

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Neutral Citation No. [2023] EWCA Crim 1512

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/02396/A3, 2023/02507/A3



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 8th December 2023

B e f o r e:

LORD JUSTICE DINGEMANS

MRS JUSTICE STACEY DBE

HIS HONOUR JUDGE DREW KC

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

BARNEY JOYCE
JORDAN JOYCE

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr C Digby appeared on behalf of the Appellant Barney Joyce

Miss E Heath appeared on behalf of the Applicant Jordan Joyce

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. The appellant Barney Joyce, who was born on 17th August 2002 and is now aged 21 years, appeals against sentence by leave of the single judge. He had one previous conviction for attempted theft, which was committed on 27th November 2020, for which he had received a sentence of six months' imprisonment suspended for two years in Lisburn Magistrates' Court. The offending which is the subject of this appeal was, therefore, not in breach of the suspended sentence order.

2. The applicant Jordan Joyce, who was born on 18th February 2000 and is now aged 23, renews his application for leave to appeal against sentence following the refusal of the single judge. He has four convictions for ten offences. He had received in the past a sentence of 18 months' imprisonment, suspended for nine months, and a sentence of three months' immediate imprisonment. He had also committed the same offence as Barney Joyce and had received the same sentence of six months' imprisonment, suspended for two years in Lisburn Magistrates' Court. He had also been deported from France because of offending. We will grant Jordan Joyce leave to appeal against sentence.

3. On 9th May 2023, in the Crown Court at St Albans, the appellant Jordan Joyce pleaded guilty to one offence of conspiracy to steal from motor vehicles, contrary to section 1 of the Criminal Law Act 1967. On 15th June 2023, in the Crown Court at St Albans, the appellant Barney Joyce pleaded guilty to one offence of conspiracy to steal from motor vehicles and one offence of dangerous driving. This meant that the appellant Jordan Joyce received a discount of 25 per cent for his guilty plea; and the appellant Barney Joyce had a discount of 20 per cent for his guilty plea. On 15th June 2023, the Crown confirmed that they would not pursue other counts which had been on the indictment.

4. On 13th July 2021, the appellant Barney Joyce, was sentenced by His Honour Judge Kainth for the offence of conspiracy to steal to 29 months' detention and to a consecutive term of six months' detention for the dangerous driving. The total sentence was therefore 35 months' detention in a young offender institution. He was also disqualified from driving for 26 months, comprising a 12 month discretionary period and a 14 month extension period, and until an extended driving test was passed. We will return to the disqualification order later in this judgment. Deprivation orders were made in respect of the tools and the motor vehicle.

5. The appellant Jordan Joyce was sentenced to 27 months' imprisonment for the offence of conspiracy to steal from motor vehicles. The difference between his sentence for the conspiracy and that of Barney Joyce for the conspiracy was explained by the difference in discount for the guilty plea.

6. There is a ground of appeal which is common to both appellants. It relates to the judge's categorisation of the offence of conspiracy to steal under the offence specific guideline. As a second ground of appeal, Barney Joyce also complains that insufficient weight was given to his mitigation; and Jordan Joyce submits that no account was taken of his mitigation.

Factual circumstances

7. On 5th April 2023 (when Barney Joyce was aged 20 years 7 months and Jordan Joyce was aged 23), various calls were made to the police about catalytic converters being stolen from motor vehicles in Hemel Hempstead. One complainant heard a cutting noise outside her home at 8.50 pm. She saw that her car was on a tilt. There were two males wearing dark clothing by the car and she saw them carry away the catalytic converter. Her car was assessed as an insurance write off and she was paid £1,034 by her insurance company.

8. About ten minutes later, another complainant heard drilling outside her address. She saw

one man next to her vehicle holding a pole and another man underneath the vehicle. A third man was standing on the other side. A neighbour banged on the window and the male holding the pole swung it as if to make a threat. Stones were thrown at the neighbour's house which caused £500 worth of damage. The three men ran off and the complainant discovered that her catalytic converter had been cut away. The neighbour had seen one of the men carrying an angle grinder. Another neighbour ran out and the men scratched the front of his van with a crowbar after one of them had walked towards him while brandishing it. There was £350 worth of damage to his vehicle.

9. During the course of the evening another car belonging to another complainant was broken into. A bag containing about £1,000 worth of tools was stolen. Some of the tools were later recovered in the car in which the defendants were stopped but an impact drill, an angle grinder, batteries, a hammer drill and a jigsaw, worth a total of £931 were not recovered.

10. Another catalytic converter was stolen at 9.30 pm. A neighbour saw the theft take place. Three men were involved, carrying a trolley jack. The cost of replacing the catalytic converter was £1,400 odd and a further £1,100 odd had to be paid for repairs to the car.

11. At 9.33 pm another call was made to the police from a resident in another area of Hemel Hempstead who had seen two men outside wearing black bandanas and dark clothing. When they saw her they stopped and pretended to tie their shoelaces. She saw them walk off and a black Subaru crept forward. The men got into it and the car sped off. She noted the registration number and called the police.

12. The vehicle was on false number plates. It was being driven by the appellant Barney Joyce. There was a pursuit. The car drove in excess of 70 miles per hour in a 30 mile per

hour zone. It went the wrong way around roundabouts, on to the wrong side of roads and keep left bollards and eventually drove across a cricket pitch. The vehicle had been stung with a stinger device deployed by the police but it kept going. It entered an area of scrub near the Grand Union Canal. Five men got out of the car. Two ran towards the canal and jumped in. Barney Joyce got out of the driver's door and then sank in some mud and had to be rescued. He was wearing rubber gloves and had a hacksaw blade in his pocket. Jordan Joyce was arrested on the canal towpath soaking wet, having been in the canal. At his feet were a pair of gloves, a hat and torch. A co-defendant, Thomas Kiely was also removed from the canal and arrested. He was subsequently sentenced in Chester for this conspiracy and another conspiracy. Nothing turns on that. It appears that two of the five men had managed to swim away, and therefore details of them are not known.

13. Inside the Subaru motor car, police officers found a yellow power saw, a circular saw next to the driver's door, six catalytic converters in the boot of the car, a trolley jack and tools. There were also some tools on the rear seats as well as number plates with different registrations. From the canal the police recovered a black jacket, a beanie hat, a black glove and a bandana. All the defendants answered "No comment" when they were interviewed.

14. The relevance of identifying what was found in the car is because an issue arises as to the categorisation of the offending.

The sentencing

15. Although a pre-sentence report had been ordered for both appellants a month before the sentencing hearing, the Probation Service were unable to produce pre-sentence reports in time. Attempts were made to obtain a stand down report, but there were insufficient numbers of probation officers able to produce such a report. Both appellants were keen to progress to sentence. Accordingly, the judge sentenced without a pre-sentence report. This was

unfortunate and was plainly not the fault of either appellant. That is one of the reasons why we have granted Jordan Joyce leave to appeal.

16. At the sentencing hearing, Jordan Joyce expressed remorse. He wrote a letter, which we have seen, in which he said that, having tried for some time to father a child, his wife was now pregnant. He also said that he had been attacked in 2022 and had suffered disabling injuries to his hand. A photograph was provided to the court below, which we have also seen.

17. In passing sentence, the judge noted that neither Barney nor Jordan Joyce had taken advantage of the opportunity provided to them by the suspended sentence order imposed by Lisburn Magistrates' Court. The judge said that the evidence clearly showed that they worked in tandem and together when it came to their criminality.

18. The judge found that the offences were unpleasant for a number of reasons. It was unpleasant for the victims, who suffered from anxiety. Threatening the victims with a pole was intimidation, as was the use of the crowbar.

19. The judge set out details of the police chase in which it was clear that Barney Joyce did not propose to stop and attempted to escape. The judge noted the tools of the trade that were found in the car that was impounded by the police. The judge said that all of this was designed to avoid capture and arrest. He said that the impact to the victims could not be underestimated because once the catalytic converter was stolen, the car could not be driven. Its owner could not get to work, do their shopping, or do what they needed to do. It made their lives miserable. However, the judge reminded himself that he must follow the guidelines.

20. The judge found that under the offence specific guideline for theft this was category 2 offending because it was medium value (which would have been category 3, but with significant additional harm to the victims, made it category 2). He found that it was high culpability because there was sophisticated, significant planning. The judge said that they had targeted multiple vehicles within a short space of time and therefore culpability was high.

21. There were additional aggravating features, including relevant previous convictions and the fact that this was stealing goods to order. The judge referred to the mitigation. He said that both appellants were young.

22. The judge noted that for a category 2 offence the starting point was two years' custody, with a range of one to three and a half years. The judge said that the law stated that he had to start at two years. In the light of the additional aggravating factors, the sentence before discount for the guilty plea was three years' imprisonment. As already noted, he gave 25 per cent credit for Jordan Joyce and 20 per cent credit for Barney Joyce.

Later materials

23. We have been provided with further materials in relation to Barney Joyce. He is married. At the time of sentence he had one young child and one child due to be born. We now have a prison report on Barney Joyce which indicates that there have been some negative adjudications in prison for refusing to move and refusing to return to his cell. He was reported to be manipulative and abusive to staff. He had called one a "fat slag". He had also missed work sessions. There was, however, one positive adjudication noted. Most relevantly, there is a recent report from the Standout Programme which indicates that Barney Joyce is now engaging well in training to acquire tools and skills for when he leaves prison.

The correct category

24. The judge categorised the offending as category 2. Although that was common ground before the judge, Mr Digby submitted that it was category 3 offending and that the judge should have remained in category 3. We agree that because the removal of the catalytic converter effectively disables the car, it was category 2 offending. It was medium value and it caused significant additional harm to the victims.

25. So far as culpability A is concerned, on behalf of Jordan Joyce it is submitted that there was not significant planning, nor was it sophisticated offending. We consider that it was clearly a sophisticated offence with significant planning. The planning was part evidenced by the fact that it was indicted as a conspiracy. The appellants pleaded guilty to conspiracy. There were five men, only three of whom have been identified. They were in a vehicle with the relevant tools required to carry out the offending.

26. There were also additional aggravating factors: it was a group activity; there was intimidation of those who attempted to intervene to stop the offending; and there were determined efforts by all to escape. Both Barney and Jordan Joyce had a relevant previous conviction.

27. The starting point taken by the judge was two years, with a range of one year to three and a half years. We find that the judge was entitled to go near to the top of the range, to have regard to all the relevant features of the offending, including the significant fact that the offending was part of a conspiracy. We therefore must have measured regard to the aim of the conspiracy.

28. In our judgment, it is plain that the judge must have gone beyond three years, near to the top of the range, before allowing some limited discount for mitigation, which he identified simply for the age of both appellants. In our judgment, the judge was right to identify that

both appellants were young. He did not distinguish between them. Although Jordan Joyce had more previous convictions, it was apparent that they committed the offence together; they had previously offended together; and the previous offence was a relevant previous conviction because it was also for theft and attempted theft. In our judgment, this was a permissible approach to take where both had a relevant previous conviction and had committed the offending together.

29. It is right to note that both appellants are young men and have the potential to become useful members of society. However, looking at the sentence as a whole, we are unable to say that it is manifestly excessive.

30. We have been alerted to an issue into how the disqualification period was expressed. Pursuant to the guidance in *R v Needham* [2016] EWCA Crim 455, we propose to restructure the way in which the disqualification from driving in the case of Barney Joyce is recorded. The disqualification will remain at 26 months, but will comprise a discretionary period of 15 months under section 35A of the Road Traffic Offenders Act 1988 and an uplift of 11 months under section 35B of 1988 Act.

31. Accordingly, having granted leave to appeal to Jordan Joyce, we dismiss both appeals save to the extent of varying the way in which the period of disqualification is recorded.

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

Lower Ground, 18-22 Fumival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
