Neutral Citation Number: [2025] EWCA Crim 220

Case No: 202304017 A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT BOURNEMOUTH
HHJ FULLER KC
T20220113

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 March 2025

Before:

LORD JUSTICE JEREMY BAKER
MRS JUSTICE McGOWAN
and
HER HONOUR JUDGE TRACEY LLOYD-CLARKE (RECORDER OF CARDIFF)

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Between:

LFH MOONFLEET MANOR LIMITED	**Appellant**
- and -	
REX	**Respondent**

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Mr David Whittaker KC (instructed by **Kennedys Law**) for the **Appellant**
Mr Samuel Jones (instructed by **Blake Morgan Sols**) for the **Respondent**

Hearing date: 30 January 2025

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Approved Judgment

This judgment was handed down remotely at 14.00on Tuesday 11 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

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Mrs Justice McGowan:

1. Section 45 of the Youth Justice and Criminal Evidence Act 1999 apply to these proceedings, such that no matter relating to any person concerned in the proceedings shall while she is under the age of 18 be included in any publication if it is likely to lead members of the public to identify her as a person concerned in the proceedings.

Introduction

2. On 13 July 2023, in the Crown Court at Bournemouth, LFH Moonfleet Manor Limited, ("the appellant"), was convicted by a jury, of count 2, of failing to conduct its undertaking, namely the running of Moonfleet Manor Hotel, in such a way so as to ensure, so far as was reasonably practicable, that persons not in its employment, namely guests and visitors to the hotel, were not thereby exposed to risks to their health and safety, contrary to section 3(1) and 33(1)(a) of the Health and Safety at Work etc. Act 1974 ("the 1974 Act").

3. The appellant was acquitted of count 1 of failing to make suitable arrangements for managing a project, contrary to Regulation 4(1) and (2) of the Construction (Design and Management) Regulations 2015, ("the 2015 Regulations").

4. Quadra Built Environment Consultancy Limited ("Quadra"), was convicted by the jury of an offence of failing to ensure that it planned, managed and monitored the pre-construction phase and coordinated matters relating to health and safety during the pre-construction phase to ensure that, so far as was reasonably practicable, construction work was carried out without risks to health and safety, contrary to Regulation 11(1) of the 2015 Regulations.

5. Rocare Building Services Limited ("Rocare") had previously pleaded guilty in the Magistrates' Court to an offence of failing to ensure that it planned, managed and monitored the construction phase and coordinated matters relating to health and safety during the construction phase to ensure that, so far as was reasonably practicable, construction work was carried out without risks to health and safety, contrary to Regulation 13(1) of the 2015 Regulations. The Magistrates committed Rocare to the Crown Court for sentence.

6. On 24 October 2023, the three companies appeared before the trial judge, His Honour Judge Fuller KC, who imposed the following sentences in relation to their respective convictions:

    i. Rocare – a fine of £160,000.00
    ii. Quadra – a fine of £60,000.00
    iii. The appellant – a fine of £200,000.00 together with a costs order of £143,482.04.

7. The appellant now appeals against sentence with the leave of the Single Judge.

The offences

8. The appellant owns and operates the Moonfleet Manor Hotel ("the hotel") in Weymouth. In 2018, it came to the appellant's attention that the slate roof of the hotel required replacement, as a result of which the appellant engaged Quadra as the principal designer for the necessary works, whilst Rocare was engaged as the principal contractor.

9. The works began on 25 February 2019, and thereafter, site meetings took place at which representatives from the three companies were present when health and safety issues were discussed.

10. On 10 March 2019, a scaffold clip fell from a relatively low level of the scaffolding which had been erected around the hotel so as to enable safe access to the roof.

11. On 27 March 2019, a crane lifting operation was being carried out, concerning large scaffolding beams which required to be raised up to the roof level of the hotel from an area where hotel guests had been permitted to pass. Staff had to take immediate action to re-direct guests to use a safer route.

12. On 13 June 2019, a stone slate weighing about 1.5 kilograms, fell two-storeys from the roof of the hotel and hit a 3-year-old child on the head. She, together with her younger brother and their father, were walking from the swimming pool area of the hotel, along a path situated next to the hotel, on their way back to their car.

13. The child suffered a depressed skull fracture and was hospitalised. Her treatment included being placed into an induced coma, whilst her condition was stabilised. Pieces of slate were removed from her skull, and she was assessed. The treating neurologist has recently told her parents that, apart from an increased chance of epilepsy, there were no obvious long-term implications arising from the head injury, but that they would have to wait and see.

14. Prior to the incident, the stone slates had been stacked in piles on the roof trusses across the building, pending their fixing. The only physical precaution which had been taken against their fall, was the erection of single-plank toe-boards around the edges of the scaffolding platforms. Moreover, pedestrians such as the child and her family, who wished to access the swimming pool were permitted to walk next to the scaffolding, in an area which became known as the "pinch-point", which is where the incident took place.

The sentencing hearing

15. In the course of his sentencing remarks, the trial judge stated that,

> "…..
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> *This area, the pinch point as it was called, [had] been identified from a relatively early stage by the Rocare site manager and the scaffolders who, when erecting the scaffold on this, the northeastern corner of the hotel, raised it with the site manager. The route serviced a large number of members of the public who wanted access to the swimming pool beyond. The risk to the public should, of course, [have] been identified much earlier in*

> *the design stage and well before the contractors came on site. It was not.*
>
> *When the contractors did arrive, the concerns of both the site manager and the scaffolders were brought to the hotel management's attention and the site manager's immediate superior. It was the main thoroughfare for visitors to the pool and was directly under the scaffold. It was an obvious hazard. The scaffolders and Rocare site manager raised the issue with the hotel. Over a period of time a number of requests for alternative access routes were accommodated by the provision, on two occasions, of temporary alternative routes through the hotel, but only during the erection of the scaffolding. The routes were temporary because of the hotel's expressed concerns about the inconvenience to its residents.*
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> *Thereafter, the use of the route continued. Rocare took no steps to eliminate or control the risk to members of the public being injured. That the risk was obvious was underlined by a report of a scaffold clip 'falling to the ground' close to the accident site, near the pinch point, a few weeks beforehand. It was, as the Prosecution said in closing, an accident waiting to happen.*
>
> *The scaffolding took from February to April to complete and the works to the roof several more weeks after that. Throughout the period the public used the path alongside the scaffold to get access to the pool. An alternative route should and would easily have eliminated the risk and indeed following the accident, one was set up almost immediately.*
>
> *In the absence of an alternative route, measures above the ground to catch falling objects of protect the public as they walked down the path should have been deployed. A fan, scaffold gantry or other covered walkway would have been an industry standard. In the circumstances, I am quite satisfied, as indeed the jury clearly were, that after repeated warnings the hotel were well aware of the risk at this particular part of the hotel, both during the scaffold erection and thereafter, but chose to ignore it and do nothing to eliminate it as they easily could.*
>
> …."

16. The judge went on to consider the relevant sentencing guidelines, namely those relating to organisations. He rejected the appellant's submission that its culpability was low, in that whilst there were factors which indicated low culpability, there were also factors which indicated high culpability, including the duration of the risk and the appellant's failure to heed the warnings of others, in particular in relation to the presence of pedestrians in the area of the pinch-point. In the event the judge determined that the level of the appellant's culpability was medium.

17. In so far as harm was concerned, the seriousness of the risk had been agreed to be at level A, and the judge determined that as the appellant had not kept people away from the area of the pinch-point, the likelihood of harm was high, resulting in an initial categorisation of harm within category 1.

18. The judge accepted that as the appellant had an average turnover for the previous three years of £2.3 million, the appellant was a small organisation, resulting in an appropriate starting point of fine of £160,000.00 with a category range of between £100,000.00 - £600,000.00.

19. The judge accepted there were mitigating factors, including the appellant's lack of previous convictions, and hitherto good safety record, which involved audits by third-party specialists. Moreover, there was a history of self-reporting. However, as the judge was satisfied that the offence was a significant cause of the actual harm which had taken place, he determined that there should be an upward adjustment in the category range, which resulted in a fine of £200,000.00.

20. He then considered whether the fine, based upon the appellant's turnover, was proportionate to the overall means of the appellant, and determined that it was. In doing so he rejected the submission which had been made by the appellant that because its turnover was towards the bottom of the range for the purposes of defining the size of organisation under the guidelines, a reduction in the level of fine was required.

Grounds of appeal

21. In extremely helpful written and oral submissions, Mr David Whittaker KC, who also appeared on behalf of the appellant at trial, seeks to argue two main grounds of appeal.

22. Firstly, it is submitted that the judge's categorisation of the offence under the guideline was determined upon an erroneous factual basis. In particular, it is submitted that the criticism of the appellant's attitude towards health and safety concerns which were raised by others, which became known in the trial as "pushback", was a feature of count 1. Therefore, in view of the appellant's acquittal on count 1, the judge was not entitled to rely upon this criticism when considering the level of culpability and harm in relation to count 2, which was limited to an assessment of the appellant's reaction to the two earlier incidents in March 2019.

23. Secondly, that in view of the relatively low level of the appellant's turnover, which was towards the bottom of the range for small organisations under the guideline, a further downward adjustment was required at step 3. It is submitted that the judge's failure to do so, has resulted in a disproportionately high sentence.

Discussion

24. In the course of his submissions, Mr Whittaker took us to various points in the transcript of the trial, during which the evidential basis of counts 1 and 2 were discussed between counsel and the judge, and we were also referred to the legal directions which the judge provided to the jury as to what had to be proved by the prosecution in relation to the two counts.

25. Whilst we accept that in those earlier discussions, Mr Jones, who appeared on behalf of the prosecution, stated that in relation to count 2, the jury would be entitled to consider the appellant's reaction to the two earlier incidents in March 2019, we do not accept that he limited the ambit of count 2 to those events. Indeed, it was made clear that the evidence in relation to "pushback" was relevant to both counts.

26. Moreover, we are satisfied that the evidential difference between the two counts, essentially rested upon the nature of the allegation, namely that whilst count 1 involved the appellant's alleged failure to make suitable arrangements for managing construction work at the hotel, count 2 involved the allegation that the appellant had failed to conduct its undertaking, namely the running of the hotel, in such a way as to ensure, so far as was reasonably practicable, that guests and visitors to the hotel, were not thereby exposed to risks to their health and safety.

27. In this regard, although the jury may well have considered that the appellant had made suitable arrangements for managing the construction work at the hotel, by appointing Quadra and Rocare as principal designer and contractor respectively, they were nevertheless sure that by failing to heed concerns expressed by those companies, the appellant had failed to conduct the running of the hotel in such a way as to ensure that its guests and visitors were not exposed to risks to their health and safety by allowing them to walk in the vicinity of the pinch-point *en route* to the swimming pool area, especially in the light of the dangers highlighted by the earlier events in March 2019.

28. In those circumstances, we do not consider that the judge erred in his consideration of the evidential basis for his determination of culpability and harm under the relevant sentencing guideline. In particular we are satisfied that for the reasons he provided, he was entitled to determine that there were factors which indicated high culpability, including the appellant's failure to heed the warnings of others in relation to the presence of pedestrians in the area of the pinch-point.

29. Moreover, we consider that the judge was also entitled to determine that the appellant's failure to keep visitors and guests away from this area gave rise to a high likelihood of harm, which, in accordance with the guideline, enabled the judge to make a substantial upward adjustment to the fine within the category range at step 2, subject of course to a downward adjustment to take into account the mitigation available to the appellant. Therefore, there can be no criticism of his view that at step 2, the level of fine which was justified under count 2, was one of £200,000.00.

30. Step 3 of the guidance required the judge to consider the issue of proportionality, namely the amount of the fine in the context of the means of the offender. In this regard, as the guideline itself sets out, the court should take into account, *inter alia*, its turnover. However, this does not mean that simply because the amount of the offender's turnover is at the lower end of the range for a small organisation, it is necessary to reduce the amount of the fine at stage 3. Rather, not only should the level of fine reflect the extent to which the offender fell below the required standard, but it should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence. In particular,

> *"The fine must be sufficiently substantial to have a real economic impact which will bring home to both management*

> *and shareholders the need to comply with health and safety legislation."*

31. It is apparent from the sentencing remarks that, in accordance with the guideline, the judge gave this issue careful consideration, and concluded that there was nothing which, either at step 3 or step 4, required him to reduce the amount of the fine which he considered was justified at step 2. We have considered the issue for ourselves, including the fact that whilst the appellant made an operating profit of £277,161.00 for the year ending 2021, it made an operating loss in the previous two years, and do not consider that this necessitated a downward adjustment in the level of the fine at step 3 or 4, and that the fine which the judge imposed on the appellant in this case, was proportionate.

Conclusion

32. Accordingly, the appeal against sentence is dismissed.