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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation No. [2020] EWCA Crim 1188
Case No: 2018/05036/A2. 2018/02111/A2

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 25th August 2020

B e f o r e:

LORD JUSTICE HADDON-CAVE

MR JUSTICE JEREMY BAKER

MRS JUSTICE MOULDER DBE

R E G I N A

- v -

BRADLEY THOMAS ROBERT GILL
JAMES PATRICK FOY

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Mr P B Humphries appeared on behalf of the Appellant Bradley Thomas Robert Gill
Mr B Jones appeared on behalf of the Appellant James Patrick Foy

Mr M Reid appeared on behalf of the Crown

JUDGMENT

Tuesday 25th August 2020

LORD JUSTICE HADDON-CAVE: I shall ask Mr Justice Jeremy Baker to give the judgment of the court.

MR JUSTICE JEREMY BAKER:

1. These two appeals against sentence arise out of an extensive police investigation into the supply of very large quantities of cocaine in the Fylde coastal area of Lancashire and beyond. It resulted in the prosecution of over 30 individuals who were either convicted or pleaded guilty to various drug-related offences, including conspiracy to supply cocaine.

2. The criminal proceedings took place at Preston Crown Court before His Honour Judge Medland QC, who had the unenviable task of sentencing all those who had either been convicted or had pleaded guilty in respect of their particular roles within the conspiracy. It was a task which he carried out with particular care and clarity.

3. The appellant Bradley Gill had pleaded guilty to the conspiracy to supply cocaine on 31st May 2018 and was sentenced to 14 years' imprisonment for that offence on 9th November 2018. The appellant James Foy was convicted of conspiracy to supply cocaine on 4th April 2019 and was sentenced to six and a half years' imprisonment on 10th May 2019.

4. Both appellants appeal against sentence with the leave of the single judge.

5. The police investigation was known as "Operation Jennet". It took place over a period in excess of a year, between about May 2016 and July 2017. During the investigation, six kilos of high purity cocaine, with a retail value of almost £700,000.00, together with over £122,000.00 in cash was seized. However, it was contended by the prosecution that the other

evidence in the case, including probe evidence from one of the motor vehicles used for transporting some of the drugs, together with surveillance evidence concerning the number of trips carried out by the conspirators, revealed that the total amount of cocaine involved in the conspiracy was at least 28 kilos. This was said to be a conservative estimate, based on only one kilo of cocaine per trip; whereas some of the quantities of cocaine that were seized weighed two kilos.

6. The wholesale quantities of cocaine were sourced from Merseyside or Yorkshire and then brought into the Blackpool area, where they were bulked out and retailed along the Fylde coast. The conspiracy was headed by two individuals, namely, Anthony Gill and his brother Bradley Gill, both of whom were involved in a number of meetings with various of the co-conspirators throughout the period of the conspiracy.

7. John Foy together with his brother James Foy were involved in one delivery of cocaine from Liverpool to Blackpool on 17th March 2017. The surveillance evidence revealed that they made the journey together in a VW Passat motor vehicle, and whilst James Foy stayed inside the vehicle, John Foy handed over a house brick sized package to one of the other conspirators. When the motor vehicle was subsequently seized in the course of the police investigation, it was found that, like other vehicles used within the conspiracy, it contained a specially adapted void between the rear passenger seats. The void had traces of cocaine within it, and it was accessed by an electromagnetic catch wired into the vehicle.

8. In his sentencing remarks, the judge indicated that, having heard the evidence in the trial, he accepted that this was a sophisticated conspiracy and that the overall quantity of drugs involved was likely to be at least 28 kilos of high purity cocaine. He observed that this was at least six times the indicative quantity within category 1 of the definitive guideline for drugs offences. He indicated that in order to reflect the scale of the conspiracy, he proposed to uplift

the appropriate starting points, depending upon the role played by each of the conspirators, by around 25 per cent.

9. In relation to Anthony Gill and Bradley Gill, both of whom he considered to have had leading roles within the conspiracy, the judge assessed that after a trial the appropriate sentence would have been 21 years' imprisonment which, after deducting one-third to reflect the timing of their pleas of guilty, resulted in sentences in each of their cases of 14 years' imprisonment.

10. In relation to John Foy and his brother James Foy, the judge indicated that because of the limited nature of their involvement in the conspiracy, he would not apply the 25 per cent uplift from the appropriate starting point. In so far as the quantity of cocaine which they had delivered in the motor vehicle, the judge stated that:

"I have been asked to accept that it was less than a kilogram. In my judgment the precise weights perhaps matter little. It was a house brick size package that you had taken the trouble to deliver up from Merseyside. You were in an especially adapted car with a hide in the back of it. Of that the jury were sure. The prosecution case was that this was a kilogram, and I have seen nothing to lead me to any view that it was significantly less than that.

James Foy, it might well be said in your case that your involvement was perhaps less direct than that of your brother. Up to a point I can accept that. However, in your case you have relevant and recent previous convictions for drug supply offences, albeit in relation to Class B."

The judge stated that, in the light of these observations, he would treat the two brothers equally and that as they both had been convicted after a trial, the sentence in each case would be six and a half years' imprisonment.

11. In his original grounds of appeal, Mr Humphries, who appears on behalf of Bradley Gill,

submitted that the sentence of 14 years' imprisonment was manifestly excessive. He suggested that, bearing in mind the fact that the police did not stop and search each of the motor vehicles involved in the various trips in and out of Blackpool, it could not be said with any certainty that they all involved transporting cocaine, such that the estimate of 28 kilos of cocaine was an overestimate, rather than an underestimate. Moreover, unlike his older brother who had a previous conviction in 2007 for supplying controlled drugs, Bradley Gill had only one previous conviction for possession of a bladed article. It was also pointed out that Bradley Gill had expressed remorse for his involvement in the conspiracy, had a number of testimonials available to him, and had undertaken a number of courses whilst in custody.

12. This morning, before us, Mr Humphries sought to rely upon a point identified by the single judge: that of a possible disparity between the sentence imposed on Bradley Gill and his brother Anthony Gill. Although the prosecution had placed both brothers in a leading role in this conspiracy, they had suggested that Bradley Gill may have played a subordinate role to that of his brother.

13. Mr Jones, who appears on behalf of James Foy, submits that the sentence of six and a half years' imprisonment imposed upon him is manifestly excessive. He submits that the judge was not entitled to conclude that the quantity of cocaine in which he had been involved was one kilo and suggests that it was significantly less. On this basis, the judge should have dealt with James Foy as though he had a lesser role in a category 3 offence, like his co-accused, Daniel Thornber, who was sentenced to four years' imprisonment for his role within the conspiracy. It is submitted that the judge also took too much account of James Foy's previous conviction, for which he was sentenced after his involvement in the conspiracy.

14. His Honour Judge Medland QC had the distinct advantage that he was the trial judge in relation to a significant number of individual conspirators and was therefore in the best position

to assess the evidence concerning the quantities of drugs involved in the conspiracy and the role played by the various conspirators.

15. In regard to the overall conspiracy, we have no doubt that, based upon the evidence relied upon by the prosecution, the judge was entitled to determine that on a conservative basis the total quantity of cocaine involved was at least 28 kilos of high purity drug. This was, as he indicated, far in excess of the indicative level under category 1. Moreover, given the extent of his involvement in the conspiracy and that of his brother, there is no doubt that the judge was entitled to determine that both Bradley and Anthony Gill had leading roles within the conspiracy.

16. At this juncture it is opportune to remind ourselves that at step 1 of the definitive guideline it is pointed out that:

"Where the operation is on the most serious and commercial scale involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending upon the role of the offender."

Therefore, we are quite satisfied that, given the nature and extent of the conspiracy, together with the quantity of cocaine involved and the role played by both brothers, each of them was liable to be sentenced to at least 20 years' imprisonment.

17. In relation to the disparity point, we are satisfied that the judge was entitled not only to make up his own mind on the evidence that he had heard about the respective roles played by the various participants in the conspiracy, but that, based upon the evidence, he was entitled to reach the view that both of these brothers bore equal culpability. It may well have been, as the evidence showed, that Anthony Gill was exclusively involved with the wholesale end of the

operation, whereas Bradley Gill was exclusively involved in the retail end of the operation. But in our view, given the nature and extent of this conspiracy, those two roles were of equal importance within the running of this particular organised crime group. True it is that Anthony Gill's previous convictions are more extensive and relevant than those of his brother Bradley Gill; moreover, that Bradley Gill has expressed remorse and has undertaken courses since his remand in custody. However, although it may be that, bearing in mind these factors, Anthony Gill may consider himself fortunate that his sentence is not in excess of that imposed upon him, it does not, in our judgement, afford Bradley Gill any assistance in criticising the sentence imposed upon him. We consider that, bearing in mind the nature and scale of the operation which was being conducted along the Fylde coast, and the guidance issued by the Sentencing Council, his sentence of 14 years' imprisonment was entirely justified.

18. As we have already pointed out, having heard the evidence in the trial, the judge was best placed to determine the quantity of drugs with which James Foy was involved. In his case the evidence was that, similarly to other known quantities, his brother had been seen with a house brick size piece of cocaine. Furthermore, although the prosecution had suggested that both James Foy and Daniel Thornber had played similar roles, namely a lesser role under the definitive guideline, the evidence in relation to the quantity of cocaine involved differed, in that all that could be seen of the package in the possession of Daniel Thornber was that it was contained in a plastic bag and was able to be placed in a jacket pocket.

19. In these circumstances, the judge determined that Daniel Thornber had played a lesser role in a category 3 offence within the definitive guideline and imposed a sentence which was within the relevant category range, namely four years' imprisonment.

20. In the case of James Foy, it is apparent that the sentence imposed upon him, namely six and a half years' imprisonment, was within the category range for an individual who had played

a lesser role in a category 2 offence. We consider that, not only was the judge entitled to have sentenced James Foy within this category range, but he was entitled to uplift his sentence within the range to take into account the fact that, although he had not already been sentenced in relation to his conviction for conspiracy to produce cannabis, he had already committed this offence by the time he came to be involved in the conspiracy to supply cocaine. Therefore, we are unpersuaded that the sentence imposed upon James Foy was, as has been submitted to us, manifestly excessive.

21. Accordingly, both appeals against sentence are dismissed.

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

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