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IN THE COURT OF APPEAL

CRIMINAL DIVISION

Neutral Citation Number: [2020] EWCA Crim 1504

CASE NO 201903751/B5

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 29 October 2020

Before:

LORD JUSTICE HOLROYDE

MR JUSTICE PICKEN

HIS HONOUR JUDGE THOMAS QC

(Sitting as a Judge of the CACD)

REGINA

V

MOHAMMED WAQAS REHMAN

Computer Aided Transcript of Epiq Europe Ltd,
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Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)
MS B WEBSTER appeared on behalf of the Applicant.

MR J CLOSE appeared on behalf of the Crown.

J U D G M E N T

1. LORD JUSTICE HOLROYDE: On 17 May 2019, at the conclusion of a trial in the Crown Court at Preston before HHJ Knowles QC and a jury, this applicant was convicted of conspiracy to handle stolen motor vehicles. After some delay due to the applicant's ill-health, he was sentenced on 23 September 2019 to 5 years' imprisonment. After the sentencing hearing, he applied for an extension of time to bring an application for leave to appeal against conviction. These applications have been referred to the Full Court by the Registrar.
2. The applicant stood trial jointly charged with Mohammed Khan and Jason Batchelor, both of whom were also convicted of the conspiracy, and another man who was acquitted by the jury and about whom we say no more.
3. The indictment alleged a conspiracy between 26 April 2017 and 21 September 2017. The prosecution case related to 11 vehicles which had been stolen, two of which were found by the police on 20 September 2017 outside an industrial unit in Preston. They had both been stolen in August and subsequently fitted with false registration plates. Inside the unit were six more stolen vehicles, four bearing false registration plates and one in the process of being dismantled. Number plates relating to two more stolen vehicles, and paperwork relating to an eleventh, were also found inside the unit.
4. Although there were some tools inside the unit, there was none of the large equipment which would be expected in a vehicle maintenance or repair business, and no evidence of any legitimate business being carried on. In short, there was clear evidence that the unit was being used by persons engaged in the disposal or realisation of stolen motor vehicles.
5. When the police entered the unit the only person present was Khan. His phone was seized from him. Although he had taken the precaution of swallowing the SIM card as the police entered, records later showed that he had very frequently been in contact with the applicant, including at the time of the police attendance at the unit.
6. Enquiries established that the owner of the unit had leased it to the applicant. The tenancy agreement prohibited subletting.
7. The applicant was arrested and his phone seized. Stored in the phone were photographs taken inside the unit, some of which showed Khan. One of the images showed a Ford vehicle, which had been stolen on the day before the photograph was taken. The applicant had sent a number of the images to his partner saying he needed to "set up eBay". She responded: "Not getting involved with your stuff".
8. In interview under caution, the applicant denied any knowledge of or involvement with any of the stolen vehicles. He said that he had taken the lease of the unit and sublet it to Khan at a rent which resulted in a small monthly profit to him. He had nothing to do with Khan's activities and had not visited the unit. The applicant later provided the police with a copy of what purported to be a lease agreement between him and Khan, though the prosecution case was that this was a sham with a forged signature.
9. The applicant gave evidence. He maintained, as he had done in the defence statement served on his behalf, his denial of knowledge of or involvement in the conspiracy, though he did at this stage admit that he had visited the unit on two occasions. He put forward explanations for the images found on his phone and for his frequent phone contacts with Khan.
10. Neither Khan nor Batchelor appeared at the trial.

11. There was plainly evidence from which the jury could be satisfied that the applicant was a party to the conspiracy. No criticism is or could be made of the judge's directions of law, or of any other aspect of the conduct of the trial.
12. As we have indicated, no application for leave to appeal against conviction was made within the period of 28 days after the conviction, and it is accepted by Ms Webster, who appears in this Court as she did below on behalf of the applicant, that no grounds for appeal then existed. The grounds of appeal which are now advanced are all based on what is said to have been a failure of disclosure by the police.
13. A pre-sentence report was prepared for the assistance of the judge at the sentencing hearing. The author of that report referred in it to a matter which had been mentioned to her by the applicant, of which his legal representatives had previously been unaware. It thus emerged for the first time at the sentencing hearing that the police were in possession of material relating to the applicant, which it is said would have assisted the applicant's defence but was not disclosed either to the Crown Prosecution Service, to prosecuting counsel, or to the defence.
14. In addition to the submissions of Ms Webster, we have also received submissions from Mr Close, appearing in this Court as he did below for the respondent. We are very grateful to them both for the realism with which they have conducted the case and for their helpful succinct submissions. They have both confirmed, and of course we readily accept, that during the trial and the period leading up to the trial, they had no knowledge of the material which is now said to be important.
15. It is, however, submitted by Mr Close that the material did not meet the disclosure test under the Criminal Procedure and Investigations Act 1996. It did not undermine the prosecution case, nor was it capable of assisting the defence case which was put forward in interview, in the defence statement and at trial. In particular, it was inconsistent with, and indeed contradictory of, the applicant's denial of any knowledge that stolen cars were passing through the unit. Mr Close therefore submits that there was no culpable failure of disclosure.
16. Having heard and considered the submissions of counsel, we accept that submission by Mr Close. In the light of the case which the applicant put forward, but which he would now wish to abandon, the material did not meet the statutory test for disclosure.
17. It is moreover important to emphasise that the relevant matters came to the attention of Ms Webster and her solicitors because of what the applicant had told the probation officer. The applicant had chosen, at that stage, after his conviction, to mention matters relating to himself which he had not sought to rely on at any earlier stage of the proceedings.
18. In addition, in the light of the further information now available and the submissions which we have received, it has become clear that the case which the applicant wishes now to advance is based on an incorrect factual account recently given by him to his legal representatives. We do not think it necessary to go into detail. It suffices to say that we are satisfied that the case that the applicant now wishes to advance is not only contradictory of the case he presented at trial but is itself based on assertions which are factually incorrect.
19. In those circumstances, we are satisfied that the grounds of appeal are unarguable. We emphasise that that is no fault of Ms Webster or of her solicitors, who have acted perfectly properly throughout, on the basis of the instructions which they have from time

to time received from the applicant.

20. It follows from that we have said that no purpose would be served by our granting an extension of time, because an appeal against conviction has no prospect of success. For those reasons the applications are refused

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