No: 200001432/Y2

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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2
Thursday, 18th September 2003

B E F O R E:
LORD JUSTICE KAY
MR JUSTICE SILBER
MR JUSTICE LEVESON

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R E G I N A

-v-

PETER RIDGWAY SANDERS

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MR P BOGAN appeared on behalf of the APPELLANT
MR B GREGORY appeared on behalf of the CROWN

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J U D G M E N T
(As Approved by the Court)

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1.LORD JUSTICE KAY: On 9th February 2000 in the Crown Court at Southwark before Her Honour Judge Pearlman and a jury the appellant was convicted of 14 counts of theft. He was subsequently sentenced to a total of three years' imprisonment.

2.He now appeals against conviction with leave from the single judge and his application for leave to appeal against sentence has been referred to the Full Court. It may seem surprising that the case comes before the Court so long after the time when the conviction was recorded, but that is the result of the appellant having absconded from his sentence and the appeal having been stayed until such time as he was found and sought to resurrect it.

3.The facts of the case are straightforward. The appellant is a disbarred barrister who was employed as a consultant to a firm of solicitors. In September 1993 his debts, which by then exceeded £2 million, resulted in him entering into an arrangement under the Insolvency Act. He was subsequently made bankrupt.

4.On 1st December 1994 his uncle, John Sutcliffe, died. He had at that time been living in Morocco and whilst he was there he had been with a man called Mr Tuckwell, who was a friend, and Mr Tuckwell was named in the will.

5.The will in question was proved before the probate court. It was a will entered into in Tangier on All Souls Day 1976. The will was proved in the District Probate Registry at Ipswich on 5th May 1995. It named the appellant as executor and it was he who proved the will. The estate, we are told, was something of the order of £200,000. The will made a number of specific bequests to a number of differing organisations and individuals, including £1,000 to the appellant. The residue was left to Mr Tuckwell.

6.The appellant started to administer the estate. In the course of his doing so he did make certain payments, but he took from the money included within the estate a sum of £100,000. It was that sum, taken in its varying ways, which was to give rise to the counts in the indictment.

7.The appellant was arrested in June 1997 and interviewed. He answered various questions, but declined to comment on what had happened to the £100,000 which he had in fact taken. He was therefore charged with the various charges of theft.

8.When he stood trial he did not contest in any way that he had taken the money, nor, significantly, did he suggest that he had done it otherwise than dishonestly. Neither of those matters are in issue in this appeal. What he contended at trial was that there had come to light, since the time when he took the money, a subsequent will of his uncle that left the residue of the estate to him, so that the property which he had taken, albeit he had not known it at the time, was in fact money to which he was entitled. It was on that basis that he sought to defend the matter.

9.It is unnecessary to recite the lengthy history up to the time of trial. There were a number of adjournments of the case which were clearly significant to the trial judge. But in due course the appellant applied at the beginning of the case for a further adjournment in order that he could call a witness from Morocco to prove the subsequent will. He was refused that adjournment. The trial commenced. He disposed of the services of his counsel during the course of the case. The judge ordered that the matter should continue. The appellant continued unrepresented.

10.The grounds of appeal fall into two distinct categories. The first is a straightforward contention that there was such a defect in the indictment that the offence as described was not an offence known to the law. We shall deal with that shortly in a moment.

11.The second were contentions that the course of the trial was unfair, for example, the refusal of the adjournment to call a crucial witness. It seems to us that those matters are entirely dependent upon whether in fact in law the appellant did have a defence to these matters. We have invited counsel to address us on that aspect of the case and we have reached a conclusion upon it. We will deal with that when we have dealt with the other matter.

12.Dealing with the question relating to the indictment. The complaint made is that the indictment alleges the taking of money belonging to the estate of John Constable Sutcliffe, the uncle. It is contended that the estate is not a legal person and that therefore the indictment is defective in suggesting that the property belonged to an entity which is not a legal person.

13.We simply do not accept that there is any validity at all in that contention. The use of the expression "the estate of a deceased person" is commonly used shorthand for the property of the beneficiaries of the estate of the deceased person. We think it is manifestly clear that that was what was intended by the indictment. Those beneficiaries are perfectly lawful beings who are entitled to own property, and as such the use of the expression in the way that it was expressed would, unless there was any suggestion that it had misled anybody, not in any way amount to any material fault in the indictment.

14.We turn, therefore, to look to see whether there is any question that anybody could have been misled. We are satisfied that there is none. There is no suggestion that the appellant did not understand the case against him. Indeed, the very way he sought to defend it made it perfectly clear that he understood the basis of the case against him. There is no suggestion that his lawyers were in any doubt what was intended. If they had been, of course they could have sought particulars, but they did not because they knew full well what the case was that they had to meet.

15.The suggestion made on behalf of the appellant in this regard by Mr Bogan is that the jury may in some way have been misled. We reject that contention. The whole case was conducted upon the basis that the issue was whether it was any sort of defence for there to be discovered subsequently different beneficiaries from those that were being relied upon by the Crown. The jury must have understood the expression used in the indictment to be a way of referring to the beneficiaries named in the will which had been proved. We do not think there is the slightest merit in that point and we reject it.

16.We turn, therefore, to the other grounds and we turn to what is in effect the preliminary point, whether, even if an adjournment had been given, or the case had taken any different course, there was in law any defence open to the appellant. The contention argued on behalf of the appellant is that, if he could establish that there was another will which had been made after the date of the one which had been proved, that would amount to a defence, because the property that he was alleged to have stolen would in effect have been his own property. Hence there would have been no crime and hence, of course, he was entitled to be acquitted.

17.That argument, we are satisfied, totally fails to understand the significance of the grant of probate. When probate is granted the court creates a trust empowering a person, the executor, to deal with the property belonging to the deceased person in a particular way. The particular way is in accordance with the will that has been proved. It is, of course, open to the appellant, or indeed to anybody else, who discovers the existence of another will, to go back before the probate court and to ask the court to vary the terms of the trust so that the property is held for the benefit of those named in the later will. But unless and until that is done the trust is the one created by the probate court.

18.Once that trust has been created section 5(2) of the Theft Act 1968 comes into play. It reads:

> "Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat to the trust shall be regarded accordingly as an intention to deprive of the property any person having that right."

19.Once there is in being the trust which was created by the grant of probate, if the appellant dishonestly deals with the property in a way that is not in accordance with the trust, so as intentionally to defeat the trust, then he commits the offence of theft.

20.In many cases of this kind there may be a real issue as to dishonesty. One could foresee circumstances in which an executor, discovering the existence of a subsequent will, might believe that he was entitled to deal with the property without going back and having the trust varied in a way that accorded with the later will rather than the proved will. That would afford a defence to a charge of theft, because such a person, if that was accepted as being a possible explanation of what had occurred, would not be acting dishonestly.

21.That though is not this case. There was no suggestion at the time when the appellant dealt with the property in a way that was not in accordance with the trust that he thought he had any right to do so. Hence admissions were made that he had acted dishonestly. In those circumstances, we are entirely satisfied that this appellant had no defence to the charges that were brought to him in law.

22.This was not, as is suggested by counsel, a question of mixed fact and mixed law. It was a pure question of law. The question was: was there a trust in being in law which required him to deal with the property in a particular way? There undoubtedly was. In the absence of any defence of acting honestly, he had no defence to these charges.

23.In those circumstances, it becomes wholly unnecessary for us to look to see whether, in fact the evidence he wanted to call would have supported a defence and thus it was unfair that he was denied an adjournment. The grant of an adjournment could not have assisted him because he had no defence. Similarly the other matters of complaint could not, even if we explored them and considered them in any way, result in us concluding that the conviction was unsafe. In law verdicts of guilty were the only ones open to the jury on the admitted facts. Strictly the judge ought to have directed the jury that that was the situation, but when we now, as the reviewing court, consider the matter and ask ourselves was this conviction unsafe, the plain and simple answer is, no, it was not. These were perfectly proper convictions. Accordingly, the appeal against conviction is dismissed.

(Submissions made in relation to an application for leave to appeal against sentence)

24.LORD JUSTICE KAY: The appellant invites us to consider granting him leave to appeal against sentence following our conclusion in relation to his conviction appeal.

25.The reality of this matter is that he was a person in a position of trust with a background that made him particularly aware of the importance of following the directions given to him as an executor by the court. The sum of money that was appropriated was a substantial sum.

26.Having regard to the authorities and the sentences suggested by those authorities which relate to offences of dishonesty by those in a position of trust, we simply do not see that this sentence was in any way out of line with the appropriate range of sentences for offending of this kind. In those circumstances, we have come to the conclusion that this would not be a proper case in which to grant leave to appeal against sentence.