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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/00380/B3, 2023/00384/B3
[2023] EWCA Crim 606



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 27th April 2023

B e f o r e :

VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE PICKEN

MRS JUSTICE FARBEY DBE

R E X

- v -

SHEILA COULTAS
VICTOR INGHAM

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Miss K O'Raghallaigh appeared on behalf of both Applicants

Mr S Baker KC appeared on behalf of the Crown

J U D G M E N T
(Approved)

Thursday 27th April 2023

LORD JUSTICE HOLROYDE:

1. This court has previously considered appeals against conviction by many persons formerly employed as sub-postmasters or sub-postmistresses ("SPMs"), or as managers of sub-post offices, who had been prosecuted many years ago by Post Office Limited or its predecessor ("POL"), and had pleaded guilty to or been convicted of offences of dishonesty. The judgments in those cases are publicly available and we need not repeat all that we said in them: see *R v Josephine Hamilton and Others* [2021] EWCA Crim 577, *R v Robert Ambrose and Others* [2021] EWCA Crim 1443, *R v Roger Allen and Others* [2021] EWCA Crim 1874, *R v Margaret White and Others* [2022] EWCA Crim 435, and *R v Richard Hawkes and Others* [2022] EWCA Crim 1197.

2. Those cases raised issues as to abuse of process and as to the safety of convictions, having regard to concerns about the reliability of the computerised accounting system, Horizon, which was in use in sub-post offices at the relevant times. Fraser J, in earlier civil proceedings, had made findings which showed that there had been inadequate investigation of those concerns and/or a failure to make full and accurate disclosure about the concerns to those who were being prosecuted on the basis that Horizon showed a shortfall in the accounts of the sub-post office. This court used the shorthand term "Horizon case" to refer to a case in which the reliability of Horizon data was essential to the prosecution, and in which there was no independent evidence of an actual loss from the account at the branch post office concerned, as opposed to a Horizon-generated shortage.

3. In *Hamilton* we concluded that throughout the relevant period there were significant problems with Horizon, which gave rise to a material risk that an apparent shortfall in branch post office accounts did not in fact reflect missing cash or stock, but was caused by one of the

bugs, errors or defects which, as Fraser J had found, existed in Horizon. We also concluded that during the relevant period, POL knew that there were serious issues about the reliability of Horizon, and that POL failed adequately to consider or to make relevant disclosure of problems with, or concerns about, Horizon. Instead, they asserted that Horizon was robust and reliable. We were also satisfied that POL had consistently failed to be open and honest about the issues affecting Horizon and had effectively steamrolled over any SPM who sought to challenge its accuracy.

4. We are today concerned with applications by two former SPMs, Ms Sheila Coultas and Mr Victor Ingham. They contend, through Miss O'Raghallaigh, that their cases are Horizon cases, that their prosecutions were an abuse of the process, and that their convictions are unsafe for reasons similar to those which have led to the successful appeals in earlier cases. Ms Coultas and Mr Ingham accordingly apply for long extensions of time in which to apply for leave to appeal against their convictions. Each seeks to adduce fresh evidence in support of the applications.

5. POL, represented before us today by Mr Simon Baker KC, does not oppose the applications. It is, however, of course for the court to determine those applications.

6. We record once again our gratitude to counsel and to solicitors on both sides for the very great assistance they have rendered in their conduct, preparation and presentation of these cases.

7. Having considered all the material which has been placed before the court, we are satisfied in the case of each of Ms Coultas and Mr Ingham that it is appropriate to grant the extensions of time sought, to grant leave to appeal, to receive the fresh evidence and to allow the appeal.

Sheila Coultas

8. On 25th February 2008, in the Crown Court at Lincoln before His Honour Judge Milmo KC, Ms Coultas pleaded guilty to three counts of false accounting relating to the period between 4th December 2006 and 20th March 2007. On each count the court record shows that she was made subject to a conditional discharge for a period of 12 months. It is right to note that Ms Coultas' own recollection as to the nature of the sentence differs. However, nothing turns on the point for present purposes.

9. In very brief summary the facts of the case were as follows. Ms Coultas was the sub-postmistress at Stirling Road Post Office in Stamford. An audit on 19th March 2007 revealed a shortfall of £39,454.72, which Ms Coultas said she could not explain. She was suspended. When interviewed under caution two days later, she said that she had first noticed the shortfall when carrying out her weekly balances and that it had been running at the level found on audit for some time. She said that she had been looking for an explanation, but could not find anything. She became upset when accused of stealing the money and said that she did not think any of her staff had been stealing. She accepted that she had hidden the shortage in the accounts. She stated that she did not tell her staff or POL about the shortage because she wanted to find the cause herself.

10. Ms Coultas was re-interviewed on 15th May 2007. She stated that she had initially discovered a shortfall of £37,000 in December 2006, and that a further £2,000 had disappeared in sums of £400 or £500 each week between then and the audit. She denied stealing the cash and repeated that she did not suspect her staff of theft. She said that she thought that it was a loss in the paperwork, but she did not receive any transaction corrections. She added that in February or March 2007, Horizon "went down" for nearly four days and that after reporting this to the Horizon help desk, a new processor was put in.

She described the branch also as having the occasional power surge or power cut, which meant that the branch system had to be rebooted the next morning. She added that she did not reveal the shortage to her staff as she wished to find the cause of the shortage herself. It was for this reason also that she did not contact POL.

11. Although not directly referable to the period covered by the indictment, records which are incomplete indicate that on at least four occasions calls were made to POL reporting discrepancies in balances. These included a call in July 2001, when Ms Coultas reported a loss of over £400, for which she could not account; and a call in February 2003, in which she said that the branch was short at balancing and that she was putting in cash to make good the loss. The log in relation to one of those calls records that Ms Coultas was advised that if she had checked her cash, stamps, remittances, transfers and all her weekly reports, and these were correct, then "there is nothing more Horizon can do for her".

12. Ms Coultas was initially charged with theft. She pleaded not guilty to that charge when she appeared before a magistrates' court and was committed for trial to the Crown Court. It appears that by the time of her first appearance in the Crown Court on 25th January 2008 she had served two Defence Statements. Neither is now available. However, according to a memorandum concerning the hearing, the POL investigator told prosecution counsel that losses were still occurring at the branch after Ms Coultas had been suspended. As we understand it, that was a point which had by then specifically been raised on Ms Coultas' behalf.

13. The point was indeed correct. In preparing its response to Ms Coultas' present applications, POL has found a letter dated 5th May 2008 from Ms Coultas' replacement as SPM, a Mrs Eastman, in which Mrs Eastman referred to writing "again" due to losses totalling £3,700 that she had been experiencing between 5th July 2007 and 11th August 2007.

She described the losses as "continuing almost daily" and referred to having reported them to the helpline. The letter went on to state that she had told Mr Whittaker (the POL investigator responsible for Ms Coultas' case), Mr Utting (the contracts manager), and Ms Kuchal (the branch development manager) about the issues and asked for assistance in establishing the cause of the losses. Mrs Eastman stated her belief that the losses must be due to the computer and asked for the losses to be investigated. In addition, it appears that on 14 occasions Mrs Eastman made calls in relation to balancing or accounting issues. In one such call she raised concerns about discrepancies and asked for the system to be checked.

14. The memorandum to which we have referred concerning the hearing on 25th January 2008 included the following:

"Counsel tells me that the officer informed him that the computer was checked and was working properly. What evidence is there to support this? Could this be produced, whether by statement from the person who conducted the check or otherwise? Any documentary evidence should be produced. Again, with regards to the computer, I understand that this has been removed from the office. Could this be confirmed? Also, has the computer now been located? If so, it will need to be examined and a report made."

15. There is no documentation in the papers now available that indicates whether the computer was checked or examined. Nor is there anything to indicate that POL requested ARQ data.

16. At a pre-trial review hearing on 25th February 2008, the indictment was amended. Ms Coultas pleaded guilty to three counts of false accounting. She did so, as her recent witness statement makes clear, in ignorance of the fact that bugs in the Horizon system could cause unexplained shortfalls.

17. POL accepts that this is a case in which the reliability of Horizon was essential to Ms Coultas' prosecution and conviction. There is no evidence independent of Horizon to establish actual shortfalls in the accounts. Ms Coultas, who had served as an SPM since 1995, denied ever having taken any money. She maintained throughout that she did not know the cause of the shortfall, thereby impliedly querying whether there was a shortfall at all. Moreover, at the time of Ms Coultas' prosecution, POL was aware that Mrs Eastman was also reporting unexplained losses at the branch, which she was blaming on the computer system. Despite those facts, it does not appear that POL obtained any evidence to prove the shortfall, other than reliance on the Horizon printouts, which had been obtained at the audit.

18. It follows that the evidence to prove the existence of a shortfall was wholly dependent on Horizon reliability. As to Horizon reliability, there was, as Miss O'Raghallaigh submits, a stark failure of disclosure.

19. In these circumstances, POL accepts that the prosecution of Ms Coultas was unfair and an affront to justice. POL is right to do so.

20. In our judgment, notwithstanding her guilty pleas, Ms Coultas' convictions are unsafe.

Victor Ingham

21. On 12th December 2005, in the Crown Court at Caernarfon before His Honour Judge Daniel, Mr Ingham pleaded guilty to theft from POL between April 2003 and April 2005 of £47,000 (count 1); theft between April and May 2005 of a further £3,000 (count 2); and three offences of false accounting on dates in 2003 and 2005 (counts 3, 4 and 5).

22. On 16th January 2006 he was sentenced to concurrent terms of 15 months' imprisonment on counts 1 and 2, and concurrent terms of nine months' imprisonment on each of counts 3, 4

and 4 – a total of 15 months' imprisonment.

23. Mr Ingham was the SPM at Cemaes Bay Post Office, a position he had held for almost 25 years by the time of an audit in May 2005. He told the auditors at the outset that they would find a shortfall of around £65,000. He said that he had been having large losses every week for the last two and a half years. He had initially made good the shortages in cash and by using cash advances from a succession of credit cards, and thereafter he had been increasing the cash in hand figure in order to conceal the losses. The audit identified a total shortfall of £66,948.36, of which £64,627.59 was cash that had been overstated.

24. When interviewed under caution two weeks later, Mr Ingham said that he did not have an explanation for the shortfall and was baffled by the figures which were shown to him. He said that he had been losing about £1,000 to £1,500 each week and that the shortfall had built up to the level found at audit. He was asked if he had informed anyone about the losses, to which he replied that he "informed people at the beginning of the Horizon programme", but that "nothing could be found". We note in this respect that in his recent witness statement, Mr Ingham has explained that he "used to contact the helpline. They sent engineers out and they did things with the boxes underneath the system". We also note from the statement that Mr Ingham spoke to his area manager, but did not feel that he received any help from anyone. He states that he was more or less left to believe that he was the only one in this situation. Mr Ingham went on to say that he had not informed anybody that he continued to experience losses over the last two and a half years. He explained that he did not suppose that anybody wants to admit that they have made a mistake. He accepted that he had falsified the figures to hide the shortage, knowing that it was wrong to do so, but denied that he had stolen any of the money. He said that he did not suspect anyone else of having done so. He again referred to his initially making good the losses, which he thought he had done for about 18 months, before resorting to inflating the cash in hand figures.

25. In his recent statement, he indicates that overall he thinks he paid around £20,000 to cover shortfalls in the initial period, and he is still paying off the credit card advances which he used.

26. In June 2005, Mr Ingham made good the shortfall by paying £64,670.36 to POL, having borrowed from a relative in order to do so.

27. In July 2005, Mr Ingham was summonsed to appear before a Magistrates' Court. His case was committed to the Crown Court and on 12th December 2005 he entered his guilty pleas and was sentenced.

28. Investigations by POL in relation to these proceedings have revealed logs of a number of calls which appear to corroborate Mr Ingham's account in interview and in his recent witness statement that he had raised problems with losses at the beginning of the Horizon programme. These include a log on 17th October 2000, recording that he wanted to know why he had several discrepancies; a log on 5th December 2000, reporting a discrepancy in relation to cheques; a log on 3rd January 2001, reporting a loss of £547; a log on 8th January 2001, recording that he had "rolled over with a loss and has put the money in and now wants to know how to make the balance snapshot show zero"; and a log on 18th January 2001, reporting a shortfall of about £1,060.

29. Subsequent to Mr Ingham's conviction and sentence, his replacement as SPM, a Mr Medhurst, was also investigated. Mr Medhurst contacted his contract manager to raise the fact that he was experiencing unexplained losses. That led to an audit on 23rd March 2006, in which a shortfall in excess of £4,000 was identified. When interviewed, Mr Medhurst said that he had been experiencing unexplained losses of £40 or £50 each night. He initially

made good those losses with his own money, but later falsified the figures. He indicated that he was an experienced SPM and had never suffered such losses at any other branch.

30. Although those continuing problems were not known to the prosecution at the time of Mr Ingham's conviction and sentence, they became known to POL not long afterwards. Mr Baker KC fairly acknowledges a prosecutor's continuing duty of disclosure post conviction. There is no evidence that any disclosure of these continuing problems, echoing those which Mr Ingham had asserted, was ever made – again, as Miss O'Raghallaigh says, a stark failure of disclosure.

31. As with Ms Coultas' case, POL accepts that the reliability of Horizon was essential to Mr Ingham's prosecution and conviction. Mr Ingham had contemporaneously raised the issue of unexplained shortfalls, both with the POL auditor and with the interviewing officers. In doing so, he had indicated that those unexplained shortfalls accounted for the losses for which he was prosecuted. It is apparent also that, at least on occasion, he had raised problems with Horizon via the helpline. Further, his successor, Mr Medhurst, also reported unexplained shortfalls, so lending support to the possibility that the losses experienced in the branch may have been caused by Horizon. The evidence proving the alleged fact of shortfalls was wholly derived from Horizon. There was no independent evidence that the shortfalls were genuine; but there is nothing to suggest that ARQ data was obtained or even sought.

32. In these circumstances, POL accepts that the prosecution of Mr Ingham was unfair and an affront to justice. Again, POL is right to do so.

33. In our judgment, notwithstanding his guilty plea, Mr Ingham's convictions are unsafe.

Conclusion

34. It follows, as previously indicated, that in each of these cases we grant the necessary long extension of time, receive the fresh evidence contained in the applicants' recent statement, grant leave to appeal and allow the appeal. The convictions of Ms Coultas and Mr Ingham are accordingly quashed.

35. **MISS O'RAGHALLAIGH:** My Lord, I have an application for Ms Coultas' costs, limited to her travel expenses.

35. **LORD JUSTICE HOLROYDE:** We make an order authorising the reimbursement to Ms Coultas of her travel expenses.

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

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