Neutral Citation Number: [2020] EWCA Crim 1635

Case No: 201802976

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT
SITTING AT MINSHULL STREET MANCHESTER
HH JUDGE EDWARDS

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 :

RIAZ AHMAD — **Appellant**
- and –

HEALTH AND SAFETY EXECUTIVE — **Respondent**

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- -

Mr Paul Greaney QC and Mr Tanveer Qureshi (instructed by **MPR Solicitors LLP**) for the **Appellant**
Miss Rosalind Emsley-Smith (instructed by the **Health and Safety Executive**) for the **Respondent**

Hearing date: 20 November 2020

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Approved Judgment

Lady Justice Andrews:

1. On 21 June 2018 in the Crown Court at Manchester, following a trial before HH Judge Edwards and a jury, the appellant was convicted of one offence of failure to comply with Regulation 19 (1) of the Construction (Design and Management) Regulations 2015 ("the 2015 Regulations") (count 1) and two offences contrary to provisions of the Health and Safety at Work Act 1974 ("the 1974 Act") (counts 2 and 3). These offences depended upon the Prosecution establishing to the criminal standard that, in respect of Count 1, he was a "contractor" as defined by Regulation 2(1) of the 2015 Regulations, namely, a person who managed and controlled the relevant construction work, and that, in respect of Counts 2 and 3, he was an "employer" for the purposes of the statutory offences. He was sentenced to 8 months' imprisonment to run concurrently on each of the three counts and ordered to pay £65,000 prosecution costs.

2. On 19 November 2019 on a renewed application for leave to appeal against his conviction, a different constitution of this court granted the appellant leave to appeal on two of his proposed grounds of appeal, namely:

    a) that fresh evidence undermines the credibility of Jumagul Mohamodi, an important prosecution witness on all 3 counts, and enhances the credibility of the appellant; and

    b) that the judge failed to direct the jury on how it should approach the contentious evidence that the appellant had attempted to bribe one of the witnesses, Wshiar Sarteep.

3. Whilst the order made by the court on that occasion did not expressly grant the appellant permission to adduce the fresh evidence pursuant to s.23(1) of the Criminal Appeal Act 1968 it is necessarily implicit in its ruling that it must have done so, and the appeal has proceeded on that basis. In any event, we confirm that we are satisfied that it was (and is) in the interests of justice to admit the evidence, taking into account all the factors set out in s.23(2) of that Act, irrespective of whether more could have been done to try and obtain it at the time of trial. We will consider the nature of the evidence and its significance in its proper context, later in this judgment.

4. At one time the appellant had also sought leave to appeal against sentence, but it was indicated in his counsel's skeleton argument in support of the renewed application for leave to appeal against conviction that this application was no longer pursued. Mr Paul Greaney QC, who did not appear at the trial, but who appeared for the appellant with Mr Tanveer Qureshi (who was defence counsel at trial) told the court that he believed that the relevant form had been lodged with the Court of Appeal Office, but for the avoidance of doubt he formally sought (and obtained) our leave to abandon the appeal against sentence.

5. The court is very grateful to Mr Greaney and to Miss Rosalind Emsley-Smith, who appeared for the Prosecution (as she did at the trial below) for their attractively presented, succinct and focused submissions.

Background

6. The offences related to major construction works that were undertaken on a three-storey Victorian brick building named Kings House in Oldham in July/August 2016. The appellant, who owned the building, intended to change its use from office space to a shisha bar and restaurant. No plans were submitted for building regulation approval prior to the commencement of work on site. There had been no structural survey. There were no construction plans, and no risk assessments were ever carried out. Nobody appeared to have addressed their minds as to what risks existed at the site and how to institute a safe system of work to best manage those risks and keep people safe. Various witnesses attested to the number of workers on site being between 3 and 10 at different times over the course of the five weeks or so when work was carried out. None of them wore any proper form of protective clothing. The conditions on site were unsafe and disorderly, and there was no firefighting equipment or fire detection equipment despite there being a significant quantity of combustible material on site.

7. In response to concerns being raised as to the structural integrity of the building by the owner of a neighbouring business, a council officer, Mr Mark Smith, attended on 11 August 2016 and stopped all work on site. Mr Smith found that the building had been made inherently unsafe by the removal of internal walls and the roof was inadequately supported. He found ten young men working there and told them to leave immediately. They were reluctant to do so until he explained his concerns about the structural integrity of the building. He spoke on the telephone to the appellant, who was unable to come to the site that day but said he would send a representative. A prohibition notice was served, and the road was closed pending the attendance of a specialist Health and Safety Executive ("HSE") inspector, Mr David Argument.

8. On the following day, 12 August 2016, shortly after Mr Argument had recommended that a controlled demolition be carried out, the roof collapsed. Fortunately, nobody was injured. Neighbouring businesses had to be evacuated. During the process of dealing with the aftermath of the collapse and carrying out a controlled demolition of the building it was discovered that the gas and electricity supplies had not been isolated and remained live. The building had not been subject to an asbestos survey, and therefore an asbestos specialist was required to attend.

The key issues at trial

9. By Regulation 16 of the 2015 Regulations, a domestic client who controls the way in which any construction work is carried out by a person at work must comply with the requirements of Regulation 19 in so far as they relate to matters within the client's control. There was no dispute that the appellant was a "client" within the meaning of the Regulations. Regulation 5 provides that if the client fails to appoint a principal contractor, the client must fulfil the duties of the principal contractor. So far as is relevant, Regulation 19 requires that:

> "all practicable steps must be taken where necessary to prevent danger to any person to ensure that any… existing structure does not collapse if, due to the carrying out of construction work it
>
> a) may become unstable
> b) is in a temporary state of weakness or instability."

10. Section 2(1) of the 1974 Act imposes a duty on an employer to ensure so far as is reasonably practicable the health, safety and welfare of his employees. Section 3(1) of that Act imposes a duty on an employer to conduct his undertaking (in this case, construction work) in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment (e.g. members of the public) are not thereby exposed to risks to their health or safety by falling materials.

11. The prosecution case was that the appellant controlled the work and was the employer of those who worked on the site, and specifically the three men named in Count 2 on the indictment, Jumagul Mohamodi, known as "Juma", Wshiar Sarteep, known as "Alan", and Amjal Waziri, known as "Saif". In the documents and the transcripts one finds a number of different variants on how these three men spell their names, e.g. Mr Waziri is sometimes referred to as Mr Azari; but we propose to simplify matters by referring to them, without intending any disrespect, as Juma, Alan, and Saif.

12. The question whether the appellant was an "employer" within the meaning of the 1974 Act was not definitively determined by ascertaining whether the people working on site were working under contracts of employment. It depended on whether, on an examination of all the relevant facts and circumstances, the jury were sure that he was in control of the people working on the site, in the sense that he had the right to tell them what to do, how to do it, when to do it and where to do it. It also depended on whether there was a mutuality of obligations, in the sense that the appellant was obliged to give them work and pay them for doing it, and they were obliged to turn up for work and carry it out.

13. If the prosecution established to the criminal standard that the appellant controlled the work (for the purposes of the 2015 Regulations) and was the employer (for the purposes of the 1974 Act), the burden would then shift to him to prove on the balance of probabilities that he took all practicable steps to ensure that the structure did not collapse (Count 1), that he had ensured so far as was reasonably practicable the health, safety and welfare of his employees (Count 2) and that those not in his employment were not exposed to risks to their health and safety from falling materials (Count 3). However, given the strength of the evidence about the lack of safety on the site, and the absence of any steps to safeguard against risks to health and safety, in practical terms the case turned on whether the prosecution could prove that the appellant was in control of the work and the workers on site. The prosecution contended that all the workers were incompetent and that the appellant had exploited them knowing that they were unlikely to complain about their working conditions and risks.

14. The defence case was that the appellant was not in control for the purposes of the 2015 Regulations and was not an employer of the men working on site. So far as Count 1 was concerned, the appellant contended that overall responsibility for the work rested with Ms Saira Hussain, an architect and building designer who he claimed to have appointed both as principal designer and as principal contractor for the purposes of Regulation 5 of the 2015 Regulations. He contended that Ms Hussain and the construction company or business known as "JM Builders" together managed and controlled the construction work, and therefore they were responsible for any breaches of Regulation 19.

15. So far as Counts 2 and 3 were concerned, the defence case was that JM Builders were independent contractors and that the appellant was not their employer for the purposes of the statute. Rather, they were the employers, and Juma was primarily responsible for supervising the workers and directing operations on site.

16. In his defence case statement, the appellant claimed that JM Builders was a partnership between three men, Juma, Saif and an electrician named Javid or Javad Ahmed, also known as Javad Khan. The appellant had paid substantial sums to JM Builders and it was they who controlled events on site and all those who worked there. He contended that he had undertaken all reasonably practicable steps including due diligence in respect of JM Builders, shared all knowledge with Ms Hussain, and liaised with Frank Summerfield, the project's consulting engineer, and JM Builders at all material times. He claimed to have no personal experience of managing construction work, controlling construction work or arranging construction work.

17. The trial judge gave impeccable directions to the jury in his summing-up as to the legal test they must apply and what factors they should take into account, about which no complaint is or could be made. Subsequently, after the jury had retired, they sent a note to the judge asking: "what is the definition of an employer and an independent contractor? We want to be clear on that". In the course of counsel's discussions with the judge about how he should respond to that inquiry, Miss Emsley-Smith correctly observed that the question of what was an independent contractor was not an issue in the case. She said that even if the jury took the view that the workers were independent contractors, that did not necessarily mean that they were not employed by the defendant, because for the purposes of the 1974 Act, the test is the extent of the control and the mutuality of obligations. Mr Qureshi agreed. He suggested to the judge that it would be right to make it clear that it was the defendant's case that he did not employ them, and that ultimately the question for the jury was one of fact, namely, whether or not he was their employer.

18. With the benefit of that helpful input from both counsel, the judge told the jury in answer to their question that there was no definition in the Act of what an employer is, or of an independent contractor, and referred them back to his written legal directions. He said it was an exercise by them of judgment to the facts, the circumstances and the evidence. He added:

> "An independent contractor of course can be an employee and the defendant can be their employer. It is the defendant's case that he did not employ them. It is the prosecution's case, so that you are sure, remember, that he did employ them, so that is the exercise that you have to undertake."

Again, no complaint is or could be made of those directions.

Evidence of control

19. The prosecution relied, inter alia, on the evidence of HSE Inspector Argument that when he first attended the site, he rang the appellant who told him that it was his project and that he was carrying it out via his limited company, Kingston Estates and Property Limited. A man named Mohammed Amjad told him that he was the appellant's representative on site. The prosecution also relied upon contemporaneous communications, such as emails, and other documents such as the building control

application pack in which the appellant was named personally as the person intending to carry out the work. His builders were listed as "JM Builders".

20. When it was suggested to Mr Argument in cross-examination that Ms Hussain was the principal contractor, he said that the notion was fanciful at best. He added that after the defence statement was served, he went to see her again and she satisfied him that she was not in control and never had been. Mr Argument denied that he had decided from the outset that the appellant was guilty and that this had tainted his investigation. He said he had a completely open mind about involvement in the project and he had no evidence that Ms Hussain had been appointed as principal contractor.

21. When it was put to Mr Argument that the appellant had identified Mr Amjad to him as being one of those in control, Mr Argument said that the appellant had *not* flagged up Mr Amjad as being in control of the work, but rather had said he was a friend who he was allowing to use his office and that he was not involved in the project.

22. A man named John Jones, the managing director of a scaffolding firm in Salford, gave evidence in an unchallenged statement that the appellant rang him for a quote in late July 2016 and that Mr Jones visited the site on 28 July to take measurements. While he was there, a man of Asian appearance came out and asked what he was doing. When Mr Jones explained, and asked if the man knew anything about the building or the scaffolding, the man went away and came back with a telephone. The appellant was on the line, and Mr Jones had a short discussion with him to confirm what was going on. Mr Jones subsequently sent the appellant a quotation for the scaffolding. The appellant rang him up and initially haggled over the price, but then agreed to the quote. He subsequently rang him to say there would be a delay because the building had collapsed.

23. Mr Smith, whose statement was also read, said he spoke to the appellant at the site on the day the roof collapsed, in the presence of Frank Summerfield (who told Mr Smith that he was acting as the appellant's consulting engineer), Juma of JM Builders, a Mr Amjad who described himself as an adviser to the appellant, and another younger man whose name he did not know. During that conversation, Mr Smith was told that the appellant had paid Juma to do some of the building work, and that the appellant was paying the other operatives directly. Mr Smith got the impression that Juma was not in overall control of the works and there appeared to be some disagreement as to who was in charge as between the appellant, Juma, and Mr Amjad.

24. A Mr Nazir who owned a nearby ice cream parlour gave evidence that the appellant had offered to sell him or lease him the building in 2015, but he was not interested. He said that the appellant and another tall man came on site once or twice a week, appeared to give instructions to the workers and then left. When a large, jagged crack appeared in the centre of a party wall, Mr Nazir mentioned it to one of the workers on site who said: "boss coming" and the appellant later appeared.

25. An insurance broker named Mr Cassell gave evidence that in July 2016 the appellant had asked him to provide a quote for JM Builders which he did, but he then went on holiday and on his return he discovered that the building had collapsed. The appellant's explanation was that he was asked to obtain a quote for the insurance as a favour to the builders.

26. The prosecution also relied on evidence from and concerning the people who had been appointed to undertake the works. As Mr Greaney realistically accepted, so far as Count 1 was concerned the primary evidential conflict was between the appellant and Saira Hussain. Ms Hussain said she had been engaged to obtain the necessary planning permission for the change of use, but she was never appointed as principal contractor. The planning application was approved on 11 February 2016. In March 2016 she had a meeting with the appellant and Mr Amjad, who was introduced to her as the prospective structural engineer on the project, but the appellant subsequently changed his mind and decided to use Mr Summerfield instead. Ms Hussain took the planning drawings with her to that meeting to enable Mr Amjad to do the structural calculations. However, in the event it was Mr Summerfield who produced the structural drawings for Ms Hussain to put in the package of building control drawings for submission to the relevant authority shortly before the building collapsed.

27. Ms Hussain said that the appellant was in control of the project 100%, he was telling her exactly what to do and when he was going to start the work. He asked her if she knew any builders and she recommended someone she knew called Fabian, who had done a good job on a shisha bar in Blackburn called "Cube", whose owners she knew. She introduced Fabian to the appellant at a meeting at the site in April 2016. Mr Summerfield was present on that occasion and said that it would cost around £25,000 to do the necessary steelwork to reinforce the building. The appellant became annoyed at this and said that Frank did not know what he was talking about, the appellant had got loads of properties, and he started pointing out which beams would need taking out and added "I'll be telling him what to do, I've managed building projects before."

28. Ms Hussain agreed that she had complete control over the planning phase of the project but said she was not involved with any builders, quotes or calculations relating to the quantity of steel required. In the event, the appellant did not engage Fabian. He told her that he knew some lads who would do the building work. She said she would not know where to begin with steelwork and she had no dealings with JM Builders. She did not supervise any of the construction work and said she had been surprised to learn of the intended demolition, because she did not know that any work had begun.

29. Mr Summerfield gave evidence that he had worked with the appellant on a number of previous schemes. He had been instructed to do the structural design on this project. He went to a site meeting on 16 April 2016 which was attended by the project architect Ms Hussain, her assistant Jodie, a builder named Fabian, Mr Amjad, the appellant, and someone he understood to be the appellant's accountant. Mr Summerfield was asked to provide detail to enable Fabian to give a price. The cost of the steel required was £20,000, but he (Mr Summerfield) was uncomfortable about the shape and the need to alter and break through brickwork without damaging things. The shisha bar would involve heavy loading and this project would involve a significant amount of temporary support.

30. When the plans were submitted to the appellant, the price came as a bit of a shock to him. Mr Summerfield told him that the only way to make it cheaper was to put in brickwork columns which had to be designed. He reviewed the plans, and later sent the appellant some further drawings. Mr Summerfield regarded Ms Hussain as the lead professional and understood her to be the project manager. He had not attended the site in August 2016 and had given no-one on site any directions as to what to do.

31. A matter of hours before the roof collapsed on 12 August 2016 the appellant sent an email to Ms Hussain, copied to Mr Summerfield, stating that he had already arranged scaffolding prices and steelwork. A little later he rang Ms Hussain's office urgently seeking the building control papers which needed signing. Then she had an email to say that the building was in imminent danger, and the appellant asked her to deal with the council as a matter of urgency. She said she was shocked when she found out that the building had been demolished.

32. After the building had been demolished the appellant rang her and spoke to her in Urdu. He said that he was on site, that "they're here, they're out to get me, make sure the files are in order and we stick together, you're one of us". Her response was that if the HSE did not contact her, she felt she should contact them, and he became really angry and hung up on her. This account of the conversation was denied by the appellant.

33. The question whether Ms Hussain was appointed as principal contractor was essentially a direct contest between Ms Hussain, on the one hand, and the appellant, on the other. When Miss Hussain was first cross-examined it was put to her that a meeting with the appellant at which he appointed her as project manager took place in her office in Blackburn a few days after planning permission was obtained, on 15 or 16 February 2016, after which they went to look at the Cube shisha bar. She denied that there was ever such a meeting and said that the appellant had only ever visited her office once, three years previously.

34. In his evidence in chief on 13 June 2018, and again on 14 June 2018 the appellant gave an account of a meeting at Ms Hussain's office after which they went to look at Cube. The meeting took place on Thursday 18 February 2016 between 5pm and 6pm and lasted around 45 minutes. He said that Ms Hussain gave him documents to sign which had her firm's letterhead on them, and which he understood to be a principal contractor agreement. He signed them on trust without reading them. He said she was going to find the builders and supervise the building work and convert the building into a shisha bar.

35. He explained the discrepancy in the dates put to Ms Hussain in cross- examination on the basis that he had recently seen an email from her dated 15 February 2016 which suggested they should meet on Thursday that week, which was 18 February, to go and look at Cube. In cross-examination he said that the meeting at which he signed the documents took place in the reception area of the office, and not in Ms Hussain's room. Afterwards they spent around half an hour in the shisha bar and then went out for a meal in an Indian takeaway, although they sat in the restaurant to eat. They were in the restaurant for between 30 and 45 minutes.

36. It was put to him by Miss Emsley-Smith that in written representations made to Mr Argument by the firm of solicitors he had first instructed after the building collapsed, and in his defence case statement, prepared by his trial solicitors, there was no mention of his appointing Ms Hussain as principal contractor in a written agreement, and no mention of a meeting on 18 February 2016. In each case, the appellant said it was due to the way his solicitors decided to word the documents and the questions they chose to ask him. It was also put to him that he did not tell Mr Smith or Mr Argument on 11 or 12 August 2016 that Ms Hussain was the principal contractor, and

that he did not insist that she was on the site when they decided to carry out the controlled demolition.

37. The prosecution recalled Ms Hussain to give rebuttal evidence on Monday 18 June 2018. She said that the first time she knew of the suggestion that the meeting with the appellant took place on 18 February 2016 between 5pm and 7 or 8pm (to include the visit to Cube and the meal) was on the morning of the previous Friday (15 June). She told the jury that she was not even in Blackburn at that time on 18 February, because she had an appointment in Manchester at 6pm to conduct a housing inspection for an immigration case. She had confirmation of that appointment in both her paper diary and electronically (in the form of a booking sent to her by email on 16 February) and she would have left at around 10 minutes to 5 to get to Manchester because it was a busy time of day. She spent around 30 to 40 minutes inspecting the property in Manchester, and then she went straight home to Burnley because she was babysitting.

38. As a result of that visit, she produced a report on 19 February (the authenticity of which was not challenged). Her diary and the email setting up the appointment had been produced for inspection by the defence on the previous Friday and were made exhibits. She said that the Blackburn office had no reception area. She did not have a meeting with the appellant on that date and she did not visit Cube with him or go to a takeaway with him that evening.

39. In cross-examination Ms Hussain accepted that in an email she had sent the appellant on 15 February 2016 about a possible visit to Cube, she asked when would be a good time for him, and suggested that she could possibly do Thursday evening. However, the appointment in Manchester was made the next day. She categorically refuted the suggestion put to her by Mr Qureshi that she had carried out the inspection in Manchester earlier on 18 February than the time that was booked in her diary and came back to Blackburn afterwards to meet the applicant, explaining that she had another appointment between 11am and 12.30pm.

40. Ms Hussain's rebuttal evidence, supported as it was by contemporaneous documents, was extremely damaging to the appellant's case and to his general credibility, especially, but not only, on Count 1. It is against that background that we turn to consider the evidence of the people who did work, or who were alleged to have worked on the site at the material time.

41. Javad Khan, one of the three people originally alleged by the appellant to be a partner in JM Builders, denied that he was part of that business. He gave evidence that the appellant had offered him what he described as a "little job" at Kings House and that he had asked for the plans so he could see what electrical work was involved. However, although he provided a quote, he did not agree to do the work, and he never did any work on the project. He said he knew Saif but he was not engaged in the project with him, and he never spoke to Ms Hussain. He said he only went to the site once, to collect a ladder that he had loaned to Juma.

42. We have referred to Javad Khan as being one of the three people who were originally alleged to be partners in JM Builders because the appellant's case about the people who comprised JM Builders changed. During his evidence at trial, the appellant claimed for the first time that Mr Amjad was also one of the principals in JM Builders. He said that he did not mention this in his defence statement because Mr

Amjad was working with JM Builders behind his, the appellant's, back. Mr Amjad's supposed role as part of JM Builders was not put to the prosecution witnesses by the appellant's counsel, and it was understandably suggested to the appellant in cross-examination that he was making this up in order to explain away the great deal of evidence called by the prosecution that Mr Amjad was his representative on site who was responsible for giving instructions to the builders and paying the skip men.

43. Mr Amjad did not give evidence.

44. The evidence of Juma, Alan and Saif was of some relevance to Count 1 (to the extent that none of them had any dealings with Ms Hussain) but was more important so far as Counts 2 and 3 were concerned. All three gave evidence through interpreters. Unlike Juma, who had indefinite leave to remain, Alan and Saif were not permitted to work in the UK because of their immigration status. None of the three had any meaningful experience of this type of work. The defence case was that the three of them had colluded to give false evidence against the appellant. However, much of their evidence was mutually inconsistent, and some parts of it supported the appellant's account. It also accorded in many respects with what had been said to Mr Smith and Mr Argument at the site.

45. Alan's evidence was that JM Builders was Juma, and that the appellant paid Juma and Juma paid him and the other workers, including four or five Romanians. He said that Amjad was the appellant's business partner and he came to the site every day. It was the appellant who told him which part of the building was to be demolished. The appellant only came to the site for short periods.

46. Saif said he only worked on the building for a few days and then left because it was dangerous. He said he was working directly for the owner of the building (i.e. the appellant) who agreed he would pay him on a weekly basis, and he thought he promised him £35 per day. He was expecting cash in hand, but he never got paid. It was the appellant or Amjad who told him what to do and how to do it. It was all demolition work. On the days when he worked there were two or three Romanians and a Kurdish man working on the site (Alan is Kurdish). He was unaware of Juma organising any work. He said he did not know anyone called "Alan" or Sarteep. He had met Juma a few times, but he never worked for him and was never paid by him, and he had only met Javad Khan once.

47. Juma was described by the judge in his summing up as "an important witness". He said he had been introduced to the appellant by two other men, one of whom was Saif. He was a labourer, and he was told there was building work. The appellant promised him long term employment, and that he would be paid £50 a day to do demolition work. He told him that he had consulted an engineer called Amjad and Amjad would be on site to instruct them. He also told Juma that any visitors to the site should be given his phone number and he would speak with them.

48. Before Juma started working for the appellant, the appellant took a copy of his driving licence, national insurance card, and bank card, and said he would sort out his tax and national insurance. (The jury had a photocopy of those identification documents, including the bank card, which was from Barclays bank.) The appellant also said that he would sort out insurance cover for the job for Juma and two others for a year, at a cost of £900. Juma bought his own wheelbarrow and a hammer and the appellant said

he was going to reimburse him later. He said that JM Builders belonged to a friend of his called Richard for whom he sometimes worked. Richard was married to the mother of his friend Asif who lived at the address at which the business was registered. He said it was registered by Asif to enable them to obtain materials from a supplier named Selco.

49. The appellant would come to the site every two days in the evening and give him instructions about how to carry out the work. You could not do anything without his permission. Juma said he told the appellant on many occasions that the ceiling and the back wall were very dangerous, but the appellant did not seem to care. Juma said Mr Amjad was responsible for paying the skip men and that he, Amjad, was in control on the site. He denied that his own role was supervisory. He said that the appellant "told us that Amjad was an engineer and we should all listen to him". The appellant would send Juma messages asking him who was working and how many people were working on site (copies of those messages were in evidence). He did this on one occasion when Juma was at the hospital. He said that Alan had acted as an interpreter and only worked occasionally on site, that Saif had been working there and that Javad Ahmed had attended the site two or three times and done minor electrical work.

50. In cross-examination, Juma was shown a copy of a ledger on Mr Qureshi's computer screen, and it was suggested that he had signed the ledger every time he received a payment in relation to the construction works. He said that it looked like his signature, but "he didn't pay me the money". When pressed as to whether he signed it, he said "I think he paid me once or twice, that's all". When asked again if he signed the document, he said "I did."

51. When he was re-examined, he initially said he did not remember signing the document. He then said he could not remember receiving £2,000 in cash on 22 July 2016 and that he could not have received that sum from the appellant on that date. When asked if he signed every time he received a payment, he said he was paid by Amjad. He would go to Amjad's office, Amjad would give him the money for the skip men and he would sign and then pay the skip men. He denied receiving lump sums which he divided between himself and the other workers, and said that the appellant only paid him £50 per day. He denied asking the appellant for money and refuted the suggestion that he had come to court to lie because he was not paid what he felt he was owed for the work he had done.

52. Juma had not been asked anything specifically in cross-examination about a cheque for £3,000, which was referred to in an entry on the ledger. In re-examination Miss Emsley-Smith asked him to look at a photocopy of that cheque. He said he did not recognise it, and he was never asked to sign a photocopy of the cheque. He was then taken back to the ledger entries and shown the entry for a £3,000 cheque on 22 July 2016. When asked if he signed the second line of that document he said "no, I think it's been made up by him" meaning the appellant. He then said that he did not sign a later entry relating to payment for the skip, that Amjad paid the skip man directly, denied signing an entry on 9 August for £500, said he had not seen a document like this before, and said that he was never asked to sign a book.

53. In his evidence in chief the appellant denied forging any signatures on the ledger. He produced the original ledger, which the jury were able to inspect. He said the notes were made when the money was paid, 22 July was the day on which he took the

identity documents from Juma, that he was present when Juma signed the ledger, and that the prosecution could check this by obtaining Juma's bank statements from Barclays bank. As to the cheque for £3,000 he said that his own bank statement showed it had been cleared and he would not have paid the money to anyone other than Juma. He did not pay Juma £50 per day and he did not promise him long-term work, because there is no more work when a project is finished. He also said he was keeping the record of payments in the ledger because he had agreed a price of £55,000 with Juma and Saif for the project and this money would be deducted from that sum.

54. This was the first topic upon which the appellant was cross-examined. He repeated that he knew the signatures were Juma's because he was present when Juma signed the ledger in front of him. He again denied that he had forged the signatures and said that was why he was requesting that the ledger be sent for forensic examination. It was not specifically put to him that the cheque was *not* handed over to Juma.

55. In answer to a question from this court, it was confirmed by Mr Qureshi that the following matters were added to the agreed facts after the appellant had given his evidence:

    i) That on 12 June 2018 at 0018 the appellant contacted Nicolas Daniels of HSBC and requested assistance with the details of the bank account into which cheque number 100500 dated 22nd July 2016 and payable to Juma Gul Mohamodi was paid;

    ii) The bank confirmed that the cheque was cleared on 25 July and provided a copy of the front and back of the cheque.

    iii) The cheque was paid into a Barclays bank account.

56. Whilst establishing that the appellant paid a large sum of money to Juma, apparently for distribution to the other workers on site, was not necessarily inconsistent with the appellant being in control of the workforce, it was a factor which he had relied upon as an indication that JM Builders was an independent business, and that Juma was one of its principals.

57. There was more than enough evidence adduced at trial, including the ledger entries, from which the jury could legitimately infer that Juma had been given a cheque for £3,000 on 22 July 2016 by the appellant and had paid it into his Barclays account, and that he had also been paid £2,000 in cash by the appellant on the same day. If they did conclude that Juma had lied about these matters, it would damage Juma's credibility and correspondingly bolster the applicant's credibility, at least on the issue of money being paid by the appellant to Juma (even though the cheque was made payable to him personally and not to "JM Builders"). The documentary evidence was also consistent with the evidence given by Alan as to how he and some of the other workers on site were paid, and with the unchallenged evidence of Mr Smith.

58. The fresh evidence consists of two documents, namely,

    i) A statement from the same Mr Daniels, a relationship manager in the Corporate Loan Department of HSBC UK Bank plc, which confirms that a cheque issued from an HSBC business account (which he identifies) dated 22

July 2016 had been credited to an account at Barclays Bank plc in the name of Mr Jumagal Mohamodi on 26 July 2016, and

ii) A report by a handwriting expert, Ms Louise Floate, who examined four disputed signatures on the ledger. Ms Floate's expert opinion is that there is no evidence of simulation or forgery and that there is "strong support for the proposition that each of the four questioned signatures on the ledger is a genuine signature written by Jumagal Mohamodi".

59. Mr Greaney submitted that this evidence left no room for any doubt that Juma was not telling the truth about the cheque, and that he did sign the ledger. He contended that it could not be assumed that the jury had found he was lying about those matters on the basis of the evidence they already saw and heard, and the additional evidence would have enhanced the appellant's credibility generally. The result was that this would have provided real support for the proposition that JM Builders were the employers of the workers on site and the appellant was not in control of them.

60. Miss Emsley-Smith submitted that it was important for the Court to take an overall view of the evidence and not get drawn into granular consideration of one aspect of it. The rebuttal evidence of Ms Hussain in respect of the alleged meeting of 18 February 2016 was so damaging to the appellant's credibility on a central feature of the case, that this point was not going to make a significant difference in terms of the safety of the convictions. The judge had given impeccable legal directions on the issue of who was the employer, and she submitted that irrespective of the ledger entries and any damage done to Juma's credibility, there was a vast quantity of other evidence available, including from independent witnesses such as Mr Smith and Mr Argument, from which the jury could properly reach the conclusion that the appellant was the person in control of the workers on site.

61. We agree. It is highly unlikely that the jury would have believed that Jumagal Mohamodi was not the "JM" in "JM Builders". Given his shifting evidence in the witness box, the agreed facts about the cheque, and the claim that his signature was forged after initially accepting that he had signed the ledger, it is equally unlikely that they would have found he was telling the truth about not receiving the cheque and the other payments that were recorded in the ledger in July 2016. We accept that the fresh evidence would have put that matter beyond any doubt, as Mr Greaney said. But that was just a small part of the evidence as to who was really in control of the workers on site.

62. Irrespective of what the jury made of Juma's evidence, there was a wealth of evidence that the appellant was the person in control, and responsible for giving orders to the people who were carrying out the work. The rebuttal evidence was fatal to the appellant's case on Count 1 and seriously undermined his credibility on Counts 2 and 3. It is also clear from the transcripts that, in general terms, he was not a credible witness, even if he was telling the truth about paying £5,000 to Juma at a time when the work was either about to start or shortly after it had begun. It did not help his cause that, among other matters, he tried to distance himself from Mr Amjad and changed his case as to who was behind JM Builders in a very material respect after the prosecution evidence had been called, and that he also sought belatedly to challenge the agreed evidence of Mr Smith once he appreciated how damaging it was.

63. Juma was by no means a perfect witness, as the transcripts of his evidence make plain, but the idea of his being the man in overall control (as opposed to possibly acting as the conduit for instructions) was plainly absurd. There was no evidence that he, rather than the appellant or Amjad, was giving the workers instructions about what to do on site. The contemporaneous messages that passed between him and the appellant regarding who was working on site and when, the evidence he gave about being told to give visitors to the site the appellant's telephone number so that he could speak to them (which was consistent with what happened when Mr Jones, the scaffolding supplier, visited the site), and the requirement that a record should be kept of payments made for the skip men, and that Amjad should be involved in making those payments, all supported the prosecution's case and supported the evidence of the independent witnesses.

64. Ground 1 does not give rise to any basis for doubting the safety of the conviction on any of the three counts.

65. Ground 2 concerns Sarteep, aka Alan. Mr Greaney told the court that in a witness statement dated 12 September 2016 (which was not in the appeal bundles) he had said that:

> "£1000 was sent to my home address by Saif from Riaz (the appellant). Saif told me to take the £1000. Later Riaz would talk to me. Later on, Riaz phoned me and told me to say that incident had nothing to do with him and blame it on Juma."

Saif, the person who was alleged to have been the conduit for the payment, had said nothing about this alleged handover of money to Alan in his witness statement. However, on that initial account the key conflict was between Alan and the appellant, because the content of the alleged subsequent telephone conversation provided the non-innocent explanation for the payment.

66. There was correspondence between the prosecution and the defence about whether the prosecution would seek to rely on this aspect of Alan's evidence. On the first day of trial, the defence made an application to exclude the evidence, and the judge ruled it to be admissible. No complaint was made about that to us, but Mr Greaney submitted that this made it all the more important that the jury should have been carefully directed about how they should treat that evidence.

67. Alan gave his evidence on 8 June 2018. He was asked in chief if he had contact with Saif after the building collapsed and he said yes, he saw him many times. He was asked if Saif spoke to him specifically about the building collapse and he said no, but he came to him about the money. When asked what money he was talking about, he said that Saif talked to him about money, "Riaz owed him money, Juma owes him, and also he told me that £1,000 [was] being sent by Riaz from Riaz by him to give it to me in order for me to come out of the case and I said, I am not taking £1,000 it is not worth it, life of other people more important than £1,000." When asked for clarification about what he meant by coming out of the case, he said they wanted him to be quiet by paying him £1000 not to go to court. He gave no evidence about any direct telephone conversation with the appellant of the nature described in his witness statement of 12 September 2016.

68. In cross-examination he said he did not know Saif's full name. He agreed that he first went to give a witness statement to Mr Argument on 23 August 2016 and that Juma accompanied him. Mr Argument made an appointment to see him at his home address on 1 September as he said he wanted to take their statements separately. He agreed that on 1 September 2016 there was a break for lunch, and after that Saif had arrived with the money. He said Saif did not come inside but "he was outside address from faraway". It was put to him that he (Alan) showed Mr Argument some banknotes and that he never suggested on that date that he had been given the money as a bribe; that suggestion was first made in a telephone conversation with Mr Argument on 6 September, which led to the further statement to which we have referred being taken. He disputed that he had told Mr Argument in that telephone conversation that he was offered £100 not £1000. He denied threatening the appellant that unless the appellant paid him the money he owed him, he would give evidence against him.

69. Saif was asked nothing about this alleged incident with the money in his evidence in chief, and in cross-examination he denied knowing Alan (or Sarteep) or going round to the house of a man he had said he did not know. He said he did not remember going to anyone's home address after he gave his witness statement at a time when Mr Argument was there. The appellant denied giving money to Saif to take to Alan, and denied any attempt to bribe Alan not to give evidence.

70. The judge, as is the normal practice now, delivered his summing up in two parts, with most of the legal directions being discussed with counsel and given before their final speeches. No-one asked him to give any specific legal direction to the jury as to how to treat the evidence of Alan on this topic. Mr Greaney confirmed that this was not a tactical decision by the defence, although we can see very good reasons why such a decision could have been taken. Mr Qureshi, in answer to a question by the court, said he was sure that in his closing speech, he would have reminded the jury of the factual dispute between the witnesses on this issue.

71. In the second part of his summing up, the judge accurately summed up Alan's evidence. He reminded the jury that Mr Argument had confirmed that there had been no suggestion in the statement taken by him from Alan on 1 September 2016, the date of the alleged payment, that Alan had received money from the appellant. He also reminded the jury of text messages sent to the appellant by Alan on 25 March 2018 which said "give me my money, one-month. From court I'm going to stand against you and Juma. I work one month, you didn't pay me." The judge did not specifically remind the jury of any part of Saif's evidence although he did say that he was going to; neither counsel drew that omission to his attention. He did, however, specifically remind the jury of the appellant's denial that he gave any money to Saif to hand to Alan.

72. Mr Greaney initially submitted that the judge ought to have given the jury a modified *Lucas* direction (see *R v Lucas* [1981] QB 720) after discussing the matter with counsel. However, when the formulation of such a direction was considered with the court, it soon became apparent that a direction to the jury that if they decided that the appellant was lying and that he had given £1000 to Saif to hand to Alan to persuade him not to give evidence, they should not treat it as evidence of his guilt unless they were sure that there was no alternative innocent explanation, was extremely unlikely to improve the appellant's position and may well have made matters worse.

73. Ultimately Mr Greaney was driven to submit that the only direction that the judge could have given to the jury was that they should disregard the evidence; but the judge had ruled the evidence admissible following a contested application, and that ruling was not revisited at the trial after the evidence changed, and has not been challenged on appeal.

74. Ultimately, and irrespective of the absence of any evidence from Saif, the real contest on this point was between Alan and the appellant, and the judge did remind the jury of what they each said about it and of the evidence that potentially undermined Alan's account. In our judgment there was no need for him to go further; he was not obliged to direct them about how they should treat Alan's evidence if they believed it.

75. Further or alternatively, Mr Greaney submitted that it could not have been appropriate for the judge to have failed to remind the jury of the evidence of the witness who was supposed to be the conduit, Saif, who had denied even knowing Alan, let alone going to his house with money. Whilst it is unfortunate that, having told the jury that he was going to remind them of the evidence of Alan, Juma and Saif, the judge overlooked Saif, we consider that omission was probably of more assistance than harm to the defence.

76. If the judge was going to remind the jury of Saif's evidence he would have had to remind them of all of it, not just about his lack of support for Alan's evidence about the alleged bribe; given the number of occasions that Saif had said both in chief and in cross-examination that the person from whom he took instructions on site was the appellant (or Amjad) and that he spoke with the appellant directly on site and that the appellant had arranged to pay him directly rather than through Juma, that could not have improved the appellant's position. The dilemma, from the defence perspective, was that apart from the allegation about the attempted bribe, Alan's evidence was probably more favourable to them than Saif's (and vice versa).

77. Bearing in mind also that the jury had just heard a closing speech from defence counsel who was bound to have made the point that Saif did not support the allegation, and that nobody protested at the time or suggested that the judge should have directed the jury any differently, we are not persuaded that the judge fell into error. Even if he did, the absence of any direction to the jury along the lines suggested and the failure to sum up Saif's evidence comes nowhere near making the convictions unsafe. There is no substance in Ground 2, whether taken on its own or in conjunction with Ground 1.

Conclusion

78. In conclusion, we are satisfied that the evidence against the appellant was overwhelming, and that neither of the grounds of appeal affords any basis for doubting the safety of his conviction on any of the counts. This appeal is therefore dismissed.