



Neutral Citation Number: [2011] EWCA Crim 2458

Case No: 201104418A1

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM KINGSTON CROWN COURT**  
**His Honour Judge Price QC**  
**T20110369**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28/10/2011

**Before :**

**LORD JUSTICE HUGHES**  
**MR JUSTICE CRANSTON**  
and  
**MR JUSTICE HICKINBOTTOM**

-----  
**Between :**

**Charlie Samson Gilmour**  
**- and -**  
**The Queen**

**Appellant**

**Respondent**

-----  
**David Spens QC (instructed by Messrs Corker Binning) for the Appellant**  
**Duncan Penny (instructed by the Crown Prosecution Service) for the Respondent**

Hearing date: 5th October 2011  
-----

**Approved Judgment**

**Lord Justice Hughes :**

1. On 15 July 2011, this defendant, who had pleaded guilty to violent disorder, was sentenced to sixteen months' imprisonment. Given the relatively short term of the sentence, his application for leave to appeal against sentence has been referred to the court directly by the Registrar, so that if the sentence should be shown to be manifestly excessive or wrong in principle that can be determined in good time.
2. The offence was committed in the centre of London in the course of serious disorder which occurred in the later stages of what had begun as a generally peaceful demonstration against Government proposals relating to the funding of further education. It took place on 9 December 2010.
3. The demonstration had begun in Parliament Square and had continued for most of the day and into the evening. Until the evening it was, for the most part, noisy and demanded a large police presence, but it was not generally aggressive or violent. In the evening a large group of the crowd moved up Whitehall and from there to Piccadilly Circus, into Regent Street and thence into Oxford Street. By now it was dark. There was serious mob disorder. In Oxford Street there were mass attacks on shops. Shoppers and staff were besieged inside. Heavy plate glass windows were kicked in and goods were looted. Just before that, in the southern part of Regent Street, it happened that three cars conveying the Prince of Wales, the Duchess of Cornwall and others to an evening public engagement had to pass through the crowds. The cars were surrounded and set upon by some elements of the throng. The side windows of the principal car were both broken. The rear windscreen of the third vehicle, a people carrier, was smashed. Wing mirrors and wipers were wrenched off and the cars dented. Paint and a variety of objects including bottles were thrown at the vehicles. The cars were kicked, banged with fists and hit with sticks. The several occupants were exposed by the smashed windows to the attackers and their missiles.
4. The defendant admitted violent disorder. He was unmistakably captured on CCTV footage in Oxford Street joining in the attack on the windows of a shop. He was part of a violent crowd laying siege to the shop, in which both staff and shoppers were trapped. He twice ran up and launched heavy kicks at the window, as did others before him and, no doubt, after him. The combined effect of the attack was that the windows were at some stage broken –it may well be by the time the defendant joined in. The defendant helped himself to a section of a mannequin and carried it away. That too was undoubted, because he was filmed carrying it, and indeed gave an impromptu street interview to a journalist in front of a camera, in which he announced that the crowd was extremely angry, and at which stage he was still carrying the mannequin part, albeit he tried to tuck it under his greatcoat.
5. The Crown case was that the defendant also took violent part in the attack on the royal cars a little earlier. He could be seen on CCTV footage pressing about the cars, so close that he was knocked away, and to the ground, by one of the escorting officers opening the passenger door to do so and to clear the path. There could be no doubt that he then sat ostentatiously on the bonnet of one of the escort cars, because that too was plainly shown on camera. Very shortly after the driver braked and caused him to slide gently off the bonnet, the cars were pelted with objects which included three large bins. It seems to have been at this stage that the windows of the cars were smashed, although by precisely which object(s) is not clear. The Crown case was that

the defendant threw one of the bins. He did not admit this. Accordingly the judge had to assess the evidence. He did so and heard full argument. He concluded that he was sure that the defendant had indeed thrown a bin.

6. Mr Spens QC now raises on the defendant's behalf two issues on appeal:
  - i) was the evidence such that the judge was entitled to find that the defendant had thrown one of the bins at the royal car ? and
  - ii) in any event, given the defendant's personal circumstances, was the sentence of 16 months manifestly excessive ?

#### The finding of fact

7. There was no witness who gave evidence of seeing the defendant throw the bin. The evidence consisted of various sections of television footage and still photographs. The defendant put before the judge some expert evidence of examination of the material, which was not in dispute. The defendant had the opportunity to give evidence himself if he wished, but declined to do so. Through counsel and by way of written basis of plea the case which he relied upon was that he had a gap in his memory in relation to events in Regent Street, but would have expected or hoped to remember if he had indeed thrown a bin. Since he did not give evidence, the extent and plausibility of such a gap could not be explored with him, but there was no duty on him to give evidence. There was certainly evidence that he was quite significantly under the influence of both drink and drugs that day. We were told that he remembered sitting on the car, but asserted a gap in memory from then until he was outside the attacked shops in Oxford Street seven and a half minutes later. The effect of all this was, as the judge observed, that there was no positive evidence from him to set against the photographic material, but that did not of course relieve the Crown of the duty of making the judge sure that the offending bin-thrower was the defendant.
8. The judge held that the defendant could not be identified simply by his features from the photographs of the relevant bin thrower. We have ourselves seen the footage a number of times. The judge is clearly correct. The person in question can be seen only from behind and from the side, emerging from the crowd carrying the bin and projecting it at the car from quite close to its nearside. The face is not shown. Nor could the person throwing the bin be tracked continuously either forwards or backwards on the footage to an unquestioned image of the defendant: the footage, as it often is, was discontinuous. The defendant's clothing and in particular his greatcoat were however recovered; their appearance was not confined to camera footage. The judge concluded that he was sure that it was the defendant because (i) the thrower was the same build and colouring as the defendant and had similar long straggly hair to him, (ii) he wore a similar (waisted) greatcoat to that worn by the defendant, (iii) there were no identifiable differences between the defendant and the thrower, (iv) the thrower was where the defendant must have been at the time, given the undisputed parts of the footage, and (v) the behaviour of the thrower was entirely consistent with that of the defendant, who was excited and could be seen on a number of occasions to be aping the actions of others when they became aggressive.
9. Mr Spens rightly reminds us that the expert evidence demonstrated only that the defendant could not be excluded as the thrower, rather than the footage amounting to

a positive identification of him as such. In particular, the appearance on the back of the thrower of a bright spot entirely consistent with a gold button on the back of the defendant's coat could be an artefactual product of the recording and not a button at all; thus it is not safe to treat it as a positive mark of identification. We agree.

10. Mr Spens also submits that the evidence of the defendant's behaviour that day points away from his being aggressive and violent at least until the crowd reached Oxford Street. He submits that whereas being knocked over by the car door might have led to a violent reaction, the defendant did not thus react, for it is then that he sat on the car bonnet.
11. We agree, as did the judge, that at times during the day the defendant was clearly in good, if intoxicated, humour. In Parliament Square earlier in the day he can be seen shouting good-humouredly and at another point declaiming poetry. A camera has captured a brief episode when he brandished a flag-stick very close to a stationary police officer and, when peaceably reprimanded, responded with what is clearly an immediate apology: that episode reflects credit on both the policeman and the defendant. We agree also that in the initial stages his drawing a scarf over his face was quite plainly playing up to the camera and not a serious attempt to disguise himself. He was, at that stage, aping others who wore masks throughout.
12. Unfortunately, however, his behaviour was not always in this benevolent category. Later he clearly does properly mask his face with his scarf. He was photographed in Parliament Square (masked) hefting a lump of rock, although he was watched at the time and not seen to throw it. At one point there is no doubt that he crouched down in the doorway of the nearby Supreme Court and tried to set fire to a bundle of newspapers against the wooden doors; he was dissuaded and scampered away; that cannot have been other than potentially very dangerous and in the context of a volatile crowd very likely to lead others to behave equally dangerously. A little later he was to be found swinging in an exhibitionist manner and for quite a prolonged period on one of the flags on the Cenotaph. This was an incident which unsurprisingly subsequently attracted a good deal of attention. Deeply offensive as it undoubtedly was, it did not amount to violence and thus was not part of the offence of violent disorder with which he was charged. Its relevance in law is limited to the fact that, along with the other behaviour we have mentioned, it demonstrates that he was at times over-excited, out of control, and raising the temperature in a manner which could only be dangerous in the context of a large and angry crowd. He was part of the press on the cars and jumped on the bonnet. Then, within a very few minutes of Regent Street, he was undoubtedly joining in the violent attack on one of the shops in Oxford Street, again deliberately covering his face. Shortly after that, his own words to the street interviewer invoked the memory of the 1968 riots, and indeed of the French Revolution; his words spoke of his mood.
13. Thus either side of the disputed footage his behaviour was entirely consistent with his throwing a bin at a royal car. That the violence came not immediately after being knocked down by the car door, and only after also being dislodged from the car bonnet, does not alter this fact. Nor does the fact that he was intoxicated; that is wholly consistent with the behaviour seen throughout. We do not agree that his behaviour, taken overall, points away from his being the thrower of the bin. It would not of course prove it in the absence of the camera footage, but it is entirely consistent with his doing so.

14. We have reviewed the whole of the evidence. We are satisfied that the judge was entitled to come to the conclusion which he did, and for the reasons which he gave.

#### Sentence

15. The defendant was 21 and an undergraduate. He is plainly a talented man. The judge had the advantage of a number of telling references from people who knew him well. They knew a person who is generally of gentle and peaceable disposition. The judge rightly treated what the defendant did as entirely out of character. We agree with Mr Spens that in particular testimonials from a national charity for the homeless painted a picture of his capacity to behave very differently from what he did on 9 December. He had worked as a volunteer for some six months during a 'gap' year, and had earned considerable praise for respect for others, long hours, reliability and enthusiasm. It is also clear that he has been much chastened by the realisation of what he did on 9 December. He has made genuine efforts to stop drinking and taking drugs. He made a public apology soon after the event, stimulated no doubt by the heavy publicity which the graphic pictures of the Cenotaph incident had generated. We do not doubt that the press attention which he and his family received as a result of that incident will have added to his chastening and formed part of the extra-legal punishment he brought upon himself. He has the advantage of a supportive family.
16. As has been said before, for example in R v Al-Haddad & others [2010] EWCA Crim 1760, the law protects the right of people in this country to demonstrate, that is to say to make known and in public their feelings on matters of public concern. Equally, to do so in large numbers in public carries clear responsibilities, principally amongst them to act without disorder or violence which puts the public at risk. In that case there was the added consideration that there were mass attacks both on the police and on a foreign embassy which the State is under an international duty to protect. The present case was not quite so serious. But the attack on the shops in Oxford Street was an attack by a mob on hapless shoppers and staff who were terrified as well as trapped inside, whilst the attack on the cars was upon both public figures and those whose job it was to protect them. It is an unavoidable feature of mass disorder that each individual act, whatever might be its character taken on its own, inflames and encourages others to behave similarly, and that the harm done to the public stems from the combined effect of what is done *en masse*. That is one of the principles which underlies the recent judgment of the Lord Chief Justice in R v Blackshaw & others [2011] EWCA Crim 2312, given in the context of what were much more serious riots all over the country in August of this year (see paragraphs 4 and 5).
17. Beyond the principles which we have mentioned which are illustrated by those two cases, we do not think that any exact analogy can be drawn with the facts there dealt with. But the judge must have taken a starting point for his sentence well below the 27 months contemplated in Al Haddad and a great deal below the single but much more serious case of violence (Halloway) dealt with in Blackshaw. We do not believe that violence in this context and of the kind displayed by this defendant can normally be met by other than significant sentences of immediate custody even for those of otherwise good character. The judge could not give Mr Gilmour the same reduction in sentence for his plea of guilty which he would have been able to give if he had felt able to admit everything he had done, but he could, and plainly did, reduce the sentence appreciably because he pleaded guilty. Violent disorder carries a maximum of five years imprisonment. A sentence of something in the region of 20-21 months

after trial, which is what the judge has passed, correctly took account both of the defendant's serious and dangerous acts in this inflammatory context and of his normal character. It is a penalty which properly met the facts of this case. We are unable to say that it is arguably either manifestly excessive or wrong in principle. The application for leave to appeal the sentence must accordingly be refused.