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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Liverpool Crown Court
Queen Elizabeth II Law Courts
Derby Square
Liverpool
L2 1XA

Monday 7th December 2015

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Thomas of Cwmgiedd)

MR JUSTICE HOLROYDE

and

MR JUSTICE WILLIAM DAVIS

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R E G I N A

v

KURT RICHARD BEDDOES
CRAIG CARTWRIGHT
IAN ELLIS
ANTHONY BUSHELL
THOMAS WHITTINGHAM

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Mr N Johnson QC appeared on behalf of the Appellants

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J U D G M E N T

Monday 7th December 2015

THE LORD CHIEF JUSTICE: I shall ask Mr Justice Holroyde to give the judgment of the court.

MR JUSTICE HOLROYDE:

1. The court is concerned with appeals by a total of seven appellants who pleaded guilty to or were convicted of offences of conspiracy to cause an explosion and conspiracy to burgle commercial premises. They all have the leave of the single judge to appeal against their sentences.

2. This judgment relates to the appeals against sentence by five of the appellants who were sentenced by His Honour Judge Brown on 5th September 2014. A separate judgment will relate to the appeals against sentence by the other two men and to a renewed application by one of them for leave to appeal against conviction. They, too, were sentenced by His Honour Judge Brown, in their cases on 12th December 2014.

3. It will be necessary in this judgment to refer to the facts which are relevant to all seven appellants. They have all been represented before the court by Mr Johnson QC, to whom we are very grateful.

4. Each of the appellants was charged on an indictment containing two counts. Count 1 charged conspiracy to cause an explosion, the particulars being that each of the named defendants conspired together "to cause by a mixture of gases an explosion of a nature likely to endanger life or cause serious injury to property". On count 2 each was charged with conspiracy to burgle commercial premises. The particulars were that they conspired "to enter as trespassers

buildings, namely, commercial premises housing automatic teller machines with intent to steal therein".

5. Three of the appellants, namely, Kurt Beddoes (now aged 33), Craig Cartwright (now 41) and Ian Ellis (now 31), all pleaded guilty to both counts. Their guilty pleas were entered at a stage of proceedings such that they were entitled to, and received, a reduction in their sentences of 25%. Anthony Bushell (now 31) and Thomas Whittingham (now 29) were convicted by a jury in July 2014. Daniel Morgan (now 23) and Jonathan Webb (now 33) were convicted after a later trial in December 2014.

6. A brief summary of the facts will suffice to indicate the seriousness of the offending in which the appellants were involved. Between 30th January and 10th December 2013 an organised crime group carried out offences targeted against automatic teller machines ("ATMs") in Merseyside, Cheshire, Derbyshire, the West Midlands, Leicestershire and Oxfordshire. They did so with a high level of criminal skill and efficiency. They used fast cars (some of them stolen) bearing false registration plates. They operated at night. They wore dark clothing, gloves, hats, and in some cases face masks. They used two-way radios in order to communicate with one another without risk of detection. It was apparent from the evidence that the offences had been carefully planned and that those who carried them out had provided themselves with all the necessary equipment, which they were able to use swiftly and efficiently.

7. In the first substantive offence, those involved, who included Beddoes and Cartwright, first rendered an ATM in Loughborough inoperable, and then returned at a later date when they cut off the safe door with an angle grinder. That enabled them to gain useful information as to the locking design and the alarm installation wiring.

8. Two further similar offences followed in early March 2013 with Beddoes and Cartwright again being involved. Cash was stolen on each occasion.

9. From 13th March 2014 the conspirators began to use a new and much more serious method to break into premises and steal cash from ATMs. They jemmied the front off an ATM, inserted piping through which a mixture of oxygen and acetylene gases could be pumped from gas cylinders, and then ignited the gases, thus causing an explosion. The effect of such an explosion was to break open the ATM and to cause extensive damage which, it is said, tended to spread inwards into the premises, rather than outwards into the street. Those involved were then able to smash their way into the premises and steal the cash from the ATM.

10. This method of using explosives to attack ATMs had previously been used in other parts of Europe, but the offence of 13th March 2013 was the first time it had been used in this country. As will be seen, it set a criminal trend which others have followed.

11. That first offence of its type did not, in fact, result in the conspirators succeeding in stealing any cash. Their many subsequent offences were, however, for the most part more successful. Sums of up to £80,000 were stolen in a single raid. In all, the conspirators carried out 31 attacks on ATMs. In at least 24 of those cases they either detonated or tried unsuccessfully to detonate an explosion.

12. It is not necessary to go much further into the details of the offences, but it is appropriate to mention some of the features. The method of igniting the explosive mixture of gases after it had been piped into the ATM enabled the offenders to remove themselves to what they considered to be a safe distance. In one of the early offences the appellant Cartwright, nonetheless, appears to have suffered a burn injury to his hand, a photograph of which was later found by the police

stored in his mobile phone. No other person in fact sustained any injury as a result of the commission of the offences, though in some cases nearby residents were woken from their sleep by the alarming noise of an explosion. However, it must be noted that the explosions were of necessity detonated in circumstances which were far from controlled. Those carrying them out were either unskilled in the igniting of explosions or were making a sinister use of a skill somehow acquired. Evidence before the court showed that, in order to carry out a controlled explosion safely, it would be necessary to establish a cordon and to move all persons up to 100 metres away from the ATM. The power of the explosions is shown by the evidence that in one of the substantive offences a safe door weighing some 60 kilograms was sheered from its hinges. The explosions resulted in very substantial damage to the premises, including, in some cases, bringing down ceilings, and debris and broken glass were thrown across the pavement and into the carriageway.

13. The evidence showed that a number of offenders carried out each of the substantive offences. In some cases they had travelled to and from the scene in two separate vehicles. Some of the false registration plates which were used to disguise the vehicles were created by the conspirators themselves, using equipment which was found in premises at Huyton used by the conspirators. That unit was linked to the appellant Cartwright. Cars were stolen by the use of keys created using other specialist equipment, which was later found by the police at the home of the appellant Beddoes.

14. On one occasion, in mid-June 2013, the offenders were confronted by local residents. One of the offenders swung a golf club and they were able to escape with about £16,500.

15. On 30th August 2013 the police raided the unit in Huyton which we have mentioned. The appellant Whittingham was arrested. A substantial quantity of the equipment which the

offenders had used in their crimes was recovered.

16. Undeterred by this setback, the conspirators quickly resumed their criminal activities. Less than a fortnight later they carried out another offence involving the detonating of an explosion. On 27th September 2013 two offences were committed at almost exactly the same time at premises on the Wirral and in Warrington. It follows that on that occasion the conspirators had been able to equip two separate squads of men who were able to blow apart the ATMs. Their collective activities on that one night resulted in the theft of a quarter of a million pounds in cash.

17. Later that same day the police raided the house in Huyton. They found over £100,000 in cash and further criminal equipment. CCTV footage recovered from a security camera showed a number of the conspirators coming and going from the premises. Interrogation of computer equipment and satellite navigation devices showed the extent of the planning, the research which had been undertaken into past offences of this kind committed elsewhere, and the sourcing of the necessary equipment and materials.

18. Again, the conspirators were undeterred by this raid. Two further offences followed in which explosions were detonated, before other conspirators were arrested. The appellants Morgan and Webb removed themselves to Spain, from where they had to be repatriated.

19. In all, the offences involved the theft of some £800,000 in cash and the causing of damage which cost some £500,000 to repair. But those direct losses were not the only consequence of this campaign of organised crime. In his sentencing remarks (at page 12B) the learned judge said this:

> "Banks and other commercial institutions provide an important service to the public by having cash machines and the offences have undermined the confidence the banks have in the security of that system. That is very clear from the two victim personal statements which I have seen from the banks.
>
> This was the first time this type of offence had been committed in the United Kingdom and over a period of eight months it is said they placed the whole financial sector under significant pressure. The banks were forced to identified vulnerable locations, reassure frightened staff and manage disgruntled customers and communities. There was inconvenience to the general public and additional security measures were deployed at considerable cost."

20 In his sentencing remarks the judge rightly identified six aggravating features of the offences: first, the careful planning and execution of a criminally sophisticated operation; secondly, the geographical spread of the offences around a wide area; thirdly, the fact that a number of men acted in concert as part of an organised crime group; fourthly, the large number of offences; fifthly, the uncontrolled nature of the explosions which created considerable risks for the safety of the public and could have had devastating effects; and sixthly, the considerable financial reward to the offenders and consequential loss to the bank.

21. As to the risk to the public, the judge (at page 11D) said this:

> "It is submitted that the causing of explosions was simply a means to an end so that the banks could be burgled, and it is suggested there was no callous disregard for anybody's lives. It is also suggested your activities did not involve a campaign against the public or any communities, and that the intention was not to injure or to put life at risk.
>
> I am satisfied that the offences were committed at the dead of night, not because of concern for public safety but really to avoid detection, and although there may not have been the intention to cause death or serious injury, nonetheless it is very fortunate that nobody was hurt or killed. Although the explosions were not intended to threaten human life, they undoubtedly occurred in an uncontrolled way and public safety was inevitably at great risk. You must have known how combustible the gases were and must

> have appreciated the risks you were taking and in particular the risk to public safety."

22. Having heard the evidence at the trials of those who had pleaded not guilty, the judge concluded that the appellants Beddoes and Cartwright were leading figures and involved throughout. He found that Bushell was a trusted lieutenant, Webb was close to the top, and Whittingham played an important role. Ellis and Morgan played rather lesser roles.

23. All of the appellants have previous convictions, although none has previously served a custodial sentence of any great length. Beddoes had been convicted of 29 offences, including in 2004 possessing a firearm and ammunition in a public place, and in 2006 conspiracy to burgle.

24. Cartwright had been convicted of 27 offences, including several of burglary.

25. Ellis had been convicted of 32 offences, including offences of burglary some years ago.

26. Bushell similarly had been convicted of 62 offences, including a number of burglaries some years ago.

27. Whittingham had been convicted of 28 offences, including in 2010 conspiracies to steal a vehicle and to burgle.

28. The judge concluded that the degree of harm caused and the culpability of each of the appellants were very high and that significant deterrent sentences were necessary. He adopted the approach of imposing concurrent sentences on each of the two counts on the indictment. He took as his starting point a total sentence of 23 years for those at the top of the conspiracy if they

had been convicted after a trial. From that starting point, taking into account the roles played by individuals and their pleas, he sentenced them as follows. Of those who had pleaded guilty, Beddoes and Cartwright were each sentenced to concurrent terms of 17 years and eight years' imprisonment; Ellis, to concurrent terms of 13 years and eight years' imprisonment. As to those convicted after trials, Bushell was sentenced to concurrent terms of 17 years and eight years' imprisonment; Morgan, 13 years and eight years' imprisonment; Webb, 19 years and eight years' imprisonment; and Whittingham, 18 years and eight years' imprisonment.

29. On behalf of each appellant, Mr Johnson submits that the starting point was simply too high. We will consider that important point first, before returning briefly to those submissions which are specific to individual appellants.

30. A number of cases were cited to the learned judge, as they have been to us. It was and is common ground that there is no definitive sentencing guideline specifically applicable to this type of offence. Broad comparisons were suggested by the prosecution and the defence to assist the judge in what was, undoubtedly, a difficult sentencing exercise. First, reference was made to the level of sentencing for burglaries or robberies of commercial premises committed by ram-raiding. Secondly, reference was made to the level of sentencing for other kinds of offences involving the use of explosives, including terrorist cases. Thirdly, reference was made to the level of sentencing for armed robberies in which actual violence was used.

31. Reference was also made to the sentencing remarks of another judge who had dealt with a similar type of offence in a case involving a number of defendants, of whom the lead defendant was a man called Cassidy. As we have said, it was these appellants who first introduced this type of offending into this country. But by the time they fell to be sentenced, a similar type of offence, committed later in 2013, had come before the Crown Court in another city. The

offenders in that case had carried out three burglaries in which they had caused explosions by the use of a mixture of gases. Their offences had been committed in the period of about a month. One had been successful, when almost £20,000 was stolen. The other two had been unsuccessful. The judge in those cases had passed sentences based on a starting point of eight years' imprisonment. Submissions were made to His Honour Judge Brown about that case. He distinguished it on the basis that it was very different in the scale of offending involved.

32. Subsequently, and after Judge Brown had sentenced the first group of these appellants, the Attorney General was given leave to refer the sentences in *R v Cassidy and Others* to the Court of Appeal Criminal Division. That Reference was heard in November 2014: *Attorney General's Reference Nos 74-78 of 2014 (R v Cassidy & Ors)* [2015] 1 Cr App R(S) 30. This court held that the judge in that case had failed adequately to mark the element of deterrence, and that his starting point of eight years' imprisonment had been unduly lenient. Rafferty LJ, giving the judgment of the court, referred to the increase in such offences in Europe since this method of attacking ATMs had first been carried out in 2005. She referred to the offences committed by these conspirators. At [16] she said:

> "In the UK the first recorded offence was in March 2013 and since then attacks have been recorded as occurring nationwide."

The court went on to conclude in that case that for the offenders most seriously involved, the appropriate starting point was one of twelve years' imprisonment.

33. As Mr Johnson readily and realistically acknowledges, the seriousness of the offending in this case could only be met by long sentences, and the judge was entitled, by virtue of section 142(1)(c) of the Criminal Justice Act 2003, to have regard to the need to deter other offenders.

Section 143(1) of the same Act also required the judge to consider not only any harm actually caused, but also any harm which the offence was intended to cause or might foreseeably have caused.

34. The question which we must address is simply stated: was the starting point of 23 years taken by the learned judge so high as to be manifestly excessive?

35. The level of sentencing for other types of offence does provide an informative comparison, although it is not determinative. We note that for a single ram-raid burglary this court, in *Attorney General's Reference Nos 45-49 of 2007 (R v Callaghan & Others)* [2008] 1 Cr App R(S) 8, indicated a starting point after trial of or approaching seven years. However, whilst it is true that ram-raiding offences share a number of features with this type of offending, what they lack is the extremely serious element of the use of an explosive. We note also that in *R v Lawlor and Smith* [2013] 1 Cr App R(S) 532 the court indicated that for a ram-raid robbery in which members of staff were not physically injured but were terrified, a starting point of between ten and 15 years for a single such offence would be appropriate.

36. Mr Johnson relies on the level of sentencing in that type of case as indicating what is appropriate for a type of offending which he acknowledges is less serious than that with which we are here concerned. He then invited our attention to sentencing in cases of armed robbery. He submitted that such offences are markedly more serious than that present case when they involve the carrying of loaded firearms and the use of actual violence. He particularly invited our attention to *R v Wynne, Knight and Hall* [2014] 1 Cr App R(S) 14, and to the earlier case of *R v Jenkins* [2009] 1 Cr App R(S) 109, in which the court indicated that for a series of armed robberies in which actual violence is used, a starting point of up to 25 years may be appropriate.

37. We accept that the element of the deliberate infliction of violence or the threat of violence upon a victim is absent in this case, and for that reason a single offence of this type will often be less serious than a single armed robbery involving violence. We do, however, note that none of the armed robbery cases cited to us involved anything like as many as 24 separate offences.

38. Finally, Mr Johnson invited our attention to cases involving the use of explosives with intent to endanger life. Those cases identify a starting point of up to about 15 years' imprisonment as generally appropriate, where the starting point will be much higher if there is a terrorist element, or element of attack upon society as a whole. Mr Johnson submits that the present offending was offending against property, not offending directed against persons.

39. Ultimately, of course, the fact-specific nature of the criminal activity involved in a particular offence must remain the paramount consideration. With the advantage of Mr Johnson's assistance as to those broad areas of comparison, we turn to the aggravating features of this offending. The essence of the criminality undoubtedly lies in the detonating of explosions for a criminal purpose. The seriousness with which society and the courts regard the use of explosions is immediately illustrated by Schedule 21 to the Criminal Justice Act 2003, which indicates that in cases of murder the appropriate minimum term should be the same for cases involving the use of an explosive as it is in cases involving the use of a firearm.

40. Next, it is important to bear in mind that the appellants took part in a highly organised criminal activity which took place over a long period of time (nearly a year), and stopped only because of the intervention of the police. They offended over a wide geographical area. Those features at once distinguish this case from *Cassidy and Others*, in which the scale of offending was far less.

41. The care with which the appellants planned and executed their offences shows professional criminality. We note that they started in a cold-bloodedly, businesslike way by destroying one ATM and thus gaining information as to how it might be vulnerable. They introduced, as we have said, this type of serious offending to this country. The need for deterrence is vividly shown by the fact that other criminals quickly followed their lead.

42. Set against those considerations, we accept that there was no intention to cause injury to any person. Like the learned judge, we are unimpressed by any suggestion that the timing of the offending was planned specifically to protect the public, rather than for reasons of self-interest. Although these offences were committed late at night and in the early hours of the morning, and there is no evidence that any persons were in fact put immediately at risk, it is we think unarguably the case that there was nonetheless a risk to the safety of others. Even if it be the case that the force of the explosion would mainly be transmitted inwards, it would seem obvious that at least some debris, including broken glass, would fly outwards. That, after all, is presumably the reason why the appellants removed themselves to a safe distance before triggering the explosion. Nor could it safely be assumed that there was no risk of anyone coming upon the scene at just the wrong moment. Indeed, the court was informed with specific reference to the use of ATMs that in the month of March 2014, in Liverpool alone, over 100,000 ATM transactions were completed between 1am and 6am. All that said however, the absence of any actual injury or proven intent to cause injury, and the absence of any evidence that substantial numbers of persons were put at risk, are important considerations to set against the serious features of the offending which we have identified.

43. Clearly long sentences were unavoidable. In our judgment, however, the starting point of 23 years taken by the learned judge was somewhat higher than was necessary or appropriate in all the circumstances. No doubt if the judge had had the benefit of the *Attorney General's*

Reference in *Cassidy* being decided before he had to pass sentence, his difficult sentencing exercise would have been greatly assisted.

44. In our judgment, in all the circumstances of this case, the appropriate starting point for sentence for those most heavily involved would be one of 20 years' imprisonment after a trial.

45. Turning to submissions specific to individual offenders, Mr Johnson realistically concedes that there can be no complaint about the learned judge's assessment of the roles of the appellants Beddoes and Cartwright. As to Ellis, he submits that the judge failed to identify his precise starting point and that if the starting point was 17 years, then the sentence after appropriate reduction for the plea should have been three month less than it was. We see little merit in an argument based on such refined arithmetic as that.

46. As to Whittingham, Mr Johnson submits that the evidence points to his having withdrawn from the conspiracy after the end of August 2013. That may be so, but it was a factor which the judge, having heard the evidence at trial, was in the best position to assess.

47. As to Bushell, complaint is made that he should have been sentenced on the basis that his involvement in the conspiracies was limited to the month of September 2013. So far as his overt acts in pursuance of the conspiracy are concerned, the evidence at trial had been limited to events in that month. It is argued that the learned judge gave no warning that he would sentence on a wider basis than that. But what the judge said (at page 10B of his sentencing remarks) was this:

> "Now, there is evidence that you may have been in Spain until around about the beginning of August, but I have no doubt that on your return to the UK you played a very important role in the

> bank attacks. I simply do not accept the proposition that your participation was limited to the September offences or that you were a lesser light."

It should be noted that during the month of August 2013 one of the substantive offences involved the use of a car which had been bought by Bushell some months earlier. It seems to us that in the passage which we have quoted the learned judge was doing no more than making the realistic point that it is unlikely that Bushell returned from Spain and immediately became involved at a high level in this conspiracy without having had any prior knowledge or involvement at all.

48. In the end, the learned judge was in the best position to assess the criminality of each of the appellants. Despite Mr Johnson's attractive submissions, we are not persuaded that there is any ground specific to any individual appellant for reducing any of the sentences.

49. In the result, the sentences fall to be reduced because of the conclusion we have reached about the appropriate starting point for sentence. We allow the appeals of the five appellants to whom this judgment relates. We quash the sentences imposed below and we substitute the following sentences which are, as before, concurrent as between counts 1 and 2: Beddoes, 15 years and seven years' imprisonment; Cartwright, 15 years and seven years' imprisonment; Ellis, eleven years and six years' imprisonment; Bushell, 15 years and seven years' imprisonment; and Whittingham, 16 years and seven years' imprisonment.

50. To that limited extent these five appeals succeed.