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Neutral Citation No. [2024] EWCA Crim
IN THE COURT OF APPEAL
CRIMINAL DIVISION



Case No: 2023/01155/B1

On appeal from Southwark Crown Court
(His Honour Judge Bartle)

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 5th July 2024

B e f o r e :

LORD JUSTICE DINGEMANS

MRS JUSTICE YIP DBE

HER HONOUR JUDGE NORTON

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

ALEXANDER THOMAS WINDSOR

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Mr J Sturman KC appeared on behalf of the Applicant

J U D G M E N T
Approved

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of a renewed application for leave to appeal against conviction following refusal by the single judge.
2. The proposed ground of appeal relates to the admission of bad character evidence against the applicant in his trial for offence of evasion of duty and VAT, which were charged as two counts of conspiracy to cheat His Majesty's Revenue and Customs.
3. The trial began on 26 October 2022, nearly 12 years after the applicant's original arrest, and concluded with his conviction on 8 March 2023.
4. It was common ground between the prosecution and defence that this was a highly sophisticated fraud conducted over a substantial period of time. It was intended to, and did, cause very serious loss to the Revenue. There were over 1,000 consignments of alcohol which were smuggled into the United Kingdom from 5 December 2009 to 6 December 2010 without duty being paid, and the use of missing traders which enabled the payment of VAT to be avoided. The amount of duty evaded was some £22 million, and the total amount of VAT evaded was some £5 million – a total just short of £28 million.
5. Of the over 1,000 loads, 685 went to an entity called Eastenders Cash and Carrys; 196 went to other cash and carries; and there were other loads.
6. The applicant was tried with a co-accused, Mr Babbar, who was acquitted, and a Mr Marwaha who was convicted. It was the first of three trials which had been separated for case management reasons. Other defendants in other trials included Avtar Hare,

Mr Gill, Mr Chambers and Mr Wareham.

7. The prosecution case was that the defendants were involved in the alcohol diversion fraud (as it was termed) in 2009 and 2010. The prosecution case was that the principal organiser of the fraud was Avtar Hare, whilst the applicant was a director and shareholder of the Eastenders group of Cash and Carry's, which received much of the illicit alcohol. The amount of illicit alcohol, as against legitimate alcohol in the cash and carries was guesstimated at just over 25 per cent. There was no dispute that this was a massive and carefully organised fraud.
8. It is not necessary to set out the way in which the whole fraud was carried out. Alcohol was taken from France from bonded warehouses and either said to be headed for a similar bonded warehouse in France, or where duty had already been paid at rates in France to be transferred to another warehouse.
9. The applicant's defence in all of this was that he was duped by Avtar Hare and his older brother, Ken Hare, and that although he was a director of the Eastenders Cash and Carry's, the principal recipients of the alcohol, he knew nothing about the frauds. He was concerned only with administration, not buying and selling, and he claimed that was the responsibility of his fellow director, Ken Hare.
10. It is necessary to give a little detail of the previous conviction which was admitted into evidence. In 1997 (some 12 years before the events which are the subject of this renewed application), the applicant (who pleaded guilty), Mr Avtar Hare (who pleaded guilty), Mr Ken Hare (who was convicted after trial), and Mr Gill (who pleaded guilty) were convicted on a joint indictment of being knowingly concerned in 1995 (14 years before the events the subject of this application) in the evasion of

excise duty in relation to an outward alcohol duty diversion, for the ultimate benefit of Hare Wines, which operated Cash and Carry outlets in Leighton, Barking and Harrow. The headquarters of this group of companies was at 24 Rigg Approach in Leighton, and it was operated and controlled by the Hare brothers and other members of their families, with the assistance of Mr Gill and others.

11. The applicant operated a transport company which provided the means of transportation for the movements of alcohol which were shown on accompanying administrative documents ("AADs") to be intended for export from UK bonded warehouses to bonded warehouses on the continent, but which were in reality diverted to Hare Wines. Although the applicant did not dispute the conviction, the parties differed as to whether there were similarities to the allegations at the trial. As Mr Sturman KC, who has appeared on behalf of the applicant this morning and to whom we are grateful for his succinct and helpful submissions, fairly pointed out, the applicant's role in that conviction, which was transporting the alcohol, was very different from his role in this conviction, which is where he was operating the cash and carries which were receiving the alcohol.
12. The prosecution's case on adducing this conviction was that the previous conviction showed that the applicant had a propensity to commit offences of this type, namely cheating the Revenue, and a propensity to commit offences of cheating the Revenue with some of the defendants, and that he was not an innocent dupe.
13. Section 101 of the Criminal Justice Act 2003 provides:

"Defendant's bad character

- (1) In criminal proceedings evidence of the defendant's bad

character is admissible if, but only if —

...

- (d) it is relevant to an important matter in issue between the defendant and the prosecution,

..."

14. Section 103(1) provides:

"For the purposes of section 101(1)(d) the matters in issue between the defendant and the prosecution include —

- (a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;

..."

15. If evidence would have such an adverse effect on the fairness of proceedings, it should not be admitted. The court must have regard to the length of time between the matters to which that evidence relates and matters which form the subject matter of the offence.
16. In *R v Hanson* [2005] EWCA Crim 824; [2005] 1 WLR 3169, at [7] it was held that where a propensity to commit the offences is relied upon there are three questions to be considered: i does the conviction establish a propensity to commit offences of the kind charged? ii Does that propensity make it more likely that the defendant committed the offence charged? iii Is it unjust to rely on the conviction of the same description or category, and, in any event, will the proceedings be unfair if they are admitted?

17. In *Hanson* consideration was also given to the decision to admit bad character and its reviewability by the court. It was noted that in circumstances where a judge has directed themselves correctly, the Court of Appeal will be slow to interfere with a ruling as to admissibility and would only do so where the judgment was plainly wrong or exercised unreasonably.
18. In our judgment the trial judge was entitled to admit the applicant's previous conviction. The issue in the trial was whether the applicant was an innocent dupe of other defendants who had exploited him and his business. It might be thought clear that a previous conviction for cheating the Revenue with the same defendants, even 14 years before these offences were committed, was relevant to an important matter in issue between the prosecution and the defence, namely whether the applicant was a participant or a dupe, and the fact of the previous conviction made it more likely that he was guilty of the offence, given his defence.
19. In our judgment the judge was also entitled to conclude that, notwithstanding its age and the fact that there was a single conviction, it showed a propensity to commit offences of this type, namely cheating the Revenue, and a propensity to act when so doing with the other named defendants. The fact that there were differences in the role played did not, in our judgment, undermine the judge's directions to himself in that respect.
20. Accordingly for those reasons, and notwithstanding the skill with which the matter has been argued before us, we refuse the renewed application.

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

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