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No: 201705297/C4- 201705326/C4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 19 July 2018

B e f o r e:

MRS JUSTICE McCOWAN DBE

SIR BRIAN KEITH

R E G I N A

v

STEVEN LEE GORRY
ROBERT MICHAEL COULSON

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Mr K Seal appeared on behalf of the **Appellant Gorry**

Mr N Jones appeared on behalf of the **Appellant Coulson**

J U D G M E N T

(As Approved)

1. SIR BRIAN KEITH: The conspiracies to which these appeals relate were highly sophisticated ones. They targeted people with cars at the high end of the market. Their homes were broken into and their car keys were taken. The keys were then used to steal their cars. In R v Bham [2013] EWCA Crim 10, it was noted that burglaries of this kind had become sufficiently common for a name to be given to them. They are called "Hanoi" burglaries. But unlike the appellant in Bham, some of the burglaries in the present case had an additional feature. The burglars took other things as well, including in one case items of considerable sentimental value which were never recovered.
2. The appellants are Robert Coulson and Steven Gorry. We trust that we shall be forgiven for referring to them by their surnames from now on for convenience. They were tried at Cardiff Crown Court on an indictment which charged them with conspiracy to burgle dwelling- houses and conspiracy to steal cars. They pleaded not guilty. They were convicted on both counts. Coulson was sentenced by Judge Lloyd- Clarke to 9 years' imprisonment on each count, to be served concurrently with each other, and he was disqualified from driving for six- and- a- half years. Gorry was sentenced to 7 years' imprisonment on each count, to be served concurrently with each other, and he was disqualified from driving for five- and- a- half years. They now appeal against their sentences with the leave of the single judge.
3. Subject to one important reservation, three burglaries were committed in furtherance of these conspiracies. In the first, a house was broken into by the door to one of its garages being forced. Access was thereby gained into the house through the other garage. That happened while the occupants of the house were away on holiday. The keys to their Audi worth £10,000 were taken, as was the Audi itself which had been in the drive. Also taken were the spare keys to another Audi which the occupants had taken on holiday with them, £340 and \$250 in cash, a handbag and its contents, a necklace and a Fabergé egg which had been a gift from the mother of one of the occupants.
4. In the second burglary, which occurred four days after the discovery of the first burglary, a house occupied by a 78- year- old woman who lived there alone was broken into through doors at the back of the house. She had not been there at the time. The keys to her Volkswagen Jetta were taken, as well as the Jetta itself which had been in the drive. Also taken were a necklace with the presentation box in which it had been kept, a dish which had been presented to her late brother- in- law, and her late brother- in- law's MBE together with the presentation box in which it had been kept.
5. The third burglary took place during the night a couple of days later. The householder and her children had been in at the time asleep. When she got up the following morning, she discovered that the keys to her Mercedes convertible were missing from the bunch of keys which had been in the lock of the front door but were by then on the floor. The car was no longer in the drive where it had been. The value of the three cars was said to be no more than £50,000.

6. The prosecution's case was that these three burglaries were evidence of the conspiracies, but not the limit of the acts done in furtherance of them. The judge accepted that. She was satisfied that many more vehicles had been stolen. That conclusion was based on texts sent by Miles Bishop - who was also charged with and convicted of these conspiracies, and who like Gorry was sentenced to 7 years' imprisonment on each, to be served concurrently with each other - to a man to whom he was trying to fence the cars which were stolen. In those texts, Bishop referred to other cars and said that he was getting 10 vehicles a week. On a later occasion, he had sent a text to Coulson telling him to "tell the boys no more until next week". The judge inferred that Bishop was being provided with so many vehicles that he was not able at that time to dispose of them all. Bishop's evidence at the trial had been that he had just been boasting and trying to drum up business, but the judge concluded that that was untrue.
7. The judge noted that the text related only to the *theft* of vehicles and their disposal. They might therefore have been stolen otherwise than in furtherance of the conspiracy to *burgle*. As she said, there was simply no way of knowing whether the other vehicles had been acquired as a result of burglary to obtain their keys, or whether only some of them had been or whether none of them had been. However, she was satisfied, given all the circumstances of the case, that at least some of those vehicles would have been acquired in that way. In our view, it was open to the judge to make all those findings, and to the extent that those findings are challenged on these appeals, we reject that contention. Moreover, this was not a case of the appellants being sentenced for burglaries which might have taken place in the future, as was submitted on behalf of Coulson in his counsel's advice. They were sentenced for being parties to conspiracies in which a number of burglaries in furtherance of those conspiracies had already taken place.
8. In her sentencing remarks, the judge said that the evidence was that Coulson would go out late at night in his car and he would collect Gorry. As we read her sentencing remarks, she inferred that they would then commit the burglaries together, that Gorry would then drive the stolen cars away followed by Coulson in his car and that Bishop would then organise their disposal. The judge was satisfied that Coulson was the ringleader, apparently accepting the prosecution's case that Coulson appeared to have decided when and where to go to carry out the burglaries. As for Gorry, the prosecution did not suggest that he played a leading role in the conspiracies, and he may have been what the prosecution described as a "go-between". The judge described Gorry and Bishop as the next most significant figures in the conspiracies, Gorry's role having been to provide support for Coulson when the burglaries were being committed. To be fair, the roles which the judge attributed to the principal players in the conspiracy has not really been challenged.
9. Both Coulson and Gorry had previous convictions. Coulson was 40 years old at the time of these conspiracies and had many convictions, mostly for offences of dishonesty and offences to do with driving. He had been sentenced to detention in a young offender institution when he was a teenager for non-residential burglaries but

since then he had not received a custodial sentence. He had been given community service in 1996 for another non- residential burglary, though he had not had any convictions since 2003. The judge had been under the impression that he had previous convictions for non- residential burglaries in 2008, 2011 and 2014, but we have been told that that was not correct. As for Gorry, he was 29 at the time of these conspiracies and he had convictions for a variety of offences. He had been to prison a number of times, notably for 5 years in 2008 for offences of robbery and having an imitation firearm with intent to commit an indictable offence, and for periods totalling three- and- a- half years in 2012 for offences of aggravated vehicle taking, possessing an air weapon when prohibited from doing so, possessing an offensive weapon and dangerous driving.

10. When the judge came to determine the length of the sentences of imprisonment to be imposed, she bore two things in mind. First, there was the Definitive Guideline on Burglary Offences issued by the Sentencing Council. There were, she said, some factors indicating greater harm - the theft of items of considerable sentimental value and the presence of the householder in her property on one occasion - though against that there was one factor indicating lesser harm: limited damage or disturbance to property. In addition, there were a number of factors indicating higher culpability: a significant degree of planning; the burglars must have taken equipment for the burglaries to the scene; and the burglars were members of a group or gang. All that put the burglaries carried out in furtherance of the conspiracies within category 1, with a starting point of 3 years' imprisonment and a sentencing range of 2 to 6 years' imprisonment. The judge noted that there were present here a number of additional aggravating factors: the appellant's convictions; the burglaries were committed at night; and on one occasion there were children at home.
11. The second matter which the judge had in mind was what the Court of Appeal had said in Bham. That case had involved Hanoi burglaries, eight in all, in which the appellant had been involved in three, in furtherance of a conspiracy to commit burglary which was the charge the appellant faced. The burglaries had been well planned, a high level of expertise had been shown by the removal of tracker devices, the occupants of the properties had been at home at the time, in one case the occupier had confronted the burglar in his bedroom, and the total value of the vehicles which had been stolen in the burglaries in which the appellant was involved came to £170,000. The Court of Appeal thought that the appropriate starting point in that case, before any discount to reflect the appellant's plea of guilty, was 6 years' imprisonment. Judge Lloyd- Clarke recognised that the Court of Appeal discourages the citing of authorities when there is an appropriate sentencing guideline, but she thought that taking Bham into account was appropriate in this case when the circumstances of the case did not neatly fit into the guideline.
12. We deal first with the sentences of imprisonment which the judge passed. It is said that the sentences passed by the judge were too long because they exceed (and in Coulson's case did so by a considerable margin) the top end of the sentencing range in the guideline and what the Court of Appeal had said was the appropriate starting point in Bham. We do not agree. Exceeding the guideline may well be appropriate in a

particularly serious case, and the guideline, as the judge pointed out, related to a single offence of burglary. Moreover, Bham was in many respects a very different case. Bham himself had no previous convictions. The judge in that case had not been able to tell which of the various conspirators had been the instigator or ringleader. The judge could only sentence the defendants on the extent of their involvement in the particular burglaries. In any event, there had not been a challenge to the judge's presumed starting point of 7 years' imprisonment, the sole issue having been whether the judge should have made a greater distinction in the sentence between the appellant and the other conspirators.

13. In the circumstances, we do not think that the judge's starting point for Coulson was too long. As the ringleader, with previous convictions, albeit not since 2003, he could expect sentences well in excess of the 6 years thought appropriate in Bham for someone who had no previous convictions and had to be sentenced on the basis of his participation in three burglaries. Nor do we think that the judge's starting point for Gorry was too long. As someone who had served long sentences in the recent past, he could also expect a sentence in excess of the 6 years' imprisonment thought appropriate in Bham for someone with no previous convictions. The difference in the sentences passed on Coulson and Gorry sufficiently reflected the lesser role which Gorry had played.
14. We have not overlooked the point made on Gorry's behalf that his previous convictions did not include convictions for the offence of burglary, and that he was said to have had personal mitigation which the judge did not take into account, namely his partner had recently had a miscarriage, and he would not be around to help with the care of his daughter who lived with his mother. But we do not think that those factors were sufficiently compelling to affect the outcome of the sentencing exercise which the judge had to perform.
15. There is, though, one matter which needs to be mentioned before we turn to the appellants' disqualification from driving. The maximum sentence which the judge could have passed on both appellants for the offence of conspiracy to steal was 7 years' imprisonment. That is the combined effect of section 7 of the Theft Act 1968 and section 3(3) of the Criminal Law Act 1977. Moreover, the maximum sentence for an offence is reserved for the most serious examples of that offence, and we do not think that the maximum sentence was called for in this case. Coulson's sentence for the offence of conspiring to steal should, we think, have been 6 years' imprisonment, and Gorry's sentence for that offence should have been 5 years' imprisonment.
16. We turn to the orders disqualifying the appellants from driving. Only Coulson is appealing against that order, but for reasons which will become apparent in a moment, we propose to treat Gorry as appealing against the order as well. The judge did not identify the power she was exercising, but it looks as if she was purporting to disqualify the appellants pursuant to section 147(3) of the Powers of Criminal Courts (Sentencing) Act 2000 on the basis that a motor vehicle had been used for the purpose of facilitating the commission of the offences in question, rather than under the

general power of disqualification under section 146. In fact, she had no power to disqualify the appellants under section 147(3). The appellants could not be disqualified under that provision on their conviction for the types of conspiracy of which they were convicted. The only type of conspiracy which a defendant can be disqualified under section 147(3) on conviction for is one in which the vehicle was used directly in the formation of the conspiracy itself. The mere fact that vehicles were used in acts performed in furtherance of a conspiracy is not sufficient to engage the powers in section 147: see R v Riley (1984) 5 Cr App R(S) 335, a case dealing with a similarly drafted provision in the statutory predecessor of section 147(3), namely section 44(2) of the Powers of Criminal Courts (Sentencing) Act 1973.

17. For these reasons, we quash the sentences of 9 years' imprisonment on Coulson and 7 years' imprisonment on Gorry on count 2 of the indictment for the offence of conspiracy to steal, we substitute for those sentences one of 6 years' imprisonment in the case of Coulson and 5 years' imprisonment in the case of Gorry, to be served concurrently with the sentences imposed for the offence of conspiracy to commit burglary, and we quash the orders of disqualification from driving made against each of the appellants. To that limited extent only, these appeals must be allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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