Neutral Citation Number: [2020] EWCA Crim 482

Case No: 201900136, 201900155,
201900178, 201900340, 201900422,
201901632, 201904213

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT SITTING AT TEESSIDE
Her Honour Judge Sherwin

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/04/2020

Before:

LORD JUSTICE SIMON
MR JUSTICE FRASER
and
MR JUSTICE HILLIARD

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Between:

Regina	**Respondent**
and	
Ryan Johnson **Paul Casey** **Andrew Belford** **Robert Anderson** **Darren McBride**	**Appellants**

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M Crowe for **Johnson**
G Gatland for **Casey**
M Donkin for **Belford**
AJ Davis for **Anderson**
D Lamb for **McBride**
P Makepeace QC and **R Herrmann** for the **Crown**

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Approved Judgment

Note: There is an order made at Teesside Crown Court on 9th January 2019 under section 4(2) of the Contempt of Court Act 1981 postponing publication of the identification of the person referred to as "A" in this judgment as the witness in these proceedings until the conclusion of linked trials.

Lord Justice Simon:

Introduction

1. On 18 December 2018 in the Crown Court at Teesside, before Her Honour Judge Sherwin, the appellants, Ryan Johnson, Robert Anderson, Andrew Belford, Paul Casey and Darren McBride were convicted on count 1 of an indictment, which charged conspiracy to supply a controlled drug of class A (cocaine).

2. On 29 January 2019, they were sentenced to the following terms of imprisonment: Johnson, 7 years; Anderson, 10 years; Belford, 7 years (to run consecutively to a sentence being currently served); Casey: 7 years; and McBride, 10 years.

3. Johnson, Anderson, Belford and Casey appeal against conviction with the leave of the Single Judge. McBride's application for leave to appeal against conviction (with an application for an extension of time of 314 days) has been referred to the full court by the registrar. We grant leave.

4. Applications for leave to appeal against sentence by Anderson and Casey (both aged 46) have also been referred to the full court.

Background

5. In 2014 and 2015, Durham Police investigated a suspected drug dealing operation. At that time, the focus of the investigation was on the activities of a man called Andrew Blake. As the investigation developed two other men, A and Christian Winter, were identified as being close to the heart of the operation.

6. The prosecution of those identified by the investigation as being involved was named Operation Sidra; and in January 2016, A, Blake and others were charged, with among other offences, conspiracy to supply cocaine between 1 March 2014 and 1 June 2015.

7. In late September 2016, A approached the police with a view to becoming an assisting offender under the terms of Chapter 2 of the Serious Organised Crime and Police Act ('SOCPA') 2005; and underwent the formal statutory procedure between October 2016 and the summer of 2017. He was interviewed on about 120 occasions; and eventually pleaded guilty to all the offences with which he was charged in Operation Sidra.

8. In the course of the SOCPA interviews, A gave detailed information about the involvement of those already charged under Sidra, as well as others involved in his drug dealing network. A decision was taken by the Crown Prosecution Service to continue with the prosecution of those involved in Operation Sidra. This became known as Sidra 1, and concerned A's closest criminal associates.

9. The investigation and prosecution of others who had been named by A, including the appellants, became known as Sidra 2.

10. The particulars of the Sidra 2 indictment, on which the appellants were charged was drafted in these terms:

> Between the 1 January 2014 and 1 June 2015 conspired together with other persons to supply a controlled drug of Class A, namely cocaine, to another.

Dean Smart pleaded guilty to this offence.

11. The prosecution made clear that those named on the Sidra 1 indictment were those included as the 'other persons' in the particulars of the conspiracy count on the Sidra 2 indictment.

12. We turn then to the facts in more detail.

Sidra 1

13. Sidra 1 concerned (amongst other charges) allegations that a number of men conspired together and with others to supply cocaine. A maintained two safe houses where he stored cocaine, mixing agents and paraphernalia, such as cocaine presses and money. Those safe houses were run by Victoria Harding and David and James Murphy. The Murphys would also assist with the mixing of the drugs, and with delivery and collection. Winter was A's right-hand man and assisted him in running the drugs business, making deliveries, collecting drugs and money for A, as well as assisting in the mixing of the cocaine.

14. While A was abroad, in Ibiza in October 2014 and in Jamaica in November 2014, Winter took over the running of the operation, liaising by telephone with A and, on his behalf, with those to whom Winter supplied drugs, received money from or owed money to.

15. In January 2015, A's safe houses were raided by the police, who recovered drugs and other items. From about this time A began to use a man named Ian Ramshaw to assist him, both in providing a safe house and in assisting in delivering cocaine.

16. During the period of the conspiracy A supplied cocaine to Andrew Blake, who was a major cocaine supplier in his own right and who also lent A large sums of money, at one time possibly approaching £100,000. Blake had his own customers for cocaine.

Sidra 2

17. The information disclosed by A about the appellants was to the following effect.

Anderson

18. He started to purchase cocaine from Anderson in the spring to early summer of 2014. Initially he bought 4½ ounces; this was as a way of building up trust. Thereafter, drugs were supplied on credit, and over time the quantities increased. A would mix the drugs before selling on to others.

19. In November 2014 A went on holiday to Jamaica; and made arrangements by which Anderson, who was cautious about whom he dealt with, delivered 1kg of cocaine to A's sister who gave him money and later pleaded guilty to money laundering. The drugs were subsequently collected by Winter and thereafter distributed to Andrew Blake, Dean Smart and the appellant, Paul Casey. When he returned from Jamaica, A continued to buy cocaine from Anderson.

Belford and McBride

20. The prosecution case against these two was that they were in the business of supplying cocaine together. From early 2014, they sourced wholesale cocaine from A and thereafter supplied to others including a man called Owens.

Casey

21. A said he supplied cocaine to Casey, and that he was one of the people named by A as an intended recipient of the cocaine sourced from Anderson whilst A was on holiday in Jamaica.

Johnson

22. A said that **Johnson** was one of the people from whom he sourced cocaine.

Conspiracy

23. The grounds of appeal against conviction are that the Judge erred in refusing an application to dismiss the cases against the appellants on the basis that there was no case for them to answer as the evidence stood at the conclusion of the prosecution case.

24. Before turning to those submissions, it is convenient to summarise some of the statements of principle and observations of this court in relation to the charging of conspiracy.

25. It is of the essence of a conspiracy that there must be an agreement to which the defendant is a party and that each defendant charged with the offence must be proved to have shared a common purpose and design, rather than similar or parallel purposes and designs, see for example, *Shillam* [2013] EWCA Crim 160 at [19]-[20].

26. However, it is possible for the evidence to show the existence of a conspiracy of narrower scope and involving fewer people than the prosecution originally alleged, in which case it is not intrinsically wrong for the jury to return guilty verdicts accordingly: *Shillam* at [20].

27. What are referred to as 'chain' conspiracies and 'wheel' conspiracies are different in structure. In a chain conspiracy, A agrees with B, B with C and C with D. In a wheel conspiracy: A at the hub recruits B, C & D. In each it is necessary that the defendants must be shown to be a party to the common design and aware that they are part of a common design to which they are attaching themselves: see for example Blackstone Criminal Practice 2020 A5.49.

28. The need to show a common design and an awareness of the common design highlights the danger to the prosecution of charging a single conspiracy rather than what may be a series of substantive offences or different conspiracies, when the offending involves a group of people over a substantial period. Such offending may, on proper analysis, be the result of a series of transactions or agreements, and a single conspiracy may be impossible to prove, see *Mehtab* [2015] EWCA Crim 1260.

The application

29. The appellants argued that there was no evidence of a common intention or purpose which involved them and their alleged co-conspirators, and accordingly no case for them to answer. It was not sufficient for the prosecution to say, in broad and unspecific terms, that each defendant 'intended to supply cocaine', and that this was the common purpose.

30. The prosecution's response was that the common purpose or design was one that also encompassed the defendants in the Sidra 1 trial. It was the wholesale acquisition of cocaine; its dilution (and on occasion without dilution); and onwards transmission to others with a view that they should then, in turn, supply others with the cocaine, within a relatively confined geographical area. The prosecution relied on *Greenfield* (1973) 57 Cr.App.R 849 for the proposition that where there was evidence on which, if uncontradicted, a reasonably minded jury could convict a defendant of the conspiracy charged, despite evidence of the existence of a different conspiracy, then the judge should allow the case go to the jury.

The Judge's ruling

31. She began by observing that she had been referred to a number of cases: *Meyrick and Ribuffi* (1929) 21 Cr App R 94*; Greenfield* (above); *Griffiths and Others* [1965] 3 W.L.R. 405*; Shillam* [2013] EWCA Crim 160; *Mehtab* [2015] EWCA Crim 1665 and *Dad* [2017] EWCA 321. In order to sustain a charge of conspiracy, the prosecution had to prove: (i) that the defendant agreed with one or more others; (ii) that a course of conduct would be pursued which, (iii) if carried out in accordance with their intentions, would necessarily involve the commission of an offence; and (iv) proof of the intention to be a party to an agreement to do the unlawful act.

32. The case of *Griffiths* made clear that all parties to the conspiracy must join in the same agreement, although conspirators might join and leave the conspiracy at different times. It was possible for a person to be guilty of conspiracy even where he did not know the full extent of the scheme; but he must know that there was a scheme which went beyond the illegal act that he agreed to do. Conversely, where the facts established that there was one or more persons at the centre of the unlawful activity and such persons dealt with other individuals who did not know each other and each was ignorant of the fact that the activities went beyond his own dealings, it would not amount to a single conspiracy. If that person did know that there were others and that the activity in which he took a part extended beyond his own dealings with the person or persons at the centre, then the evidence would disclose a single conspiracy.

33. In *Shillam*, following a review of the authorities, the court had identified the following propositions: (a) a conspiracy required that the parties to it had a common unlawful purpose or design; (b) that meant a shared design, which was not the same as

similar but separate or different designs; (c) in the criminal law (as in the civil law) there may be an umbrella agreement pursuant to which the parties enter into further agreements which may include parties who are not parties to the umbrella agreement. So that A and B might enter into an umbrella agreement pursuant to which they enter into a further agreement between A, B and C, and a further agreement between A, B and D and so on. In that example C and D would not be conspirators with each other.

34. The Judge also referred to *Greenfield*, in which it had been held that where there was evidence, upon which if uncontradicted, a reasonably minded jury could convict an accused of the conspiracy charged, despite evidence of the existence of a different conspiracy, then the judge should let the case go to the jury.

35. This, the Judge said, was an issue that had to be addressed separately in the case of each defendant as the evidence was different for each.

36. Given the verdicts in Sidra 1 and the guilty plea to count 1 in the present trial, a jury could be sure that a conspiracy existed.

37. Furthermore, the Judge was satisfied that there was evidence sufficient to show a case to answer in respect of each of the appellants, which included evidence which showed an awareness of the common design.

Anderson

38. The case against Anderson was that he supplied A. However, the prosecution case was not limited to that connection as the evidence, if accepted by the jury, showed that Anderson also dealt with Winter in A's absence. Anderson was in regular contact with A while he was out of the country. The jury would be entitled to conclude that, given the amounts of cocaine supplied by Anderson to A and its high-level purity, that it would be diluted before being passed on to others further down the chain. Unchallenged evidence had been given by A that this was how the drugs supply chain worked and that he (A) was at a high level in those operations and not a street dealer.

39. The evidence showed this happening, with arrangements for the onwards transmission of the cocaine and the return payment, ultimately to Anderson. The fact that payment to him was delayed was capable of raising the inference that he must have known of others who would ultimately be feeding money up the chain of supply to him. Even if Anderson could not be shown to have known that Blake, Casey and Smart were to have been in the chain of recipients of the cocaine he must, on the evidence, have known that some person or persons would have been.

Belford and McBride

40. The evidence, if accepted by the jury, showed that they were wholesale purchasers of cocaine from A for the onward sale to others. It was through them that A first met Andrew Blake and went on to supply wholesale quantities of cocaine to him. Once the introduction had been made Blake raised concerns about the quality directly with A, but Belford and McBride were aware of the problem and made it clear that it was A's problem to sort out. The evidence also showed the links with Winter when A was out of the country, and the importance that A placed on Belford, shown by this being the

first call he made on his return to the UK from Jamaica. There was also contact with Ramshaw once he became involved.

41. There was clear evidence that Belford and McBride shared a common purpose with A and that they must have had some awareness of the scale of the operation and the various levels involved in it.

Casey

42. The evidence against Casey showed that, during the indictment period, he was involved in receiving cocaine from A and passing it on. This was in such quantities as went beyond personal use. The evidence showed that Casey must have had some wider knowledge of the agreement: the shift to dealing with Winter when A was in Jamaica and the resumption of contact with A on his return. Casey was a recipient of the cocaine delivered to an address at Goswick Way and, whilst the evidence did not go as far as showing that he knew it came from Anderson, it would be a reasonable assumption that he must have known that A was sourcing the drugs from somewhere. Similarly, with the money being paid back up the line to A and onwards.

Johnson

43. So far as Johnson was concerned, he was alleged to have been a wholesale supplier of cocaine to A. The jury had evidence that he was connected to both A and Blake in the supply of cocaine. They had also heard evidence demonstrating his knowledge of the safe house at Carlton Crescent, his presence when A was cutting cocaine and his discovery that this was being done behind the back of Andrew Blake. Thereafter Johnson told Blake what A was doing, leading to a confrontation between them. That led to A going to Winter to obtain money. There was the familiar pattern of communication with Winter whilst A was in Ibiza and Jamaica, returning to communicating with A on his return home.

Submissions on appeal and discussion

44. On behalf of the appellants, it was submitted that the evidence was capable of establishing that Anderson and Johnson were supplying drugs to A, who in turn was supplying drugs to Belford and McBride and to Casey, but that there was nothing to suggest that Anderson and Johnson were party to any agreement that involved the further onward supply by A to others; or that A was party to any agreement with Belford and McBride and with Casey that involved the onward supply of drugs by them. If, contrary to the submissions, the prosecution could overcome these hurdles, it was then argued that the evidence disclosed a series of separate agreements with A rather than any involvement in the larger conspiracy argued for by the Respondent.

45. We have already indicated that Dean Smart pleaded guilty to involvement in the conspiracy charged in Count 1 which was of course evidence of its existence. In addition, A's evidence was that the most common way for a recipient in a supply chain at this level to pay their supplier would be after an agreed period of time during which the recipient had himself supplied the drugs onwards and received payment which could then be used to pay the original supplier. That was potentially important evidence on the question of whether or not any of those concerned had an interest in

onward supply. On one view of the matter, onward supply was a necessary pre-condition to payment.

46. A said that he had first received cocaine from Anderson in 2014. Initially, he was receiving quantities of 4 and a half ounces, usually with credit extended over a maximum of a week. As time built up, the quantities increased to 9 ounce and half kilo blocks. A would mix the drugs and pass them on to his customers. As we have said, when A was in Jamaica, Andrew Blake was contacting Winter who was in temporary charge of A's operation. A spoke to Anderson to obtain drugs which were then to be supplied to Paul Casey, Dean Smart and Andrew Blake. Winter was to collect the money from the three of them and give it to Anderson. In our judgment, this was an example of the business practice that A had outlined at the start of his evidence - drugs would have to be supplied onwards before the original supplier could be paid. In all the circumstances, we are satisfied that there was evidence from which the jury would have been entitled to conclude that Anderson was party to a wider agreement involving A's onward supply to others of the drugs with which Anderson had provided him. The scale of Anderson's involvement was entirely consistent with the conspiracy charged in Count 1.

47. In evidence, A said that in early 2014, he had supplied Belford and McBride with 3x 9 ounce blocks of cocaine. It had been mixed but then re-pressed to make it look like pure cocaine. A knew that they were going to supply it on. Subsequently, McBride said that the people to whom the cocaine had been distributed were complaining about the fact that the drug had been mixed. A was asked to go to a meeting with the people who had been supplied. One of them was Andrew Blake. Over the next few days, A made amends by supplying the original buyers with higher purity cocaine.

48. A also said that Belford and McBride were supplying cocaine to a man called Swell. Sometimes A went with Belford and McBride to Swell's house. They would give the drugs to Swell and sometimes Swell gave A the money.

49. In our judgment, A's involvement with those beyond Belford and McBride in the supply chain was clear evidence from which the jury would have been entitled to conclude that Belford and McBride were involved with A in a conspiracy to supply drugs, and not simply in receiving drugs from A without any involvement by A thereafter. A said that by the time of his arrest in 2015, he had been supplying Belford and McBride for over a year. It was properly open to the jury to conclude that they must have had an appreciation of the scale of the operation and that the scheme they were attaching themselves to went beyond their own acts of supplying with A.

50. Ryan Johnson was another person who supplied cocaine to A in minimum quantities of 4 and a half ounces and up to 9 ounces or maybe more. A said that he would mix the drugs he got from Johnson and supply them on. A said that he owed Andrew Blake money. As a result, he was diluting drugs that he supplied to, amongst others, Blake. A said that Ryan Johnson became aware of this on the occasion when Johnson was present at one of the safehouses where A was processing the cocaine and to which we have already referred. After Johnson told Blake what was going on, A was threatened by Johnson and Blake. In our judgment, it was open to the jury to conclude from all of the evidence that Johnson knew about and had an interest in A's activities with the drugs that Johnson had supplied to him, and was party to the conspiracy charged in Count 1.

51. A said that he was supplying Casey because Casey had a network of people he could sell to and because he was a cash buyer. He supplied Casey with quantities between 4 and a half to 9 ounces and upwards. Those amounts were obviously consistent with Casey obtaining drugs for onward supply. Whilst it may have been open to the jury to conclude that A and Casey were parties to an agreement which involved Casey's onward supply of the drugs, we do not think that the evidence in his case was sufficient to establish that Casey was party to the larger conspiracy. The particular features which have led us to different conclusions for the other appellants are not present for Casey. In our judgment, the judge ought to have acceded to the submission of no case to answer made on his behalf.

52. We turn therefore to the application for leave to appeal against sentence made by Anderson. He also requires an extension of time of 67 days, which has been referred to the full court by the registrar. An explanation has been provided, and we will return to this after we have considered the merits of the application. As we have indicated, Anderson was sentenced to a period of 10 years' imprisonment. The judge considered the Definitive Guideline for Drug Offences, and all the parties agreed that although these did not apply directly to offences of conspiracy, they provide what she described as "a useful starting point". We agree. Anderson sold cocaine to A, in small quantities to begin with, starting in the spring or early summer of 2014. The quantities increased until they were half a kilogram of high purity at a time, which A would then mix, re-press and sell on. Anderson had previous convictions of some age, mostly for dishonesty and violence, although one conviction was for the importation of cannabis for which he received a sentence of two years in 2000. She considered Anderson was at a high level in the supply of cocaine of high purity, and concluded that this was in a leading role and given the amounts – which totalled about 2 ½ kilos – was on the cusp of Categories 1 and 2.

53. The grounds of appeal challenge both the description of Anderson being in a leading role, and also the categorisation of being on the cusp of Categories 1 and 2. It is said there was no evidence about the purity of the cocaine, and her conclusion that Anderson must have been close to the original source was unsupported. It is also said that the quantity, 2 ½ kilos, falls "well short" of Category 1.

54. We do not consider the points raised on the application to be reasonably arguable. The judge had heard the trial and was ideally placed to identify the type of role occupied by Anderson. He was cautious with whom he dealt, and did so only in quantities of about ½ kg. He did however do so over a period in excess of one year. She considered all the features of the case and came to a common sense conclusion, which she was ideally placed to reach, and which was eminently justified. Further, the quantities used in the Guideline for Categories of harm for cocaine are 1 kg for Category 2, and 5 kg for Category 1. It is therefore clear that the quantity here, 2 ½ kg, does indeed fall between those two figures.

55. We do not consider that it is reasonably arguable that this sentence was manifestly excessive or wrong in principle and we would refuse the application for leave.

56. We shall however deal briefly with the extension of time required. This is 67 days. The explanation that has been provided is far from satisfactory from the court's point of view, although it does clearly demonstrate that the delay is not remotely the fault of the applicant. He indicated his desire to appeal on 4 February 2019, well within time

which would expire on 22 February 2019. The next couple of months of delay, before the form was lodged some months later – the grounds are dated 29 April 2019, although Form NG was returned before that – were caused by acts, and failures to act, by the applicant's legal representatives. Only some of that period is explained by a delay waiting for a transcript of the sentencing remarks.

57. We make it clear that in this case, this delay has not caused the applicant prejudice as we would have dismissed the application even had it been made within time. However, we emphasise the importance of legal advisers observing time limits. This applicant had received a substantial prison sentence and he was entitled to have his advisers lodge an appeal in time, rather than having to seek an extension of time.

Conclusion

58. We therefore grant McBride the necessary extension of time to appeal against conviction, but dismiss all the appeals against conviction save for Casey's which we allow. We dismiss Anderson's application for an extension of time to appeal against sentence, and his application for leave to appeal against sentence.