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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation Number:
[2023] EWCA Crim 1638

CASE NO: 2023 02329 A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 21 December 2023

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE HILLIARD

HIS HONOUR JUDGE DREW KC

REX

v

SOUL KWAKE-AMPOMAH

Computer Aided Transcript 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 MATTHEW HODGETTS appeared on behalf of the Appellant
MR RICHARD POSNER appeared on behalf of the Crown

J U D G M E N T

MR JUSTICE HILLIARD:

1. On 24 April 2023, in the Crown Court at Southwark, the appellant (then aged 19) pleaded guilty on re-arraignment to one offence of attempted robbery. On 6 June 2023, he was sentenced to 25 months' detention in a young offender institution. On 4 July 2023, he was made the subject of a Criminal Behaviour Order for 3 years, with a single prohibition on being in a group of three or more people within a specified geographic area, described as the 'West End of London' and marked on a map, unless the other people were family members. He now appeals against sentence, limited to a challenge to the Criminal Behaviour Order, with the leave of the single judge.
2. In the early hours of the morning of 4 November 2022, an undercover police officer was walking along Greek Street in the West End of London. He was approached by the appellant and his co-accused Emmanuel Segilola. The officer was wearing a gold Rolex watch. The appellant offered to sell him some weed. The officer declined and continued walking. Mr Segilola followed him and grabbed his wrist. The co-accused Damilola Odunoren then approached and grabbed the officer whilst Mr Segilola tried to take the watch. The appellant approached and tried to undo the watch. At this point other police officers intervened. The offenders ran off but were apprehended.
3. The appellant had a number of previous convictions.
 - He was made the subject of a Referral Order in 2020 for allowing himself to be carried in a vehicle taken without the owner's consent.
 - He had convictions in 2020 and 2022 for possessing cannabis.
 - In August 2021, he was sent to custody for 2 months for handling stolen goods.
 - In April 2022, he was made the subject of a Community Order and a Knife Crime Prevention Order for possessing a hunting knife in a public place.
4. Mr Segilola had previous convictions for robbery, attempted robbery and possessing a bladed article.
5. The pre-sentence report assessed the appellant as posing a medium risk of reoffending, especially if he continued to associate with negative peer influences in the future. It was

thought that he would need to make a conscious decision to extricate himself from negative peer influences. It was noted that the existing Community Order had not deterred him from further criminal behaviour.

6. The prosecution applied for a Criminal Behaviour Order with six conditions in the case of this appellant. The judge was provided with a statement from a police officer which contained a number of pieces of intelligence about the appellant suggesting that he may have committed other offences. The basis for the suspicions was not spelled out. The judge said that he was satisfied that the appellant had engaged in behaviour likely to cause harassment, alarm or distress by virtue of the commission of the offence of attempted robbery, and on the basis of all the material before him he said he considered it was necessary to make a Criminal Behaviour Order in the terms we have set out. He refused to grant the order in the wider terms in which it was originally sought and containing the six conditions because he did not think there was a sufficient basis for it. He accepted that the appellant had only committed this one offence within the specified geographical area but said that it represented an escalation of offending in a history of criminal and anti-social behaviour and the offence was committed in a high crime area for acquisitional offending. He said that the order was a fair and proportionate restriction to prevent behaviour that was likely to cause harassment, alarm or distress.
7. It is now argued on the appellant's behalf by Mr Hodgetts that the order should be set aside because the judge relied in part on anonymous hearsay which was not admissible and upon which no weight could be placed, and because the order could not help to prevent the appellant from engaging in behaviour likely to cause harassment, alarm or distress. The respondent argues that there was sufficient material to justify the making of an order. We are grateful to both counsel for their submissions.
8. Section 331(2) of the Sentencing Act 2020 provides as follows:
 - "(2) The court may make a criminal behaviour order against the offender if it—
 - (a) is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to

any person, and
(b) considers that making the order will help in preventing the offender from engaging in such behaviour."

9. Rule 31.6 of the Criminal Procedure Rules permits the use of hearsay evidence in an application for a Criminal Behaviour Order, but subparagraph (1)(b)(iii) requires the notice to "identify the person who made the statement which is hearsay, or explain why if that person is not identified".
10. The police officer's statement relied upon here included summaries of incidents from police crime reports, or intelligence, but in almost all cases no information was given as to why the appellant was suspected of wrongdoing. The statement contained a number of allegations but no information which would enable the judge to evaluate them. There were, in addition, a number of statements from named individuals which did establish that robbery and street crime were particularly prevalent in the West End of London, with obvious consequences. We do not think that the intelligence material specific to the appellant was of any value in this particular case. In other cases, of course, police intelligence may be of value depending upon the basis for it and how it is explained, but it was, as we have said, of no substance here.
11. That is not, however, the end of the matter. Section 331(2)(a) was clearly satisfied on the basis of the attempted robbery offence alone. In addition, there was material which the judge was entitled to consider as regards s.331(2)(b) aside from the statement of the officer as to police intelligence. The appellant had previous convictions for handling stolen goods and possessing a knife. This offence of attempted robbery represented an escalation in offending. It had been committed with two others in the early hours of the morning in an area where crime of this kind is prevalent. On the face of it, the victim had been targeted. One of the co-accused had a number of relevant previous convictions. The pre-sentence report suggested that the appellant needed to make a break from negative peer influences. The offence was committed during the currency of a community order. True it is that there was only one offence of attempted robbery in this particular area, but the one offence had to be viewed in the context we have set out. In our judgment, the judge was entitled to

consider from this material that making the order in the terms he identified would help prevent the appellant from engaging in behaviour that was likely to cause harassment, alarm or distress to any person. The appellant was much less likely to do so if he was not in the presence of the unhelpful influences he needed to break from whilst in an area of particular temptation. Accordingly, we are satisfied that the judge was entitled to make the order he did and this appeal must be dismissed.

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Lower Ground, 18-22 Fournival Street, London EC4A 1JS
Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk