Neutral Citation Number: [2020] EWCA Crim 704

No: 201902523/B2-201902591/B2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 20 May 2020

(VIRTUAL COURT)
B e f o r e:

LORD JUSTICE SINGH

MR JUSTICE SPENCER

MR JUSTICE CHAMBERLAIN

R E G I N A
v

AZILAH GOLAM-RASSOUDE

HAMMAD GOLAM-RASSOUDE

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd, Lower Ground, 18-22 Furnival Street, London EC4A 1JS, Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

Mr J Lyons appeared on behalf of the **Applicant A Golam-Rassoude**
Mr S Murphy appeared on behalf of the **Applicant H Golam-Rassoude**

J U D G M E N T

1. LORD JUSTICE SINGH: These are renewed applications for leave to appeal against conviction. It would appear that the applicants also require a short extension of time of three days to file the renewed applications although this was disputed.

2. On 10 June 2019, in the Crown Court at Blackfriars, the applicants were convicted, on a retrial, of converting or transferring criminal property. This was the only count on the indictment at the retrial but it had been count 2 at the first trial. The applicants were acquitted at the first trial on count 1, fraudulent evasion of a prohibition on the importation of Class A drugs but the jury was unable to reach a verdict on count 2. After their conviction they were both sentenced by the trial judge (His Honour Judge Milne QC) to four-and-a-half years' imprisonment. There was a co-defendant, Saeid Ahmed. He was acquitted.

3. In the present proceedings we have been assisted by written and oral submissions from Mr Shaun Murphy, on behalf of Mr Golam-Rassoude, and Mr John Lyons, for Mrs Golam-Rassoude. We are grateful to them.

4. The facts are fully set out in the summary prepared by the Criminal Appeal Office and which the parties have. For present purposes they can be summarised more briefly. The applicants, who are both in their 60s, were husband and wife. They were from Mauritius originally but had lived in the UK since 1995. On 4 November 2016 a lorry bound for the UK was stopped by Customs authorities just outside Calais. The cargo was inspected and one pallet, wrapped in black plastic, contained 10 large cardboard boxes with "Claire International" written on the outside. Inside the boxes were contained packets of hair extensions. Underneath those packets, however, were a total of 45 blue blocks covered in clear plastic, which were found to contain a total of 45.42 kilograms of cocaine, with a wholesale value of £1.35 million, and 24.99 kilograms of heroin, with a wholesale value of £700,000. The pallet was addressed to "New Look Azila" at a storage unit in Edmonton which had been rented by Mrs Golam-Rassoude since 12 March 2015. The authorities substituted dummy packages for the drugs and allowed the delivery to proceed. The boxes were collected from a distribution centre in Kent by the applicants. They took the boxes to their home address at 46 Meadow Way, Chigwell, where Mr Golam-Rassoude was seen to take them into a garage. About 1 hour later the co-defendant (Ahmed) was seen to arrive in a van. He was greeted at the front door by Mr Golam-Rassoude with a handshake before returning to his van. It was at that point that the authorities intervened and arrested the three defendants.

5. The police found the 10 cardboard boxes in the garage along with other boxes labelled "Claire International". A further eight boxes containing only hair extensions were found in Ahmed's van.

6. The police found a CCTV system which had recorded and stored over 2 months' worth of

footage from one internal and five external cameras at the property. The footage showed that both applicants were involved in the continuing process of deliveries arriving at their home address. The footage also showed Ahmed attending the address on eight occasions over the 2 months on dates linked to the importations whereupon he was seen to both collect and return boxes.

7. It was also accepted that Ahmed was handing over to the applicants carrier bags containing packages of cash in the sum of many thousands of pounds each time. The applicants would count and record the cash. Mrs Golam-Rassoude would pay it into various banks in sums of between £1,000 and £8,000. In September 2016 alone £50,000 was deposited into the accounts. During the relevant period other unknown individuals were also recorded attending at the address and handing over packages to the applicants.

8. HMRC had no record of any PAYE income or Self Assessment Tax Returns for either applicant. At the trial the prosecution case was that the applicants knew, or at least suspected they were taking part in a scheme to move around substantial sums of money arising from a criminal enterprise relating to the contents of the boxes. The totality of the evidence meant that they could have been in no doubt that it was not a lawful business they were assisting. Everything about the way the business was run was consistent with it being unlawful and centred around the adverse supply of illegal stock, namely drugs generating tens of thousands of pounds of cash every month which required careful handling to avoid the attention of the authorities. The applicants were trusted by a couple called the Mungurs to be in effect their accountants, bookkeepers and pay masters in the United Kingdom. It would have been readily apparent to them from the sheer scale of the funds being passed back to them that it was no cosmetics business that they were assisting in.

9. To prove their case the prosecution relied on the following matters. First, evidence accepted by the defence relating to the movement of Class A drugs, namely the seizure of drugs on 4 November 2016, where collection of the boxes from a distribution centre by the applicants, the removal of the boxes in the applicant's house, the collection of the boxes by Ahmed, documentary and CCTV evidence of numerous previous instances of the same procedure being employed or otherwise boxes being previously delivered to a storage unit rented by the applicants for subsequent collection by Ahmed. Secondly, evidence accepted by the defence of the handling of large sums of cash, namely CCTV evidence of the cash being delivered to the house by Ahmed and others, documentary evidence in the form of notebooks of sums of cash delivered and paid out, documentary banking evidence of the sums divided up and paid into different accounts belonging to the Mungurs at different banks and at different branches. Thirdly, expert evidence that the means of dealing with the cash was consistent with money laundering. Fourthly, the fact that Mrs Golam-Rassoude had been made a co-signatory on two of the Mungurs' accounts and had a bank card issued in her name. Fifthly, the absence of any evidence to show that subsequent to May 2015 the Mungurs had any legitimate UK business interests. Sixthly, it was accepted by the defence that the applicants were permitted by

the Mungurs to live rent free at a substantial London property. Seventhly, notebook entries on the face of it indicated that Mrs Golam-Rassoude was on occasions paying herself substantial sums from the cash that was received. Eighthly, evidence of frequent trips made by the applicants to France, the implication being that this was to meet with the Mungurs there, or those connected with them. Ninthly, the absence of any evidence of legitimate income for the applicants.

10. The defence case for both applicants was that at no stage did they think they were taking part in a movement of Class A drugs or handling money arising from criminal conduct. They had a genuine belief that they were assisting with a legitimate cosmetics business. They were unsophisticated people, with little or no business experience, who had no trappings of a criminal lifestyle. As was submitted on their behalf before this court, they had in effect been deceived by others.

11. At the trial the issue for the jury was whether the applicants knew or suspected that the moneys that they were handling were the proceeds of crime.

12. The issues in these applications arise from two rulings made by the trial judge. The first, on 21 May 2019, was a ruling as to the basis upon which the prosecution could put its case. This was considered before the prosecution opening. The prosecution sought to suggest that the applicants knew that the parcels contained illegal drugs notwithstanding their acquittal at the first trial on count 1. The defence submitted that there should be some prohibition on this presentation of the case, on the basis that the acquittal on count 1 determined the issue of the knowledge of the applicants in their favour. The prosecution was under an obligation either to accept that the applicants did not know about the drugs or to acknowledge that there was no evidence that the applicants must have known about them. It was not open to the prosecution to make any assertions that the applicants must have known that the money was the proceeds of the criminal drugs importation. The court had an overriding and inherent power to prevent the prosecution from doing so.

13. The judge ruled that in so far as a ruling was required, he would not interfere in the way that the prosecution put its case. Attention was drawn to the actual offence charged under count 1. It was clear that the allegation that was being made related to the importation of the drugs rather than any dealing with them.

14. An explanation was required, not simply for the volume of cash generated but also a situation into which it came into the house. Not telling the jury about the drugs had the attraction of simplicity but it did not have the attraction of balance: it risked the absurd situation of the jury being told that the boxes contained nothing of interest and even their existence would probably become irrelevant. Looking at the case as a whole the coincidence between the boxes of drugs and the unfeasibly large amounts of money

passing through the house were connected, at least by inference to an overwhelming extent, and therefore it was unrealistic to contemplate a situation where the jury were not told that the drugs were present.

15. It was not suggested at the first trial that count 1 was an essential prerequisite without which there had to be an acquittal on count 2. It was fairly accepted by the applicants that there could be a trial on count 2 without the need for a conviction on count 1.

16. It was quite clear that the applicants would not face trial or risk conviction for the drugs offence. They did not risk double jeopardy nor could they be sentenced on that basis.

17. The defence contention that the acquittal must have reflected a decision on the broader knowledge of the applicants was not a conclusion that was safely viable. The jury had not been required to present any special verdict, or give any indication as to those facts if they found to be proven or not.

18. The judge's second ruling, made on 29 May 2019, was on the defence application to adduce evidence of the applicant's acquittals on count 1 at the first trial. The defence submitted that the jury should be told of the decision by the jury in the first trial to acquit all defendants on count 1. The judge ruled that there was no relevance at all in the prior acquittals and therefore consent was not given to their being adduced before the jury either by admission or in any other form.

19. In respect of the arguments about the jury speculating, if the applicants or Mr Golam-Rassoude only had been convicted of the drugs offence, it would rather beg the question as to why the jury had not been told about that earlier conviction. It was not clear why they would possibly speculate that may be there was to be another trial on the drugs matter. If the jury were to come to the conclusion that there was some legal bar to proceeding on the drugs matter, then it was uncertain that it would result in any unfairness. The judge emphasised, more than once, that the jury would be told not to speculate. That, of course, is a standard direction which all trial judges give to the jury.

20. In their grounds of appeal both applicants submit that the judge erred, first, in permitting the prosecution to puts its case against the applicants at the retrial on the basis they had been knowingly involved in the importation of drugs. The second ground of appeal is that the judge erred in ruling that the defendants had not be permitted to tell the jury that they had been acquitted of the drugs charge at the first trial. There is a third proposed ground of appeal on behalf of Mr Golam-Rassoude that the judge failed to deal with these matters adequately and fairly in the directions which he gave to the jury.

21. We have also had the advantage of seeing in writing grounds of opposition which have been filed in a respondent's notice. The Crown submit that the judge's rulings were carefully reasoned and correctly founded on relevant legal principles. There was no error in law, and no unfairness in the conclusions reached by the judge. It is submitted that the verdicts are safe.

22. We turn first to consider the relevant principles. The following propositions appear to be undisputed on behalf of the applicants and in any event appear to us to be established by the authorities. First, generally speaking, evidence of the outcome of an earlier trial arising out of the same events is irrelevant and therefore inadmissible since it amounts to no more than the evidence of the opinion of the jury in the earlier trial. Secondly, there may be exceptions to this general principle, such as the effect of an acquittal on the credibility of a confession or the evidence of a prosecution witness.

23. In R v Terry [2005] QB 996 at paragraph 35, Auld LJ said:

    i. "The rationale of the exceptions stated, by way of example in that proposition, appears to be that where an earlier acquittal is arguably attributable to some aspect of the evidence which is common to both trials and/or otherwise relevant to an issue in the second, evidence of the acquittal may be admissible in the later trial."

24. Before leaving that passage we would observe that in that last sentence Auld LJ referred to "may" be admissible. That clearly suggests that the trial judge has a discretion. Of course, a trial judge will be much better placed to assess these matters than this court can be, being intimately familiar with the totality of the evidence at the trial.

25. Thirdly, the rule of double jeopardy does not prevent evidence being admitted if it is relevant to an issue in the second trial: see, for example, R v Z [2000] 2 AC 483 at 487, in the speech of Lord Hope of Craighead, which included the following:

    i. "... the issue in the present case is not whether the defendant is guilty of having raped the three other complainants. He is not being put on trial again for those offences. The only issue is whether he is guilty of this fresh allegation of rape. The guiding principle is that prima facie all evidence which is relevant to the question whether the accused is guilty or innocent of the offence charged is admissible."

26. Lord Hope then went on to mention that of course there remains the discretion of the trial judge to exclude unfair evidence under section 78 of the Police and Criminal Evidence Act 1984 ("PACE").

27. After referring to the decision of the Privy Council in Sambasivam v Public Prosecutor Federation of Malaya [1950] AC 458, Lord Hope continued as follows:

    i. "The principle ... is that of double jeopardy. It is obvious that this principle is infringed if the accused is put on trial again for the offence of which he has been acquitted. It is also infringed if any other steps are taken by the prosecutor which may result in the punishment of the accused on some other ground for the same offence. But it is not infringed if what the prosecutor seeks to do is to lead evidence which was led at the previous trial, not for the purpose of punishing the accused in any way for the offence of which he has been acquitted, but in order to prove that the defendant is guilty of a subsequent offence which was not before the court in the previous trial**."**

28. In his oral submissions before us Mr Murphy placed particular emphasis on that last sentence and submitted that that scenario can be contrasted with the present case. In our view, that last sentence cannot be read out of context or as if it were a provision in a statute. It was apt in the context of that particular case, but in principle there would be no material distinction where, as in the present case, the defendant was charged with a second offence at the first trial but the jury were unable to reach a verdict and so there is a retrial for that offence. What is crucial is that there is no question of trying the defendant again or seeking to punish him for the offence of which he was acquitted.

29. Fourthly, the doctrine of issue estoppel does not apply to criminal law: see R v Humphrys [1977] AC 1.

30. The applicants also rely on Article 6(2) of the European Convention on Human Rights, which is one of the Convention Rights set out in Schedule 1 to the Human Rights Act 1998. This guarantees the presumption of innocence. In particular, the applicants rely on two decisions of the European Court of Human Rights: Sekanina v Austria (1994) 17 EHRR 221 and Rushiti v Austria (2011) 33 EHRR 56.The principle is summarised as follows in Rushiti at paragraph 31:

    i. "The Court cannot but affirm the general rule stated in the Sekanina judgment that, following a final acquittal, even the voicing of suspicions regarding an accused's innocence is no longer admissible. The Court, thus, considers that once an acquittal has become final - be it an acquittal giving the accused the benefit of the doubt in accordance with Article 6(2) - the voicing of any

suspicions of guilt, including those expressed in the reasons for the acquittal, is incompatible with the presumption of innocence."

31. However, those authorities were considered by this court in Terry at paragraphs 51-53. They were held to concern a different issue, namely compensation proceedings after a defendant has been acquitted. Those cases do not concern a retrial after acquittal where the evidence adduced is relevant to an issue at the second trial.

32. The applicants have been unable to draw our attention to any more recent authority which casts doubt on that understanding of the position under Article 6(2). There is nothing in principle in Article 6(2) to prevent a retrial. At the trial in the present case, it was rightly accepted on behalf of the applicants that they could be tried on what had been count 2 in the earlier trial and was now the only count at this trial. Furthermore, the presumption of innocence applied throughout this trial. The jury were not asked to decide whether the applicants were guilty of the offence in count 1 at the earlier trial; their only task was to decide whether they were guilty on count 2, which was the only count at the retrial.

33. The applicants also rely on the decision of the Supreme Court in Serious Organised Crime Agency v Gale [2011] UKSC 49; [2011] 1 WLR 2760, in particular at paragraph 21, in the judgment of Lord Phillips PSC, and paragraph 125, in the judgment of Lord Brown JSC, to the effect that the presumption of innocence in Article 6(2) is infringed by findings in subsequent proceedings which cast doubt on the validly of a prior acquittal where there is a procedural connection between the two sets of proceedings. In our judgement, there is no such procedural connection in this case. What that case concerned was recovery proceedings under the Proceeds of Crime Act 2002. In fact it was held there had been no link between criminal proceedings in Portugal which had led to an acquittal and the civil recovery proceedings in England.

34. The applicants had also cited in their written submissions the recent decision of this court in R v Blerim Hajdarmataj [2019] EWCA Crim 303 at paragraphs 37 and 38, where Irwin LJ said:

    i. "37. It is helpful to begin by distinguishing two discrete questions: firstly, the evidence of previous offending (or other bad character) given in an earlier trial which has resulted in an acquittal, and secondly admission in evidence of the acquittal itself. We are here principally concerned with the first issue.

    ii. 38. We note, however, that where such evidence of previous offending is admitted as bad character evidence, the second issue will often arise ... In our view, where the evidence of a complainant was the essence of the case in the trial leading to an acquittal, and where accuracy or credibility was the critical question before the acquitting jury, it may be appropriate to adduce

> the acquittal, as well as the previous complainant's evidence, if the latter is to be admitted as bad character evidence in a subsequent trial. The second jury will necessarily hear that there was a first trial, and that the witness was the complainant in that trial. If they are not told of a conviction, they may in any event conclude there was an acquittal. Or they may wrongly infer there was a conviction, which would be a highly prejudicial matter..."

35. It seems to us that the facts of the sort of case that was being described by Irwin J in that passage are very different from those of the present case. That was simply an example of one of the exceptions recognised to exist in Terry. Like the single judge, we can see no analogy with that kind of case here.

36. We now turn to the application of those principles to facts of the present case. In our view, the single judge was undoubtedly right to conclude that there was no reason why the trial judge was required either (i) to prevent the prosecution from suggesting at the second trial that the applicants must have been aware that the packages contained drugs or (ii) to inform the jury that the applicants had been acquitted on the importation of drugs charge at the first trial. That acquittal did not create an issue estoppel, nor did it lead inexorably to the positive conclusion that the applicants did not know of the presence of drugs. It simply meant that the jury were not sure of guilt on count 1.

37. We turn specifically to each of the three proposed grounds of appeal. Ground 1, which complains about the judge's first ruling. In our view, it would have been absurd to suggest that this case could have been presented without revealing that the criminal conduct which generated the criminal property was the proceeds of importing/dealing in controlled drugs. The jury could not properly assess whether the defendants knew or suspected that the money represented the proceeds of criminal conduct without testing the plausibility of the applicant's explanation against the whole facts.

38. We note in this context that in the first defence skeleton argument on this issue (at paragraph 18), of which we were reminded by Mr Murphy at the hearing before us, it was suggested that the following formula would be acceptable:

> i. **"Thus we submit that the Crown should limit its case in a retrial along the following lines:**
>
> **(b) The Crown asserts that some or all of the boxes imported before 8 November 2016 must have contained unlawful cargo, namely Class A drugs [this is not disputed by the defence];**
>
> **(c) The Crown does not suggest that the defendants were knowingly involved in the importation of any Class A drugs;**
>
> i. **(ii) knew that any of the earlier boxes contained drugs.**
>
> **(d) Each defendant must have suspected that the contents of some or all of the boxes contained some sort of criminal property."**

39. That raises the interesting question why the date should be 8 November 2016 and not earlier dates. The answer appears from the original indictment and the directions of law given at the first trial. The relevant period for count 1 was pleaded as between 1 March 2016 and 9 November 2016, whereas the date of count 2 was much broader, 1 December 2015 and 9 November 2016. It seems in the first trial that the focus on 8 November 2016 in count 1 was because that was the only importation which could be proved directly - see the directions of law at paragraph 4A.

40. In the written directions of law for the first trial for count 2, at paragraph 12, it was said:

    i. "In this count you are not concerned with the events of the 8 November 2016 but the cash that had been received by the GRs [the applicants] before their time."

41. These points serve to emphasise that there was by no means a complete overlap between the two counts. More fundamentally for count 2, that being the only count at the retrial, the prosecution only had to prove suspicion that the cash they were handling was the proceeds of criminal conduct, whereas for count 1 the jury in the first trial had to be sure that the applicants knew it was and that they were actively concerned in the importation of drugs (see the directions of law at paragraph 4D).

42. Ground 2, which complains about the second ruling by the judge. The key question is: what would have been the evidential value of the acquittal on count 1? It did not prove that the applicants did not know or suspect that the cash represented the proceeds of criminal conduct generally or drug dealing in particular. If the acquittals had been introduced what direction could the jury have been given? None that could have assisted them. We accept what the Crown's say about this in the respondent's notice at paragraph 28, where it is submitted that the problem with the approach invited by the applicants is highlighted if one considers how the retrial jury would have been directed as to the relevance of the acquittals. A direction that that amounted to conclusive proof of lack of knowledge would amount to issue estoppel, it would extrapolate a factual conclusion from the original verdict that could not be made with certainty and give arise to the issue how the jury were to apply the prior jury's assessment of an entirely different count with a different mens rea. A direction that they place the previous acquittal into the balance in weighing the evidence would give rise to the question of how they could do that as without knowing the reasoning of the previous jury they could not place the verdict into a count as against their own evaluation of the evidence.

43. The third option would be to direct them to ignore the principle.

44. In Terry the judge did allow the jury to know of acquittals but only for the specific purpose of enabling the defence to establish that there could have been other voices heard in the vehicle not to prove the defendant could not have been in the vehicle himself. That is a good example of the sort of special relevance which would have been necessary.

45. Ground 3 complains about the summing-up generally. Like the single judge, we do not consider that this adds anything to the first two grounds.

46. Mr Murphy confirmed before us that counsel agreed the judge's directions, which included this at paragraph 13C:

    i. "The prosecution has suggested ... to each defendant that they knew that the incoming boxes ... contained drugs.

    ii. If you were sure that the defendants did know that, it would obviously be strong evidence that they were aware that the money that they were dealing with represented the proceeds of crime. However, it is not necessary for the prosecution to prove that they did know about the true nature of the drugs because this is a case about the money. It is the knowledge or suspicion regarding the money that is central to the case, and of course neither defendant in this trial faces a charge in relation to the drugs."

47. Furthermore it does not seem that counsel complained at the time that the judge had not dealt with the drugs evidence fairly consistent with his rulings.

48. Ultimately, as it seems to us, both Mr Murphy and Mr Lyons were driven to submit that the trial judge should have excluded certain matters from the consideration of the jury at the retrial because otherwise there would be unfairness. In substance that amounted to a submission that the judge exercised his power in

49. 78 of the Police and Criminal Evidence Act wrongly.

50. We are unable to accept that submission. The trial judge was well placed to decide what could fairly be placed before the jury and what needed to be placed before them. He was much more familiar with the totality of the evidence than this court can be. In the result, we have come to the conclusion that there is no unfairness in this case and the convictions are safe.

51. For the reasons we have given, these renewed applications for leave to appeal against

conviction are refused. In those circumstances it is unnecessary to consider further the applications for an extension of time if indeed they were required.

52. LORD JUSTICE SINGH: May I just invite counsel to make any further submissions?
53. MR MURPHY: There is nothing from me. Thank you.
54. LORD JUSTICE SINGH: Mr Lyons?
55. MR LYONS: My Lord, no. Thank you.
56. LORD JUSTICE SINGH: Thank you both very much. Can I just check with my Lords if there is anything else they need to add.
57. MR JUSTICE SPENCER: No.
58. MR JUSTICE CHAMBERLAIN: No.
59. LORD JUSTICE SINGH: Thank you. I am grateful to the court staff as well for making the arrangements for this remote hearing.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk