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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 1519



CASE NO 202203616/B1

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 5 December 2023

Before:

LORD JUSTICE EDIS
MR JUSTICE JEREMY BAKER
SIR ROBIN SPENCER

REX
V
DEEPANKAR DIXIT

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MR R ROSSER appeared on behalf of the Applicant

J U D G M E N T

LORD JUSTICE EDIS:

1. This is a renewed application for an extension of time for leave to appeal against conviction and for leave to appeal against conviction. The extension of time which is required is in the region of three years. The conviction resulted from the verdict of the jury returned on 21 November 2019. The conviction resulted in a sentence of imprisonment of two years and three months from which the applicant has long been released. He appears before us by Mr Rosser who has presented two grounds of appeal. He did not appear at the trial and the *McCook* procedure has been applied in this case given the suggestion that trial counsel ought not to have acquiesced in the events which give rise to the two grounds of appeal. It is right to record that the applicant, who is a solicitor, drafted his own grounds of appeal which were very much more voluminous than those which Mr Rosser has presented, he having decided that a number of matters which were raised by Mr Dixit himself were not properly arguable.
2. The conviction to which we have referred was in respect of an offence of false accounting, contrary to section 17(1)(a) of the Theft Act 1968. Mr Dixit was tried with his former partner in a firm of solicitors, Mr Siddique, and both were convicted.
3. The grounds for the application for an extension of time are that the applicant says he needed time to gather fresh evidence, although that endeavour related to some grounds of appeal which are not now pursued; he says that he was unable to obtain legal advice and was hindered by the pandemic and various other difficulties. We will consider the merits of the grounds that are before us in order to determine whether either is arguable but we are bound to observe that none of what is said in support of the application for the extension of time provides any very substantial ground for the very long extension which would be required to pursue this application.

4. The particulars of the offence, as set out in the indictment as it originally stood, were that between 1 January 2014 and 19 May 2016, dishonestly and with a view to gain for the applicant and his co-accused Mr Siddique, falsified records required for an accounting purpose, namely digital records associated with a StrongBox accounts package by omitting therefrom material particulars, namely the details of cases in which legal representation was provided and of the fees received in respect of said representation in a manner which was misleading, false or deceptive.
5. The StrongBox accounts software package is an accounting system which is one of a number of different products which are available on the market which solicitors may use in order to keep their accounts. The applicant and Mr Siddique were partners in a firm called Kingstons based in Newcastle upon Tyne and directors of the company which owned the business. They did opt to use StrongBox for keeping accounts of the firm's business.
6. We shall turn to the facts in outline in a moment but begin by setting out the two grounds which are argued before us. These are as follows:
 1. The drafting of the indictment was defective and led to an error in the directions of law. We have set out the particulars of the offence as they originally stood above. During the course of the trial it appears that the indictment was amended so that it included the words "made or" before the words "required for an accounting purpose". This reflected some evidence given by a witness in the trial to which we shall turn. There was and is no doubt that the StrongBox documentation was created for the purpose of record-keeping in relation to financial transactions. Record-keeping in relation to financial transactions is often called "accounting".

The submission is that there was no evidence that the software package was made or required for an accounting purpose and further, that the judge failed to direct the jury that it was a material ingredient of the indictment that the StrongBox records were made or required for an accounting purpose and it is said there was no evidence of this.

2. The judge erred by including a direction on joint enterprise. It is said that this was not the prosecution case. Mr Dixit was alleged to have created the falsified records himself. It is argued that the impact of the inclusion of this joint enterprise direction was to expand the terms of the indictment so that it became something akin to a conspiracy to defraud and may have resulted in a lack of focus in the attention of the jury on the issues that mattered.
7. The facts were complex to a degree, but it is unnecessary to set them out in detail. The police executed a search warrant at the solicitors' firm in pursuit of an investigation into some third parties, not the firm itself nor either of the partners to whom we have referred. However, in the course of the execution of the search warrant they discovered a very large quantity of cash which was kept in envelopes around the office and in a safe with names written on them. They also found some deposit slips for cash which had been paid into the bank. This caused a new investigation to start which resulted in Production Orders being executed and the prosecution which resulted in the conviction which we have described.
8. Essentially the prosecution case was that this cash had been paid by immigration clients of the firm for legal services. It was not put through the books, and it did not appear on the StrongBox system but was rather divided between the defendants and another person. Evidence for the division was found in a deleted spreadsheet found on a laptop but

nowhere else. That document was said to be an instrument of the criminality rather than one of the accounting records which solicitors are of course obliged by their professional rules to keep. It was said that that deleted spreadsheet effectively gave the game away.

The purpose of hiding this cash was no doubt to avoid having to account for it to HMRC and pay tax on it.

9. The defence case was that the spreadsheet was the real accounting record of the business and that the StrongBox system was not. The defendant said that they had not hidden the spreadsheet because they had given it to their accountant and their accountant gave evidence on their behalf in the trial. The jury therefore had to decide which was the accounting record of the business and specifically whether the StrongBox system was required or made for an accounting purpose. They then had to decide whether it had been deliberately falsified by the omission of the receipt of a large amount of money which had been received in cash and finally the issue was of dishonesty.
10. The evidence, to which we have referred in passing, which resulted in the amendment of the indictment came from a witness called Lindsey Barraclough from the Solicitors Regulation Authority. She had investigated the firm and identified cash payments which had been made to the firm but not declared on the client or office ledgers. She said when she was asked questions about it that the StrongBox accounting system was the particular software which was used by the firm, although they were not required to use it or indeed any other software package. It would not be a breach of their obligations if the solicitors had decided to keep their financial accounting records in hard copy manual ledgers. The fact is they did not. They chose to keep their accounting records of most but not all of their transactions by means of the StrongBox accounting package. Because that evidence may have caused some doubt as to whether the StrongBox package was "required", the

indictment was amended so as to include the word "made" to avoid that issue diverting the attention of the jury.

11. The judge gave the jury careful written directions which had been shared with all counsel in the case and which were not the subject of any objection at the trial. It is only necessary to refer to two of the directions which relate respectively to the two grounds of appeal.
12. In relation to the elements of the offence, the judge gave a direction which is criticised in ground 1. It says, under a heading "Count 1, false accounting" as follows:

"To be guilty of this offence a person must dishonestly, with a view to gain for himself or another or with intent to cause loss to another; destroy, deface, conceal or falsify any account or any record or document made or required for an accounting purpose.

A person who makes or concurs in making in an account or other document an entry which is misleading, false or deceptive in a material particular; or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document."

13. There is then a passage defining the words "gain" and "loss" which it is unnecessary to set out and the judge then summarised the prosecution case in short terms and the defence case in answer to it. He then set out three questions which the jury had to consider in these terms:

"As such there are 3 questions that you will need to consider for each defendant when deciding on this Count:

1. Are you sure that the defendant you are considering either falsified the accounting system himself by failing to enter at least one of the clients onto the accounting package, or concurs in that falsification by another person? If yes, then go to question 2. If no, then that defendant is not guilty on Count 1.

2. Are you sure that the actions of the defendant you are considering were dishonest? If yes, then go to question 3. If no, then that defendant is not guilty on Count 1.
3. Are you sure that the actions you find carried out in question 1 by the defendant you are considering were carried out with a view to gain for himself or another or with intent to cause a loss to another? If yes, then the defendant you are considering is guilty of Count 1. If no, then he is not guilty of Count 1."

14. So far as ground 2 is concerned, the judge said this about joint enterprise:

"Joint Enterprise

It is the prosecution case that Count 1 was committed jointly by Mr Dixit and Mr Siddique. It is said by the prosecution that whilst it may well have been Mr Siddique who was involved in creating the cash spreadsheet and editing it, Mr Siddique was aware of what was occurring, was benefiting from it financially and was therefore concurring in what was occurring.

The law states that a defendant can be guilty of a crime even if the crime is actually carried out by another person. If the defendant intends that a crime should be committed and assists, encourages or causes it to be committed, the defendant is guilty of the crime even if someone else actually carries it out. In this case specifically it is the case that if someone concurs to the false accounting occurring, then that is sufficient (if the other elements of the offence are proved)."

15. The judge then went on to give some further directions in relation to joint enterprise and to summarise in short terms the position of the parties on that issue.

16. The direction as read out to the jury was as we have just given it. In the document which was given to the jury the first paragraph of it was different in that the prosecution case was summarised in these words:

"It is said by the prosecution that whilst it may well have been Mr

Dixit who was involved in creating the cash spreadsheet and editing it, Mr Siddique was aware of what was occurring, was benefiting from it financially and was therefore concurring in what was occurring."

17. In other words, the judge was guilty of a slip of the tongue while reading out his written direction to the jury, substituting in one place in his oral directions the name of Mr Siddique where the name of Mr Dixit should have appeared in that passage. Mr Rosser draws that error to our attention and relies upon it in support of his criticism of this direction. It is right to record that when the judge asked counsel who then appeared for Mr Dixit what he said about this joint enterprise direction, counsel said:

"Well, so far as Mr Dixit is concerned it does not particularly trouble me one way or another. Plainly the Crown's primary focus in relation to him is that he was directly involved."

18. In the responses to the *McCook* questions from the Registrar's office, counsel who appeared at trial has essentially responded saying, "I did not object to the form of the indictment or the direction criticised in count 1 because there was nothing wrong with the indictment and the direction was perfectly in order." In relation to ground 2, he makes the same point that he made to the judge, namely the prosecution case against Mr Dixit was quite plainly that he was a principal offender himself responsible for falsifying records and accordingly the joint enterprise direction which was intended to address the position of Mr Siddique rather than Mr Dixit was simply irrelevant to his client's case.

Discussion

19. We are grateful to Mr Rosser for the work that he has done on the applicant's own grounds of appeal. He has made a valiant effort to separate the wheat from the chaff. Sadly, in our judgment, he has however failed to identify any wheat. The two grounds

which he has presented before us are in reality no more arguable in our judgment than the ones that he wisely decided to abandon. We have set out the indictment above. It is not defective. The submission boils down to a submission that the questions which the judge posed for the jury, which we have set out in full above, should have been broken down so that there was a specific question directing the jury's mind to the issue of whether the StrongBox accounting package was "made or required for an accounting purpose". In short there should have been four questions rather than three.

20. The first observation we make about that is that the questions which the judge drafts for a jury in a route to verdict depend upon the way that the case has been presented to the jury by the advocates. In reality there could be no sensible issue as to whether the StrongBox package was a document required for an accounting purpose. Of course it was. The solicitors are required to keep accounts and they chose to do so using the StrongBox system. That is why it was in their office. The fact that there was no direct evidence, so it is suggested, showing that this accounting package was an accounting package appears to us to be of no consequence.

21. Accordingly, the elements of the offence were properly and fully set out for the jury by the judge in his questions and, come to that, in the indictment as it was amended during the trial. The jury can have been in no doubt that the prosecution were required to prove that the StrongBox accounting package was a document made or required for an accounting purpose and that that was part of the offence which they were considering. We do not accept that any sensible criticism could be made of the way this was left to the jury or that it in any way can arguably have rendered the conviction unsafe.

22. So far as the joint enterprise direction is concerned, it may well be that the position of

Mr Siddique did not actually require a joint enterprise direction since concurrence in the falsification of an accounting record by another is a way of committing this offence as a principle, rather than as a secondary party. That is a consequence of the way in which section 17 of the 1968 Act is drafted. Nevertheless, the joint enterprise direction quite clearly related only to the position of Mr Siddique. It did not affect the position of Mr Dixit at all since the case against him was that he himself committed this offence as a principal. That was either proved or not and, as the jury found it, it was proved. Consequently, even if there may be some criticism of the joint enterprise direction that would be a criticism which would in our judgment lack substance but could only sensibly be advanced by Mr Siddique.

23. So far as the slip of the tongue by the judge is concerned, it is clear to anybody reading the transcript that that must have been a slip of the tongue. The jury must have appreciated that and if they were in any doubt about the position they would do what any sensible person would do in those circumstances namely look at the written document which contained the direction without the slip of the tongue. They were out for over seven hours and had plenty of time to sort that out. They cannot have been in any doubt about the prosecution case against either of these two defendants and were properly directed in relation to it.

24. In those circumstances, we have concluded that there is no arguable ground of appeal which can be advanced on behalf of Mr Dixit and we refuse leave to appeal. In those circumstances there is no purpose in granting the extension of time but in any event there was no good reason for Mr Dixit allowing three years to pass before advancing his grounds of appeal. For those reasons these applications are refused.

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

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