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# LISELLE MARIE BARROW

COURT OF APPEAL (Lord Justice Woolf, Mr. Justice McCullough and Mr. Justice Saville): January 12, 1988

Thirty months' detention upheld on a girl of 16 who participated in a robbery in which a woman of 82 was attacked in her home.

The appellant, a girl aged 16, pleaded guilty to robbery. Together with two youths she forced her way into the home of a woman aged 82, who was held and superficially injured. £210 was stolen. Sentenced to 30 months' detention under Children and Young Persons Act 1933, s.53(2).

**Held:** the sentence could not be faulted.

**References:** long term detention of juveniles, *Current Sentencing Practice* E 4.5 (g), *Archbold* 5–380.

*P. Wood* for the appellant.

**McCULLOUGH J.:** This appellant was born in September 1970. She appeals with leave of the full court against a sentence of 30 months' detention under section 53(2) of the Children and Young Persons Act 1933 passed upon her on June 18, 1987 in the Crown Court at Burnley.

She had pleaded guilty to an offence of robbing an old lady, aged 82, of £210. The old lady lived alone. The offence took place on March 18, 1987 when the appellant was aged 16 years and six months. Two others were charged with it. They too pleaded guilty. One was Darren Eccles, who at the time was aged 15 years six months. He was given a sentence of three years' detention under the same provision. The other was David Smalley, then aged 18 years and eight months. He was sentenced to three years' youth custody.

The appellant asked for one offence to be taken into consideration, which was an attempted burglary of the same house earlier the same evening.

The facts, briefly, were as follows. The appellant and one of the boys were seen at the back of the house at about 8.45 or 9 p.m., trying the handle of the back door and trying, it seems, to do something to a nearby window. The neighbour who saw them shouted "Police," but they took no notice. They remained for about half an hour, only leaving when a light came on in a nearby house. Although only one boy was seen, it would appear that both boys were with the appellant at this time. As she later told the police, they had a screwdriver and were trying to get in. They knew the old lady lived alone, that she had money in the house and they believed they knew the room in which she kept it. It seems that they had assembled at the initiative of the appellant.

The attempt at the back door having failed, they went round to the front door at about 10 p.m. By then the boys were wearing stocking masks. The appellant was wearing a kagool, not disguised to the same extent as they were, but aware of their disguise. One boy knocked at the door. The old lady came to the door and opened it. Eccles pushed her inside and then held her. Smalley and the appellant rushed in. One of them—the appellant says it was not her and no doubt she is right—found the money. The £210 was taken and all three left by the back door which the appellant had opened ready for their escape. The old lady, as one can imagine, was extremely frightened by this experience. She had not even realised that there were more than two people there: the one who held her and one other, she thought a

man, who had rushed past her. Having got what they had gone for, they ran away and divided the money.

The Court has seen a photograph of the old lady's face taken less than two hours after the incident. It shows a superficial injury to her nose, caused no doubt when she was held.

There is reason to believe that a girl in her early 20s may have provided the information which prompted this robbery and may indeed have suggested how to go about it.

The appellant has a disturbed background. She has not been involved in any offence as grave as this beforehand, but she has been before the courts twice before, once at the age of 14 for two cases of theft, one of cash and one of some pens worth under £5, when she was conditionally discharged. Then at the age of 16, in September 1986, she stole property worth £2 for which she was fined, and also fined for one of the offences for which she had originally been conditionally discharged.

Prior to her sentence the appellant had been remanded in custody at an assessment centre for three months; so had Darren Eccles. Those are factors which the learned judge took into account. He did so because in neither case would the period count towards sentence. The appellant had not previously experienced any form of custody. Although at the time with a boy who was two years older and who had a more substantial record, her own responsibility was by no means minimal. It may be that she did not pick up the money and certainly she did not hold or touch the old lady, but she was one of the team of three who committed this robbery.

The Court has been furnished with a helpful report, dated January 4, 1988, from Mr. Corcoran, the officer in charge of the secure unit where the appellant has been detained since September 1987; she was previously at a remand centre. The report speaks well of her. It says that she has a likeable and pleasant personality. She has not given rise to any problem. Her attitude and behaviour have always been acceptable by the standards of the unit. She tries to get on with most people most of the time. She has struck them as basically mature and sensible, and they think the prognosis for her is good. There is no evidence of psychiatric disturbance or personality disorder. She is getting on well and they are pleased with her. She can cope with the environment. Mr. Corcoran believes that she is ashamed of what she did.

All those factors will be taken into account by the Secretary of State when he and those who advise him are considering when she should be released on licence, but the question for this Court is whether 30 months was manifestly excessive or wrong in principle. Looking as best one can at the part played by each participant, at their relative sentences and the general level of sentences for offences of this kind, the Court finds no reason to fault the sentence which was passed on the appellant.

We hope that she will be encouraged by Mr. Corcoran's report to look towards her release, but the appeal must be dismissed.

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## HOWARD FRANCIS BEER

Court of Appeal (Lord Justice Mustill, Mr. Justice Kenneth Jones and Mr. Justice Potts): January 12, 1988

*Carrying persons to a ship from which unlawful broadcasts were to be made—whether custodial sentence appropriate—length of sentence.*

Nine months' imprisonment reduced in the case of a man who admitted carrying persons to a ship from which unlawful broadcasts were to be made.

The appellant pleaded guilty to carrying persons to a ship from which unlawful broadcasts were to be made, contrary to Marine Etc. Broadcasting (Offences) Act 1967, s.4(3)(*f*). The appellant was detected in a small boat, carrying persons to a pirate broadcasting ship. The appellant had previously been convicted of supplying goods to the same ship, for which he had been fined £500 by a magistrates' court. Sentenced to nine months' imprisonment.

**Held:** an immediate custodial sentence was necessary to mark the flagrant breach of a statute which was well known to the appellant, but the period was longer than was necessary to mark the seriousness of the offence. The sentence would be reduced to allow the appellant's immediate release.

*R. Gifford* for the appellant.

**MUSTILL L.J.:** The appellant appeared in the Crown Court at Southend on November 24, 1987, facing an indictment which contained three counts. The first count charged that on October 13, he had carried persons by water to a ship, having reasonable cause to believe that broadcasts were made or were to be made from the ship while it was on the high seas. The offence there charged was laid under section 4(3)(*f*)(ii) of the Marine etc. Broadcasting (Offences) Act 1967. Count 2 of the indictment charged a similar offence said to have been committed on November 4, 1985. Count 3 charged an offence of supplying goods to the same ship contrary to another provision of the Act of 1967. Counts 2 and 3 were not proceeded with and the appellant was dealt with on a plea of guilty to the first count alone. He was sentenced to nine months' imprisonment, against which he appeals by leave of the single judge.

To make the matter intelligible it is necessary to refer to one or two sections of the 1967 Act. Section 1(1) makes it unlawful for broadcasts to be made from a ship while it is in United Kingdom waters. Section 3 creates a group of offences concerned with broadcasting from a ship in such waters. Section 4 prohibits various acts of a nature which may facilitate broadcasts from such ships. In particular, section 4(3)(*a*) provides that it shall be an offence for a person to furnish to another a ship or aircraft, knowing that broadcasts are to be made from it. Paragraph (*d*) of the same subsection makes it an offence to supply wireless telegraphy apparatus for installation in such a ship. Paragraph (*f*) makes it an offence for a person knowing, or having reasonable cause to believe, that broadcasts are to be made from such a ship, to supply any goods or materials for the operation or maintenance of wireless telegraphy apparatus installed therein or for the sustenance or comfort of the persons on board it, and the carrying by water or air goods or persons to or from it.

The 1967 legislation provides a series of penalties for breaches of those prohibitions, and it is of some importance to note that the maximum penalty for any of them is two years' imprisonment.

Turning to the facts of the present case so far as they emerge from the material before us, they are as follows. At the material time the appellant was the owner of a small motor-propelled boat. It was stopped by the police in the River Crouch, and the appellant admitted that he and his passengers had been out on a visit to a vessel called "Ross Revenge," which lay at anchor in Knock Deep and was used for pirate broadcasting. The appellant told the police that his passengers were friends, or the friends of friends, who had gone to the ship for sight-seeing. At that stage he denied that anybody had left his speed boat and asserted that he had warned his passengers that if they boarded the pirate ship they would breach the law. However, his plea of

guilty must be taken as an admission that that statement was untrue. Nothing is known of the identity of the persons who were being carried to and from the ship; whether, as the learned judge seems to have assumed, they were participants in the broadcasting activities on the ship, or whether they wanted to visit it for some other reason. That was not explored in the Crown Court and has not been elucidated before us today. At all events, those persons were carried to and from the ship and the offence was fully constituted.

This was not the first occasion on which the appellant had been before the courts for a similar offence. Only the previous month he had been convicted of supplying goods to the same ship, for which the justices fined him £500. That seems to have made no impression at all on his mind. Evidently he did not think that the Act had to be obeyed, and he promptly offended again as we have outlined. It seems to us that an immediate custodial sentence was inevitable to mark this flagrant breach of a statute the terms of which the appellant knew perfectly well.

However, there is substance in the submission that the period of imprisonment was longer than was necessary to mark the seriousness of the offence. After all, the maximum term of two years' imprisonment under the Act is available in cases where the defendant has supplied the vessel or the wireless apparatus, or indeed himself has made the broadcasts. Can it therefore be right to impose a sentence of nine months' imprisonment for what is on any view a much less serious offence, even when the appellant re-offended so soon after a previous conviction?

We think that it was not appropriate to impose a sentence of such length. The point can be made that the Act is to be obeyed by imposing a lesser sentence. We give effect to that conclusion by quashing the sentence of nine months' imprisonment and substituting such sentence as will permit the appellant's immediate release.

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## GEOFFREY MARK SHORTER

Court of Appeal (Lord Justice Woolf, Mr. Justice McCullough and Mr. Justice Saville): January 12, 1988

*Possessing offence weapon—possessing vegetable knife—whether custodial sentence appropriate—length of sentence.*

Six months' imprisonment upheld for possessing an offensive weapon (a vegetable knife).

The appellant was convicted of possessing an offensive weapon, a vegetable knife. He was detained by police officers and found to be in possession of a vegetable knife. The appellant had two previous convictions for possessing an offensive weapon. Sentenced to six months' imprisonment.

**Held:** in the circumstances, the sentence was perfectly proper.

**References:** possessing offensive weapon, *Current Sentencing Practice* B 3–5.

*C. Pitt* for the appellant.

**WOOLF L.J.:** On November 20, 1987 in the Crown Court at Kingston the appellant was convicted, having pleaded not guilty, of having an offensive weapon

in his possession. He was sentenced to six months' imprisonment and an order for the destruction of the offensive weapon was made. This Court has seen the offensive weapon, which was a vegetable-type of domestic knife. Although that can be said, it is equally true to say that it could be a very dangerous weapon if used offensively. The appellant now appeals against sentence with leave of the single judge.

The circumstances of the offence were that the appellant, who is 24 and was unemployed at the time, was seen by police officers running from the scene of an incident. It was not suggested, and could not be suggested, that he had been in any way involved in the incident. He was asked where he had been. According to the police officers he made no reply. He was out of breath. He was put in the back of a vehicle, where the police officers say—the appellant disputed this—that he was taking steps to try and get rid of something. At any rate, he was found to have in his rear left jeans pocket the knife in question. According to the police, when he was asked what this was for, he said: "It's for sticking in cunts like you, what do you think it's for?" Then he was arrested and cautioned and said: "I ain't saying fuck all. I don't have to talk to you." He was asked various other questions and he did not alter the attitude which is indicated by the remarks that have already been referred to.

At his trial he put forward a wholly different account. If his account was right, then he was innocent of the offence with which he was charged. Quite clearly, having regard to the verdict of the jury, they accepted the police officers' evidence and rejected the appellant's evidence.

In considering Mr. Pitt's submission that the sentence of six months' immediate imprisonment was too long, one has to take into account the way the matter was dealt with at the trial by the appellant and the appellant's behaviour when he was initially arrested. It is also highly relevant that in 1981 (admittedly when he was only 17) there was an offence of possessing an offensive weapon (copper tubing) dealt with by the magistrates' court, when he was fined £50; and again in February 1983 there was an offence of possessing a flick knife dealt with by the magistrates, when he was fined £200.

In cases with different backgrounds and different circumstances from those to which we have referred, this Court could well take the view that six months' immediate imprisonment could be too long for the carrying of a weapon of this sort. But each case has to be considered in accordance with its own facts. On the facts of this case, which have been shortly summarised, this Court takes the view that the sentence imposed by the extremely experienced judge was perfectly proper and not one with which this Court can interfere. Accordingly the appeal is dismissed.

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## THOMAS DOYLE

COURT OF APPEAL (Lord Justice Croom-Johnson, Mr. Justice Caulfield and Mr. Justice Tucker): January 12, 1988

*Supply of heroin—supplying heroin on relatively small scale—length of sentence.*

Seven years' imprisonment upheld on a man convicted of possessing heroin with intent to supply, and of supplying heroin, on a relatively small scale.

The appellant was convicted of possessing diamorphine with intent to supply,

and of supplying diamorphine. He was found in possession of a bag containing 3.39 grammes of powder of which 25 per cent. was diamorphine, estimated to be worth £179. The appellant admitted using heroin himself, and that he had been selling heroin in small packets for a few weeks. Sentenced to seven years' imprisonment.

**Held:** (considering *Aramah* (1982) 4 Cr.App.R.(S.) 407, *Gilmore* (May 20, 1986, unreported) and *Carter* (1986) 8 Cr.App.R.(S.) 410) there were inevitably cases where there were slight variations between the lengths of the sentences which were imposed. Looking at the matter broadly, in the light of the sentences imposed in comparable cases, and of the fact that the appellant could expect no discount for pleading guilty, the sentence was one which the judge was fully entitled to impose.

**Cases cited:** *Aramah* (1982) 4 Cr.App.R.(S.) 407; *Gilmore*, May 20, 1986, unreported; *Carter* (1986) 8 Cr.App.R.(S.) 410.

**References:** supply of heroin, *Current Sentencing Practice* B 11–2.3 (B).

*M. J. Topolski* for the appellant.

**CROOM-JOHNSON L.J.:** This is an appeal by Thomas Doyle against a sentence of seven years which was imposed by His Honour Judge Finney in the Crown Court at Wood Green on March 17, 1987. He was refused leave by the single judge, but was granted leave by the full court and, accordingly, he comes here as an appellant.

He was convicted after a contested trial on two counts, one of possessing a controlled drug, diamorphine, with intent to supply it. On that he was sentenced to seven years' imprisonment. On the second count, he was convicted of unlawfully supplying a controlled drug, diamorphine again, and he was again sentenced to seven years' imprisonment; the two sentences to run concurrently.

The facts of the case were these. On September 19, 1986 a police officer noticed Doyle enter a house in Lymington Road in London and followed him. They saw him drop a bag which appeared to contain heroin. The appellant was cautioned. He said that the bag was not his. He then said it was not all his, but some of it was for friends and he sold £5 worth of the drug at a time. He used up to three-quarters of a gramme a day himself; he sometimes spent £60 a day. He said that he only sold to people he knew and would sell to teenagers if they had enough money. He said that he did not feel guilty. He had been selling heroin for a few weeks and had sold one or two packets that morning. He had in cash on him £35. He said that he might have sold seven packets that morning. He agreed that the package that he had dropped would contain five or six grammes of the drug, worth some £480.

When his flat was searched the police officers found various burnt spoons which he said were used by friends. They found quantities of citric acid, some 60 syringes and other paraphernalia of drug abuse. That was the interview at the scene where he was first stopped by the police.

When he was interviewed at the police station, he said that the bag of heroin had never been in his possession. He said that he had never previously admitted that it was. He admitted responsibility for the spoons and syringes found in his room, but denied that he had admitted using large amounts of heroin or selling the drug. In short, he was putting forward that the police account of the first interview was all fantasy and lies and he denied that the money which was found upon him was the proceeds of any sale, but was simply his supplementary benefit money.

On examination of the bag which was found on him, it was in fact found to contain 3.39 grammes of ground powder of which 25 per cent. was diamorphine, and we have been told by counsel appearing on behalf of Doyle that the value of that was £179.

He did not come before the court as somebody with a previous good character. Indeed, he did in fact have quite a long time ago a very small conviction, an unimportant one, of possessing drugs, which consisted of 10 Mandrax tablets, for which he was fined £30 by the magistrates, which fine he paid. But apart from that he had convictions for dishonesty and could not put himself forward as a man of good character.

The jury found him guilty. They obviously rejected his denial of the account which the police officers say that he gave to them, when they stopped him. When the learned judge came to impose sentence, he said this:

> "What horrifies me is some of the replies you made to the police officers. You were asked: 'Do you sell to teenagers?' Your answer was: 'If they have got the money.' You were asked: 'Do you sell to children?' Your answer: 'Never. Just to teenagers. Most are over sixteen.' You were asked: 'Don't you feel guilty?' Your answer: 'It is their choice.' That is an answer you repeated more than once. You were asked about the syringes: 'Are they all for the use of your customers?' Your answer to that was: 'I wouldn't call them customers. I prefer friends.' "

The judge having had an opportunity of seeing the appellant in court during the course of the trial, described him as an evil little man. He said: " . . . and I am afraid you will suffer the penalty of evil little men, who spread this vicious and corrupt poison around, leaving death and degradation in their wake."

The ground of appeal in this case is that the sentence of seven years is out of line with comparable sentences in other cases. It is conceded by Mr. Topolski, who has said all that can be said on behalf of Doyle, that the *Aramah* guidelines are for present purposes no longer effective and now the possession and trading of hard drugs, even in small quantities gets a higher sentence than would previously have been so before Drake J. indicated in the case of *Gilmore* that the time had come when the sentences for drug offences should be increased.

In particular Mr. Topolski has relied upon the case of *Carter* (1986) 8 Cr.App.R.(S.) 410. *Carter* was the case where in fact there was a plea of guilty, which was a point in Carter's favour. It was also a case where he was a man of previous good character, which Doyle cannot claim. In all the circumstances of that case, Carter's sentence, which had been one of six years, was reduced by the Court of Appeal to one of five years, but imposing sentence Taylor J. did say this:

> "Observations about the possible need to raise the level of sentencing were also made in the case of *Gilmore*. . . . In the course of giving the judgment of the Court Drake J. said this: 'The experience of all the members of this court is that the number of serious drug offences is on the increase, and has been on the increase since the time when *Aramah* was before the court in 1982. We think that without violating the guidelines to be looked at the time has clearly come when it is necessary to move up the level of sentencing for serious drug offences.' "

There are inevitably cases where there are slight variations between the different cases in the length of the sentences which are imposed. Mr. Topoloski has submitted that this is not one of the more serious cases, that Doyle is a small scale supplier, though supplying, it is true, for profit, and on his own confession for profit in order to keep himself supplied in drugs for his own use. The amount of heroin which was found upon him was not very large, but it was clear that during that day he had made a number of sales, and had he been stopped rather earlier by the police, it could well be that they would have found more drugs upon him. But the real point is this. Looking at the matter broadly, and clearly in the light of comparable sentences imposed in other cases which have been before this Court and upon