

**IN THE DISTRICT COURT
AT WHANGANUI**

**CRI-2016-083-000574
[2017] NZDC 10693**

THE QUEEN

v

ALEXIS JANE WATSON-LAIRD

Hearing: 16 November 2016
Appearances: H C Mallalieu for the Crown
R J Leith for the Defendant
Judgment: 16 November 2016

NOTES OF JUDGE I D R CAMERON ON SENTENCING

[1] Alexis Watson-Laird has pleaded guilty to the charges of aggravated robbery, unlawfully using a document to obtain a pecuniary advantage, unlawfully converting a motor vehicle and wilful damage.

[2] The various facts are these: That in relation to the aggravated robbery the victim in this matter was a 60 year old male who resided alone at his home in [Whanganui]. On Thursday 18 February the victim was home alone asleep on the couch with the front door open. At around 11.40 pm this defendant and an associate, Vincent Jordan, entered the victim's address. Both were disguised and armed. This defendant poked the victim, waking him from his sleep, producing a knife and pointing it directly at him. The defendant was wearing a balaclava with eye holes and gloves. The victim jumped up in fright and turned to see Vincent Jordan standing in the middle of the lounge. Jordan was wearing a balaclava with eye holes. Jordan produced what the victim believed was a pistol, pointing it directly at the

victim, telling him to turn around. He demanded to know the location of the victim's MasterCard. The victim told Jordan there was cash and credit cards in his wallet in the van outside. Jordan tasked this defendant to get the wallet from the van and come straight back. Jordan remained where he was while pointing the pistol directly at the victim. This defendant retrieved the wallet from the van, finding the victim's credit cards and \$120 in cash. This defendant returned to stand next to Jordan in the lounge and showed him the contents of the wallet. Jordan instructed the victim to stand up and turn around. The victim did as instructed. Jordan handed this defendant the pistol and told her, "If he moves f-ing shoot him." Jordan then bound the 60 year old victim tightly around his hands and ankles with black plastic cable ties. Jordan demanded the victim tell him the PIN number for his MasterCard. Once the victim provided Jordan with his PIN number Jordan applied thick black tape over the victim's mouth, asking the victim if he could breathe. This defendant took the landline phone from the kitchen bench, ripping the line from the wall prior to both Jordan and this defendant exiting through the front door. Jordan returned a short time later and informed the victim that if the PIN provided was wrong they would return. This defendant and Jordan left the victim's address in a motor vehicle with the victim's SKY TV remote, a Panasonic DVD remote, landline phone and base, a set of keys, a packet of cigarettes, a wallet containing Eftpos cards, \$120 in cash and a Westpac MasterCard. The victim was still bound on the couch in the lounge.

[3] Then in relation to the using a document for pecuniary advantage charge. Jordan drove this defendant in his vehicle to an ANZ ATM machine located at the [local Shopping Centre]. At 11.58 pm this defendant accessed the victim's MasterCard using the ANZ ATM machine with the PIN number that the victim had provided. This defendant accessed the victim's MasterCard account seven times within quick succession and withdrew a total of \$2100 over the seven transactions.

[4] After some time the victim managed to work the tape free from his mouth and shuffle outside on his knees where he called out for help. This alerted his neighbours who came to his aid and contacted police.

[5] In terms of injuries to the victim, as a result of being bound the victim sustained minor bruising to his wrists and ankles.

[6] In relation to the wilful damage charge, the victim in this matter is [the motor lodge]. On Wednesday 10 February 2016 at 10.49 am an associate of the defendant booked and paid for a room at that motor lodge. Later that day this defendant went to that room which she occupied overnight. While inside the room she used candles inside the spa bath situated within the room causing burn stains on the lining of the spa bath. Upon inspection of the room by staff members, the room was found in a messy state and stains on the carpet. Reparation in the sum of \$6727.50 for the damage to the spa bath is sought.

[7] Finally, in relation to the unlawful conversion of a motor vehicle, the victim in that matter is a 49 year old male and is an associate of this defendant. The defendant had been using the victim's vehicle during the day of 19 February 2016 with the victim's permission. Then on that day the victim was at his home address with the defendant and another associate. While the victim sat on the couch having a cigarette this defendant asked the victim if she could use his vehicle to go to the bottle store. The victim did not answer this defendant. A short time later the victim observed this defendant and her associate leaving the address in his vehicle without his permission. Later that night the victim sent the defendant a text asking, "Where's my car?" To which the defendant did not respond. At approximately 6.30 pm police were notified by a member of the public of a motor vehicle accident at Gull Service Station, Victoria Avenue, Whanganui, involving the victim's vehicle. The victim's vehicle and occupants decamped from the scene prior to police arrival; however the vehicle was located by police on Wicksteed Street near Glasgow Street at 6.20 pm. Police observed the vehicle to have received a smashed rear windscreen and panel damage as a result of the motor vehicle accident. The victim's vehicle is a Ford Laser valued at approximately \$2000. Prior to the vehicle being taken it was in good condition, only having a dent on one rear guard and a scuff mark on the other. Reparation is sought for \$300 being the amount of the excess paid by the defendant to his insurance company.

[8] In terms of the defendant's criminal history, she has convictions for offending from 2013 to 2016. There are a variety of offences that she has committed. In particular in relation to dishonesty she has three previous theft convictions. She has a conviction for burglary in respect of which she received eight months'

imprisonment in 2015. She has three drug-related convictions as well as convictions for three breaches of supervision and two breaches of prison release conditions. The defendant has no previous convictions for violence.

[9] I have read the victim impact statements from both the owner of the vehicle and the owner [the motor lodge] and taken those into consideration.

[10] In terms of Restorative Justice, this defendant was prepared to attend Restorative Justice in relation to the aggravated robbery but, not surprisingly, the victim was not willing.

[11] In terms of the pre-sentence report, this defendant is now 20 years of age. At the time of the offending she stated that she was using methamphetamine daily and that she was in fact consuming up to one gram per day at times. She admitted, too, that she had a problem with alcohol and would consume excessive amounts, particularly if she was unable to access methamphetamine. She is described as having shown little remorse and to have participated in the interview in a superficial manner.

[12] Mr Leith has pointed out that this defendant is not particularly keen to express herself and is also very reluctant to talk about her past which has been less than a happy one, and I take that into account.

[13] This defendant is single with no dependents and her ability to comply with any community-based sentence is questionable.

[14] In terms of sentencing principles, she needs to be held accountable for what she did. I need to denounce her conduct and deter others from this type of lawless activity. The lead charge is the aggravated robbery and *R v Mako*¹ is the guideline judgment. There the Court identified starting points of seven years or more where there is forced entry at night by a number of offenders seeking money or drugs or other property and committing violence against victims where weapons are brandished. Even if there are no serious injuries the Court said where residences

¹ *R v Mako* [2000] 2 NZLR 170 (CA)

were entered then that starting point would increase to around 10 years under the then home invasion provisions. In *Fenton v R*² the Court of Appeal has observed that those observations are still valid, notwithstanding the repeal of the home invasion provisions and also the observations in *R v Mako* have been confirmed as applicable by the Court of Appeal in the case of *Hemopo v R*³.

[15] In this case in terms of aggravating features there was the planned aggravated robbery. There were two offenders, both were armed and wearing disguises. The victim was physically assaulted by being bound and gagged and there was a considerable amount of property taken, including his card which was subsequently misused and significant amounts taken from his bank account.

[16] I adopt a starting point of nine years' imprisonment. Recognising that this defendant played a slightly lesser role than that of Vincent Jordan, I would reduce that to eight and a half years' imprisonment. Then recognising the defendant's youth and the fact that she was willing to attend Restorative Justice, I would reduce the 102 month level to 82 months, namely six years' 10 months' imprisonment. Applying a 25 percent discount to that 82 month level for her guilty plea, that reduces the level to 61 months, and noting that she has participated in an alcohol and other drugs brief programme while in custody on this charge I would reduce that to 60 months, namely five years' imprisonment.

[17] Accordingly, on the aggravated robbery charge this defendant is convicted and sentenced to four years' nine months' imprisonment.

[18] In relation to the unlawfully using a document to obtain a pecuniary advantage, the defendant is convicted and sentenced to three months' imprisonment concurrent with the four years nine months term.

[19] In relation to the unlawful taking of a motor vehicle, the defendant is convicted and sentenced to two months' imprisonment, cumulative on the four years nine months, taking the total to four years' 11 months' imprisonment. And in

² *Fenton v R* [2011] NZCA 110

³ *Hemopo v R* [2016] NZCA 242

relation to the wilful damage charge, the defendant is convicted and sentenced to a further one month's imprisonment, again cumulative on the earlier sentences, taking the total to five years' imprisonment.

[20] This defendant has fines of \$4892.25 which she seeks to have remitted and a short prison term imposed. Accordingly, I remit her fines and Court costs totalling \$4892.25 and substitute one month's imprisonment, cumulative on the five year term. So an end point of five years' one month's imprisonment.

[21] In relation to the unlawful using the document, I also order reparation to be paid to the victim in the sum of \$1050.

[22] In relation to the aggravated robbery offence the defendant is also ordered to pay reparation in the sum of \$217.50 to the victim for the loss of property and repairs.

[23] In relation to the wilful damage of the spa bath the defendant is ordered to pay reparation in the amount of \$6727.50, and in relation to the unlawful conversion of a motor vehicle the defendant is ordered to pay the victim the sum of \$300 being the excess previously referred to.

I D R Cameron
District Court Judge