



Neutral Citation Number: [2024] EWCA Crim 766

Case No: 2024/00867/B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT KINGSTON-UPON-THAMES
HHJ RAJEEV SHETTY
T20217027

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2024

Before:

THE LADY CARR OF WALTON-ON-THE-HILL
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
MRS JUSTICE CUTTS
and
MR JUSTICE HILLIARD

Between:

William Sartin
- and -
Rex

Applicant

Respondent

Darren Snow (instructed by **CLP Solicitors**) for the **Applicant**
Gareth Weetman and Andrew Young (instructed by **The Crown Prosecution Service**) for
Respondent

Hearing date: 03 July 2024

Approved Judgment Transcript

This judgment was handed down ex tempore in Court 4 on 03 July 2024 and by release to the National Archives.

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The Lady Carr of Walton-on-the-Hill, LCJ:

Introduction

1. We have before us an application concerning the decision of His Honour Judge Shetty ("the Judge") sitting in the Crown Court at Kingston-upon-Thames on 12 February 2024 to continue trial without a jury because of jury tampering, pursuant to section 46 of the Criminal Justice Act 2003. The challenge to the section 46 ruling is made under section 47 of the Criminal Justice Act 2003.
2. As the grounds of appeal presently stand, there is no challenge under section 47 to the judge's finding under section 46(3) that jury tampering had taken place.
3. However, on Monday, 48 hours before today's hearing, the applicant, Mr Sartin, lodged an application to adjourn the hearing in order to allow him to explore fresh evidence from the person said to be responsible for the jury tampering. That man is presently under investigation in relation to the jury tampering allegations and in custody on other matters.
4. The application to adjourn is resisted by the respondent.

The Background

5. Mr Sartin, along with eight other co-defendants had been charged with conspiracy to evade the prohibition on the exportation of a controlled drug of Class A. Specifically, this was in relation to the exportation to Australia of a Doosan excavator containing 448 kilograms of MDMA.
6. Due to his health problems, Mr Sartin was severed from the first trial involving his co-defendants. His later trial lasted for over four weeks. On 30 January 2024 a man in the public gallery said "Love you Bill" as Mr Sartin returned to the dock from giving evidence, to which Mr Sartin replied along the lines of "Love you too". The next day, 31 January 2024, the court excluded the man from the public gallery, in response to which the man was abusive to the Judge. Later that same afternoon the jury sent a note indicating that several jurors had noticed this male earlier, staring at them and constantly texting on his telephone.
7. On 8 February 2024, after the jury had finished their second day of deliberations, and after they had left court, a juror telephoned the court to inform the jury officer that a man had been stationed in a car outside the court's main entrance. The man had seen the juror and a few others as they were leaving court and had started shouting words to the following effect: "You're in court 1, aren't you? You're in court 1. You're in court 1" repeatedly to the juror and her fellow jurors. The tone was said to be aggressive and intimidating, as if to say: "I know who you are". The man then drove off, did a U-turn and parked facing the court entrance from the other side of the road. The juror who saw this said that she was upset and shaken. Another juror had noticed the same activity.
8. Mr Sartin's trial had indeed been taking place in court 1. The man in question was the same man who had been in, and excluded from, the public gallery previously.

9. Both the prosecution and the defence agreed at the time that there had been jury tampering and that the jury should be discharged as a consequence. The Judge also agreed. The effect of these events could have been to influence the jury to vote not guilty for fear of being identified. It could also have been done to influence the jury so that they would believe Mr Sartin's evidence, and think that he had changed his evidence mid-trial because of pressure from the public gallery. It could also have led the jury to think that Mr Sartin was guilty because of the intimidation.

The Application to Adjourn

10. For Mr Sartin, Mr Snow submits that the man has indicated to Mr Sartin's solicitors that he is "prepared to assist" Mr Sartin in this application. The man is said to have provided an explanation in a police video recorded interview, which Mr Snow says that he has seen, to the effect that his behaviour was not intended to scare or to frighten the jury, nor to influence their deliberations. The man said that he did not intend to tamper with the jury. The submission is that further investigations into all of this need to be made, and an adjournment of what is identified for the first time today as a period of four weeks is sought accordingly. It is also said to be significant that the man has yet to be charged with any offence arising out of the jury tampering.
11. In summary, submits Mr Snow, the question of whether the actions of the man were or were not in fact an attempt at jury tampering arguably goes to the heart of the rationale for concluding the trial in the absence of a jury. There is potential for a new ground or new grounds of appeal. There may be a credible basis for suggesting that the finding of jury tampering was in fact wrongly made. In his oral submissions, Mr Snow emphasises the importance of the right to a jury trial and the question of inherent fairness to the applicant in all the circumstances.

Decision

12. This is, on any view, an extremely late application. Whilst it is not suggested that Mr Sartin's lawyers have been to blame, there is no explanation for the timing of the emergence of the man's comments. The man was a friend of, and known to, Mr Sartin. Further, as the respondent submits, it is a speculative application made on the basis of evidence that may or may not be forthcoming from the man, and on the basis that the man would be willing to testify orally if necessary.
13. The Judge was entitled to make the assessment of jury tampering at the time, based on the material then available to him. As was stated in *R v McManaman* [2016] EWCA Crim 3; [2016] 1 WLR 1096 at [20]:

"It must then be for the Judge to determine when to make the decision under section 46(3) balancing the need for a decision in relation to the status of the trial in the interests of all concerned together with the importance of expedition if the trial is to be continued as against the state of the evidence in relation to tampering that has so far been obtained by the police and the likelihood of additional enquiries producing further material evidence."

14. Assuming in Mr Sartin's favour that there is at least an inherent jurisdiction to admit fresh evidence on an interlocutory appeal under section 47, Mr Sartin would nevertheless require leave to amend his grounds of appeal and leave to adduce fresh evidence very significantly out of time.
15. The authorities are clear that it is not relevant to decide whether the defendant has been in any way responsible for the tampering: see *R v Mohammad (Shaid) and Others* [2024] EWCA Crim 34 at [36(vi)]; *R v McManaman* [2016] EWCA Crim 3; [2016] 1 WLR 1096 at [21] to [25]. Put simply, proof of tampering is all that the Criminal Justice Act 2003 requires. Evidence from the man that the applicant was not involved in any jury tampering would simply not be relevant.
16. Relatedly, it is difficult to see why any lack of intention on the part of the man, even if established, would materially assist (or evidence to that end be admissible). All concerned, including defence counsel, were agreed that it was necessary as a matter of fairness to all concerned to discharge the jury because jury tampering had taken place. The Judge had ample evidence before him to reach that conclusion.
17. Finally, the application for leave to appeal against the Judge's decision to proceed without a jury is a substantial application which we are fully prepared to hear today. A court day has been set aside to this end. It is also urgent. If the appeal is dismissed, the trial below should complete as soon as possible. If the appeal is allowed, again any consideration of and the hearing of any fresh trial should take place as soon as possible. That is why the time limits for lodging an appeal against a section 46 ruling are very short (five days).
18. Taking all these matters together, including the lateness of the application and its lack of clear merit, it is not in the interests of justice to grant the adjournment sought. We will proceed to hear the application in full accordingly.

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

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