length. They will seem to be particularly severe from the perspective of persons of such an age who still have the capacity to mature and to grow out of their criminality and to mend their ways and who also will potentially be confronted with the risk of institutionalisation.
45. We think in a case of this kind a "stand back and appraise" approach is necessary. That clearly is what the judge, who had had the benefit of conducting the trial, commendably had done. Our conclusion is that whilst the sentences imposed in the case of each offender may be described as being on the lenient side, and might perhaps have been somewhat longer, they cannot fairly or properly be described as unduly lenient. Thus, although we are prepared to give leave in this particular case given the circumstances, we dismiss this Reference.