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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Neutral Citation Number [2019] EWCA Crim 2284

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 13 December 2019

B e f o r e:

LORD JUSTICE HICKINBOTTOM

MRS JUSTICE ELISABETH LAING DBE

SIR RODERICK EVANS

R E G I N A
v
PATRICIA BOADEN

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Mr G Bedloe appeared on behalf of the **Appellant**

Mr P Tapsell appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

1. MRS JUSTICE ELISABETH LAING: On 6 November 2015, in the Crown Court at Canterbury, the applicant was convicted of fraud (counts 1 and 2 on the indictment) and of dishonestly failing to notify a change in circumstances contrary to section 111A(1) of the Social Security Administration Act 1992 (count 3 on the indictment). On 18 December 2015, His Honour Judge Van Der Bijl sentenced her to two years' imprisonment on each of those three counts, to be served concurrently.

2. In this case the single judge referred the application for leave to appeal against conviction to the full court. She also referred to the full court the application for an extension of time of 899 days.

3. On 12 November 2019 those applications were listed before the full court. The court adjourned those applications after a hearing at which both sides were represented. The court gave leave to amend the grounds of appeal and directed that a waiver of privilege be obtained from the applicant and that evidence explaining her delay in seeking leave to appeal be lodged within 14 days.

4. At the hearing today, the applicant has been represented by Mr Bedloe, who did not represent the applicant below, but he did represent her at the hearing in November. The prosecution has been represented by Mr Tapsell. Mr Tapsell has represented the prosecution throughout. We thank both counsel for the help which they have given us.

5. <u>The facts</u>
   The applicant received housing benefit between 3 November 2008 and 2 September 2012. The sum was over £43,000. She also received nearly £7,000 in council tax benefit between 3 November 2008 and 4 November 2012.

6. After her aunt died in January 2007, the applicant received, as executor of her aunt's estate, the sum of £385,000-odd. The applicant and her husband then jointly bought a holiday home in Florida for about US$357,000, that is about £200,000, on 1 July 2008. It was then sold to Sunshine and Blue Skies Escape LLC, a company owned and operated by the applicant and her husband, on 11 March 2010. It was advertised for holiday lets after it was first bought.

7. On 15 May 2009, when the applicant was completing a benefit claim form, one of the questions was whether "you, your partner or your children own any property... land or holiday homes in the UK or abroad? This includes properties and land on which there is a mortgage or loan, held in trust or jointly held with another person." The applicant answered "No" to this question. That was the basis of count 1.

8. She failed again to declare the holiday home in a benefit review form which she completed on 9 April 2010. That was the basis of count 2.

9. On 26 March 2010 just over £36,000 was paid into the account of Innovation in Groundcare Limited, a company owned and operated by the applicant and her husband. Ashford Borough Council were not told about this sum. That was the basis of count 3.

10. In her interviews in September 2012 and July 2013, the applicant denied that she had been dishonest. She said that she believed that the Florida property was held in trust for her children. The payment of over £36,000 was a transfer from one business to another. Neither she nor her husband had received any financial benefit from the closure of the Groundcare Solutions business.

11. The case as we have described it was the subject of admissions. The only issue at trial was whether the applicant had acted dishonestly.

12. The prosecution case was that the applicant had been dishonest in her claims for benefits. They relied on the admissions. The applicant with her husband owned the property at the relevant time in May 2009. She was dishonest, the prosecution alleged, when she did not declare it on the claim form which she submitted in May 2009 (count 1). The property was sold in March 2010 to Sunshine and Blue Skies Escape LLC, a company owned by the applicant and her husband. The prosecution case was that she was dishonest when she failed to declare it again in April 2010. Her failure to notify Ashford Borough Council of the receipt of the sum of just over £36,000 from the sale of the business in March 2010, which amounted to a change in her circumstances, was also dishonest, the prosecution alleged, and she knew that it would affect her entitlement to benefit.

13. The defence case was that the applicant had not been dishonest. She gave evidence. She said that she never considered that the Florida property belonged to her. Her intention was that it was placed in trust for her daughters. She denied that the money from her aunt's estate belonged to her. Her argument was that because as executor she had not complied with her aunt's wishes (expressed in clause 9) of the will because she gave her brother more than the lesser of either 15 per cent or £15,000 specified in a will a codicil to the will came into effect. Its effect was that she lost her entitlements under the will. After that, the money passed to her three daughters. It was therefore her case the money was never hers.

14. The issue for the jury was whether the applicant had acted dishonestly in not declaring the Florida property and the sum of just over £36,000 from the sale of the business.
15. The prosecution relied on the admissions, which were supported by documentary

exhibits. The prosecution sought to undermine the applicant's account by relying on the way in which she had treated and spent the money which had been inherited from her aunt. Their case was that she had treated that money as if it was her own.

16. The applicant gave evidence in her defence in support of her case that she had not been dishonest in relation to the matters alleged in any of the three counts. She said that she did not believe that she owned the Florida property when she completed the form. The property had been bought for the children and was "never ours". The three daughters were beneficiaries of the trust that owned the limited company to which the property was transferred. She denied ever having received any money from the Florida property.

17. Her case in relation to Groundcare Solutions was that the luggage side of that business had been sold for £100,000 in November 2009. Once creditors had been paid, the balance of just over £36,000 was paid into a limited company Innovation and Groundcare Limited. It had not crossed her mind to declare this amount to Ashford Borough Council as the money belonged to the business and it had all been declared through accountants.

18. <u>The applicant's evidence in support of the application for an extension of time</u>
The applicant has signed a witness statement dated 28 November 2019.

19. She says that as far as she can remember her barrister, Miss Rai, gave her negative advice on the prospects of an appeal, face-to-face, in a short meeting after court. The applicant was sentenced on 18 December 2015 and taken immediately to prison from court.

20. On 21 December 2015, her solicitor, Mr Betts, wrote to her. He had not been present at the trial. He said that he had asked trial counsel to advise in writing on the prospects of an appeal against conviction and sentence. The applicant says she never received that written advice. Her current solicitors, Bird Solicitors, asked Mr Betts to provide that advice in a letter dated 14 November 2019. Mr Betts had not replied (by the time the applicant made her witness statement, but in a moment we will describe what Mr Bird, her current solicitor, has to say on this point). Her case is that Miss Rai believes that she gave negative advice about the prospects. She cannot remember if the advice was in writing or not.

21. On 25 January 2016, the applicant wrote to Mr Betts, referring to his visit to her earlier that day. He told her that there were no grounds of appeal against conviction or sentence. She said that she raised "a number of issues", told him that they should be considering an appeal and asked him to get the transcripts. On 11 February 2016, Mr Betts wrote to the applicant again. He confirmed that he and counsel both considered that there were no grounds of appeal against conviction or sentence. Mr Betts said that the applicant could submit an appeal herself, but warned her about the potential loss of time order if she did

not succeed.

22. On 12 January the applicant wrote to Mr Betts about the Proceeds of Crime Act ("POCA") matters. She also mentioned getting transcripts and asked him to discuss the potential for an appeal once he had the transcripts. She made a similar request in a letter to Mr Betts dated 28 April 2016. On 28 October 2016 she wrote to the court asking for a transcript as her solicitor had not got one and she could not afford one herself.

23. She wrote to Mr Betts again on 31 October 2016. She asked him for the trial papers which, she says, she had not had before. She also told him that she wanted to appeal against her conviction. Mr Betts replied on 17 November 2016. He asked for £25 to provide the papers to the applicant's husband. Mr Betts said nothing about an appeal.

24. On 24 November 2016 the applicant applied to transfer the legal aid for the POCA proceedings from Betts & Co to Birds Solicitors. She wrote separately to the court making a data subject access request for the transcript of the trial on 24 November. On 26 November 2016 she wrote to her solicitors. One topic was a possible appeal against conviction.

25. On 5 December she sent a form to the court asking for a transcript of the trial. That was refused.

26. In late 2017 she found some old papers. She is not sure when that was. She was clearing out her mother's belongings. She made some enquiries of the Land Registry which "forms the basis of my fresh evidence."

27. On 8 February 2018 she "had some correspondence" with Bird Solicitors about an appeal. She was told that no legal aid was available and she should lodge her own grounds of appeal. She did so in May 2018.

28. There is also a witness statement dated 2 December 2019 from Mr Bird, who is now the applicant's solicitor. He says he was first contacted by the applicant in late November 2016. There were three issues, including advice on an appeal against conviction. Although the legal aid for the POCA proceedings had been transferred to his firm, legal aid for the advice on conviction is covered by the original grant of legal aid for the trial. Once that advice had been given it cannot be revisited under that representation order even if legal aid for the POCA proceedings is transferred. He explained there is a publicly funded scheme which allows applicants to get advice on appeal from new counsel and solicitors, which is called the Advice and Assistance Scheme. It has a strict means test. The applicant was not eligible for it because her husband's earnings were taken into account and were too high.

29. In Mr Bird's view there was nothing obvious in relation to the issues the applicant was raising which led him to think that an appeal might succeed. When the applicant later raised new documents Mr Bird thought that an appeal was most likely to succeed if the insolvency court, which was dealing with the linked aspect of her case, found in her favour on an interpretation of a clause in the will. Mr Bird advised the applicant about those matters, and about funding limitations, on 8 February 2018. She was advised to lodge her own notice of appeal which in his words "she promptly did".

30. Mr Bird wrote to trial counsel on 14 November 2019. She replied in an email dated 15 November 2019.

31. Counsel had not kept any papers and had changed her laptop since 2015. She hoped Mr Betts would be able to help with attendance notes and any written advice. She said that it was her practice to have a conference with her client after the conviction in which she gives oral advice on appeal, including advice about the 28-day time limit. She had the conference in the conference room at the court. She cannot now remember specifically what she advised, although she is "certain" that the advice was negative. She says it is her invariable practice to send her instructing solicitors a written report at the end of the trial in which she confirms that she has given advice on appeal against conviction and what the advice was. She is "certain" that she did that in this case. She anticipated that the document would be available from the solicitor's file.

32. Mr Betts did not reply to a letter dated 14 November 2019 or to a chasing email, but Mr Bird was able to speak to him on 28 November 2019. Mr Betts confirmed that the applicant was given negative advice on appeal. He could not remember if that had been confirmed in writing. He was in the process of getting the file from storage. On 29 November, Mr Betts emailed Mr Bird from his new firm. His search had drawn a blank. He said that counsel had given negative advice on appeal and that he had reinforced that in a later meeting with the applicant about the POCA application, some time after sentencing.

33. <u>The summing-up</u>
The judge started by telling the jury that the summing-up would be short, not because it was a short case, but because there had not been many witnesses and all the evidence was agreed. The jury were ideally suited to decide this sort of case. The judge was sure that they would do it fairly.

34. The judge told the jury that the evidence was finished. He said that they should not ask for any more evidence, or send any questions about the evidence, because he would not be able to deal with them. It was not allowable.

35. He would not comment. If he did make a comment, the jury should ignore it. He said that he would give the jury directions.

36. The prosecution case "is simply that they say she was dishonest and that was that, deliberately dishonest and that was that. That is what it truly comes to." He went on to say:

    i. "From the defence point of view her case is really quite the opposite to that. She says she was not deliberately dishonest, not dishonest at all indeed. That is her case."

37. The judge then dealt with the applicant's good character:

    i. "You have to bear in mind that you are hearing from a lady who has got no previous convictions at all."

38. The judge corrected something that defence counsel had said about good character. The true position was that the jury must take that into account, in two ways. First, it affected her credibility; "that is to say that you are more likely to believe her when giving evidence than you are, for example, a person who has got 18 pages of previous convictions. It states the obvious, but it is very important that it is taken into account." Second, it affected "- what is described as a tendency. She does not have a tendency to be dishonest, so there are no previous convictions. There are some people who do have a tendency to be dishonest. She is not one of those and you should take that into account, having reached the age of 49, as I think she is."

39. The judge then referred to the indictment:

    i. "They are, so far as the counts are concerned, rather complicated verbiage, I think one would say. They can all be boiled down to the one word, 'fraud', which is in count 1 and count 2, and count 3, dishonest failure to notify. In all that mass of language there is, so far as the first count is concerned, that word 'dishonest' on the top line. That is all you have to decide. The rest is decided or agreed. But that is the crucial point, and I add to that, dishonest, being deliberately dishonest because, obviously, you cannot not be deliberately dishonest."

40. He continued:

    i. "Count 2 has the same word, 'dishonesty'. It is at the top line at the end, again, so that is effectively the issue in that count. Count 3, likewise, dishonest failure, the word 'dishonest' again there, being

right at the top, crucial to what the case is really about."

41. The judge directed the jury that any verdict must be unanimous. He went on:

    i. "It must also be one which you only can become part once you are sure that she is guilty".

42. He referred to the phrase "beyond reasonable doubt" and explained that "the real and proper word is that you must be sure she is guilty before you can convict her." He said that the word "sure" should not be paraphrased.

43. He then gave a direction to the approach the jury should take to the three counts on the indictment. He said:

    i. "Technically, you are supposed to come back with separate verdicts, as it were, but frankly, this is one of those cases where it stands or falls together. There is really no separation, as it were, between the three counts that you have got, the separation of what they actually are, because, in reality, there isn't any separation."

44. He said:

    i. "There it is members of the jury."

45. He was not going to refer them to any documents. They had seen the documents and could go through them:

    i. "It would probably be a very good idea if you really went through it all. We obviously have not referred to it all but it might just help you to go through it all so you get an overview of what the parties are on about, as it were, and that would probably help you. It is going to take you a little time to do that."

46. He told the jury that they were not under any pressure of time. He directed them again that their verdicts must be unanimous.

47. At the end of the summing-up, he asked counsel whether either of them had any difficulties. Each counsel answered that question and said "No".

48. The jury retired at 14.26 and returned their verdicts at 15.32, after one hour and six minutes.

49. <u>The grounds of appeal</u>

There are three grounds of appeal. The first, referred to the full court by the single judge, is whether the convictions are arguably unsafe because the judge gave no direction on dishonesty, whether by reference to R v Ghosh [1982] QB 1053, or to Ivey v Genting Casinos [2017] UKSC 67, [2018] AC 391. The second is that the judge was wrong not to give the jury the standard direction that they must consider each count separately. The third is that the judge was wrong not to give the jury a direction on the burden of proof.

50. Discussion

We will consider the merits of the grounds of appeal before we consider the application for an extension of time.

51. Ground 1

"Dishonestly" is a word which English speakers use every day. It has no special legal meaning. This is not a case in which there was any suggestion that the applicant had an idiosyncratic view of what is or is not dishonest. The issue, rather, was whether she had a dishonest state of mind when she did the acts alleged in counts 1 to 3, or whether her state of mind was such that she honestly thought that she did not need to make the three disclosures which were the basis of these three counts. A Ghosh direction was not, therefore, appropriate. Nor do we consider that this was a case in which the jury needed any help at all with the meaning of "dishonesty". We do not consider that ground is arguable. We therefore refuse leave to appeal on ground 1.

52. Ground 2

Not only did the judge fail to give a direction on separate treatment; he directed the jury not to approach each count separately. He told the jury that there was no separation between the counts. That was wrong. The three counts concerned different points in time and two different properties. The evidence about the applicant's state of mind on each occasion was different. There was no logical or factual connection between the three counts which could possibly mean that they all stood or fell together. Moreover, in his speech, prosecuting counsel (reasonably, in our judgment) had led the jury to expect that the judge would tell them "in due course that [they] must look at the evidence in respect of each count individually and that, of course, is right".

53. This failure is compounded in our judgment by two further gaps in the summing-up and one contradiction.

54. The first gap is that the judge gave the jury scant help about the elements of each offence. Apart from referring to the counts on the indictment as "rather complicated verbiage" and "all that mass of language", the only help he gave the jury was that they could "all be boiled down to the one word, 'fraud' (count 1 and count 2) and 'dishonest' (counts 1, 2 and 3)." In his speech, prosecuting counsel (again, reasonably, in our judgment) had led the jury to expect that the judge would direct them about "the specific elements of the various

offences".

55. The second gap is that the judge gave the jury no help about the facts. The jury could not decide the case on the basis of the agreed evidence and the documents only. That was the background. They had to evaluate each of the applicant's explanations for not making the disclosures which were the subject of the three counts. The judge did not tell the jury that that evidence was relevant to the issues, and did not summarise it for the jury. He told the jury that the documents were important and that they should spend time considering them, but did not guide that inquiry in any way.

56. There were contradictions at the start of the summing-up. The judge told the jury that all the evidence was agreed. Much of it was, of course, but the critical evidence, that is the applicant's evidence about her thought process, was not. Later on in the summing-up, however, he directed the jury that there was an issue about dishonesty. We consider that ground 2 is not only arguable, but made out.

57. <u>Ground 3</u>
In his opening, Mr Tapsell explained the burden and standard of proof to the jury. He finished that explanation by saying this:

    i. "You have to be sure and as I say His Honour the judge will address you in due course about the full impact and meaning of that."

58. The judge did tell the jury that they had to be sure that the applicant was guilty. He did so, however, in a way which could lead a listener to think that "guilty" was the only verdict which was open to the jury. That is certainly how the applicant interpreted the summing-up in her original grounds of appeal. The judge's direction about the standard of proof was not balanced by his spelling out that if the jury were not sure the applicant was guilty, they must acquit her.

59. In that context, his failure to tell the jury that the prosecution must make them sure that the applicant was guilty before they could convict her is a serious one.

60. There was some suggestion that this failure would be cured and mitigated by a passage in the speech of prosecuting counsel. He said:

    i. "I will start by repeating what I said yesterday that the burden and standard of proof apply to me and the - sorry, the burden applies to me and the standard you must apply to all of the evidence is a high one. You must be satisfied so that you are sure."

61. There are three principal problems with this passage. First, while some lawyers might

understand the point that counsel was making about the burden of proof, it is, in our judgment, expressed in a shorthand way which many lay people wold find mystifying. Second, as counsel's spontaneous correction suggests, the passage is muddled. Third, the sweeping statement about the standard of proof is wrong. If the jury thought that the applicant's explanation was or might be true, she was entitled to be acquitted. In so far as there might have been an evidential burden on the applicant on any issue, she did not have to make the jury sure of anything; but only had to show that it was more likely than not that her evidence on that point was true.

62. Far from curing or mitigating the judge's failure to give the appropriate direction, this passage in counsel's speech compounds that failure, because the judge did not make clear that the prosecution had to prove its case so as to make the jury sure of it and that the applicant did not have to prove anything. We consider that ground 3 is not only arguable but made out.

63. <u>The application for an extension of time</u>
We are reluctant to criticise trial counsel. Correcting the judge's summing-up at the end of the trial is not an easy thing to do. Nevertheless, the judge expressly invited comments from counsel at the end of the summing-up. Neither counsel intervened. We consider that the defects in the summing-up were so glaring that counsel should have pointed them out to the judge, however embarrassing that might have been, and invited him to correct them. To his credit, Mr Tapsell accepted at the earlier hearing in November that with hindsight he should have intervened.

64. It has not been possible to reconstruct the details of the advice on appeal which the applicant was given after the trial. All we know is that the advice was negative. If it had been clear to us that the applicant was advised, at the time, that there were defects in the summing-up, but that an appeal would achieve nothing, because a properly directed jury would still have convicted her, we might have taken a different course. There is, however, no evidence that the applicant was advised in those terms.

65. We note that for much of the early period of the delay the applicant was energetically seeking a copy of the transcript. Her advisers on the other hand did not seek a copy of the transcript. Mr Bedloe submits that the points which are now raised in the grounds of appeal are pure points of law. They were not available to the applicant to raise as an unrepresented litigant, nor were they available without a copy of the transcript. We agree with those submissions.

66. In the light of those matters, and of counsel's failure to invite the judge to correct a patently defective summing-up, we consider that it would be unjust to refuse the extension of time which is sought. This is despite the fact that we do not consider that there is any explanation for the delay between 8 February 2018 (when Mr Bird advised the applicant to lodge her own notice of appeal) and a date in May 2018 when she in fact

did so.

67. We take into account in deciding this application the merits of the grounds of appeal which, as we have already observed, we consider to be strong. We consider that this is a case in which it is appropriate to grant the application for an extension of time of 899 days.

68. The decision on the application for leave to appeal
We grant leave to appeal on grounds 2 and 3.

69. Disposal
There are two further questions:
1. Are the convictions safe, despite the defects in the summing-up?
2. If not, should we order a retrial?

70. Are the convictions safe?
Mr Tapsell argues, in short, that the evidence against the applicant was compelling, if not overwhelming. In the light of the terms of the questions she was asked on the relevant forms, she simply had no credible explanation for her failure to declare the Florida property, or the payment to Groundcare Solutions.

71. We have considered this argument carefully. We reject it. First, the standards we demand of a summing-up cannot vary according to whether or not the defendant on the face of it appears to have a strong defence. Secondly, we consider that the positively wrong direction on separate treatment (if, as we assume, the jury followed it) makes the verdict of the jury wholly opaque. For all we know the jury might have doubted the applicant's guilt on one, or more of the counts. But if they followed the judge's direction they might nevertheless have convicted her on all of them. Third, overall, the summing-up is so defective that we consider that in breach of Article 6 the applicant did not have a fair trial.

72. We therefore consider that the convictions are unsafe. We allow the appeal and quash the convictions. We will now hear submissions on whether there should be a retrial.

73. LORD JUSTICE HICKINBOTTOM: Mr Tapsell, what are your instructions?

74. MR TAPSELL: My Lord, we would seek a retrial. As we have indicated, the substantial issue in this matter is one of dishonesty and we would say that it is in the interests of justice where there has been such a large claim on public funds, the benefit fraud claim, that those matters are prosecuted and the matter properly ventilated and a final decision

reached. We say that, notwithstanding the fact that the defendant has served her sentence. Nevertheless, it is important that the issue of the dishonesty at the time of the offences, or not, is properly considered and a view on the merits of the evidence, rather than as a (inaudible) leading point, if I can put it like that. So we say it is in the interests of justice for the matter to go to retrial.

75. LORD JUSTICE HICKINBOTTOM: From the last hearing, I recollect that these convictions were used, I think, in some way to support - was it criminal proceedings under the Insolvency Act?

76. MR TAPSELL: Yes, there were separate proceedings under the Insolvency Act. I am afraid that counsel who prosecuted this matter were not kept informed as to the nature of that matter, so I am unable to say whether the conviction there was as a result of a guilty plea or whether she was found guilty after trial on that matter and the matters had been ventilated. Certainly we attended some initial hearings in connection with that Insolvency Service prosecution, which appeared it was going to be contested all the way, and indeed the Proceeds of Crime Act application that counsel lodged at the conclusion of this trial was held in abeyance until the outcome of that Insolvency Service claim and then run out of time because unfortunately the court did not proceed with the matter within two years.

77. LORD JUSTICE HICKINBOTTOM: Does that mean that you are not relying upon the fact that the convictions were -- that by quashing the convictions that has a knock-on effect in any part of the insolvency proceedings?

78. MR TAPSELL: I do not know what part these convictions played in the other trial. I am afraid I have no information on that and I have no instructions on that at all because that was not fought by the Council and the Council were not kept informed by the Insolvency Service. I imagine, of course, that a conviction for, I think what was in effect the same offences, because those matters related to the ownership of the Florida property and the monies from the Groundcare Solutions partnership being wound up, were part and parcel of the insolvency issues, should I say, and therefore a failure to declare those in the insolvency and bankruptcy process was the basis of the counts that were brought by the Insolvency Service. As I say, I do not know what happened at the trial of that matter.

79. MRS JUSTICE ELISABETH LAING: Are you saying that the underlying facts in the insolvency prosecution were similar to the underlying facts in these counts?

80. MR TAPSELL: Certainly the Insolvency Service prosecution relied on the ownership of the Florida property and the non-declaration of that in the course of the bankruptcy proceedings and also I believe the receipt of the monies from the winding up of the

partnership and the creation of the limited company, again by Miss Boaden and her husband, because he was also prosecuted in that matter. But as I say I have no information on how that matter progressed and indeed what evidence was presented by the Insolvency Service and whether Miss Boaden pleaded or was convicted.

81. LORD JUSTICE HICKINBOTTOM: You cannot rely upon any potential unravelling of other proceedings by the quashing of these convictions? You solely rely upon the fact that the counts involved dishonesty and it is in the public interest to have such matters determined. Is that right?

82. MR TAPSELL: The only information I have is from the press release from the Insolvency Service, or publicity from the Insolvency Service, that there was a -- that she was found guilty at the end of it all or she was convicted at the end of it. But I am afraid I do not know what the sentence was in that matter.

83. MRS JUSTICE ELISABETH LAING: Are you inviting us to infer that there is almost certainly a connection between the insolvency proceedings and the conviction?

84. MR TAPSELL: Given they arise from the same nexus, the same factual basis, there must have been a knock-on effect. But I am unable to assist the court.

85. MRS JUSTICE ELISABETH LAING: In other words, you are not able to say precisely what, but you are saying that there must have been one?

86. MR TAPSELL: There must have been. The insolvency proceedings followed on as a result of, in large part, these proceedings.

87. LORD JUSTICE HICKINBOTTOM: The conviction, yes.

88. MR TAPSELL: It may be that Mr Bedloe has more information on what happened after counsel was not involved in the proceedings.

89. LORD JUSTICE HICKINBOTTOM: Thank you very much. Mr Bedloe?

90. MR BEDLOE: My Lord, I do oppose the application for a retrial. The principles are those that are established in the case of R v Graham and others [1997] 1 Cr. App. R 302 and the first question is whether it is in the public interest for there to be a retrial.

Secondly, the second question is whether it is in the legitimate interest of the defendant. The first question involves consideration of unfairness or oppression to the defendant and in relation to that I would submit that Mrs Boaden was subject to proceedings which took place over many months in 2015 and that these proceedings obviously took their toll physically and emotionally on her, and indeed her mental health today is not sound as a result. Although it has not been necessary for your Lordships to have sight of it, there is evidence from her GP about her current state of health which is brought about largely because of the sequence of proceedings that she has faced over the last four or five years.

91. The legitimate interests of the defendant entail a consideration of the time that has passed since the original offence and the subject matter that forms the basis of the indictment is now a decade old. The penalty already paid -- and this in my submission is one of the most powerful points -- she has now been sentenced to a term of two years' imprisonment. She spent a year of that time in prison and that cannot be undone. She has therefore paid the penalty for a matter which on the basis of your Lordships' judgment she should never have been convicted of. There is also, and this is very much a supplementary point and it is referred to in the case law, the question of adverse publicity. Benefit fraud is a matter that arouses a peculiar interest amongst the public and it was reported quite extensively at the time in the local area. One aspect of the case that has vexed Mrs Boaden for many years is the extent to which her name comes up in Google searches, the number of local press articles that there were about her at the time and this was obviously a subject which in that area was considered to be likely to have a significant public interest. So there was a degree of publicity surrounding that. So I would oppose a retrial on that basis.

92. So far as the insolvency proceedings are concerned, I probably have to tread carefully so as not to infringe her privilege in relation to those proceedings. I was only instructed in those matters very late in the day because of my involvement in her bankruptcy case. I can tell the court that she pleaded guilty at Canterbury Court to those matters. She did so on a basis of plea and the Crown submitted to the court an application to rely on or adduce and rely upon her convictions in this matter at trial.

93. MRS JUSTICE ELISABETH LAING: Was that application resolved or did she plead guilty before there was a decision?

94. MR BEDLOE: I am looking at my note to try and recollect what the sequence of events was and how matters unfolded. The subject of that application obviously were representations made to the Insolvency Service arising out of the same factual background and the overwhelming likelihood in those circumstances was that an application to rely on those convictions would be successful. Necessarily, whether or not the application was considered before she entered her pleas I do not precisely recall. Whether or not it was considered, the advice would certainly have been given that the overwhelming prospect was that those matters would go before the jury with the inevitable implications that they would have in those proceedings.

95. LORD JUSTICE HICKINBOTTOM: What was the sentence in relation to the insolvency proceedings?

96. MR BEDLOE: So, I can say that the indictment -- she pleaded guilty to three counts and in relation to those she received a 22-month sentence of imprisonment, suspended for 24 months, with 200 hours' unpaid work, concurrent on all three counts.

97. MRS JUSTICE ELISABETH LAING: Twenty-two months suspended for 24 months, 200 hours.

98. MR BEDLOE: Yes.

99. LORD JUSTICE HICKINBOTTOM: Has that sentence be effectively served too?

100. MR BEDLOE: That was imposed in June last year, so it would still be effective. The suspension period is still effective and as to the unpaid work I do not have the precise answer but I understand that that probably has been completed.

101. LORD JUSTICE HICKINBOTTOM: Yes.

102. MR BEDLOE: There was in fact in those proceedings a late amendment in the indictment because of the way the count was originally pleaded. There was argument about whether that count as pleaded was likely to succeed and it resulted in an application to amend which was granted, which slightly reformed the way the case against her was framed. That was also something that I think contributed to her decision to plead guilty.

103. LORD JUSTICE HICKINBOTTOM: Yes. Anything else, Mr Bedloe?

104. MR BEDLOE: I am just trying to see if I can help any further in terms of the sequence, but I am sorry I am not getting that information at the moment.

105. LORD JUSTICE HICKINBOTTOM: Thank you very much.

106. MR TAPSELL: My Lord, it appears that they were knock-on effects from this matter and therefore in my submission that supports the case for a retrial so that matters

can be properly aired and the defendant can have a fair crack of the whip.

107. LORD JUSTICE HICKINBOTTOM: Although -- yes, although it is true to say that the sentence for the Insolvency Act offences has also been to a large extent served?

108. MR TAPSELL: Certainly likely to have been served, yes.

109. LORD JUSTICE HICKINBOTTOM: Yes. Thank you very much. We will retire.

110. (The court adjourned for a short time)

111. LORD JUSTICE HICKINBOTTOM: As a result of our judgment this morning, we will refuse leave to appeal on the ground 1, we will grant leave to appeal against conviction on grounds 2 and 3 out of time, we will allow the appeal against conviction on those grounds and we will quash the convictions. The only outstanding point is whether we should order a retrial under section 7(1) of the Criminal Appeal Act 1968.

112. We have the power to order a retrial when we allow an appeal against conviction if "it appears that the interests of justice so require". That involves a balancing exercise and the various criteria one way and the other have been helpfully set out by Mr Bedloe for the appellant and Mr Tapsell for the Crown.

113. In respect of the public interest in having a retrial, there is always a public interest in the prosecution of those who are reasonably suspected on available evidence of having committed serious crime, including crimes such as this which involve public money. Furthermore, following her conviction in respect of these offences she was subject to further criminal proceedings under the Insolvency Act to which she ultimately pleaded guilty and in respect of which she received a sentence of 22 months' imprisonment suspended for 24 months with 200 hours of unpaid work in June 2018. Mr Tapsell submitted that it was in the public interest that these other proceedings were not unravelled because of the quashing of these convictions without a retrial.

114. However, on the other side of the balance, these offences concern matters which occurred many years ago now and the proceedings which were in 2015 were a considerable time ago. There is evidence that the succession of proceedings which the appellant has faced over the years has had a toll on her mental health and a further trial will no doubt add to that toll. Furthermore, and in our view importantly, the appellant has not only served the full two-year sentence in respect of these offences, but has also served the majority of the sentence for the Insolvency Act offences.

115. In all of the circumstances, on balance, we do not think that it is in the interests of justice to order a retrial.

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

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