IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM

THE CROWN COURT AT WOOLWICH

[2023] EWCA Crim 1236

No. 202203706 B4

Royal Courts of Justice

Thursday, 5 October 2023

Before:

LORD JUSTICE WARBY

MR JUSTICE MURRAY

HIS HONOUR JUDGE MENARY KC
(RECORDER OF LIVERPOOL)

REX
V
MONICA WILLIAMS

Computer-aided Transcript prepared from the Stenographic Notes of
Opus 2 International Ltd.
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

MR K. BARRY appeared on behalf of the Appellant.
MR N. JONES appeared on behalf of the Respondent.

J U D G M E N T

LORD JUSTICE WARBY:

1 This is an appeal against conviction by Monica Williams, now aged 57.

2 In November 2022 she was tried in the Crown Court at Woolwich on two counts of fraud contrary to s.1 of the Fraud Act 2006. On 18 November 2022 she was convicted on one of those counts and acquitted on the other. She was later sentenced to 18 months' imprisonment suspended for two years.

3 She now appeals against conviction on two grounds: that the judge misdirected the jury by failing to give them certain directions, and that the jury's verdicts were fundamentally inconsistent so that the conviction is unsafe.

4 The charges arose from the appellant's tenancy of a property at 44 Etta Street in Deptford, London SE8 ("Etta Street") which belonged to the London Borough of Lewisham ("the Council".)

5 On 26 October 2006 the appellant entered into a tenancy agreement with the Council in respect of Etta Street. It was a term of the agreement that the appellant must live in the Etta Street property as her only or principal home. Accompanying the agreement was something called a “sign-up sheet” with a declaration which said "I do not lease/own any residential property nor am I the tenant of any residential property." Below that was what appeared to be the appellant's signature. These were the facts that were presented to the jury in opening.

6 In 2010 and again on 3 January 2016 the appellant made a Right to Buy application in respect of Etta Street. Her 2016 application asserted that she was occupying the property as her only or main home.

7 In 2019 the Council became suspicious that the appellant might have misstated the position and that she might have failed to comply with her tenancy obligations. They undertook investigations which yielded evidence tending to support that view:

> (1) In February and April of 2019, a tenancy audit officer called Cooper made six unannounced visits to Etta Street, finding nobody there.
>
> (2) It was ascertained that Land Registry records showed that from 25 November 1988 the appellant and one Junior Morrison were the registered owners of a property at 86 Spencer Road in Ilford, Essex. From 23 September 1998 the appellant's Student and Graduate Services account was registered to that address and on 7 February 2002 a mortgage application form was submitted to the Abbey National in respect of that property in the names of Junior Morrison and the appellant purporting to bear their signatures. At the time the property was mortgaged to Santander PLC.
>
> (3) Land Registry records further showed that from 25 April 2003 the appellant and Junior Morrison were the registered owners of a property at 76 South Park Road, also in Ilford. On 26 February 2006 a personal bank account in the appellant's name was registered at this address. In February 2018 a flexible savings account was registered at number 76 South Park Road in the names of the appellant and Junior Morrison, and children's savings accounts were also registered at this address in the names of the appellant and each of her children. At the

time of trial this property had a charge in favour of The Mortgages Business PLC.

(4) On 16 May 2019 Mr Cooper went to 76 South Park Road where a woman answered the door but declined to produce ID and shut the door on Mr Cooper.

(5)Mr Cooper later went to Etta Street. On a couple of visits he found nobody at home. When he attended on 3 June 2019 by appointment, he was met by a woman wearing a blonde wig whom he said was the same woman who had answered the door in South Park Road 18 days earlier. He said he had seen that same woman leaving Etta Street that evening without the wig. The prosecution case was that this woman was the appellant.

8 Interviewed in July 2019 at the Council's offices the appellant's account was that the Ilford properties had been purchased and put in her name without her knowledge. She did not know how her name came to be on the registered title for the properties. She had visited both properties many times, but she had never lived at South Park Road. That property was tenanted. The rent was paid to the appellant. The mortgage was paid by Junior Morrison who was the father of her children but not her partner. 86 Spencer Road was also tenanted. The appellant received the rent and had recently been paying the mortgage on that property. As for the Right to Buy form, a friend (whom she named) had completed this for her because the friend "knew the process".

9 The indictment contained the following allegations:

(1) Count 1 alleged that, dishonestly and intending to make a gain for herself or another the appellant failed between 15 January 2007 and 16 May 2019 to disclose to the Council information which she had a legal duty to disclose namely that she had stopped using 44 Etta Street as her only or principal home.

The prosecution case was that at some point in this period the appellant had moved out of Etta Street and begun to reside at 76 South Park Road. She was under a legal obligation to disclose this, it was said, because it would have affected her entitlement to remain a tenant of Etta Street, which was dependent on her living at that address as her only and principal home. The prosecution alleged that her failure to make such disclosure was dishonest.

(2) Count 2 alleged that on or about 3 January 2016 the appellant committed fraud in that, dishonestly and intending thereby to make a gain for herself or another, she made a representation within her Right to Buy application which she knew to be untrue or misleading, namely that she was occupying Etta Street as her only or main home.

The prosecution case was that on the date specified in this count the appellant knew full well that she was not occupying Etta Street as her only or main home and was therefore not eligible to buy it under the scheme. The allegation was one of deliberate deception in order to make a gain for herself.

10 The appellant's evidence was that she had not signed the sign-up sheet attached to the tenancy. But she did not dispute what the tenancy agreement said. The centrepiece of her defence was that Etta Street was and remained her only or main home from the day she moved in and throughout the relevant period. She was probably out when Mr Cooper made his unannounced visits to Etta Street. She was the person he saw there wearing a hairpiece, but there was nothing suspicious about that, as wearing a hairpiece was something she often did. She was not the person seen by Mr Cooper at 76 South Park Road. She said she had never lived at either of the Ilford properties. She had disclosed her true connections to those properties to the Council in 2010 when she made her first Right to Buy application. So far as count 1 was concerned, therefore, her case was that she had no duty to disclose anything and did not act dishonestly in failing to do so.

11 As to count 2,the appellant accepted in her evidence that if she had known that Etta Street was no longer her only or main home then her statement in support of the Right to Buy application would have been dishonest and she would be guilty as charged. But, she said, Etta Street always was her only or main home.

12 As to what she had said in interview the appellant said that any inconsistency between that and her evidence at trial could be explained by the fact that she had never been interviewed before and felt sick with her nerves at the time.

13 In support of her case the appellant also relied on a large body of correspondence addressed to her at Etta Street and various agreed facts. These included that she had been the registered Council taxpayer at Etta Street throughout; that she had never been on the electoral roll for either of the Ilford addresses; and that a forensic document examiner instructed by the prosecution had compared the signature on the Abbey National application form with samples of the appellant's handwriting and had been unable to determine whether or not it was her signature, the evidence being inconclusive.

14 The judge began his summing up with conventional legal directions including the standard directions that decisions as to what the evidence proved and did not prove were for the jury alone; that the jury did not have to accept or reject all of the evidence of any given witness; and that they should consider each of the counts on the indictment separately and did not have to reach the same verdict on each.

15 The judge then gave the jury written directions in the form of a document entitled "Definitions and Route to Verdict", which he read out to them. This had been the subject of prior discussions with Counsel. Counsel for the defence had made written representations about it, some but not all of which the judge had accepted.

16 In its final iteration the route to verdict document had the following relevant features.

17 As to count 1, it identified the ingredients of the offence, namely that the appellant (i) failed to disclose information which she was under a legal duty to disclose (ii) did so dishonestly and (iii) intended by failing to disclose the information to make a gain for herself. The document then summarised the rival cases, much as we have done, and went on as follows:

> "No-one disputes that if MW moved out of 44ES and began to live somewhere else and deliberately failed to disclose it that elements (ii) and (iii) of the allegation would be made out - what is in dispute is (i). Thus as far as count 1 is concerned the principal question for you to answer is:

> Has P proved to the necessary standard that MW ceased to live at 44ES as her only or principal home between the times alleged?
>
> If the answer is yes then it is open to you to find her guilty upon count 1 - because all the elements that P has to prove would be established given the facts of this case.
>
> If you are not sure that is proved, then you must acquit her. If you decide that she had 2 homes but that 44ES was her principal home then she must be acquitted. To that end you may ignore the word "only" in each count and concentrate upon the question has P proved that 44ES was not her main or principal home. That observation applies to both counts."

18 Turning then to count 2, the document identified three matters which the prosecution had to prove: (i) that MW made a false representation; (ii) that she did so dishonestly; and (iii) that she did so in order to make a gain for herself. The document then, summarised the rival cases of the parties and referred to the concession made by the appellant, that she would have been dishonest and guilty as charged if she had known that Etta Street was no longer her main home. The document went on to identify the principal question for the jury to answer on count 2 as follows:

> "Has P proved that at the time she completed the paperwork MW knew that 44ES was not her only or principal home? If you are sure the answer to that question is yes then assuming that you find the other elements established it would be open to you to find her guilty. If it is no or we are not sure then you must acquit her on count 2."

19 The document also dealt with identification by Mr Cooper and the appellant's good character, in terms which have attracted no criticism.

20 After the jury had spent two and a half hours in retirement majority verdict direction had been given. Just over an hour later they returned verdicts of not guilty on count 1 but guilty on count 2.

21 The first ground of appeal is that the judge failed to give the jury appropriate directions, namely (i) that if they found the appellant not guilty of count 1 they must also acquit her of count 2; (ii) that "principal home" and "main home" mean the same thing, namely the house in which the appellant mainly lived; and (iii) that count 2 did not allege that the appellant had failed to disclose her association with the two Ilford properties.

22 The second ground of appeal is that the guilty verdict on count 2 was fundamentally inconsistent with the not guilty verdict on count 1.

23 We can understand why the single judge did not set limits on the scope of the leave to appeal being granted, but for our part we see no merit in the second and third complaints of non-direction. The judge gave the jury a clear and sufficient explanation of what was alleged in count 2 and what ingredients the prosecution had to establish to make it good. We see no reason to doubt that the jury well understood that a person's "principal" home and their "main" home are the same thing, and that they mean the place where the appellant mainly lived. These points were made sufficiently clear in the summing up in any event and Mr Barry did not press this ground orally, having had the opportunity of reviewing the transcript. We are unable to accept the suggestion that the judge was required to provide the jury with any further explanation of count 2, setting out what it did *not* allege. There was nothing in the circumstances of the case that called for any such direction.

24 The remaining grounds of appeal are closely related to one another. It is convenient to begin with the allegation of inconsistent verdicts.

25 The test to be applied by this court when an appellant alleges that her conviction on one count is inconsistent with her acquittal on another is clear. The law was examined in detail in *R v Fanning* [2016] EWCA Crim 550, [2016] 1 WLR 4175, where many authorities were explored and explained. The essential points established by that case, which call for no elaboration today, are these:

> (1) The appellant bears the burden of satisfying the court that the two verdicts cannot stand together.
>
> (2) What the appellant must show is that no reasonable jury which had applied their minds properly to the facts in the case could have arrived at the conclusion they did.
>
> (3) But verdicts are not to be treated as inconsistent if the jury had been sure about some parts of the evidence given by a witness but unable to be sure about other aspects of that evidence.

26 It is no part of the test that the jury or the Court of Appeal is bound by any concessions made by the appellant in evidence at the trial, or by how the case was argued by Counsel, or by how the factual issues were described to the jury by the judge. The test is stated in terms of how a reasonable jury might rationally respond to the facts of the case. As it is normally the function of the jury to determine what are the facts of the case, that would seem to mean, in most cases at least, the evidence in the case.

27 Applying these principles to the case before the court, our conclusions are these:

> (1) The one critical factual issue in the case, as everyone agreed, was whether the appellant was living at Etta Street as her main residence throughout the period covered by count 1. If the jury found that this was or might be the case the appellant was entitled to be acquitted on both counts. She could not be found guilty of any failure to disclose, nor could the representations she made in the Right to Buy form be found to be false. The appellant could not be convicted on either count unless the jury was sure that she was not living at Etta Street as her main residence at the time stated in that count.
>
> (2) If, on the other hand, the jury were sure that Etta Street was <u>not</u> the appellant's main residence throughout the period specified in count 1 a finding of non-disclosure for the purposes of that count was logically inevitable, and if the jury were sure she was not living there on 3 January 2016 a finding of misrepresentation for the purposes of count 2 was equally inevitable.
>
> (3) But that was not the whole picture. Even on these assumptions count 2 would still raise the further issues of whether any positive misrepresentation was not just false but also dishonest and made for to gain. Count 1 would raise the further issues of whether any passive failure to disclose the true position amounted to a breach of a legal duty and, if it did, whether that was dishonest conduct engaged in with a view to gain.

(4) On some of those matters the appellant had made concessions in the course of her evidence. But these were not binding on the jury, nor did the judge direct them to that effect. He did direct them to focus on what we have described as the critical factual issue. But he did not direct them that if they were persuaded of the prosecution's case on that issue they must convict on each count. What he said about that scenario was that in the light of the concessions made by the appellant it "would be open" to the jury to convict.

(5) There was evidence on the basis of which a reasonable jury could be sure that Etta Street was not the appellant's main residence on 3 January 2016. As a matter of logic, a jury sure of that would have to conclude that the representation made in the appellant's Right to Buy form was false. It will be irrational to do otherwise. Although it did not follow necessarily, that jury might well conclude that the representation was not only false but also dishonest, and made with a view to gain, so that count 2 was made out.

(6) That analysis would explain the verdict on count 2.

(7) The same jury might, however, have been unpersuaded that the appellant had a positive legal duty to disclose to the Council that she was non-resident on 3 January 2016, or indeed any other date within the period covered by count 1. This was a question of law which seems never to have received any detailed attention from Counsel or the judge in court during the trial. We have explored the issue in the course of argument today. It has emerged from scrutiny of the trial bundle by counsel for the appellant that there was a term expressly imposing on her an obligation to disclose within 28 days any long-term change in the persons occupying the property. But we have not been shown that this was drawn to the jury's attention, other than being placed in the jury bundle. It seems that all the jury was ever told about the issue was that the prosecution's case was that the duty arose because residing somewhere else would have affected the appellant's right to remain as a tenant of Etta Street, and that the defendant did not dispute this. The judge did not direct the jury that they must accept the prosecution's point of law.

(8) A rational jury might, further or alternatively, have been unsure that the appellant was aware that she had any legal duty to disclose the fact of her non-residence at Etta Street. The jury might consequently or for some other reason, have been uncertain that the appellant's failure to make such a disclosure was dishonest. We have not been shown the detail of the concessions she made on the issue of dishonesty. But it is clear that her concessions on that issue must necessarily have been hypothetical and so far as the information before us goes, they appear to have gone only to count 2. The issue of dishonesty on that count was not the same as the issue on count 1.

(9) These considerations would explain the verdict on count 1.

28 In the light of these conclusions, we can deal shortly with the one remaining point. It is now said that the judge was obliged to direct the jury that acquittal on count 1 would necessarily lead to acquittal on count 2. But this is not a submission that was made to the judge, either

before he gave the jury their legal directions or afterwards. It is, as Mr Barry candidly conceded, an afterthought. For Nor, for the reasons we have given,is this a correct analysis of the position as it stood on the evidence and argument in this case. The judge was therefore entitled, indeed correct, to direct the jury as he did in the conventional way, emphasising that the two counts were separate and independent of one another and different verdicts could be arrived at on the two counts.

29 For those reasons this appeal is dismissed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

Transcribed by ***Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

This transcript has been approved by the Judge.