



Neutral Citation Number: [2020] EWCA Crim 1633

Case No: 201901854 C2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SNARESbrook
HIS HONOUR JUDGE HAMMERTON

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/12/2020

Before:

LADY JUSTICE ANDREWS DBE
MRS JUSTICE CUTTS DBE
and
THE RECORDER OF WORCESTER
HH JUDGE BURBIDGE QC

Between:

JOHN PORCH
- and -
THE CROWN

Appellant

Respondent

James Elvidge (initially instructed by **Kaim Todner Solicitors**) for the **Appellant**
Geoffrey Porter (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 19 November 2020

Approved Judgment

LADY JUSTICE ANDREWS:

1. On 12th February 2016 in the Crown Court at Snaresbrook, before HH Judge Hammerton and a jury, John Porch, now aged 34, was convicted on a majority verdict of blackmail (count 1) and assault by beating (count 2). His co-accused Katie Ling, his former partner, was also convicted of blackmail. He was sentenced to a total of 5 years' imprisonment and Ms Ling to 2 years' imprisonment.
2. Mr Porch seeks an extension of time of 1164 days in which to apply for leave to appeal against his conviction. He also seeks to adduce fresh evidence in support of his application, pursuant to section 23(1) of the Criminal Appeal Act 1968. These applications were referred to this court by the single judge. For reasons that will appear, we granted the extension of time, leave to adduce the fresh evidence, and leave to appeal.
3. Having heard full argument on the appeal from Mr Elvidge for the appellant and Mr Porter for the Crown, we announced at the end of the hearing that we allowed the appeal and quashed the convictions, for reasons to be supplied in a written judgment which would be handed down as soon as practicable.
4. Mr Porter indicated that the Crown would not seek a retrial and undertook that steps would be taken to notify Ms Ling of the outcome as soon as practicable, so that, if so advised, she could make an application for leave to appeal against her conviction and for an extension of time in which to do so. Having taken instructions, Mr Porter also helpfully indicated that the Crown would not seek to resist those applications or any appeal by Ms Ling. We have directed that any such appeal (or a rolled-up application for leave with the appeal to follow, and a direction that the respondent shall attend the hearing) shall be listed before a constitution that includes myself or Mrs Justice Cutts, or preferably both of us.

Background

5. The complainant, Frederick Rawlinson, was at the relevant time a very good friend of Mr Porch. They spent a significant amount of time in each other's company drinking and taking drugs in Mr Porch's flat in Canning Town. The flat was about 20 minutes' walk away from Mr Rawlinson's parents' house, where he was then living.
6. The prosecution case was that in June or early July 2015, Mr Porch and a group of three other men, including a man named James Gent, had given Mr Rawlinson some boxes to store in his parents' garage for a few weeks. The boxes contained shotgun cartridges. Mr Rawlinson felt unhappy about doing this, but Mr Porch told him that he had to store the boxes whether he agreed to or not and "if he did not store the boxes, that was it". About two weeks later, in mid-July 2015, Mr Rawlinson went to Mr Porch's flat one evening to tell him that he wanted the boxes taken out of the garage. Mr Gent, who Frederick Rawlinson disliked, came round to the flat while he was there.
7. Frederick Rawlinson alleged that he overheard Mr Gent persuading Mr Porch that £2000 worth of drugs had gone missing, and that Mr Rawlinson was responsible for the theft. Whilst he was sitting on the sofa, Mr Rawlinson was threatened and physically assaulted by both men. Mr Porch punched him in the face and grabbed him

round the throat and squeezed his neck. Mr Gent stuck a knife in Mr Rawlinson's ribs and threatened to kill him. Then both men punched him in the face. He said they threatened to burn down his parents' house with them inside if he did not pay back the money. They then backed off and told him to go out and get some cigarettes; they took his mobile phone away so that he would come back to the flat. However, instead of going to buy the cigarettes, he ran home and woke his parents up and explained to them what had happened, including the threats to burn their house down. He did not explain the reason for the alleged debt. He asked his mother if he could pay the £2000 to Mr Porch and Mr Gent to get rid of them. She initially refused, but later changed her mind.

8. Frederick Rawlinson did not go in to work the following day, claiming to be too unwell. He was sacked. He left home shortly afterwards and went to live elsewhere.
9. There was no dispute that Frederick Rawlinson's mother, Susan, paid £900 in cash to Katie Ling on various occasions between 24 July and 15 August 2015 (during which time Mr Porch was serving a short custodial sentence on an unrelated matter). She noted down the instalment payments in a notebook. Ms Ling had gone to the Rawlinsons' home on 22 July to collect £2,000 which she said Frederick Rawlinson owed Mr Porch. It was the prosecution case that on that occasion, in response to a question from Mr Rawlinson's father Terence as to why Mr Porch did not come to collect the money himself, Ms Ling had said that if John went round to their house there would be a "bloodbath". Mr Rawlinson had left it to his wife to speak to Ms Ling, and that is how the arrangement to make payment by instalments had come about.
10. On the morning of 19 August 2015 Mrs Rawlinson called the police to her home address where she said that Mr Porch was outside trying to kick down the front door. She claimed that he had been shouting threats such as "Fred, I know you slept with my girl when I was inside, I'm going to kill you" and "I'm going to kick the door in and kill you". He also shouted to a neighbour that Frederick owed him money.
11. When the police arrived, Mrs Rawlinson reported that her son had told her that Mr Porch had threatened to burn down the family home if he was not paid £2000; that Katie Ling had visited their address and asked for the money; that Ms Ling had given Mrs Rawlinson her mobile telephone number to make arrangements to meet up with her in order to make the payments, and that Mrs Rawlinson had paid her a total of £900 in cash, £600 on 24 July from her pension and three further instalments of £100 each.
12. Boxes of shotgun cartridges were subsequently found in the Rawlinsons' garage; they were not prohibited ammunition. Terence Rawlinson gave evidence that he had noticed the boxes in the garage around four or five weeks before the evening on which his son came home and said he had been assaulted. He did not know what was inside the boxes until after Mr Porch was arrested, and his son told him on the telephone that it was something to do with guns; once he had opened them up he told the police, despite Frederick's protestations that this would put his (Frederick's) life in danger.
13. When she was interviewed on 19th August 2015, Ms Ling provided a prepared statement in which she denied making any threats. She accepted that she had collected

money from Mrs Rawlinson on behalf of Mr Porch but said that she believed that Frederick Rawlinson owed him money.

14. Mr Porch was interviewed on 20 August. He accepted going to the Rawlinsons' house the previous day, which was the day after his release from prison. He said this was because Katie Ling had told him that Frederick Rawlinson had sent her provocative texts of a sexual nature whilst he was in custody. He accepted that he was shouting, but denied trying to kick down the door of the Rawlinsons' home or making any threats of the type described by Mrs Rawlinson. He denied forcing Frederick Rawlinson to take custody of the boxes of shotgun cartridges. He accepted that he knew a man called James Gent, but denied assaulting Frederick Rawlinson on the last occasion that he saw him, and denied making any threats to burn down the Rawlinsons' house or to kill Frederick Rawlinson.
15. He also initially denied that Frederick Rawlinson owed him any money or sending Ms Ling to collect it, but after he was told that she had accepted collecting money on his behalf, Mr Porch said that Frederick Rawlinson owed him money for damage he had caused to his car in an accident that had occurred the previous year. He said that if Frederick Rawlinson was paying the money to Ms Ling then he knew nothing about it.
16. A quantity of cash was found at Ms Ling's address, and in the kitchen and in her bedroom the police found and seized a total of 19 mobile telephones. A statement from PC Hobbs, one of the officers who attended that address, dated 19 August 2015, described and exhibited each of those phones and stated the location in which they were found.
17. The three phones which matter for the purposes of this appeal are respectively a Huawei Ascend Y330-U01, a Huawei Ascend G6205, and a gold coloured Samsung Galaxy model SM-G900F. The G6205 phone belonged to Frederick Rawlinson and the other two phones belonged to Mr Porch. According to PC Hobbs' contemporaneous statement, all the Samsung phones that he seized were found in a kitchen drawer and all the Huawei phones were found in a bag of clothes in the bedroom.
18. None of the telephones taken from Ms Ling's house was interrogated by the time of Mr Porch's trial. On 21 August 2015, two days after they were seized and exhibited to PC Hobbs' statement, they were placed in storage at Forest Gate Police Station and remained there in their individually sealed exhibit bags until May 2017. We were told that Ms Ling and Mr Porch each had a mobile phone on them when they were arrested; neither of those phones was interrogated and neither became an exhibit in the case. Of course, there is no general obligation on the police or the prosecution to arrange for the forensic interrogation of every mobile phone that is seized from a suspect in a criminal case; but there may be cases in which it is apparent, or becomes apparent that a mobile phone which the police have retained may contain information of relevance, including information that may potentially assist the defence. This was such a case.
19. The Court does not have the benefit of a transcript of the evidence given at trial. However Mr Porch's evidence, as summarised by the judge in his summing-up, was that Frederick Rawlinson had borrowed his car, a Ford Ka, which he had purchased in

October 2014, and that it had been damaged in a collision. Mr Porch had obtained a quote from a friend who said it would cost between £5,000 and £6000 to fix the car. Frederick Rawlinson had offered to pay him the £6000 in instalments. Initially he would pay it at the rate of £250 per week but this had been recently increased to £300 per week. Mr Rawlinson would visit Mr Porch's flat on Wednesdays, after he received his wages, in order to pay over the money. He had paid back around £4000 of the debt by July 2015.

20. Mr Porch said that three other men were responsible for requiring Frederick Rawlinson to store the boxes of ammunition in his parents' garage, and that he had nothing to do with it. On the last occasion when Frederick Rawlinson came to his flat, Mr Porch was alone. There was no assault. Terence Rawlinson had called round at about 9pm to find out why Frederick had not come home for his dinner. Mr Porch said that Frederick went out to speak to his father; Terence Rawlinson's evidence was that he only spoke to Mr Porch, who said that Frederick would be home later.
21. Sometime later that evening, Mr Porch said the atmosphere changed. Mr Porch had confronted Frederick Rawlinson about sending provocative texts to Katie Ling and to his current girlfriend, Stacey, and Frederick became distressed and said that the women were lying. Mr Porch told him to go and get some cigarettes from the corner shop and gave him £20 to do so. Mr Rawlinson left the flat in a hurry and it was only after he failed to return and Mr Porch tried to text him to find out what had happened to him, that Mr Porch realised he had left his mobile phone behind. He sent two messages to Frederick Rawlinson via Facebook on 19 and 21 July because he was worried about him. The message on 19 July told him not to worry and to get his phone. Those messages were in evidence at the trial.
22. Mr Porch was due to attend the magistrates' court on 22 July 2015 because he had breached his terms of probation. He was concerned that he might be sent to prison, which in the event he was (for 8 weeks). He rang Katie Ling on a couple of occasions, once from HMP Thameside, and told her that Frederick Rawlinson owed him money and suggested that she should go to collect it so that she could support herself and their child whilst he was in prison. Although they had split up, they were still on good terms and he was giving her some financial support. He said that he had initially denied that she was collecting money for him when he was interviewed by the police, because he wanted to protect her.
23. Mr Porch was released from custody on 18 August 2015 and spent the night sleeping in the garage at his mother's address. He said that he went round to the Rawlinson family house the following day to collect his money and to obtain a new telephone number for Frederick. He called through the letterbox. A neighbour came out and asked what was going on, and he explained that Frederick owed him money. He accepted that he shouted, but he denied making any threats or kicking the door.

The application to adduce fresh evidence

24. Mr Porch seeks to rely upon messages that were downloaded from the three mobile telephones. Mr Elvidge submitted that this information, had it been available at trial, would have significantly undermined Frederick Rawlinson's evidence and the credibility of his account.

25. Pursuant to directions given by the single judge, the parties have produced a joint document setting out areas of agreement and disagreement between them. It is agreed that the messages were downloaded from three mobile telephones, two of which (including the gold Samsung Galaxy) are properly attributed to Mr Porch and the third is properly attributed to Frederick Rawlinson. It is also agreed that the downloads have been properly collated and served.
26. Section 23(1)(c) of the Criminal Appeal Act 1968 gives the Court of Appeal a discretion, if it thinks it necessary or expedient in the interests of justice, to receive any evidence which was not adduced in the proceedings from which the appeal lies. Section 23(2) sets out a list of four specific matters to which the court is obliged to have regard when considering whether to receive any fresh evidence, namely:
 - a) whether the evidence appears to the court to be capable of belief;
 - b) whether it appears to the court that the evidence may afford any grounds for allowing the appeal;
 - c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
 - d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.
27. Much of the argument before us understandably focused upon why the evidence was not adduced at trial and whether the prosecution failed in its duty of disclosure. However, it is well established that even if there is no reasonable explanation for the failure to adduce the evidence at the trial, the interests of justice are a paramount consideration: see e.g. *R v Sales* [2000] Cr App R 431. The power to receive fresh evidence represents a potentially very significant safeguard against the possibility of injustice. Ultimately the question for this court is whether, in the light of the additional evidence, the convictions are unsafe. That can be tested by asking what impact that evidence might have had on the mind of the jury, or whether there is a real possibility that, if defence counsel had been in the position to use that material at trial, the jury would have arrived at a different verdict.
28. Therefore if, having considered all the circumstances, the court is of the view that the fresh evidence is of such a nature as to give rise to concern about the safety of the conviction, it ought to exercise its discretion to admit it. It is normally the practice of the court to examine the evidence on which the appellant seeks to rely *de bene esse* in order to see whether it may have made a material difference to the outcome of the trial. We took that course in this case.
29. The evidence consists of messages that have been downloaded from the three mobile telephones; it is very fairly accepted by Mr Porter that they would have been admissible at trial and there is no issue as to their credibility, in the sense that they are authentic messages sent on the dates and at the times they bear, though there may have been some argument about how the messages should be interpreted and what inferences could properly be drawn from them. Indeed, Mr Porter conceded that if the mobile phones had been interrogated prior to the trial, as the CPS had asked the police

to arrange, the CPS would have been under an obligation to disclose the results of that interrogation to the defence. He was plainly right to make that concession. How, then, did it come about that the evidence was not in the possession of the defence at the time of the trial?

30. Mr Porch's case is that he had provided instructions to his legal team at trial that his telephone, which the police had seized, would contain relevant material to support his defence. However, Mr Porch had more than one telephone, and the relevant telephones were both left by him at Ms Ling's house. As we have already noted, a different mobile phone was in his possession at the time when he was arrested, and that phone was given back to him.
31. The following chronology indicates what efforts were made to obtain the telephone data before and after Mr Porch's trial. Although there is no suggestion of bad faith, it does not make happy reading.
32. After Mr Porch and Ms Ling had been arrested and interviewed, despite the fact that this was allegedly a joint enterprise blackmail, and Ms Ling had made contact with Mrs Rawlinson by phone to arrange to meet to receive the payments, Ms Ling's mobile phone was restored to her when she was released on bail. The police also gave back the mobile phone which was in the possession of Mr Porch when he was arrested; that was taken with him to the prison when he was remanded in custody, and obviously he was not in a position to access it thereafter. It was confirmed to the court in the course of the hearing of the appeal that the custody record for Mr Porch did have a reference to that phone and it had a different IMEI number from the gold Samsung Galaxy phone that was seized from Ms Ling's house.
33. In her witness statement dated 4 December 2019 the officer in the case, who was involved in the investigation from the onset, states that CPS advice was given which suggested that the mobile phones seized from the defendants should be interrogated and any evidence presented, and that she was aware of that advice. That communication from the CPS was sent to the police at some unidentified point prior to 21 January 2016. The officer says she remembers checking the phones taken from Ms Ling's address when Mr Porch and Ms Ling were first arrested on 19 August 2015. She says that she noted that they were all very old and appeared broken, or had sim cards or batteries missing. She did not believe that anything of relevance would be held on them. That view was reinforced by the fact that Ms Ling had been communicating with Mrs Rawlinson on her current mobile phone and that she did not live with Mr Porch.
34. It appears that the officer took it upon herself to decide that the telephones seized from Ms Ling's address would have no relevant material upon them and that no attempt should be made to interrogate them. She plainly did not revise her view in the light of the CPS advice or think to go back and look at the phones again. It would also appear that she did not discuss this matter with the CPS, despite their specific request that the mobile phones that were seized be interrogated. That request could not reasonably have been interpreted as relating to the two phones that the police had already been given back to the defendants. Even if the officer mistakenly interpreted the advice as relating to those two mobile phones she did nothing at all about arranging for them to be interrogated – had she done so, she would have found out, or been reminded, that they were no longer in the possession of the police.

35. It is no excuse that the defence had not mentioned mobile telephone evidence or made a request for such evidence at that stage. The CPS had identified mobile telephone evidence as potentially relevant and they were plainly right to do so. As we now know, it *was* possible to interrogate the three mobile phones that have yielded the further evidence on which Mr Porch seeks to rely; one of those phones belonged to Frederick Rawlinson and was in use by him up to and including the first two weeks of July 2015.
36. The prosecution's case, based on Frederick Rawlinson's witness statement, was that Frederick Rawlinson's phone had been taken from him by Mr Porch in Mr Porch's flat on the night of the alleged assault. The police knew that a search of Mr Porch's flat, and his mother's house where he had stayed the night before his arrest, had revealed no phones, but his ex-partner's house had 19 phones, all of which were seized and exhibited to PC Hobbs' statement. Astonishingly it appears that it occurred to no-one that Frederick Rawlinson's phone might be among them (as in fact it was).
37. The CPS served an unused material schedule in October 2015; there was no mention in it of mobile telephones. On 19 November 2015 Mr Porch and Ms Ling were arraigned. They both pleaded not guilty to the counts that they each faced. The case was placed in the warned list for the week commencing 8 February 2016. Mr Porch served a defence statement which we have read. In it, he said that Mr Rawlinson borrowed his car in January 2015 and crashed it. As a result, Mr Rawlinson owed him the value of the car (about £6,000) plus other money that Mr Porch would habitually lend him on nights out. There was an agreement that Mr Rawlinson would pay him back from his wages, initially at £250 per week and then rising to £300 per week. When he went to prison for a short time in July 2015, he asked Katie Ling to collect the money on his behalf. It was a debt legitimately owed and no threats were made. The defence statement also refers to Frederick Rawlinson lending Mr Porch *his* car (a Fiesta) for a period before July 2015.
38. Mr Porch also suggested that Frederick Rawlinson had fabricated the allegations because he wished to hide his drug consumption from his parents and because he had been sending suggestive text messages to Mr Porch's current and former partners. Disclosure was sought of bank statements and pension statements from the complainant and his mother over the relevant period. It was believed that these might show repayments of the debt on a regular basis from January 2015 onwards.
39. At the same Plea and Trial Preparation Hearing, the prosecution indicated that further evidence was likely in respect of the notebook entries from Mrs Rawlinson relating to the payments to Katie Ling, and mobile telephone downloads. The mobile telephones that the prosecution expected to be interrogated were not specifically identified. However, as we have said, the only phones that were in the possession of the police (and potentially disclosable as part of the unused material) were those which had been exhibited to PC Hobbs' witness statement. It can be inferred that at that stage, the officer in the case's decision that there was no point in interrogating or attempting to interrogate those phones had not been communicated to the CPS and they were still expecting this to be done.
40. The prosecution was directed to serve any further evidence by 17th December. When no evidence was served on that date, Mr Porch's solicitor sent an email to the CPS which specifically reminded them that the potential phone evidence had to be served

by 17 December and stated that they did not appear to have had a response to the defence case statement nor had they received the Notice of Additional Evidence. A chasing email was sent on 5th January 2016 in which the solicitor complained that he was “still in the dark regarding the complainant’s telephone evidence and his bank statements.” It appears that they had not received a hardcopy letter sent on 4 January 2016 by a paralegal at the CPS which stated that the Crown would not be serving telephone evidence in respect of Mr Porch’s case. A copy of that letter was forwarded by email to the solicitors on 7 January. The defence solicitors acknowledged receipt of that letter by email later that day, stating that if they did not hear from the CPS in regard to the bank statements by close of business they would ask the court to list the case for a mention.

41. The case was listed for mention on 12 January 2016. We have seen a transcript of the hearing and the attendance note of the barrister who attended on that occasion. (We should interpolate at this juncture that the preparation of Mr Porch’s case suffered from a lack of continuity in counsel and that even his trial counsel appears to have taken up the brief as a late replacement for the person initially instructed). Counsel told the judge that until the previous week the defence had believed that the Crown were intending to rely on the telephone evidence, but that last week her instructing solicitors received a letter stating that the Crown no longer intended to rely on it. She said “what the defence say is that in the telephone evidence there may well be text messages that support Mr Porch’s defence that there was an agreement between the two men relating to him being reimbursed to the value of his car”.
42. The judge asked why Mr Porch did not have the text messages. Counsel explained that he was in custody. The judge asked whether the defence had looked at his phone. Counsel said that she did not have that information, but that she thought that disclosure was not requested in the defence case statement because it was believed at that stage that it was going to be evidence that the Crown relied on. She said: “we have never seen it, and in any event the Crown should look at it and decide whether or not it meets the test of disclosure.”
43. The judge put the matter back for a short time to enable counsel for the prosecution to have a word with the officer in the case, who happened to be attending a different court in the same building. He said to defence counsel that if the Crown were not going to provide the material, they would have to make a section 8 application. Following that short adjournment, prosecuting counsel (who was not Mr Porter) said that he had had an opportunity to speak to the officer. So far as the telephone evidence was concerned, as counsel had suspected, the reason why the Crown had indicated that they were not relying upon it was that they could not comply with the order to serve the Notice of Additional Evidence by 17 December.
44. He told the judge that the officer had informed him that she was in the process of obtaining phone downloads from two mobile phones, one belonging to Mr Porch and one to Ms Ling, and that she hoped that the material would be available by the end of the following week. He asked for time to serve any phone evidence either as used material, or if it was unused if it assisted the defence in any way. The judge directed that disclosure should be completed by 26 January 2016.
45. Counsel would not have said what he did in open court without having made certain of his instructions. The transcript is the best evidence of what prosecuting counsel was

told by the officer in the case at the time and it is also reflected in defence counsel's note. It seems that the officer was unaware or had forgotten that the defendants had been given back their current mobile phones, and that she thought that they were still available to be interrogated.

46. Defence counsel's attendance note also records that the Crown had confirmed that the police had seized 21 mobile telephones during the investigation and that they had determined that the majority of the phones were old or unused. That does not appear on the transcript of the hearing and must, therefore, have been what prosecuting counsel told her privately after speaking to the officer. Irrespective of the proposed interrogation of 2 phones, that information should have alerted the defence to the fact that there were a large number of other phones that had been seized that the prosecution did not intend to rely upon and which someone should at least ask to inspect, or do what the judge had suggested, and request their disclosure.
47. The judge's order that all relevant material including the requested bank statements should be disclosed by 26 January 2016 was not complied with, and on Friday 5 February 2016, effectively the last working day before the trial, the case was listed for mention before HH Judge Del Fabbro. The officer in the case attended that hearing and stated that she had been unable to access the defendants' mobile telephones because they had been returned to them. She says in her witness statement that she told the CPS this in a form submitted to them on 21 January 2016 – information that the CPS failed to pass on to the defence. That was the first occasion on which the defence became aware, contrary to assurances given in open court, that no mobile phones were going to be interrogated, and in practical terms it was too late to do anything about it, as the trial was starting on the following Monday.
48. When defence counsel who attended on that occasion (not the same barrister who attended the PTPH) explained to the officer in the case that the defence was seeking evidence that there had been regular payments/withdrawals between January and July 2015 from any relevant bank account, she agreed to try and obtain the bank statements and email them to trial counsel or bring them to court on the first day of trial. In the event the bank statements were obtained and disclosed on that date, 8 February 2016. They did give some support for Mr Porch's account of regular withdrawals by Frederick Rawlinson going back to January 2015 of sums that were consistent with the defence case, but Frederick claimed that these were used for contributions towards his living expenses.
49. Following the trial, on 1 March 2016 the solicitor then representing Mr Porch sent an email to the police specifically referring to a Samsung Galaxy 5 gold phone which belonged to him and which he believed was seized from Ms Ling's house. Mr Porch has waived privilege, and correspondence was sent to his former legal representatives pursuant to the fact-finding procedure set out in *R v McCook* [2014] EWCA Crim 734, [2016] 2 Cr App R 30. Somewhat unusually, there has been no response, and we have seen no attendance notes of any conferences with Mr Porch before or during the trial. Consequently it is unclear at what point it became apparent to the defence legal team that the phone in which Mr Porch was particularly interested was a gold Samsung Galaxy and that it was among the phones he left at Ms Ling's address. However, that was the first mention made of these matters in correspondence.

50. The solicitors said they wished to retrieve the phone and send it off for analysis as part of an appeal, and asked if it could be sent to them or an appointment could be made to collect it. The officer in the case's response was that if the item was seized from Ms Ling's address the solicitors would need her written permission for the phone to be released, and that she would also need the IMEI of the phone so that she could confirm that it was the correct one. The solicitor asked if she had contact details for Ms Ling and the officer responded that she could not reveal such confidential information and that he should obtain it from Mr Porch.
51. Thereafter Mr Porch decided to try to obtain fresh legal representation with a view to getting hold of the phone. This understandably took a little time to arrange. On 11 October 2016, a paralegal from a new firm of solicitors instructed by Mr Porch, Emilio Pagliocchini, contacted Forest Gate police station seeking to collect mobile telephones from the property office. He has made a witness statement explaining the obstacles that he encountered. It is unnecessary for us to describe the considerable efforts that were taken by Mr Pagliocchini to gain access to the mobile telephones, but we are satisfied that Mr Porch's new solicitors did everything that they could, and the ensuing delay was not their fault.
52. Regrettably, it took the intervention of Mr Porch's MP and a senior police officer to achieve the desired result. Mr Pagliocchini was eventually allowed to inspect the mobile telephones. He identified the three that were of particular interest and they were retrieved from Forest Gate police station in May 2017. Thereafter all reasonable steps were taken to procure their expert examination and the disclosure of the results to the CPS. We are satisfied that there is a reasonable explanation for the delay in lodging the appeal, such as to justify granting the requested extension of time.
53. Standing back, and considering whether there is a reasonable explanation for the failure to adduce this evidence at trial, the overall picture is one of confusion and misunderstanding in which we consider that everyone involved must take some share of responsibility for the fact that evidence that was plainly material was not disclosed.
54. The assumption should not have been made that the seized phones contained nothing of relevance. The officer in the case should not have taken that decision without discussing the matter with the CPS, especially after she knew that the CPS had advised that the seized phones should be interrogated. She may have mistakenly thought that the two current phones were still in the possession of the police, but a simple inquiry would have revealed that error. There appears to have been insufficient dialogue between the officer and the CPS, leading to unnecessary misunderstandings. The prosecution was trying to comply with its duty of disclosure, but, as a result of a catalogue of avoidable errors, compounded to some extent by the fact that no specific request was made by the defence for disclosure of mobile phone evidence, it failed to do so.
55. It is unfortunate that Mr Porch did not have a continuity of representation by counsel. Had there been such continuity it is more likely that the material would have been requested, and there is a greater chance that it would have been disclosed. That said, the defence solicitors at trial were also partly responsible for the failure to obtain the evidence. They were entitled to assume from what the prosecution had said that at least some of the phones would be interrogated, until they were told otherwise very late in the day. On the other hand, they could and should have been more proactive,

and at the very least asked to inspect the phones that DC Hobbs had seized from Ms Ling's address, especially after counsel had been told at court on 12 January 2015, and reported to them, that those phones were not going to be interrogated. They should also either have taken more detailed instructions from Mr Porch or, if they had those instructions, made specific inquiries about the gold Samsung phone much earlier than they did.

56. At the end of the day, little is to be achieved by apportioning blame. It is hoped that lessons will be learnt. The catalogue of errors and misunderstandings, whilst deeply regrettable, does afford a sufficient excuse, and it would not be fair to penalise Mr Porch for what happened. It is plainly in the interests of justice to admit this evidence. As we shall explain, it does afford a reasonable basis for undermining the prosecution case and it does give rise to real doubt about the safety of the convictions.

The telephone evidence

57. We do not need to describe in detail the results of the forensic examination of the phones. We have been provided with schedules of relevant text messages and What's App messages extracted from the phones. Suffice it to say that there was a wealth of material that would have been seized on by defence counsel as substantially undermining the credibility of Frederick Rawlinson, the key prosecution witness. The text messages indicated, among other matters, that:
- i) Frederick Rawlinson had known James Gent for far longer than he had told the police, and there were communications between them that suggested a relationship that was independent of Mr Porch;
 - ii) Frederick Rawlinson was substantially indebted to Mr Porch – one message refers to £3,000 - and had been from as early as December 2014. He was paying Mr Porch back as and when he could. It appears from the messages that the debts were mostly related to the supply of drugs rather than to any damage done to a car, but as Mr Elvidge submitted, defence counsel would have been likely to give appropriate and strongly worded advice to Mr Porch to tell the truth about that;
 - iii) Mr Porch seemed to be willing to lend Frederick Rawlinson more money when asked, if he could afford to do so; requests to borrow money were met with genial, and generally positive responses.
 - iv) Frederick Rawlinson was regularly short of money and was frequently seeking to borrow money not just from Mr Porch but various other sources including his own brother, various girlfriends, and loan companies; he appeared to have drugs, alcohol and gambling issues. He was plainly struggling to make ends meet and to keep down his job.
 - v) He did promise to pay back Mr Porch on Wednesdays; there are several messages referring to giving him "doe" on "wens" and one message refers specifically to £350 being repaid on a Wednesday.

- vi) Mr Porch did not demonstrate any concern about when he would be repaid, get angry with Mr Rawlinson about his indebtedness, or make any threats towards him in any of their communications (about money or anything else).
 - vii) There were messages that could have been interpreted as suggesting that there were three men of whom Frederick Rawlinson was scared, who were nothing to do with Mr Porch, though Frederick had told Mr Porch something concerning his dealings with them.
 - viii) There were messages sent by Terence Rawlinson to his son on the night that he went round to Mr Porch's flat, which suggested that Mr Rawlinson senior had a volatile temper, and was disproportionately angry with his son that evening about the fact that he had failed to come home for his dinner. That might afford an alternative explanation for why Frederick decided to leave home; it also corroborated certain evidence given by Ms Ling about something said to her by Mrs Rawlinson.
 - ix) There were also messages to (and about) women that gave support for the contention that Frederick Rawlinson would have sent the type of inappropriate messages to Ms Ling and Stacey that Mr Porch was complaining about, and that he may have thought that it would be funny to wind his friend up by pretending that his sexual advances were welcomed by them.
 - x) There were references to Frederick Rawlinson lending Mr Porch his car (though there were no references to support Mr Porch's account of Frederick damaging his car).
58. Mr Elvidge realistically accepted that material indicating that the drugs debt was genuine would not be fatal to a case of blackmail. However, he submitted, and we agree, that with the benefit of that material, defence counsel would have had plenty of support for the thesis that Frederick Rawlinson had lied to his parents about being blackmailed to try and cover up the extent to which he had got himself into financial difficulty due to his lifestyle choices, and to persuade them, or at least to persuade his mother, to pay off his debts.
59. Mr Porter contended that the messages would not have taken matters any further. When asked by the court whether the Crown could still have presented Frederick Rawlinson as a truthful witness, Mr Porter said that it was always accepted that he had a chaotic lifestyle and therefore yes, it could. However, we are satisfied that this evidence would have severely undermined the credibility of Frederick Rawlinson. Indeed, faced with those messages it is questionable whether, on reflection, the CPS would have decided to continue with the prosecution. The fact that when the officer in the case sought to speak to Frederick Rawlinson about the messages, he was not prepared to discuss them with her, speaks volumes.

Conclusion

60. If this material had been deployed at trial, there is a real possibility that the jury would have reached a different verdict on both the counts faced by Mr Porch. It is plainly in the interests of justice to admit it, and having done so, we are satisfied that there are

good reasons to doubt the safety of Mr Porch's convictions on both counts. We therefore allow the appeal and quash the convictions.