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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202301249/A4

Neutral Citation: [2024] EWCA Crim 222

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 13 February 2024

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE MURRAY
THE RECORDER OF PRESTON
HIS HONOUR JUDGE ALTHAM
(Sitting as a Judge of the CACD)

REX
V
HOSSEIN TAHMASEBI

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR B KENNEDY appeared on behalf of the Appellant

J U D G M E N T

MR JUSTICE MURRAY:

1. On 30 March 2023 in the Crown Court at Birmingham before Mr Recorder Upward KC and a jury, the appellant, Hossein Tahmasebi, then aged 44, was convicted of four offences: converting criminal property (which was count 1); being concerned in the use or control of criminal property (count 2); possession of criminal property (count 3); and possession of a class A drug with intent to supply (count 4).
2. On 31 March 2023, Mr Recorder Upward KC sentenced the appellant to four years' imprisonment for the converting criminal property offence, with concurrent sentences of 18 months' imprisonment for each of the other two criminal property offences and a consecutive sentence of six years' imprisonment for the possession with intent to supply offence, for a total sentence of 10 years' imprisonment.
3. The judge ordered 228 days that the appellant spent in custody in France awaiting extradition to the United Kingdom to count towards his sentence. He also made an order for the forfeiture and destruction of the drugs and paraphernalia seized from the appellant.
4. The appellant appeals his sentence with the leave of the Full Court. The appellant is represented at this appeal by Mr Kennedy, who represented him at his trial and sentencing hearing. We are grateful for his submissions.
5. On 11 November 2015 at about 9.00 am, police officers observed a silver Toyota Yaris parked on Wisley Way, Harborne, Birmingham. The appellant was the driver and sole occupant of the vehicle.
6. A few minutes later a black Mini Cooper driven by a man named Bijor Tahiraj, who was the only occupant, drove onto the road and parked next to the appellant's car. Tahiraj got

out and walked towards the appellant's car. Both men were then seen on the footpath between the cars. The appellant handed Tahiraj a piece of paper. Tahiraj and the appellant went back to the Mini Cooper. Tahiraj reached into his car, took out a black handled bag and gave it to the appellant. The appellant put the bag into his car and drove off.

7. Approximately 10 minutes later, police officers stopped the appellant's car on Lancaster Flyover, Birmingham. The appellant provided his name to one of the officers and gave his address as 18 Fillingfir Road, Leeds. The officer saw a large bag inside the car and he could see that it contained a large amount of cash. The appellant immediately said: "It's not mine".
8. The officer arrested the appellant on suspicion of money laundering, and the appellant was taken to a police station. The bag of cash found in the car was seized, along with three mobile phones in the possession of the appellant. Also found in the car was a scrap of paper with the postcode for Wisley Way in Harborne. The cash found in the car totalled £89,920. This is the basis of count 2 on the indictment.
9. Whilst the appellant was detained on 11 November 2015, officers attended 18 Fillingfir Road to search the premises. Officers found a rucksack in an outside storage area. Inside the rucksack was a t-shirt, a pair of jeans and five grip-seal bags containing crystal meth. A further four bags of crystal meth were found in a Tesco bag. In total 1.689 kilograms of crystal meth was found, with a street value in excess of £250,000. This is the basis of count 1 on the indictment.
10. During the search of a wardrobe in the appellant's bedroom, officers found a rucksack containing £36,000 in cash. On a side table in the bedroom, officers found further cash.

The total cash seized in the flat by the officers on that occasion was £38,700. This is the basis of count 3 on the indictment.

11. During a search of the appellant's address, officers also found a money-counting machine, a shredder, 65 bank deposit slips and numerous coloured elastic bands. The appellant's mobile phone, which had been seized by police on his arrest, was examined. Over 1,000 images of bank deposits slips found in his flat were stored on the phone. These bank deposit slips evidenced cash credits sent to the appellant from unknown persons who appeared to be working on his behalf, paying significant amounts of cash into numerous bank accounts on a daily basis over the indictment period. In respect of count 1 on the indictment, the prosecution relied on 65 cash deposits ranging in size from £10 to £5,000 made to a variety of accounts, at a number of different banks in the North of England between 1 and 10 November 2015, totalling somewhat over £200,000.
12. In interview, the appellant said that he was self-employed and had a mortgage. He had sold a fish and chip shop in 2014 and sent the money back to Iran. It had been arranged that his brother would send the money back to him so that he could buy a business. He said that his brother had called him from Iran on the day before he was interviewed. His brother had told him that the money was ready, that he would give him a phone number and that he was to go to Birmingham to collect his money. He went to Birmingham, collected his money without counting it and was then arrested by the police.
13. The appellant said in interview that he had proof of the sale of the business because money from Iran has to be sent through a money exchange. The evidence at trial showed that he had sold King's Fish Bar in February 2015 for £48,500 but this was substantially less than the £89,920 seized on 11 November 2015.

14. The appellant said in interview that he had been trying to arrange for his wife and child to be brought to the United Kingdom from Iran. He said that he could not return to Iran himself. He said that he lived at 18 Fillingfir Road in Leeds and had the only key. He said he had passed Tahiraj a £5 note, as he had been instructed to do by his brother. The appellant was bailed to attend the police station on 25 February 2016.
15. Following his release on bail, on 18 February 2016 the appellant got on a ferry to Holland and did not return to the United Kingdom to answer bail as required on 25 February 2016. The appellant sold his house on 16 February 2016 below market value. On 17 February 2016 he arranged for his personal belongings to be shipped to an address in Iran.
16. Birmingham Magistrates' Court issued a warrant for the appellant's arrest on 23 March 2017. He was arrested in France on 18 March 2022. The UK sought his extradition, and he arrived back in the UK on 2 November 2022.
17. At the sentencing hearing on 31 March 2023 Mr Recorder Upward KC, who had presided over the appellant's trial, proceeded to sentence without a pre-sentence report. None was necessary then, and none is necessary now.
18. In assessing the appellant's culpability in relation to the possession with intent to supply offence, the judge was satisfied that the appellant played a significant role in the drugs operation. Although he did not say so expressly, he appears to have concluded that the offending fell into harm Category 2 and this conclusion is not challenged by the appellant. The judge found that the guideline starting point was therefore eight years' imprisonment.
19. In relation to the criminal property matters, the judge found they fell into harm Category 4. In relation to the most serious offence of converting criminal property (count 1), the judge

found that the appellant's culpability fell into Category A, and therefore the category range for sentence was three to six years' imprisonment.

20. The judge said that, having regard to totality, he would reduce the notional sentence for the intent to supply offence from the starting point to six years' imprisonment. In relation to the converting criminal property offence he would impose a consecutive sentence of four years' imprisonment, with concurrent sentences of 18 months' imprisonment for each of the other two criminal property offences. The total sentence imposed was therefore one of 10 years' imprisonment, from which the judge deducted the 228 days spent by the appellant in custody in France awaiting extradition to the United Kingdom.
21. In his written submissions in support of the grounds of appeal, as developed orally before us this morning, Mr Kennedy submitted that the judge erred in his application of the totality principle by imposing consecutive sentences for the criminal property offences after imposing six years' imprisonment for the possession with intent to supply offence. As a result the sentence was manifestly excessive.
22. In his oral submissions today, Mr Kennedy emphasised the relatively short period of the money laundering activity underlying count 1 which took place over the space of just a few days, principally between 7 and 10 November 2015, although he accepted that this amount of activity over that short period was a point that perhaps cut both ways.
23. Mr Kennedy also raised a couple of points of personal mitigation which had not formed part of the appellant's written grounds, namely, that he has school-age children in Iran and that he suffers from diabetes. He could not assure us that the information regarding the appellant's school-age children was before the judge at the sentencing hearing, but he

believed that the judge was aware that the appellant lives with diabetes.

24. In relation to these points of personal mitigation, they did not form part of the grounds on which permission was given. We have no assurance that the information in relation to the school-age children was before the judge whose sentence we are reviewing, so we say no more about that. In relation to diabetes, we have no reason to believe that his diabetes cannot be effectively managed in prison, and again we say nothing further about that point.
25. Both in his written submissions and in his oral submissions, Mr Kennedy made reference to the case of R v Cooper, Park, Fletcher [2023] EWCA Crim 945, [2024] 1 Cr App R (S) 14. Cooper was a case where this court has recently given guidance on the structure and determination of sentences where the court has to sentence for a criminal property offence together with another offence to which it is said to relate. Cooper confirms that the key task when sentencing for a criminal property offence at the same time as another offence is to identify whether the criminal property offence involves additional culpability and/or harm relative to the other offence and, if so, the extent of that additional culpability and/or harm.
26. The principal criminal property offence with which we are concerned today, reflected on count 1, involved numerous deposits that must have been the proceeds of serious drug dealing. It concerns criminal activity that involved additional planning and sophistication, extending the culpability attached to the drugs offence. It involved dealing with the proceeds of drug dealing in a way that increases the risk that confiscation proceedings will be frustrated and clearly also involved additional or different criminal property beyond the proceeds of the instant drug offence and over a different time period. In other words, this criminal property offending was quite clearly separate from the drugs offence.

27. No objection has been raised by the appellant to the individual sentences determined by the judge but simply to the judge's approach to totality. So no objection has been raised to the judge's categorisation of the principal criminal property offence as falling within Category 4A of the relevant guideline. The starting point is five years' imprisonment. There are no material aggravating features. We have already referred to the mitigating features which do not form part of the written grounds but were mentioned today by Mr Kennedy. Beyond that, there are no mitigating features apart from the appellant's lack of prior convictions in this country.
28. In relation to the drug offence, which concerned well over a kilo of class A drugs, the judge's categorisation of the appellant's role as significant was arguably generous to the appellant. The starting point for that sentence is eight years' custody. Had the judge decided to pass concurrent sentences for all the offending he would have been required to make a significant adjustment upward from that starting point to include all of the criminality of the three criminal property offences. For the two less serious criminal property offences, concurrent sentences were passed. The judge reduced the sentences that he was otherwise justified in passing on counts 1 and 4 in order to reflect totality, and then, as we have said, passed consecutive sentences on these counts, with concurrent sentences on the two lesser criminal property counts.
29. For the foregoing reasons, the total sentence reached by the judge of 10 years' imprisonment is not in our view manifestly excessive. The appeal is therefore dismissed.
30. Before we leave the case, we note that the judge failed to impose a statutory surcharge upon the appellant as he was required to do by section 42 of the Sentencing Act 2020. An order for £120 is recorded on the court log, but the judge made no order in relation to the

appellant in his sentencing remarks. Notwithstanding that such an order is mandatory, this court is precluded by section 11(3) of the Criminal Appeal Act 1978 from correcting the position and imposing the surcharge, as to do so would be to deal more severely with the appellant than he was dealt with in the court below. This is confirmed by a prior decision of this court, R v Jones [2018] EWCA Crim 2994 at [15], [2019] 1 Cr App R (S) 50 at [15]. Accordingly, we simply note this and direct that the court record below reflect the statutory surcharge that should have been imposed.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk