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IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

IND. NOS. 60/12, 62/12, 63/12 and 14/13

REGINA

V.

DAVID TAMASA  
RENNIE COLE  
GEORGE MIGNOTT  
RYAN ADRIAN EDWARDS  
AND  
ANDRE BURTON

Appearances:

Ms. Cheryl Richards, Q.C. & Ms. Trisha Hutchinson of the Office of the Director of Public Prosecutions, for the Crown

Mr. James Curtis Q.C. instructed by Ms. Lucy Organ of Samson & McGrath for the Defendant, Tamasa

Mr. Ben Tonner & Ms. Prathna Bodden of Samson & McGrath for the Defendant, Cole

Mr. Nick Hoffman & Mr. Guy Dilliway-Parry of Priestleys for the Defendant, Mignott

Mr. Earle Delisser, Q.C. instructed by Ms. Keva Reid of McKinney, Reid & Company for the Defendant, Edwards

Mr. Anthony Akiwumi of Stuarts Walkers Hersant & Ms. Margeta Facey-Clarke of Facey-Clarke & Associates for the Defendant, Burton

Judgment - *Regina v. David Tamasa, R. Cole, G. Mignott, R.A. Edwards & Andre Burton* Ind. Nos. 60 of 2012, 62 of 2012, 63 of 2012 and 14 of 2013 29.10.13

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Heard:

October 25 and 29, 2013

Before:

Hon. Justice Henderson

JUDGMENT

1. After a trial before a jury, all five defendants have been convicted of robbery (the first count on the indictment). In addition, each of the five defendants has been convicted of count two: possession of an imitation firearm with intent to commit robbery. On count three no verdict was required. On count four Mr. Edwards alone has been convicted of removing criminal property from the Cayman Islands, that being a portion of the proceeds of the robbery.

2. This robbery occurred at the Cayman National Bank on June 28th 2012. Approximately \$502,436 in a mixture of US and CI currency was stolen. Mr. Tamasa was the ringleader. He coordinated the

1 planning and supplied the weapons for use in the robbery. Messrs.  
2 Mignott, Edwards and Dillon entered the bank disguised. Two of them  
3 were armed with what appeared to be firearms. Mr. Dillon made a  
4 threat to kill one of the bank tellers. The overall intent of the three men  
5 was to subdue those who found themselves in the bank through the fear  
6 of serious bodily harm. Mr. Burton functioned as the getaway driver.  
7 Mr. Cole posed as a customer and in doing so deliberately distracted  
8 the security guard at the front door. Mr. Cole was apparently recruited  
9 into the plan at the last minute.

10  
11 3. This robbery was executed quickly and to some extent expertly - a  
12 topic to which I will return.

13  
14 4. I have been assisted by several victim impact statements. One is from a  
15 teller (20 years of age) who says she has been living in fear that the  
16 events will be repeated. She has suffered from a high level of anxiety  
17 causing nightmares. She has required counselling and had to be  
18 transferred to a different position with the bank. The other three bank  
19 employees who have provided statements have suffered in a similar  
20 manner.

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5. The president of the bank has provided a statement on the impact of the robbery on the bank as an institution. He says the robbery was the largest in the history of the Cayman Islands. The amount stolen amounts to about 1/6th of the bank's net profit for the year. The vast majority of the money has not been recovered. Bank employees have spent "hundreds of hours investigating and recovering from and analysing... the robbery." It is fair to conclude, as I do, that the robbery caused a very significant disruption in the daily routine and business of this locally-owned bank.

6. Mr. Tamasa is 33 years of age, married with three children. He has no criminal record. He has been working in the field of construction and is said to have a good work record. He is a Caymanian.

7. Mr. Cole is also 33 years of age and also married with three children. He has no criminal record. Mr. Cole has been here on a work permit from Jamaica and has been working in a car washing business. I recommend that Mr. Cole be deported upon completion of the sentence I am about to impose.

1 8. Mr. Mignott is 24 years of age, has a girlfriend and a child and has  
2 worked in construction as an electrician here on Grand Cayman. He is  
3 Caymanian. Mr. Mignott has several previous convictions but they are  
4 of a minor nature.

5

6 9. Mr. Edwards is 37 years of age and has no criminal record. He came  
7 here from Jamaica on a work permit and has worked in the car washing  
8 business with Mr. Cole. After the robbery, Mr. Edwards returned to  
9 Jamaica and was arrested there with, as I have said, some \$37,000 of  
10 the stolen money in his possession. I recommend that Mr. Edwards be  
11 deported upon completing the sentence I am about to impose.

12

13 10. Mr. Burton is 29 years of age and has one child. He is Caymanian. He  
14 works in the field of refrigeration and is said to have a good work  
15 record. Mr. Burton has several previous convictions and three of these  
16 involve the use of weapons. However, I infer from the trivial sentences  
17 imposed upon him at the time that these offences were of a relatively  
18 minor nature.

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20 11. I turn to a consideration of the law.

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12. Robbery is punishable by imprisonment for life. That is the maximum penalty which would be imposed for the worst conceivable offence. Possession of an imitation firearm has a maximum term of imprisonment of 20 years. Removing criminal property from the Cayman Islands is punishable by a term of imprisonment for a maximum of 14 years.

13. In the Cayman Islands, sentencing judges are much assisted by the Statement on Tariffs and Guidelines for sentencing for certain offences, to which I will refer to as the "tariff". These were originally created in 1998 and promulgated again with some revision in 2002. They have not been revised since that year.

14. The section of the tariff dealing with robbery is brief, perhaps too brief, and reads as follows:

*"As regards offences of dishonesty: For robbery, a first offence involving the use of a firearm could attract a tariff of 14 years. Otherwise, for a first offence of an aggravated nature, eight years will be imposed".*

15. The language of this passage has given rise in the case before me to no

1 less than three questions of law:

2 First, is the tariff a starting point, as the Crown says, or a  
3 reference to the final sentence after all aggravating and  
4 mitigating factors have been taken into account? Mr. Curtis  
5 for Tamasa urges the latter interpretation.  
6

7 Second, does the reference to a firearm necessarily exclude  
8 a case where the Crown has proved only that an imitation  
9 firearm was used? Mr. Tonner, supported by others, argues  
10 that it does.  
11

12 Third, what, in any event, is the proper starting point? The  
13 Crown argues that our tariff specifies a starting point of  
14 14 years. Mr. Curtis, citing a number of UK authorities,  
15 says that 12 years would be appropriate. The other defence  
16 counsel argue that the tariff governs the question but say  
17 that the starting point is eight years.

18  
19 16. I turn to the consideration of the first issue.

20  
21 17. In recent years it has become common for a sentencing judge to explain  
22 his reasons for sentence by first stating an explicit starting point, then  
23 setting out any aggravating and mitigating features which are found to

1 be present, and then stating the extent to which those features  
2 collectively increase or decrease the starting point penalty. By this  
3 process he arrives at a final sentence. This salutary approach makes the  
4 reasoning more readily understood by the defendant, by the attorneys  
5 and by the public at large. It enhances transparency and accountability.  
6 It also assists our Court of Appeal when it is called upon to review the  
7 sentence.

8  
9 18. Our sentencing tariff was created in 1998 and pre-dates the approach to  
10 sentencing I have just described. Therefore it is not surprising to find  
11 that the phrase "starting point" does not appear anywhere in the tariff.

12  
13 19. As with contracts and statutory instruments, a sentencing tariff should  
14 be read as a whole to discern the true meaning of a contention, word or  
15 phrase. The following passages in our tariff provide useful guidance:

16 At page two in the second paragraph we find

17  
18 *"a tariff means a sentence to be applied in a typical case.*  
19 *Mitigating factors will reduce it and aggravating factors will*  
20 *increase it".*

21  
22 At page three under the heading "Firearm Offences" we find

23 that the tariff for that offence, unless there are very mitigating

1 circumstances, will be ten years. If, on the other hand, aggravating  
2 circumstances exist (for instance, the use of a firearm for the  
3 commission of a serious offence) the tariff will be in keeping with  
4 decided cases and will be significantly higher. On page five at the  
5 bottom with reference to drug offences, the tariff says:

6  
7 *"The tariff for a first such offence, involving less than*  
8 *two ounces of cocaine or less than four grams of*  
9 *cocaine base without mitigating circumstances, will be*  
10 *eight years".*

11 Later it says for larger quantities:

12  
13 *"without mitigating circumstances the tariff will be*  
14 *10-12 years".*

15 With respect to burglary on page six, the tariff says this:

16  
17 *"For aggravated offences of burglary, a first offence*  
18 *will attract a tariff of 4-6 years.*

19  
20 *For burglary without aggravating circumstances a*  
21 *second or subsequent offence will attract a tariff of 3-4*  
22 *years".*

23 Under the heading "Principles of Sentencing" on page nine the tariff  
24 reads:

25  
26 *"The Court must always decide which objective should*  
27 *prevail in the particular case depending on the*  
28 *particular circumstances. With this in mind the Court*  
29 *must always consider carefully those factors which will*  
30 *push a sentence either above or below the specified*  
31 *tariff - we refer of course to mitigating or aggravating*  
32 *circumstances.*

1  
2           *The object of setting and announcing tariffs for*  
3           *sentencing is not to set measures which are cast in stone*  
4           *but to advise everyone on what the guidelines and likely*  
5           *consequences will be. The objective is also importantly*  
6           *to warn would-be offenders of the disastrous*  
7           *consequences of committing serious offences in the hope*  
8           *that they will be deterred from doing so".*

9   20.   A careful consideration of these passages suggests that the word "tariff"  
10       is used interchangeably to refer to both a starting point and a final  
11       sentence. In some of the passages I have quoted the tariff is a starting  
12       point as it is expected that aggravating circumstances will result in a  
13       higher sentence and mitigating circumstances will result in a lower one.  
14       In other passages the tariff is described as the final sentence after these  
15       two countervailing considerations have already been taken into  
16       account.

17  
18   21.   The passage which refers to robbery states that:

19  
20           *"A first offence involving the use of a firearm could attract a*  
21           *tariff of 14 years".*

22  
23       Aggravating and mitigating factors are not mentioned at this point. It  
24       seems to me the reference to 14 years is intended to be a reference to  
25       the final sentence which "could" or might be imposed after all  
26       aggravating and mitigating factors are taken into account. It does not

1 provide a starting point. The passage also asserts that:

2 *"for a first offence of an aggravated nature, eight years will be*  
3 *imposed"*.

4  
5 That refers to a case where no firearm is involved. Again the reference  
6 is to a final sentence which, in the words of the tariff, will be imposed  
7 for a robbery of an aggravated nature where no firearm is involved. It  
8 also does not provide a starting point.

9 22. I turn to the second issue.

10  
11 23. The wording of the tariff for robbery makes a stark distinction between  
12 cases involving the use of a firearm and those which do not. In the case  
13 before me, the men (except for Mr. Cole, Mr. Burton and Mr. Tamasa)  
14 who entered the bank carried what appeared to be firearms. Obviously  
15 the defendants wanted those present to believe in the deadly potential  
16 of what they were carrying. Nevertheless, no shots were fired and the  
17 weapons were never recovered so the Crown found itself unable to  
18 prove that these were real firearms in proper operating condition as  
19 opposed to mere imitations. The five defendants have been convicted  
20 only of possession of an imitation firearm with intent to commit  
21 robbery. I must accept for sentencing purposes that what the men  
22 carried into the bank were imitation firearms incapable of doing any  
23 harm. I approach my task on that basis.

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24. The sentencing tariff makes several references to a firearm, including one reference in the passage on robbery, but no reference to imitation firearms at all. The offence of possession of an imitation firearm was a part of our penal law in 2002 when the tariff was revised. I conclude therefore that the first sentence of the tariff passage concerning robbery has no direct application to the case before me now.

25. Read literally, the passage which says:

*"Otherwise for a first offence of an aggravated nature eight years will be imposed"*

could be seen as a warning that in any case involving no firearm or a mere imitation firearm, but with aggravating features, a final sentence of eight years is likely. I do not think it was intended to have that effect. There will be cases - and this is one - where a final sentence of eight years is simply too low. In other circumstances, a sentence of eight years might be too severe.

26. In two recent cases of robbery sentences reviewed in our Court of Appeal – *Barrett*, CICA 5 of 2012 - December 24 2012; and *Haylock and others*, CICA 33 of 2010 - September 7, 2011 - the Court of Appeal arrived at sentences, above in the first case and below in the second, the eight-years' mark without any suggestion that the quoted

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1 passage should control or even influence materially the result. There is  
2 just too much variation in the offence of robbery to justify a single  
3 starting or ending point for every case in which the Crown has failed to  
4 prove that a genuine firearm was used.

5  
6 27. I turn to the third issue.

7  
8 28. What then is my starting point? I consider that the correct approach is  
9 the one urged upon me by Mr. Curtis. In the absence of any discernible  
10 starting point in the tariff itself I must infer one from the authorities  
11 cited to me.

12  
13 29. The United Kingdom Sentencing Guidelines, unlike our own, contain a  
14 detailed prescription for the offence of robbery. A distinction is made  
15 there between "less-sophisticated commercial robberies" and  
16 "professionally-planned commercial robberies". The distinction is of  
17 considerable importance. The definition of less-sophisticated  
18 commercial robberies reads:

19  
20 *"This category covers a wide range of locations, extent of*  
21 *planning and degree of violence, including less sophisticated*  
22 *bank robberies or where larger commercial establishments are*  
23 *the target but without detailed planning or high levels of*  
24 *organization".*  
25

1 30. The passage in the Guidelines on professionally-planned commercial  
2 robberies reads as follows:  
3

4 *"The leading Court of Appeal decision on sentencing*  
5 *for robbery is the 1975 case of Turner. This focuses*  
6 *on serious commercial robberies at the upper end of the*  
7 *sentencing range but just below the top level. - planned*  
8 *professional robberies of bank and security vehicles*  
9 *involving firearms and high value theft but without the*  
10 *additional elements that characterize the most serious*  
11 *cases. The Court of Appeal said it had 'come to the*  
12 *conclusion that the normal sentence for anyone taking*  
13 *part in a bank robbery or in the hold up of a security or*  
14 *a post office van should be 15 years if firearms were*  
15 *carried and no serious injury done'. The Court also said*  
16 *that 18 years should be about the maximum for crimes*  
17 *which are not "wholly abnormal (such as the Great Train*  
18 *Robbery)". In cases involving the most serious commercial*  
19 *robberies the Court has imposed 20-30 years (15-20 years*  
20 *after a plea of guilty)."*

21  
22 31. The phrase "professionally planned" is not given further elaboration. It  
23 calls for a consideration of the degree of sophistication shown by the  
24 defendants in both the planning and execution of the robbery.  
25

26 32. The following factors suggest to me a substantial degree of  
27 sophistication in the case at bar. First, the robbery was timed to occur  
28 shortly before the cash on hand in the bank was collected. Secondly, a  
29 decoy was used to distract a security guard. Third, each defendant had  
30 a well understood and specific role inside the bank. Fourth, the robbery

1 was executed very quickly and I would say expertly. Fifth, the use of a  
2 getaway car and a switch car suggest a degree of professionalism.

3  
4 33. On the other hand, these factors suggest a lack of sophistication First,  
5 the getaway driver allowed his car to be blocked by another vehicle  
6 while the robbery was occurring so the robbers had to flee on foot,  
7 dropping currency as they did so. Second, the switch car was obtained  
8 from Marlon Dillon at the last minute. There was a lack of  
9 pre-planning in that regard. Third, when currency was seized from  
10 Mr. Edwards in Jamaica it still had the identifying paper wrappers on it  
11 from the bank.

12 34. Overall I consider that this was indeed a professionally planned  
13 commercial robbery, albeit one at the lower end of that elevated  
14 category. Some mistakes occurred in both planning and execution but  
15 they do not obscure the impression that these five defendants intended,  
16 and for the most part did, act as a well-co-ordinated team of  
17 professional-grade bank robbers.

18  
19 35. The professionally-planned commercial robbery category is not treated  
20 in depth in the UK Guidelines. The authors remark that the existing  
21 case authority is still valid (at page three). Later (at page 15) in the

1 passage quoted above, the guidelines cite the leading case of *Turner*  
2 1975, 61 C.A.R. 67 in which the Court of Appeal said that the "normal"  
3 sentence for anyone taking part in a bank robbery is 15 years if firearms  
4 are carried. Is the starting point for a professionally-planned  
5 commercial robbery at odds with the case authorities? No Cayman  
6 Islands cases involving that sort of robbery have been cited to me.  
7 Certainly the *Haylock* robbery was an amateurish and impulsive  
8 offence while the *Barrett* case, although more serious, lacked any real  
9 indicia of professionalism.

10  
11 36. In the case of *Barrett* the Court of Appeal considered a case of robbery  
12 with an imitation firearm. The defendant entered a service station at  
13 night, demanded the money in the till and threatened to shoot the  
14 cashier if she did not comply. He stole some \$450. After a trial at  
15 which he was found guilty, Barrett was sentenced to imprisonment for  
16 12 years. The Court of Appeal reduced this to nine years because of  
17 three mitigating factors: no actual violence was used, the amount  
18 stolen was small and the robbery happened very quickly. The Court of  
19 Appeal twice observed without expressing disagreement that the use of  
20 an imitation firearm was a significant aggravating factor. The report of  
21 the case contains no suggestion of sophisticated planning or execution.

1 37. A number of authorities from the United Kingdom have been cited  
2 including *Jenkins* 2008 WL 2443271; *Jamal* 2011 WL 883536; *Cowie*  
3 2012 1 CAR 2nd 22; and *Hoque* 2011 WL 6329143. All four are  
4 decisions of the Court of Appeal. That Court said in *Jenkins* (at  
5 paragraph seven) that the decision in *Turner* upon which the UK  
6 guidelines rely "has no longer any relevance". The reason for this was  
7 explained in detail in *Jamal* starting at paragraph 58. *Turner* and, by  
8 implication, the Guidelines derive support for the 15-year figure by a  
9 rough comparison with the amount of time a prisoner would actually  
10 stay in custody on a sentence of life imprisonment in the UK. By the  
11 time *Jenkins* was decided in 2008 that amount of time had increased  
12 considerably, which suggested that the 15-year guideline is actually too  
13 low. There has been no similar development in the Cayman Islands,  
14 where prisoners serving a life sentence are not eligible for parole at all.  
15 Another significant difference between the two jurisdictions is that  
16 when *Turner* was decided the Court was not permitted to take  
17 remission of sentence for good behaviour or release into account when  
18 imposing sentence. Today in the UK the opposite is true. However, in  
19 the Cayman Islands we still adhere to the old rule and do not take either  
20 remission time or parole expectations into account.

21

22 38. *Turner* and the UK guidelines state that the normal sentence for a

1 professionally-planned commercial robbery is 15 years' imprisonment.

2 I am satisfied from the considerations I have set out that the 15 year  
3 suggested starting point found in the UK guidelines and derived from  
4 the decision in *Turner*, while it must now be disregarded in the UK,  
5 still has relevance to the sentencing process in this jurisdiction.

6  
7 39. The UK guidelines contemplate a professionally-planned commercial  
8 robbery which involves both firearms and high value theft. The case  
9 before me does indeed concern theft of a large amount. The fact that  
10 imitation rather than real firearms were used and the fact that the  
11 planning and execution of the robbery were somewhat less  
12 sophisticated than many professional robberies convinces me that the  
13 starting point should be lowered in this case to 12 years.

14  
15 40. I must now consider the aggravating and mitigating factors which may  
16 apply to increase or reduce the starting point of 12 years. These are the  
17 factors of general application. I will consider each individual defendant  
18 separately in due course. Several of these factors have already been  
19 taken into account in placing this case in the professionally-planned  
20 commercial robbery category so they must not be considered again.

21  
22 41. The UK guidelines contain two lists of aggravating and mitigating

1 factors beginning at page six. In my view all of the aggravating factors  
2 have already been taken into account by my decision concerning a  
3 starting point. None of the mitigating factors mentioned at page seven  
4 of the guidelines is material here. I find that the appropriate sentence,  
5 subject to the individual distinctions I am about to make, is  
6 imprisonment for 12 years.

7  
8 42. I turn to each individual defendant.

9  
10 43. Mr. Tamasa has no previous convictions. He was not present at the  
11 robbery but supplied the weapons and played a leading role in the  
12 planning. He has now been convicted of a second similar robbery  
13 committed at the premises of Weststar. Mr. Curtis asks me to impose a  
14 concurrent, not a consecutive, sentence and reminds me of the  
15 fundamental rule that however my sentence is structured the total  
16 duration of imprisonment is the factor of overarching importance. The  
17 Weststar robbery must, of course, serve to increase any sentence I  
18 would have imposed for the Cayman National Bank robbery if it stood  
19 alone.

20  
21 44. The appropriate global sentence in Mr. Tamasa's case is imprisonment  
22 for 14 years. I impose that sentence on the robbery count and direct

1 that it run concurrently with his terms of imprisonment in the Weststar  
2 case. On count two I impose a sentence of imprisonment for seven  
3 years, also concurrent with all other sentences.

4  
5 45. Mr. Cole was recruited at the last minute to play a somewhat collateral  
6 role. He has no criminal record. He was not personally in possession  
7 of an imitation firearm. I sentence Mr. Cole to imprisonment for nine  
8 years on count 1 in recognition of his lesser role. On count two I  
9 impose a sentence of four years, concurrent with count 1.

10  
11 46. Mr. Mignott carried a weapon into the bank and thus played a leading  
12 role. He has previous convictions of a minor nature. I sentence  
13 Mr. Mignott to imprisonment for 12 years on count 1 and to seven  
14 years concurrent on count two.

15  
16 47. Mr. Edwards also carried a weapon into the bank and played a leading  
17 role. He purported to have inside information from a bank employee  
18 and suggested the crime to Mr. Tamasa long before it was carried out.  
19 He has no previous convictions. Mr. Edwards has now been convicted  
20 of aiding and abetting the Weststar robbery by supplying the getaway  
21 vehicle. Overall, the appropriate global sentence in his case is 13 years'  
22 imprisonment on count 1, concurrent with his Weststar sentence, and

1 seven years' imprisonment, concurrent with all other sentences, on  
2 count two. With respect to count four, removing criminal property  
3 from the Cayman Islands, I sentence him to five years, concurrent with  
4 all other sentences.

5  
6 48. Mr. Burton was not personally in possession of an imitation weapon  
7 but he played an integral role as the getaway driver. He also has  
8 previous convictions for some weapons offences. He has now been  
9 convicted of having participated in the Weststar robbery, a  
10 circumstance which demands a higher global sentence. On balance I  
11 consider the appropriate sentence in his case is imprisonment for 14  
12 years, concurrent with his Weststar sentences. On count two I impose a  
13 sentence of imprisonment for five years, concurrent with all other  
14 sentences.

15  
16 49. In every case time in custody will be taken into account.

17  
18 Dated this 29<sup>th</sup> day of October, 2013

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21  
22 Henderson, J.  
23 Judge of the Grand Court