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No: 201901551/B2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday 10 March 2020

B e f o r e:

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
LORD JUSTICE FULFORD

MRS JUSTICE McGOWAN DBE

MR JUSTICE SWIFT

R E G I N A

v

WINIFRED NYONYINTONO

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Mr E Anyene appeared on behalf of the **Applicant**

J U D G M E N T

1. **THE VICE PRESIDENT:** On 29 March 2019 in the Crown Court at Woolwich, before Judge Evans QC and a jury, the applicant, who is now aged 33, was convicted of aiding and abetting the offence of fraud by false representation, contrary to section 1 of the Fraud Act 2006. On 14 November 2019 she was sentenced to a 12-month community order. She had various co-accused whose position we have summarised later in this judgment.
2. Before this court the applicant renews her application for leave to appeal against her conviction following refusal by the single judge.
3. The case concerned a fraud committed against the Royal Borough of Greenwich which was alleged to have taken place between April 2008 and May 2017. In 2004, the applicant's grandmother, Miss Miriam Nalweyiso, then aged 70, was diagnosed with Parkinson's disease. By 2008 she had also developed severe arthritis and her medical conditions meant that she had difficulty walking and using her arms. At the time of the fraud, Miss Nalweyiso was living with her son (the applicant's uncle) Mr Stephen Ssemanda in Great Harry Drive in the Royal Borough of Greenwich.
4. The council operated a system called the "direct care payment scheme". This ensured that a carer was paid to visit a disabled resident in his or her home and to provide a specified number of hours of care each day. This allowed the principal carer, usually a family member, to have some time for themselves. The principal carer would be responsible for finding and employing the part-time carer and the council would pay that individual directly. One of the rules of the scheme was that the council could not pay money to any close family member who was living in the same house as the disabled person. Miss Nalweyiso was assessed as requiring 14 hours of care each week and the Royal Borough of Greenwich undertook to fund that level of care. In April 2010 the number of hours required was increased to eighteen-and-a-half hours per week.
5. It was alleged that the applicant was the first carer employed by Mr Ssemanda. As she did not live in the same house as her grandmother, she was eligible to be paid if she genuinely worked as a carer. The relevant "Worker's Bank Account Details" form was completed so that the applicant could be paid by the local authority.
6. Between 28 April 2008 and 8 July 2012, Mr Ssemanda told the council that the applicant had been acting as his mother's carer and he provided time sheets which were signed by both himself and the applicant. It subsequently transpired that many of the time sheets claimed for care on dates when Miss Nalweyiso was living in Uganda. The applicant maintained she had been Miss Nalweyiso's carer for a period of approximately four years and two months. During that time the council paid her over £25,000.
7. The prosecution case, therefore, was that the applicant had assisted Mr Ssemanda to defraud the Royal Borough of Greenwich. She had provided her bank account details to Mr Ssemanda so that he could pass these on to the council. The applicant was paid by the local authority for care she had not been providing and she passed most, if not all of

the money to Mr Ssemanda.

8. The evidence against the applicant was multi-faceted. First, the prosecution relied on the guilty pleas of Mr Ssemanda which established a fraud had been committed against the Royal Borough of Greenwich. Second, evidence was introduced as to the operation of the direct payment scheme, along with time sheets submitted to the Royal Borough in support of the applicant's suggested work as a carer. Third, the jury heard of the assessment of Miss Nalweyiso and the level of care that she required. Fourth, there was evidence as to periods when Miss Nalweyiso was out of the country and in consequence would not have been receiving any assistance. This meant that the applicant was aware that one or more false time sheets were being submitted. Fifth, the applicant's employment history and attendance at university was introduced to rebut the suggestion that she was working as a carer on a daily basis as claimed in some of the time sheets. Sixth, spread sheets were exhibited to show the money being paid from the Royal Borough into the applicant's bank account and thereafter being transferred on to Mr Ssemanda. Seventh, the prosecution relied on the applicant's failure when questioned to mention that she had travelled to Uganda to care for her grandmother in November 2009, as she claimed, along with her failure to mention that she purportedly provided care over and above the allocated hours which explained why claims were made at times when Miss Nalweyiso was out of the country. These were referred to during the trial as "banked hours".
9. The case against the applicant therefore was that she had knowingly assisted Mr Ssemanda in defrauding the Royal Borough of Greenwich. In this regard the jury needed to consider whether the applicant worked as a paid carer, whether she had worked the number of hours claimed and whether she believed she was entitled to claim the hours that she did. Depending on the answers to those questions, the core issue in the case was whether the applicant knew that Mr Ssemanda was committing fraud and, if so, whether she knowingly assisted him in this criminality.
10. The applicant, who was of good character, maintained at trial that she had provided care for her grandmother whilst maintaining her university studies and her employment. Her case was that she had provided care over and above the hours for which she was paid. It was highlighted on her behalf that none of the time sheets relied upon by the prosecution contained her signature. She maintained that she had challenged her uncle when he completed time sheets for a period whilst her grandmother was away, but he told her that this was to cover banked hours. She said that she trusted Mr Ssemanda and had not appreciated he was acting dishonestly. She had not mentioned in her interview that she had been to Uganda or that she had claimed banked hours because she had not been asked any questions that would have elicited these answers.
11. The applicant submitted at the close of the prosecution case that there was no case to answer. The judge ruled, bearing in mind the case against her (which we have summarised above), that there was ample evidence that prima facie established her guilty. We will return to aspects of the applicant's submissions in this regard when considering the separate grounds of appeal.

12. In light of the arguments raised as part of the renewed application, it is necessary to say something about the position of the applicant's co-accused. Brian Wangira was alleged to have known throughout that a fraud was being committed by his uncle, given he lived at the address in Great Harry Drive in 2008 and would have known whether or not the applicant was working as Miss Nalweyiso's carer. It was also alleged that he had given Mr Ssemanda access to his Barclays Bank account in September 2009, so that he could use the account, as was alleged, in connection with the fraud. His case was that he did not know what Mr Ssemanda was acting dishonestly and was lying to the council. Further, since he did not need to use the bank account, he decided to allow Mr Ssemanda access to it as he trusted him. He was acquitted on all the counts he faced which were two counts of aiding and abetting fraud and two counts of concealing criminal property.
13. Mary Namateefu was alleged to have provided her bank details to Mr Ssemanda and to have falsely claimed to have been caring for Miss Nalweyiso between 17 February 2013 and 20 July 2014. No evidence was offered against her, given a finding that she was unfit to plead.
14. Agnes Nakuya was alleged to have provided her bank details to Mr Ssemanda and falsely claimed to have been caring for Miss Nalweyiso between 17 August 2014 and 16 September 2015. During that period, she was paid over £7,000 by the local authority. The defence accepted that Miss Nakuya had never worked as Miss Nalweyiso's carer. Her case was she had intended to provide care but when she discovered that only 18 hours of work were available she turned down the position. As she had already provided her bank details to Mr Ssemanda, the payments from Greenwich were made to her. She gave the money to Mr Ssemanda who told her that it would be passed to the carer who had been employed in her place and she said that she believed him. She was acquitted of the fraud.
15. Ester Nakate was alleged to have provided her bank details to Mr Ssemanda and to have falsely claimed to have been caring for Miss Nalweyiso between 16 September 2015 and 26 May 2017. During that period, she was paid over £13,000 by the local authority. The defence case was that she was working as a carer for Miss Nalweyiso but she had not properly read the time sheets before sign them, as she trusted Mr Ssemanda. She also was acquitted of fraud.
16. The submissions in support of this renewed application by Mr Anyene can be summarised as follows. First, it is suggested that the jury should have been directed as to dishonesty in the accordance with Ivey v Genting Casinos [2017] UKSC 67, [2018] AC 391 at paragraph 74. It is argued that the judge's directions undermined the jury's proper assessment of whether the applicant acted dishonestly and made her conviction inevitable. It is suggested that by giving bespoke directions for the applicant, which differed from the directions for her co-accused, the judge unfairly and improperly focused attention on her case. In this regard it is highlighted that she was the only one of the three women retained by Mr Ssemanda to obtain funds from the local authorities, who the prosecution accepted provided some degree of care with or without payment, and she

alone was convicted. Additionally, it is argued that any defendant who had provided some degree of care was entitled to be acquitted by the judge on his direction or by the jury.

17. In oral submissions it has been emphasised by Mr Anyene that the applicant, to a significant extent, was dependent on her uncle who was the principal in this offending. It is highlighted that notwithstanding that relationship, the applicant challenged Mr Ssemanda as to the legitimacy of one of the time sheets. Mr Anyene submits that the nature of the relationship between these two individuals is relevant when the court is considering the adequacy of the directions the judge gave to the jury on dishonesty.
18. Mr Anyene has taken us to various parts of the summing-up and the Legal Directions document in support of his underlying submission that the judge did not at all stages fairly describe the applicant's defence or direct the jury entirely accurately as to the ingredients of dishonesty. It is submitted that the directions the judge gave would, as we have already set out, have resulted in the applicant's inevitable conviction.
19. Against that background we turn to the judge's directions to the jury. These were set out extensively in writing and were in due course incorporated into the summing-up. As relevant, they were as follows:
 - i. "So, the indictment. I do not ask you to turn it up. What do the prosecution have to make you sure of? Well, let us have a look at count 1; fraud by false representation. The prosecution has to make you sure that Stephen Ssemanda on diverse days between the 28th of April 2008 and the 8th of July 2012, dishonestly made a false representation and did so with the intent to make a gain for himself or another, or to cause loss to another, made a series of representations to the Royal Borough of Greenwich which were and which he knew were or might be untrue or misleading, namely, that when Winifred Nyonyintono had acted as a carer for Miriam Nalwayza[?] and that Winifred Nyonyintono between the 28th of April 2008 and the 8th of July 2012 did aid and abet Stephen Ssemanda to commit the said offence.
 - ii. In relation to Brian Wangira, that between the 1st of January 2009 and 8th of July 2012, he did aid and abet Stephen Ssemanda to commit the said offence. The Crown does not have to prove that Winifred Nyonyintono and Brian Wangira acted together. They do not have to prove that they knew that the other was involved in assisting Ssemanda with a fraud. You have to consider the case for and against each defendant separately.
 - iii. In this case, the Crown say that the defendants aided and abetted Ssemanda by assisting him in the fraud, so when considering each of the cases in relation to count 1, the prosecution, therefore, has to

make you sure of the following matters; (1) that Stephen Ssemanda dishonestly made a false representation or false representations to the Royal Borough of Greenwich and that he did so in order to make a gain for himself or another and (2) that the defendant you are considering knew that Ssemanda was acting dishonestly and lying to the Royal Borough of Greenwich in order to obtain payments from the council and (3) that the defendant you are considering in some way assisted Ssemanda to obtain money from the council and (4) that the defendant you are considering intended that his or her actions would help him so to do, so those are the four things that they have to prove.

- iv. The Crown says that in relation to count 1, you can be sure that Stephen Ssemanda has committed a fraud as he has pleaded guilty to it. The Crown Court's case in relation to Winifred Nyonyintono is that she was not working as a paid carer and that time sheets were false. They say she knew that the time sheets were false and that she knew that Ssemanda was claiming hours on the time sheets that she had not worked as on many of the time sheets, the hours claimed were whilst Miriam was out of the country.
- v. They say that on her own admission, she was aware that he was claiming for hours when Miriam was out of the country and that she knew he was acting dishonestly. They say that the fraud could not have been committed without her assistance as Ssemanda needed her details and her bank account in order for the fraud to be completed and they say that, in fact, in relation to every defendant at the insistence of [inaudible].
- vi. They say that she passed on the majority of the money to Ssemanda.
- vii. They defence case is that Winifred Nyonyintono was caring for Miriam and was doing many more hours than she was being paid for. She accepts knowing that on one time, she had seen Ssemanda was claiming a number of hours when she was not working as Miriam was out of the country, but states that she challenged Ssemanda about this and he told her the reason he was doing this is because she had been doing many hours which she had not claimed for.
- viii. They say that she trusted Ssemanda as a father figure and did not know that he was acting dishonestly and did not think that his claiming the hours in this way was dishonest.
- ix. So, the issues in relation to Winifred Nyonyintono are whether she worked as a paid carer, and if so, whether she worked the number of hours claimed and whether she believes she was entitled to

claim the hours that she did. Further, whether she knew Ssemanda was committing a fraud and whether she intended to assist him so to do.

- x. ...
- xi. Next topic, dishonesty and Winifred Nyonyintono. Now, one of the issues in relation to count 1 and Winifred Nyonyintono is whether she knew that Stephen Ssemanda was acting dishonestly when she had seen a time sheet that on her own account, she knew included a claim for hours she had not worked and therefore, assisted Ssemanda by allowing money to be paid through her bank account.
- xii. The defendant admits that the times claimed on one time sheet was false as she knew that Miriam was out of the country in Uganda and therefore, she could not have been caring for her at this time. However, she says that she challenged Ssemanda about this at the time and he said that she had not been paid for many hours that she had worked as a carer and that he was claiming for hours that were owed to her.
- xiii. She says she trusted him and believed his explanation and in those circumstances, she did not think that it was dishonest for him to claim for hours on a time sheet that she knew she had not worked as a carer.
- xiv. Now, the prosecution disputes her account and says that you can be sure that she did not work as a paid carer and if you are sure that she was not working as a paid carer, then she would be guilty, but they say that even if you conclude she was or may have been working as a paid carer, that in any event she knew that what Ssemanda was obviously dishonest and that she is now putting forward an argument to avoid being convicted.
- xv. Well, you must first consider all the circumstances including what the defendant, herself, knew or believed to be the factual situation and have that in mind when you ask yourselves whether in light of any understanding of the situation she had or may have had, you are sure that she knew his behaviour was dishonest, by the standards of ordinary, decent people.
- xvi. If you are sure it was, the prosecution will have proved that she acted with knowledge of his dishonesty, but if you are not sure that she knew that Stephen Ssemanda's behaviour was dishonest by those standards, the prosecution will not have proved that she had

acted, knowing that Stephen Ssemanda was being dishonest and your verdict will, therefore, be not guilty."

20. In our judgment, the judge correctly directed the jury that to convict the applicant they needed to be sure that (i) Ssemanda dishonestly made a false representation to the local authority in order to make a gain for himself or another; (ii) the applicant knew he was acting dishonestly and was lying to the local authority to obtain payments; (iii) she assisted Ssemanda in this objective; and (iv) intended by her actions to do so.
21. There was a particular feature to the applicant's case which was emphasised on her behalf, namely that she knew that one or more false or inaccurate time sheets had been submitted. However, she said she trusted Ssemanda's explanation over banked hours and as a result did not consider that these claims were dishonest.
22. The Court of Appeal is currently considering whether R v Ghosh [1982] QB 1053 or Ivey is to be followed in the Criminal Courts of England and Wales in the conjoined appeals of R v Barton and R v Booth. The direction the judge gave was in line with the direction as formulated in Ghosh, modified to deal with the present charge of aiding and abetting. Lord Hughes in Ivey summarised the difference between the two approaches at paragraph 74 of the judgment when setting out the preferred approach of the Supreme Court:
 - i. "... When once [the defendant's] actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."
23. As the Supreme Court indicated in Jogee [2016] UKSC 8, [2017] AC 387, if the crime committed by the principal requires a particular intent, the defendant charged with aiding or abetting the principal must do so with that intention. Accordingly, meeting the circumstances and the issues in the present case, it would have sufficed for the judge simply to have given the first part of his directions in this context, namely (and we repeat) that to convict the jury needed to be sure (i) Ssemanda dishonestly made a false representation to the local authority in order to make a gain for himself or another, (ii) the applicant knew he was acting dishonestly and was lying to the local authority in order to obtain payments, (iii) she assisted Ssemanda in this objective, and (iv) she intended by her actions to do so. These were clear and appropriate directions. Putting to one side the Ivey/Ghosh debate, it was unnecessary in the circumstances of the present case for the judge to give the modified Ghosh direction, albeit it did not in any sense damage or weaken the applicant's case. Indeed, the reverse is true. It added another factor about which the jury needed to be sure before they could convict the applicant.
24. It is to be stressed that over the years since Ghosh was decided, it has only been occasionally necessary to give a direction in this context in cases involving dishonesty

because usually the issue as regards dishonesty is clear. As Lord Lane observed in Ghosh at page 1074 letters E to G:

25. "In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the defendant himself knew that he was acting dishonestly."
26. This has had the result, as we have just observed, that it is rarely necessary for a direction of this kind to be given as part of the summing-up. In this case, the dishonesty involved in the underlying fraud was obvious and the real issue was whether the applicant had joined Ssemanda in this clear-cut criminal enterprise.
27. The cases against the various defendants as set out above were different and there was nothing illogical in the jury returning a conviction in the case of one accused and acquitting the other defendants. Given the modified Ghosh direction did not damage the case of the applicant, it is irrelevant that this direction applied only to her. Furthermore, there is no force, in our view, in the suggestion that she was entitled to be acquitted if she had provided at least some degree of care. This fraud could be perpetrated whether or not some assistance had been given. The judge summed the case up with great care and notwithstanding Mr Anyene's submissions, we do not consider that he framed the directions in a way which would have made a conviction inevitable regardless of the strength of the evidence against the applicant.
28. Mr Anyene has criticised a particular passage in the directions on the law when the judge stated "she had seen a time sheet that on her own account she knew included a claim for hours she had not worked". This was entirely accurate. The jury would have well understood that the applicant's case was that although this the time sheet was inaccurate, the request was not dishonest because she was entitled to claim for banked hours. It was for the jury to decide whether or not in those circumstances she had aided and abetted this fraudulent activity.
29. The judge provided a useful summary of the main elements of the case against the applicant during his ruling on the submission of no case to answer as follows:
 - i. "(a) [The applicant] provided her details to RBG, as a carer for [Miriam Nalweyiso].
 - ii. (b) She signed, on her account in interview, some of the time sheets claiming for care she had purportedly provided.
 - iii. (c) A number of the monthly claims were submitted for hours that she could not have provided.
 - iv. (d) She received monthly payment into her bank account and would have received payslips confirming the payments received. These include payments and payslips for times and over periods

that she could not have cared for [Miriam Nalweyiso].

- v. (e) Ssemanda was her uncle, Wangira her brother and Miriam Nalweyiso her grandmother. There was a close familiar relationship.
- vi. (f) The distribution of the monies from her bank account to others afterwards."

30. In our view this reveals a strong and clear case against the applicant and the judge was right to find against the applicant on the submission of no case to answer.

31. In all the circumstances, this renewed application for leave to appeal is refused.

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