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IN THE CROWN COURT
AT BRISTOL

Indictment No. T20080297

The Law Courts,
Small Street,
Bristol
BS1 1DA

15th June 2009

Before:

HIS HONOUR JUDGE LAMBERT

REGINA

- v -

ANDREW COLLINS
FIREMAGIC LIMITED

MR S MORGAN appeared for the Prosecution.

MR A FULLER appeared for the Defendant.

SENTENCE

Tape transcription by Mendip-Wordwave
(Official Court Reporters to the Court)
3 Chinon Court, Lower Moor Way, Tiverton, Devon EX16 6SS
Tel. 01884 259580 : Fax 01884 250235

At 2:45pm

SENTENCE

JUDGE LAMBERT: You can remain seated, I shall be some while.

In *Reg. v Howard & Sons Engineers Limited* 1999 2 Cr.App.R. Sentencing page 37, the Court of Appeal (Criminal Division) enunciated the following general principles in respect of contraventions of duties under the Health and Safety at Work Act 1974. The court states: “In assessing a level of penalty it is appropriate to look at how far short of the relevant band that the defendant has fallen; the degree of risk and the extent of the danger created; the extent of the breach; and at the defendant’s resources”. The standard of care was, however, said to be the same regardless of the size of the company.

The court observed that where death or serious injury resulted from a breach this was often a matter of chance.

Particular aggravating features would include a failure to heed warnings and deliberate financial profit from a failure to take necessary precautions, or running a risk specifically to save money. Neither of those is present in the current case.

Particular mitigating features were said to include prompt admission of responsibility -- notably absent in this case until a very late stage; secondly, steps taken to remedy deficiencies once pointed out; and a good safety record. In this case, the company did have a reasonable safety record in the sense that there are no previous convictions recorded against it.

As to ability to pay, the court observed that a fine needed to be large enough to get the message home to both managers and shareholders that the purpose of the legislation was to secure a safe working place for those who worked there and others who might be affected by the operation. That observation applies, appropriately adapted, to breaches of the regulations in any event. It was said in general that the fine should not be so great as to imperil the

A business but there might be cases where the offence was so serious that the defendant ought not to be in business.

As to costs, the defendant should normally be ordered to pay the prosecution costs if they are in a position to do so. Here, the company concerned has been run into the ground by its sole director and is defunct.

Section 33 of the Health and Safety at Work Act 1974 provides that it is an offence for a person to, 1(c), contravene any health and safety regulations. Under section 37 of the Act of the year 1974, where an offence under any relevant statutory provision is committed by a body corporate is proved to have been committed by the consent or connivance of or to have been attributable to the neglect on the part of any director of the body corporate, or a person who is purporting to act in such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The manufacture and storage of explosive substance regulations 2005, statutory instrument 1082, provides in regulation 4: “Any person who manufactures or stores explosives shall take appropriate measures, (b), to limit the extent of fire or explosion including measures to prevent the spreading of fires and the communication of explosions from one location to another, and (c) to protect persons from the effects of fire or explosion”.

Hereafter, I shall refer to these as the regulations as they are the only ones pertinent to this case.

Regulation 10 of those regulations provides that explosives are not to be stored without a licence or in contravention of the conditions of a licence. Word for word, regulation 10(1) provides: “Subject to paragraph 2, no person shall store explosives unless he holds a licence for their storage and complies with the conditions of that licence”. Paragraph 2 contains various exceptions which need not be set out for the purposes of my judgment on sentence.

A Firemagic Limited and Andrew Collins are charged on indictment T20080297. On
count 5, the company admits failure to comply with regulation 4.1(b) of the regulations in that
between 21st October 2006 and 2nd November 2006 they failed to take appropriate measures
to limit the extent of fire or explosion, including measures to prevent the spreading of fire and
B the communication of explosion from one location to another.

On count 6, Andrew Collins admits that that offence was committed because of his
consent, connivance or neglect pursuant to section 37 of the Act 1974. In particular he admits
C neglect, that being his basis of plea.

On count 9, the company admits that between the same dates it failed to protect persons
from the effect of fire or explosion contrary to regulation 4.1(c) of the regulations.

On count 10, Andrew Collins has pleaded guilty to a charge that that offence was due to
D his consent, connivance or neglect, his basis of plea being that it was due to his neglect
contrary to section 37 of the Act of the year 1974.

On count 11, the company admits failing to comply with regulation 10 of the
E regulations in that between 21st October 2006 and 16th November 2006 at Unit 3, Chemical
Business Park he failed to comply with the conditions of his licence to store explosives by
storing explosives in excess of 2,000 kilograms net explosive content.

Summons were issued in 2007 in respect of these offences. The case was committed
F for trial on 11th April 2008. It was first listed for the trial to commence on 8th December
2008. Thereafter, it was listed for trial to commence on 20th April 2009 with a time estimate
of four working weeks. It was late on 2nd April 2009 that the company and the individual
G defendant pleaded guilty to the counts I have set out. Those pleas were only forthcoming
after I had stayed certain counts on indictment on the basis that there had been a promise of
non-prosecution with the detrimental reliance thereon.

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A The pleas tendered were very late pleas of guilty, and although they were not at the
door of the court on the morning of trial they were very close to that. Adopting similar
reasoning to that in paragraph 52 of the judgment in *Balfour Beatty Rail Infrastructure*
B *Services Limited* NC 2006 England and Wales Court of Appeal Criminal case number 1586, I
consider that only the slightest credit for plea is appropriate in this case.

C Fireworks are explosives. That much is self-evident. The State is entitled to demand
exact compliance with regulations that concern explosives. All those responsible for dealing
with explosives bear a heavy burden of responsibility. Any breach of health and safety
D regulations in this area has to be taken very seriously indeed. These are not just technical
regulations; they deal with matters concerning public safety.

E Here, even on the defendant's own cases there were significant and substantial breaches
of these regulations. A huge conflagration took place, the extent of which was contributed to
by breaches of the safety regulations. After the fire had subsided there were still breaches of
storage regulations on the part of the company.

F On 27th October 2006, the company allowed a bonfire to burn in close proximity to
fireworks. That may have had no causative effect on that particular occasion, but we see
there a significant indication of the approach to these health and safety regulations by the sole
director and by the company. There were, then, numerous live fireworks kept away from safe
storage later in the day, creating an obvious and significant hazard. It is the responsibility of
the company and of its sole director to have ensured that that did not happen. But happen it
did, and this was a significant contributory factor to the extent of the conflagration that later
G took place.

H Training was inadequate so that when fire broke out workers tried to tackle it
themselves, putting their health, safety and very lives at risk. Three were admitted to hospital
as a result, and one suffered long term psychological damage. It does not do to imply that it

A was 'his own silly fault' that that occurred. That is why training is necessary and is a vital part of any health and safety regime.

B Damage to property, as a result of the fire contributed to significantly as a result of these breaches, was extreme. Figures for the damage exceed £300,000, and one man has had his business wholly ruined because thereafter he could not get insurance when fireworks were being stored at the premises concerned.

C After that date there was still no exact compliance with regulations, as the State is entitled to demand. The company was caught exceeding the terms of its storage licence, and for the sake of expediency the company and the director have been dealt on it, or their, own terms.

D Being loyal to that basis of plea, I still identify significant breaches here involved. There is no point in there being any attempt to blame others. I detect frequent attempts to avoid proper responsibility by the company, and I infer that from its very late plea of guilty.

E The company's assets are now sold. It is plain from the accounting evidence we heard in this case that it cannot meet his liabilities. It is likely that the Revenue are going to petition for its winding up, I find, but if that is not for these purposes the company is defunct and bankrupt in any common sense meaning of the words. Andrew Collins has run a company in an irresponsible manner. There was a high degree of irresponsibility on his part and I find F that he is not fit to be a company director for some significant time hereafter.

G Now, he has no money. He has brought others to their knees, however, and there has to be an element of punishment in this case. I am told that he has no job and no income, and thus cannot make payments towards a fine beyond those which would be considered nominal.

H He is not, however, beyond the reach of the law. In the circumstances of the case, section 146 of the Powers of Criminal Courts Sentencing Act 2000 empowers me, on behalf of the

A State, to remove the privilege of a citizen from driving a motor car on public roads and highways. I intend to do so.

Stand up, please.

B In respect of each of counts 6 and 10 to which you have pleaded guilty, you will be fined £150. As you have no means beyond State benefits, you will pay that or the equivalent at £2 per week. The first payment shall be made on first day of July. On those two counts, you will be disqualified from driving for six months concurrently on each. You are
C disqualified from being a company director for five years.

Sit down, please.

D The company has no assets; those have been sold. It is not trading to any material extent. The fines here are nominal as they would appertain to a company which had a turnover in excess of £200,000 a year. If the company could have been dealt with sooner the appropriate fines would have been significantly higher. If these fines drive the company out of business, good.

E On counts 5, 9 and 11, the company is fined £5,000 upon each. That being nominal, in my view, for a company of its size before it was run into the ground, as I have put it. I reiterate: I am aware that that could drive the company out of business. However, as I say, it is now defunct and the only reason it cannot pay fines is because of its mismanagement.

F Very well. You will send your driving licence to the court, please, within seven days of today by post.

Thank you very much.

G **MR MORGAN:** He has it with him.

MR FULLER: Your Honour would need to set a period in default for the personal fine.

JUDGE LAMBERT: Yes, you are quite right.

H **MR FULLER:** The total liability is £300 if that is correct, your Honour.

A **JUDGE LAMBERT:** Yes. There will be seven days in default on each.

MR FULLER: Your Honour, I do not know in relation to the £1,500. Obviously, from your Honour's remarks, you are quite aware of the situation of the company in terms of whether it is --

B **JUDGE LAMBERT:** The State will draw up a list of unsecured creditors.

MR FULLER: In terms of time for payment, it seems somewhat academic.

JUDGE LAMBERT: It is. The company has no resources at all. The Revenue is owed ...

C **MR MORGAN:** I think your Honour is required to specify otherwise it is in default of the enforcement procedure itself. For example, if the company came into a little money there would be no procedure by which it could be --

D **JUDGE LAMBERT:** It is forthwith without the statement of a fine. That is payable forthwith.

MR MORGAN: Your Honour, the only other matter, is the imposition of costs.

E **JUDGE LAMBERT:** Yes. I make no order for costs, it being necessary to ensure that the company has no means and therefore, although the State should have its costs, there are no resources from which to pay.

MR MORGAN: As your Honour has mentioned it, I just wanted to make sure.

F **JUDGE LAMBERT:** I quite understand. I considered that, but there are no resources, as I say, and the fines are nominal.

(3:05 pm)

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A We hereby certify that the above is an accurate and complete record of the proceedings, or
part thereof.

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Signed: Mendip-Wordwave Partnership

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