

Neutral Citation Number: [2019] EWCA Crim 1111

Case Nos: 2017 03911 B3 and 2017 03991 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT BIRMINGHAM

His Honour Judge Carr
T2015 8138/8110

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5.7.2019

Before:

LORD JUSTICE SIMON
MR JUSTICE PICKEN
and
MR JUSTICE SWIFT

Between:

Regina

Respondent

and

(1) Manoj Chauhan
(2) Terence Croft

Appellants

Lee Marklew for Manoj Chauhan
Ben Williams for the Terry Croft
Luke Blackburn for the Crown

Approved Judgment

Lord Justice Simon:

Introduction and the prosecution case

1. On 1 August 2017, in the Crown Court at Birmingham, before His Honour Judge Carr and a jury, the appellants Manoj Chauhan (count 1) and Terence Croft (count 3), were convicted of conspiracy to commit fraud by false representation. On 20 October 2017, Croft was sentenced to a 12-month Community Order, and Chauhan to a Suspended Sentence Order.
2. They appeal against those convictions with the leave of the Full Court.
3. Two co-defendants were also convicted. Dinesh Chudasama was convicted of 3 counts of conspiracy to make a false representation (Counts 1-3) and Edward Barker was convicted on the same charges.
4. The case concerned the sale of properties which were owned by Severn Trent Water ('STW').
5. The prosecution case was that Barker, who was an employee of STW, arranged for the sale of property owned by STW on the basis that it was in disrepair and could no longer command a high rent. The property was sold at an artificially low price ('the first sale') and subsequently sold-on at an open market value ('the second sale'), thus generating a fraudulent profit represented by the difference between the two sales.
6. The prosecution case was circumstantial and relied on a number of features of the arrangements: first, the significant price difference between the first and second sales; second, the speed with which the first sale was made after the property was made available for sale; third, evidence of pressure placed on agents to keep the first sale valuations low; fourth, the fact that the number of valuations was kept to a minimum, with usually only one agent providing a valuation, and minimal publicity; fifth, the buyers were often well known to Barker; sixth, on one occasion, relating to the appellant Croft, a fee was demanded which was paid in cash and was supported by a false invoice; seventh, on occasions people seemed to know who the eventual buyer would be long before the highest bid had been received; and eighth, false documents were created so as to suggest that estate agents had given valuations when in fact they had not, or that buyers had made offers which they had not.
7. The case against Chauhan was that he had purchased one of the STW properties and was involved in buying or selling others funded by Satbinder Pnaiser, a director of a company, Camberbest Ltd, working closely with the co-defendants Barker and Chudasama. Chauhan had left 3 voice mail messages on Chudasama's telephone which showed that they were working closely together. One of the 'fake' bidders gave Chauhan's address.
8. The prosecution case against Croft was that he had bought one property, Waterworks Cottage ('Waterworks'), at an undervalue and almost bought another, Stanford Reservoir Cottage ('Stanford'). Waterworks had been a very quick and quiet sale; and had been bought in the name of Croft's partner. It was contended that, in reality, Waterworks belonged to the appellant and had been purchased using his money. Waterworks had been purchased for £160,000. The prosecution case was that only a

fortnight later, its value was stated to be £400,000 despite the fact that no work had been carried out. In the event, and after some renovation work, it was sold 14 months later for £376,000. The prosecution also contended that Croft had paid £15,000 in cash in order to be in a position to buy property, with the money going to various co-defendants; and that a false invoice was given under the guise of a different piece of work for a different property. The prosecution also relied on inferences to be drawn from the presence of Croft, Barker and Chudasama at a dinner in Cheltenham paid for by Croft prior to his viewing of Stanford.

The history of the case

9. A trial had initially taken place before His Honour Judge Henderson in the Crown Court in Birmingham involving a number of other co-defendants. At the conclusion of the prosecution case, the defendants made submissions as to the form of the indictment, contending that what the prosecution alleged was not a single conspiracy but a number of conspiracies. Judge Henderson indicated that he would allow the indictment to be amended; and that there was a case to answer against Croft, Chauhan and others, but not against two other defendants, Mummery and Corbett.
10. He discharged the jury on the basis of difficulties caused by valuation evidence and issues of disclosure. The contents of Judge Henderson's ruling on 23 October 2016 in relation to Croft is material to the arguments on this appeal.
11. The second trial took place in early June before His Honour Judge Carr ('the Judge'); and on 1 July he heard submissions of no case on behalf of all defendants. On 5 July, he emailed the parties informing them that the submissions were rejected for reasons that would follow. It appears that defence counsel repeatedly asked the Judge for the promised reasons and that none were provided. On 1 August the jury returned their verdicts; and on 15 August, counsel for Croft emailed the Judge asking for the reasons, since grounds of appeal against conviction were in the process of being drafted. On 28 August, an advice and grounds of appeal were lodged; and on 6 September, the Court of Appeal Office had to ask the Judge to provide the reasons for rejecting the submission of no case, which now formed one of the grounds of appeal. The written reasons were not provided to the Court of Appeal Office until 19 September. The Judge indicated that he could not recall when he had finalised them and said that the failure to send them had been an oversight.
12. On 20 October, the Judge sentenced Croft to a 12-month community order, with an unpaid work requirement of 120 hours, and Chauhan to a 24-month sentence of imprisonment suspended for 2 years.
13. Although the appellants raised independent grounds of appeal, there was a degree of overlap, and it is convenient to group them under four headings.

The first ground of appeal

14. This ground is founded on the Judge's failure promptly to provide his reasons for dismissing the submission of no case.
15. In our view the complaint is fully justified. It is perfectly acceptable for a judge to give a decision and reserve reasons; but those reasons should be provided as soon as

possible. Although Mr Williams relied on the decision of the ECtHR in *Bilani v. Spain* 1994 19 EHRR 566, we doubt whether any authority is needed for the proposition that decisions of the court must be supported by reasons. However, it is important to note, as the ECtHR recognised, that the extent of the duty varies ‘according to the nature of the decision.’ In *Flannery and anor v. Halifax Estate Agencies Ltd* [2000] 1 WLR 377, the Court of Appeal (Civil Division), in the context of a judge preferring one expert over another, made clear that he had to explain why he did so. Again, the scope of the duty was said to depend on the circumstances and the subject matter of the case. There are similar statements of this principle, which is rooted in the common law, in other cases.

16. Where the conduct of the defence may depend on the nature and quality of the reasons for dismissing a submission of no case, it is crucial that a judge should give his or her reasons at a time that will enable the defence to make informed decisions as to the conduct of the defence. In *Kiziltan* [2017] EWCA Crim 1461 this Court expressed the point at [24] by reference to the admission of hearsay evidence:

It is often convenient and less disruptive of the evidence for a decision as to admissibility of evidence or some other point of law to be given immediately after argument with a detailed ruling later in the trial. This is good practice. However, where a judge permits hearsay evidence to be adduced the detailed ruling should be given before speeches so that counsel may tailor their speeches to the ruling and, where appropriate, make submissions in respect of the content of the proposed hearsay direction in light of the ruling.

17. Although Mr Williams argued that the delay in the present case caused difficulties to the defence, in view of the way in which the case proceeded, we are not persuaded that this was so. Croft’s defence were in no doubt as to the case that had to be met. It had been set out fully in the prosecution written response to the submission of no case. We note that, when it came to the closing stages of the trial, there was no suggestion on the part of the defence that the case then advanced by the prosecution, and reflected in the summing-up, was different to the case advanced throughout the retrial.

The second ground of appeal

18. This contains within it two matters of complaint: first, that the delayed reasons were, in any event, inadequate; and secondly, that there was, contrary to the Judge’s conclusion, in fact no case for the appellants to answer.
19. The Judge’s reasons were as follows (with added lettering for ease of reference):

[a] Submissions of ‘no case’ were made on behalf of all defendants. [b] When those submissions were made to HHJ Henderson at the last trial, he rejected them. So do I. [c] The prosecution have set out the evidence as it relates to each of the defendants in their skeletons dates 26 and 27 June, 2017. [d] I repeat the well-known passage from *R v. Galbraith*: ‘where however the prosecution evidence is such that it’s strength or

weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.' [e] That, for the reasons set out in the prosecution's skeletons, is the situation here.

20. In our view these reasons were scarcely sufficient: [a] and [b] simply set out the forensic background to the application (we will return later in this judgment to an argument for Croft based on Judge Henderson's ruling); [d] indicated no more than that the Judge was applying what is commonly referred to as the second limb of *R v. Galbraith* [1981] 1 WLR 1039; and [c] and [e] simply referred to written prosecution skeletons.
21. There can be no all-embracing rule as to what is required by way of reasoning: it will depend on the circumstances. The recitation of the well-known test in *Galbraith* fixes attention to what is properly within the province of the jury; but that can only be a start. A ruling adverse to the prosecution either as a matter of law or on an evidentiary basis will require properly developed reasons. In decisions adverse to the defence there will be cases where it may be sufficient for a judge to accept and briefly summarise some or all of the prosecution's written or oral submissions which demonstrate a case to answer. Substantive reasons can often be brief and sometimes very brief. Much will depend on the particular circumstances of a submission; and much must be left to the good sense and judgement of judges and recorders.
22. In the present case, there was nothing wrong in principle in referring to and adopting the previous reasoned decision of Judge Henderson; but that approach did not address the appellants' point that Judge Henderson's decision either explicitly or implicitly supported their argument that there was no case to answer.
23. We should add that on an appeal against conviction this court will usually focus on whether there was in fact a case to answer and whether a conviction is safe, rather than on an analysis of the sufficiency of stated reasons.
24. It is on this basis that we turn to consider whether there was in fact a case to answer against the appellants at the conclusion of the prosecution case.

Chauhan

25. Mr Marklew submitted that his client was simply a middleman and that all the bids were made on behalf of, and all the funds were provided by, his employer, Pnaiser or his company. His client had accepted that he had behaved in an underhand way in creating a false market by his actions, but had claimed that he was not dishonest.
26. As noted above, the case against Chauhan (count 1) was that he bought one of the 12 properties from STW and gave Pnaiser what looked like a profit. The first sale was supported by a false marketing email and the second sale, slightly over a month later, was for significantly more than the purchase price. It was open to the jury to conclude that his role in buying on behalf of Pnaiser as a front could only have been to deceive people into thinking that Pnaiser or his company were not buying as many properties

as in fact they were. It was also open to the jury to conclude that he must have known about the use of other fronts in relation to other properties because of his central role in buying and reselling the properties. In relation to two properties, he made successful offers in his own name, but then gave way to Pnaiser after the purchase was agreed. In relation to three other properties he made supporting offers where the successful bid was made by Pnaiser. Each of these sales was supported either by fake bids or valuations from estate agents that were forged. The jury was entitled to conclude that this was another form of fronting and that his conduct was deceitful.

27. In short, the prosecution evidence was such that, on one view of the facts, there was evidence on which the jury could properly come to the conclusion that the defendant was knowingly participating in a conspiracy in which a number of properties were purchased at under-values from STW within a narrow time-frame and re-sold quickly for substantial profit. In our view, there was very plainly a case for him to answer. As Judge Henderson had put it in his earlier ruling, he was the middleman in a number of tainted sales.

Croft

28. The case against Croft (count 3) was different. The prosecution evidence was that he had bought Waterworks within a narrow timeframe with the only competing bids coming from people who had not seen it. There was evidence that it had been resold at a considerable profit, although there was other evidence which suggested that this was not so. The prosecution case was that the purchase occurred in a false market, in that Barker had used forged estate agents' valuations, a suppressed valuation and a forged email. In addition, there was evidence that the property had never been openly marketed. The prosecution also relied on the deposit of £2,000 in Barker's account in June 2010, in respect of which prosecution invited the inference could be drawn that it had come from cash given by Croft to Chudasama and another man.
29. During his police interview Croft had accepted that Chudasama and Barker were involved in the sale of Waterworks and Stanford, were both present at the Cheltenham dinner, for which he paid, and were also present when he viewed Stanford. He admitted to being 'uncomfortable' about paying a fee of £15,000 in cash, which he understood placed him at 'towards the top of the list' of those who could buy STW properties. He knew that this was 'an exclusive list' which meant that his offer would be 'very favourably looked at'. He had been told, 'either you pay this fee of £15,000 and get this property and get on the list or you don't ...' He did not like paying fees in cash. The invoice for the £15,000 fee paid in respect of Waterworks was false.
30. These are all matters which, in our view, and despite the deficiencies in the ruling, show that there was a case to answer against Croft. We accept that, like Chauhan, there were points to be made in answer to the prosecution case that were fully argued before us. We note that, although he did not acquire the property, he was involved in the sale of Stanford which the jury would have been entitled to find was marketed in a false market which he had 'bought into.' Accordingly, the second ground fails.

Ground 3

31. This is a complaint by both appellants that there were deficiencies in the summing-up.

32. On a charge of statutory conspiracy the prosecution must prove: (1) an agreement between at least two persons; (2) that a course of conduct will be pursued; (3) the course of conduct will necessarily amount to the commission of an offence if carried out with the participants' intentions; (4) the participants intended to agree; (5) they intended that the agreement be carried out; and (6) they had an intention or knowledge as to the circumstances forming part of the substantive offence.
33. As we have already noted, Croft and Chauhan were the subject of different charges and different conspiracies: count 1 in the case of Chauhan and count 3 in the case of Croft.
34. The legal directions were the subject of discussion before the Judge began the summing-up; and no issue was taken on the form of the written and the nature of the oral directions in relation to the conspiracy charge in the following terms:

A conspiracy is an agreement. An agreement to commit a crime is itself a criminal offence.

As against the defendant whose case you are considering the prosecution must prove:

- (a) (counts 1 and 2) that there was an agreement between the particular defendant whose case you are considering and at least one other person (whether named as defendant or not);
- (b) (count 3) between the particular defendant whose case you are considering and with at least one other person (whether named as a defendant or not) ... and that
- (c) the agreement was to commit fraud by representation as alleged, and that
- (d) the defendant whose case you are considering joined that agreement; and that
- (e) when the defendant whose case you are considering joined that agreement he intended that the agreement should be carried out.

Different people may join an agreement at different times. If the defendant whose case you are considering joined in the particular conspiracy you are considering at any stage (and for whatever period) and intended that the agreement should be carried out, then he is guilty of conspiracy.

Different people may be involved in an agreement on different levels, and play different roles in putting it into effect. They need not know every other conspirator, or know every detail. If a person joins in an agreement, at whatever level and whatever role he plays (or agrees to play), intending that the agreement should be carried out, then he is guilty of conspiracy.

NOTE: In relation to each count, and each defendant named in the count that you are considering you will need to ask yourselves:

1. are we sure that the conspiracy alleged existed?
 2. was the defendant whose case we are considering a party to that conspiracy?
35. The Judge also directed the jury that in relation to the agreement to commit fraud by representation the prosecution had to show in relation to each count that: (a) a false representation would be made to STW, (b) it would be made dishonestly and (c) it was intended either to make a gain for himself or another, or cause a loss to another. The Judge went on to direct the jury as to the required elements of ‘a false representation’ and ‘dishonesty’. No issue is taken as to content of the legal directions.
36. The direction was not a direction founded on the earlier ruling of Judge Henderson. This was because the prosecution case on the particular conspiracies was now materially different; and it follows that Judge Henderson’s earlier ruling on no case was not a sound basis for the later ruling.

Chauhan

37. Part of the Judge’s summing up of Chauhan’s evidence was as follows:
- He said that he accepted acting in a dishonest way by putting in bids for others, but at the time he did not think it was criminal. He thought, and here is the word he used previously, he thought it was a bit ‘underhand’. He agreed that Pnaisers appeared to be successful every time they bid and he was never asked to increase an offer made on Pnaisers’ behalf which surprised him.
38. Mr Marklew submitted that the Judge should have told the jury that, even if they were sure that his client had been acting dishonestly, they should acquit him unless they were sure that the representation in count 1 would be made to Barker. This was a point made to the Judge, whose response was that his directions had covered the point.
39. Having considered the totality of the summing-up, we agree. We are satisfied that the jury would have had the point now made by Mr Marklew well in mind, and that there is no merit in this ground of appeal as far as Chauhan is concerned.

Croft

40. In his written ruling of 23 October 2016, Judge Henderson had ruled that there was a case for Croft to answer. He focused on the Waterworks sale. The evidence of overt commissions were not unusual features of land deals. He continued:
- One possibility is that this was dishonest, not in the way alleged, but that Edward Barker was taking a backhander to

give Mr Croft the ‘preferred bidder’ status the latter spoke of in his interviews. Were that the case, without a dishonest undervalue first sale, Mr Croft and the group would be not guilty of the charge since it’s very different from what the prosecution allege. Of course, were it the case that both aspects were present [corrupt and a dishonest undervalue sale] he would be guilty.

So the question here is: is there evidence on which a reasonable jury could be sure that this is a transaction of the kind alleged?

In my judgment the circumstances; in particular the speed of the first sale; the rejection by Mr Barker of much higher valuations; the significant profit [even over a significant period, even allowing for significant work] are material on which a reasonable jury could be sure this was fraudulent in the way alleged and involved Mr Croft as a knowing participant.
(Underlining in original)

41. Mr Williams submitted, first, that Judge Henderson had identified the dishonest undervalue of Waterworks as an element which the prosecution had to prove; second, that the prosecution evidence failed to show that there was an undervalue of Waterworks; and third, that the Judge failed to sum up adequately on this point.
42. So far as the first point is concerned, the charge was of an inchoate offence. As such, it was not essential to the prosecution case that a particular property was bought as part of the conspiracy, or, if bought, that it was purchased at an undervalue. It was the agreement and the intent that was important, rather than the result. Judge Henderson was no doubt correct that the proof that it was a purchase at an undervalue could amount to evidence that there was the conspiracy alleged by the prosecution; but we accept Mr Blackburn’s submission that such proof was not a necessary part of the prosecution case, which was that there was a conspiracy rather than that the conspiracy was actually put into effect.
43. As to the second point, Mr Williams identified prosecution evidence in which witnesses accepted that Waterworks had been acquired at a realistic market price; but the evidence called by the prosecution was not all one way. There was evidence from those qualified to give it, which, if the jury accepted it, indicated that it was purchased at an undervalue despite its poor condition.
44. We have considered the summing-up in relation to the third point. In our view, there was no error in summing-up. The defence valuation evidence was summarised at pp.66G-67E and was the last part of the summing-up which the jury heard. Doubtless, the defence would have preferred a repetition of points made in relation to the valuation of Waterworks, but the Judge accurately summed-up the evidence (including, importantly, Croft’s evidence) and he was not bound to repeat points which were doubtless forcefully made by leading trial counsel as to valuation. We are not persuaded, in the circumstances, that there was any material misdirection.

Ground 4

45. This ground is based on what is said to give rise to doubts as to the safety of Croft's conviction. Mr Williams argued that this court should come to the inexorable conclusion that the conviction was unsafe. He referred to *R v. Cooper* [1969] 1 QB 267 at 271 and *R v. Pope* [2013] 1 Cr App R 214, and submitted that this was a case in which the court should entertain a lurking doubt as to whether an injustice was done, and conclude that the conviction was unsafe.
46. Among the points made was that, when it came to sentence, the Judge proceeded on the basis that Waterworks had not been bought at below its market value. It is clear that the Judge found it difficult to assess the harm to STW from Croft's involvement in the count 3 conspiracy. He took into account defence evidence that the first sale was not at an undervalue and concluded that there was 'no, or hardly any, quantifiable loss.' It was on this basis that he sentenced Croft to a community order.
47. We do not accept that the verdict is unsafe in this case. The basis of sentence reflected the Judge's difficulty in placing a financial value on the harm caused in the Waterworks transaction; but that does not put in doubt the safety of the conviction.

Conclusion

48. For these reasons, the appeals of both appellants are dismissed.