

SENTENCING REMARKS

12/26642 - R v HEAGNEY & 21 ORS

12/28518 - R v BLAIR & 6 ORS

12/22388 - R v BARNES & 4 ORS

12/25775 - R v BAKER

12/39602 - R v CHARNLEY & 4 ORS

His Honour Judge Burgess - The Recorder of Belfast

- [1] Over the course of the next two weeks the court will be sentencing upwards of thirty defendants who involved themselves in disturbances in a number of areas of this City in June and July 2011. It has been some time since the courts have addressed the levels of sentencing for the offence of riot and certain aspects of that offence, including that of throwing petrol bombs and criminal damage. As the Presiding Judge at this court tier, I have been asked by the Lord Chief Justice's Sentencing Group to set out guidance for the courts until the Court of Appeal has had the opportunity to provide an authoritative guideline.
- [2] In approaching this task I invited the legal representatives for the prosecution and the defendants to address me on any case law that they wished me to consider in my general approach to such guidance. I am grateful to counsel, particularly Mr David Russell for the prosecution and Mr Gavin Duffy QC for one of the defendants (but I believe at the end of the day representing the remainder of the defendants) both for the cases that they submitted and their arguments in relation to the principles enunciated in those cases.
- [3] I will turn shortly to the background to the different disturbances but again I am grateful to Mr Russell for having prepared a background 'statement of fact' as to the nature of the disturbance in each area. This statement was furnished to each of the defendants in respect of the relevant area involving them, and they were invited to make comment to ensure that I had a proper factual background for the purpose of sentencing. No issue has been taken

with Mr Russell's paper and at the appropriate time I will set out each of those backgrounds.

- [4] I will then be turning to the individual defendants and in that respect there are two aspects that the court has considered. Again Mr Russell has produced a short 'statement of involvement' gleaned from the CCTV footage collected by the police during the disturbances, with the relevant CCTV footage furnished to the legal representatives of each defendant. This statement of involvement has been given to the legal representatives of each defendant and I believe that that has been accepted by them as accurate, and therefore affording the proper factual basis of their specific involvement. A second aspect is of course the personal circumstances of each defendant represented by a pre-sentence report in each case. In each case the writer of the pre-sentence report has properly addressed the issue of "dangerousness" - namely the provision within the Criminal Justice (Northern Ireland) Order 2008 dealing with specified offences (of which riot and petrol bombing are but two) and as to whether or not under Articles 12-15 a defendant represents a significant risk of serious harm to others in the future by reason of the committing of further serious offences.
- [5] At the outset it is worth noting that there are no guidelines that the court can consider emanating from the Sentencing Guideline Council in England and Wales. I believe there may well be a good reason for that given the nature of riots and the different circumstances and other features of such riots which may cause some difficulty in providing such guidelines. In addition this court has to take care in that whilst the offence of riot in England and Wales is a statutory offence under the Public Order Act 1986 with a maximum sentence of ten years imprisonment, in Northern Ireland it is a common law offence affording the court the power to impose an unlimited sentence. In the *Attorney General's Reference (No 1 of 2006)* [2006] NICA 4, the Court of Appeal stated that for the offence of affray, due to the significant difference in maximum sentencing between the two jurisdictions, the English Sentencing Guidelines should not be used in Northern Ireland. I have taken that into account when addressing the framework of sentencing suggested by the Court of Appeal in the case of *Najeeb and others* [2003] 2Cr App R(s) 69 to which I will shortly refer.
- [6] Turning to basic principles it is not the individual act of a particular defendant that is the essence of the offence of riot. It is the use of violence in circumstances where so many people are present as to cause or inspire fear in the general public, and other specific, targeted groups such as the police. The individual act requires to be looked at in the context of that fear. The offences that bring the defendants before the court occurred when widespread violence was occurring in the City. As the statements of background provided by Mr Russell in respect of each individual event make clear, huge

amounts of damage were caused; police officers lives put in danger through the use of petrol bombs and other missiles; injuries were caused to police officers, scarce public funds were expended on policing and on clearing up; ordinary citizens were restricted from going about their everyday lives; and businesses were adversely affected by closing early. And at the end of the day it is the ordinary citizen who has to endure the fear of that violence, have their businesses threatened in already hard economic times, and the taxpayer has to pay for the consequences through their taxes.

I understand that the description 'recreational rioting' has become fashionable in recent years. Any viewing of the coverage of these events, and any cursory consideration of their consequences and their possible consequences would quickly show how absurd such a description can be accorded them.

[7] While I will turn shortly to the guidance given by the Court of Appeal in England and Wales in *Najeeb*, it perhaps is worthwhile to set out the general statement of approach by the judge in the Crown Court who had dealt with many of the cases that came before him as a result of the riot on 7 and 8 July 2001 when massive violence erupted in Bradford City Centre. Then a full scale riot lasted something like twelve hours. Two days later more violence, generated at least in part by the earlier violence, broke out in another part of the City, some two miles or so from the City Centre where the first riot occurred. His Honour Judge Gullick, the Resident Judge in Bradford, resolved with his colleagues so far as it lay within their powers and subject always to the individual and specific mitigation available to any defendant, that the sentences arising from or connected with that violence should send out a clear and unambiguous message, the object of which was to discourage and prevent any repetition of that violence: the consequences of involvement in this kind of criminal material would be severe.

[8] He stated:

"Any participation whatsoever of whatever duration in an unlawful and riotous assembly of that type, irrespective of its precise form, derives its gravity from becoming one of those who by sheer weight of numbers pursue a common and unlawful purpose.

On the other hand, I must have regard to the total picture as it has been presented to me and on the other hand I must pay heed, as I have done, to the specific acts of an individual such as yourself. However it must be made crystal clear to everyone, that each individual who takes an active part by deed or by encouragement is guilty of an extremely grave offence simply by being in a public place and being engaged in a crime against the peace ... Those who choose to take part in activities of this type must understand that they do so at their peril. It must be

made equally clear, both to those who are apprehended and to those who might be tempted to behave in this way in the future, that the court will have no hesitation in marking the seriousness of what has occurred and it will act in such a way in the present case as will, I hope, send out a clear and unambiguous message as to the consequences to the individual. It is a message which I trust will deter others from engaging in this type of behaviour in the future.”

He went on:

“The people of this City are entitled to look to the law for protection and to the courts to punish those who behaved so violently and viciously. It would be wholly unreal therefore for me to have regard to the specific acts which you committed as if they were committed in isolation. Those acts were not committed in isolation, and, as I have already indicated, it is that very fact which constitutes the gravity of this offence. What the court has to pay regard to is the level and nature of the violence used, the scale of the riot, the extent to which it is premeditated, the number of people engaged in its execution and finally, in the context of the overall picture, the specific acts of the individual defendant”.

[9] The Court of Appeal in that case did not demur from that general approach by Judge Gullick and I adopt those principles in relation to the rioting in the City. I make some further general points in relation to the riots with which I am dealing.

- (i) None of these riots was spontaneous. They followed a dismal and ritualistic course set in previous years. Given that history everyone is fully aware that such a disturbance is likely and everyone who involves themselves has the ability to make a clear and simple decision to go nowhere near the interface where this violence occurs. Each defendant therefore made a decision to go to this specific area and to involve themselves in what they expected would occur namely attacks on the police.
- (ii) It is also said by many that they behaved whilst under the influence of alcohol. No doubt this is right, but just as it was voluntary to attend the location of these events, it was entirely voluntary to consume alcohol and to excess. If they knew that they may act in a disinhibited fashion whilst under the influence of alcohol, then should they wish to drink they should keep well away from these areas.
- (iii) This society has come a long way in a relatively short period of time. Violence which so defaced our way of life has receded as the vast

majority of citizens seek to resolve their differences absent of violence. Specific mechanisms have been put in place by our public representatives to address issues which in the past have given rise to confrontations such as we see in these specific riots. Those who involve themselves therefore do so in the face of public rejection of that time-weary behaviour and also put themselves on the other side of the fence from the processes to put such matters firmly in the past.

(iv) Last year in sentencing for a number of riots I made it clear that deterrence lay at the heart of such sentencing for the reasons that have already been set out. I also warned that if the levels of sentencing then set by me were ineffective, heavier sentences would be imposed to make it clear again that this behaviour will not be tolerated. No-one should have been in any doubt that to involve themselves in these riots or to act in any of the particular ways with which I am dealing, would invite not just periods of custody, but periods of custody even more severe than last year. That was the message that was given and that is the message that will be delivered.

(v) As is set out in all of the authorities, given the seriousness of these offences the personal circumstances of each defendant will carry less weight. Indeed as is made clear in Najeeb and all cases following thereafter, adopting the principles set out in Najeeb, even those who appear before the courts for the first time cannot expect to receive other than an immediate period of custody unless there are exceptional circumstances. In R -v- Shaw and Houston [1989] 8 NIJB 60 the court stated:

“Some years ago when dealing with young offenders with clear records or virtually clear records the giving of a non-custodial sentence for such offences could be regarded as justifiable as being in accordance with the general approach taken by the courts that, save for the particular gravity of the crime prevented, a young person before a criminal court for the first time should be given a chance to keep out of trouble in the future and should not be given a custodial sentence.”

The court rejected that approach and continued:

“The court should make it clear by stiff and deterrent sentences that those who give vent to inflamed feelings at a time of tension and commit crimes of violence will be severely dealt with so that the number of such crimes may be kept in check. ”

- (vi) I also made it clear last year that the sooner pleas of guilty were entered the greater the discount that could be afforded – discount I am obliged to give under the provisions of Article 33 of the Criminal Justice (Northern Ireland) Order 1996. The court must bear in mind that the stronger the case against a particular defendant the less the credit that can be afforded – see *R.v.Pollock* [2005] NICA 43. In virtually all cases before this court the evidence is based on CCTV footage where a defendant is identified, as are his specific acts. The log notes prepared in respect of each defendant afford the court assistance as to the length of time the defendant may have been involved in a particular riot, even if at times throughout that period he was not carrying out any specific acts. Nevertheless for the reasons I have stated his presence alone would be sufficient to allow periods of custody to be imposed.

I acknowledge that this year there has been a very substantial increase in the number of defendants who have accepted their responsibility at the first possible opportunity, certainly as regards their appearance in court. I also acknowledge that some accepted their responsibility to the police in interview, and therefore that it has been clear from an early date that a trial would not be required. I can take that into account both as evidence of remorse for involvement, even though as I have said the personal circumstances of each defendant will carry less weight than would be normal given the nature of the offence before the court. But in terms of the public purse and the reduction in the time that has been required by the police and the prosecution in the preparation of these cases, and the fact that trials will not be required, each of the defendants will be given credit for that plea.

- [10] As I indicated that I was given a considerable number of authorities both by the prosecution and the defence. In relation to matters before the Northern Ireland Courts these are now of some considerable vintage, although of course I acknowledge that this in itself does not necessarily undermine the principles they laid down. However I believe it is right for the court to reflect that where upwards of fifteen or twenty years pass and defendants continue to commit the offences with which this court is now dealing, the concept of deterrence argues for the imposition of heavier sentences.

- [11] Many of the authorities furnished were from England and Wales, many of them arising out of the same riots as were dealt with in *Najeeb and others*. In each of those cases, absent the reflection in sentences based on the individual defendant before those courts, the general principles set down in *Najeeb* were accepted, as was the general framework set in that case in respect of certain types of actions. I again remind myself that there is a statutory maximum sentence of ten years in England and the guidance given by the Court of

Appeal would obviously be within that structure (or restraint). The court stated that

- Any ringleader who had been caught and convicted following trial, could expect to receive a sentence at or near the statutory maximum of ten years.
- Immediately below that highest level of culpability the court would have expected an active and persistent participant who threw petrol bombs or used a crossbow or drove a car at the police to be sentenced following a trial to between eight and nine years.
- Below that level for those who participated over a number of hours and threw missiles less dangerous than petrol bombs, but potentially more damaging than stones, the court would have expected following a trial sentences of six to seven years.
- Below that level for those present for a significant period and repeatedly throwing missiles such as bricks or stones, the court would have expected sentences of five years following a trial.
- Lesser degrees of participation would attract sentences at a lower level.

As has been stated those potential sentences would have followed a trial and therefore all would need to be discounted in an appropriate way for pleas of guilty and early co-operation with the police.

[12] It will be seen that there are a number of issues that the court requires to address. In relation to the actions of the defendants the persistence of their presence and activities is a relevant factor, as are the nature of missiles thrown, and by extrapolation the number of such missiles they would throw. That would require to be factored into the sentence in respect of each defendant in each case.

[13] One final general point. I said when addressing the approach of the court in *Najeeb* the duration of the riot and the numbers involved would be considerations to be taken into account by the court. However I believe that the context in which the courts in England and Wales were approaching sentences did not reflect the fact that with monotonous regularity such riots occur in different parts of this City, in the main never arising spontaneously. I do not believe that I should be too greatly constrained by a consideration that at one venue there may be substantially more participants than at another venue. I am not satisfied that I should necessarily be constrained by the fact

that it lasts five or six hours at one area and less than that at another area. It would be extraordinary if by dividing their forces into smaller riots participants should then expect shorter sentences. Therefore while those criteria of duration and numbers are of course relevant, nevertheless the court should not embark on some mathematical exercise based on those criteria. They are relevant but are not definitive.

- [14] *Najeeb* has a number of helpful guiding principles enunciated both in the Crown Court and in the Court of Appeal of England & Wales. Given the higher sentencing powers in this jurisdiction and given the repetitive annual nature of these riots, there is an argument that it can assist in identifying brackets of sentencing which should pertain in this jurisdiction. As to the levels of sentencing in those brackets, I also consider that *Najeeb* sets out indications of a general framework that I can take into account. That is not to slavishly follow what is set out in England and Wales, but rather to examine, as I hope I have done with considerable care, the principles that should guide the court towards what is a proper and fair sentence for any particular defendant - bearing in mind the public interest in relation to taking the fear and destruction (and its attendant costs) from our streets which will be the main driver in relation to the sentences to be passed.
- [15] Turning then to the individual riots I have set out in the schedules hereto the statement of circumstances prepared by Mr Russell to which there has been no objection by any defendant before this court.

SCHEDULE 1 - BILL 12/26642

The charges each accused faces arise out of events on 12 and 13 July surrounding an Orange Order Parade which passed along the Crumlin Road and Ardoyne Shop Fronts. In 2009 and 2010 serious disorder had occurred in connection with the protest against the Parade.

In 2011 the Parades Commission granted permission to three Lodges and a Band to proceed along the Crumlin Road past Ardoyne Shop Fronts on the evening of 12 July. They also further determined a counter parade organised by the Greater Ardoyne Residents Collective would be prohibited from entering the Crumlin Road beyond Estoril Park and between Estoril Park and Brompton Park. A protest was permitted on both sides of the Crumlin Road whilst the Parade was passing.

Police anticipated there would be serious disorder and resources were deployed to ensure compliance with the Parades Commission Determination. Police in protective equipment were deployed at approximated 6:40 pm at Estoril Park. Shortly thereafter they came under attack from youths throwing missiles. Serious disorder ensued in the areas Balholm Drive, Brompton Park, Estoril Park and Alliance Avenue/Ardoyne Road until about 3:00 am – a total of some eight hours.

During the course of the disorder police were attacked with petrol bombs and other missiles and a number of vehicles were hi-jacked and pushed towards police lines. During the course of the disorder nineteen police officers were injured, water cannon were deployed and sixty two AEP rounds were discharged.

SCHEDULE 2 - BILL 12/22388

The accused all face charges arising out of events on 20 June 2011 on the Lower Newtownards Road, Belfast. During the course of that day serious disorder occurred at the bottom of the Lower Newtownards Road and at the junction of Castlereagh Street/Mountpottinger Road. A large crowd were reported to have run into Strand Walk in the Short Strand area and attacked the people and property.

From approximately 9:15 pm police resources which had been deployed came under attack with rubble, petrol bombs and fireworks being thrown. Many within the crowd had their faces covered and additional police resources were deployed to try and separate the two factions.

The disorder centred on Wolff Close/Newtownards Road: Pitt Park/Newtownards Road and from the grounds of St Matthew's Chapel onto

the Newtownards Road. Over the ensuing hours the disorder escalated and from 10:00 pm blast bombs were thrown and live rounds were directed at police from Strand Walk onto the Newtownards Road and from Pitt Park onto the Newtownards Road.

During the course of the disorder the police required to deploy AEP (plastic bullets) in order to assist in quelling the riot. The crowd which at its peak was in excess of 500 people reduced from about 2:30 am on 21 June 2011. The remaining persons were concentrated in the Pitt Park area but continued to throw bricks and rubble sporadically before dispersing about 4:30 am. A large number of police vehicles were damaged in the disorder.

SCHEDULE 3 - 12/28518

On 1 July 2011 the annual Somme Commemoration Parade took place in East Belfast. As there had been disorder in East Belfast on 20 and 21 June 2011 there was a large police presence to deal with the Parade and the potential for any subsequent disorder. At approximately 10:45 pm there was an altercation on the Albertbridge Road between males. Two opposing crowds of approximately 150 gathered. While the crowd on the Mountpottinger Road dispersed that on Castlereagh Street grew larger and attacked police with masonry, stones and petrol bombs. Many of the crowd concealed their identity.

The disorder escalated over a number of hours and water cannon and AEP rounds were deployed. The crowd dispersed at approximately 1:30 am having reached at its peak about 250 persons. During the course of the disorder a large number of police vehicles were damaged, water cannon and 22 AEP rounds were deployed.

SCHEDULE 4 - BILL 12/39602

The background to the events giving rise to the offences to which these accused have pleaded guilty are that on 8 July 2011 there had been disorder in Ballyclare after PSNI had removed a number of paramilitary flags from the town. On the afternoon of 9 July a large crowd numbering up to 100 had gathered in the town and re-erected the flags. Police anticipated further disorder that evening and resources were deployed in advance to meet the perceived threat to police and members of the Catholic community.

Shortly before midnight an Ulsterbus was hi-jacked and used to ram a police landrover and a large crowd of about 80 were attacking police with petrol bombs, masonry and fireworks. The crowd appeared to be attempting to reach the local Catholic Chapel. Some of the crowd were masked and attempts were made to set the bus alight and push it towards police lines.

During the course of the attack on police the numbers involved grew to over 100 and in an effort to quell the violence further police were deployed as were water cannon and AEP rounds. The crowd violence continued and a number of vehicles were set alight and pushed towards the police lines. The violence was concerted, organised and spread to Carrickfergus, Doagh, Greenisland and Newtownabbey. The disorder ended at about 2:20 in Ballyclare but continued elsewhere until 5:00 am.

SCHEDULE 5 - BILL NO 12/26858:

On 11 July 2011 serious public disorder took place in the area of Donegall Road/Broadway/Falls Road. This was part of wider disorder in North and West Belfast on the nights of 11 and 12 July 2011. Police evidence gathering teams were deployed and as a result of the material gathered and other footage a number of defendants were identified. During the course of the riot a Translink Bus was hi-jacked and crashed. The vehicle was extensively damaged during the incident to a cost of some £6,000.