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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 24th January 2020

B e f o r e:

LORD JUSTICE SINGH

MR JUSTICE SPENCER

and

HIS HONOUR JUDGE LEONARD QC

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

REGINA

- v -

BIPIN KUMAR SOLANKI
DEVENORAKUMAR PATEL

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Mr G Cammerman QC appeared on behalf of the Appellant Bipin Kumar Solanki
Mr P Raudnitz appeared on behalf of the Applicant Devenorakumar Patel

Mr G Underhill and Mr J Patel appeared on behalf of the Crown

J U D G M E N T

Friday 24th January 2020

LORD JUSTICE SINGH:

Introduction

1. On 26th September 2018, following a trial in the Crown Court at Harrow before Mr Recorder Hall QC and a jury, the appellant, Bipin Kumar Solanki, was convicted unanimously of entering into or becoming concerned in a money laundering arrangement, contrary to section 328 of the Proceeds of Crime Act 2002.

2. On 27th September 2018 the applicant, Devenorakumar Patel, was convicted of the same offence by a majority of 10:2.

3. On 7th December 2018, they were sentenced by Mr Recorder Hall. Solanki was sentenced to eight years' imprisonment and was disqualified from acting as a director for a period of ten years, pursuant to section 2 of the Company Directors Disqualification Act 1986. Patel was sentenced to six years' imprisonment.

4. In the present proceedings, Solanki appeals against conviction, with the leave of the single judge. He is represented by Mr Cammerman QC (who was not trial counsel). Counsel has confirmed that ground 3, on which leave was refused by the single judge, is not renewed before the full court. In addition, the Registrar has referred his application for leave to appeal against sentence to the full court.

5. Patel applies for an extension of time of 265 days in which to apply for leave to appeal against conviction. That application has been referred by the Registrar to the full court. As we said at the hearing, which took place before us on 16th January 2020, we grant leave to appeal out of time. This is because leave has already been granted by the single judge to Solanki. The issues are identical. There could be a sense of injustice if only one of those who were convicted together was allowed to appeal and the other was not. Patel is represented by Mr Raudnitz (who was trial counsel). Patel also renews his application for leave to appeal against sentence following refusal by the single judge.

6. We have also had the benefit of submissions from counsel for the Crown, Mr Underhill, who appeared with Mr Patel.

The Factual Background

7. Laxy London Limited ("Laxy") was incorporated on 8th December 2003. Solanki was the sole director, shareholder and secretary.

8. On 22nd January 2009, he applied to register the company as a Money Service Business ("MSB"). The expected turnover was put at between £15,000 and £50,000, with sums transferred being less than £500 and none more than £10,000.

9. In or around September 2010, Laxy changed its business address to Unit 7, City Plaza, Plaza Parade, Ealing Road, Wembley. It added a second branch in Green Street, East London at about the same time.

10. Laxy used a larger MSB called Wall Street Forex Limited ("Wall Street") to process transfers. A larger MSB called Usman International Money Exchange Limited was used for further transfers. From records obtained from Wall Street, Laxy started to use the services of Wall Street to send remittances abroad from 16th February 2010. Wall Street processed in excess of £16 million in transfers between 16th December 2010 and 22nd July 2014 on behalf of Laxy.

11. Patel was employed by Solanki to work at Laxy and at an associated parcel business, Jumbo Parcel Service Limited. He was authorised by Solanki to make and receive payment, buying and selling US dollars and euros, all TT related, and other works related to Laxy on his behalf and/or Laxy's behalf. He was also authorised to carry money from the Wembley office to the Wall Street office.

12. To operate as an MSB it is necessary to be registered with Her Majesty's Revenue and Customs ("HMRC") and to abide by the Money Laundering Regulations. There are strict rules for businesses dealing with large amounts of cash, of which one is to carry out due diligence measures to check that customers are who they say they are.

13. On 21st July 2014, Solanki was stopped by police whilst driving in Wembley. He told them that he had £35,000 in the car from the night's takings from the restaurant. Officers found a brown rucksack-type bag in the footwell behind the driver's seat. Inside it was one Post Office self-seal bag containing £33,000 cash, a quantity of correspondence and two plastic carrier bags. A white iPhone was found in the driver's door pocket. Solanki was found in possession of a Samsung Galaxy S IV phone and £2,730 in cash. He was arrested.

14. Police officers attended Solanki's home address in Wembley. As they waited, Patel arrived in a taxi. He was carrying a large, empty plastic self-seal freezer bag. The prosecution said that that was to be used to collect and transport cash. Patel said that he had been "called to the address by Bipin", whom he described as both "boss" and "friend". He said that he helped Bipin with three businesses – money transfer, parcel business and a restaurant. He often collected parcels from the address, but he was not employed to do so. He did it as a favour, but did not receive payment. He was arrested. A mobile phone in his possession was seized.

15. A search of the property revealed under the sofa in the living room a carrier bag containing two packages wrapped in Jumbo Parcel Services tape. A total of £32,191 in cash was found within. An envelope with writing on it "Not Used IDs Leicester" containing copies of 27 Pakistani passports in different identities and three bank cards were also seized.

16. A search of a garage at another of Solanki's properties in Wembley revealed a black plastic carrier bag within which there was a further blue carrier bag containing a red cash transit bag marked £30; it contained £30,000 in cash. A yellow bag was found to contain Indian passports, bank documents and a utility bill. The various documents were in different names. Following a check by an immigration officer, the passports or part-passports were all found to be false documents or forgeries.

17. Enquiries made with Lloyds Bank and the Halifax regarding the bank account documentation revealed that staff at both banks had been complicit in allowing fourteen accounts to be opened in the various names.

18. The premises of the Laxy East London branch were searched. The police seized cash, amongst other things.

19. The Laxy Wembley branch was also searched. The police found money transfer receipts where the alleged customer had confirmed that they did not undertake the transaction, or denied that it was their signature on the receipt; or where the signature on the transfer receipt and ID document associated with it clearly did not match.

20. A forensic examination of a number of items revealed the presence of Patel's fingerprints.

21. The indictment contained a single count charged under section 328(1) of the 2002 Act, the particulars of which were:

"Bipin Kumar Solanki and Devenorakumar Patel together with others unknown, between the 16th day of February 2010 and the 22nd day of July 2014, entered into or became concerned in an arrangement, namely the use of Laxcy London Limited to receive and transmit criminal property, namely money, and, creating false money transfer orders, invoices and accounting records, to disguise the source of those funds, knowing or suspecting that the arrangement would facilitate the acquisition, retention, use or control of criminal property, namely money, by or on behalf of another person."

22. It was the prosecution's case that Laxcy was used to launder "dirty" money. There was no direct evidence that the money was criminal property. The prosecution relied on circumstantial evidence. On the best figures available, during one period between 1st May and 22nd June 2014 it was responsible for the transfer of in excess of £3.3 million. The overwhelming majority of this was "dirty" in the sense that it had not been obtained from legitimate sources.

23. The prosecution said that Laxcy obtained copies of identification documents from genuine customers, which would then be kept electronically and used to create false money transfer records and to open bank accounts, which could then be used to receive funds.

24. Messages on mobile phones seized from Solanki and Patel had the hallmarks of a type of money laundering known as HAWALA (a form of money transfer system where actual cash is not moved between locations; instead, the value of money is transferred). These messages contained a reference to a "token" and a sum of money; they were used to assist in the collection and handover of street cash to those who would be engaged in the money laundering arrangements.

25. At trial the prosecution relied on the following items of evidence to support its case that the money was criminal property:

- (1) The way in which the money was handled by the defendants;
- (2) The creation of false customer transfer records; and
- (3) The use of false passports to open associated bank accounts.

26. The prosecution contended that a large proportion, if not almost all of the money, was the proceeds of crime for the following reasons:

- (1) The huge volume of transfers being processed in a short space of time and the high number of daily transfers;
- (2) The creation of false customer records and transfer receipts;
- (3) The lack of proper secure collection and delivery of cash;

(4) The circumstances of the seizure of £33,000 and £32,191 in cash from Solanki and the finding of £30,000 in cash at a garage owned by him; and

(5) The messages on the mobile phones of Solanki and Patel with "token" references.

27. Solanki was of previous good character. He was interviewed on three occasions. He answered "no comment" to all questions. In his evidence at the trial, he denied any wrongdoing.

28. Patel was also of previous good character. He was interviewed on three occasions. On the first, he said that he had been moving parcels for Solanki from Solanki's home to Solanki's workplace for about three months prior to his arrest. In the second interview he was asked about the envelope with "Not Used IDs Leicester" on it. He said "I've seen that letter. I've written it myself". Solanki, he said, had a branch in Leicester. Some documents were sent to him in error. He also confirmed that he had been to Solanki's garage to obtain parcel bags.

29. In his third interview, Patel served a prepared statement and then answered "no comment" to all questions. In brief, he denied being in possession of any false documents and continued to deny the allegation of money laundering.

30. Patel did not give evidence at the trial. He relied on his accounts in interview.

31. During the course of the trial, the Recorder was called upon to make two relevant rulings. The first arose out of a jury note which was sent to the Recorder on the afternoon of 24th September 2018, at a time when the jury were in deliberation. The jury asked the question:

"In your definition of criminal property within the written legal directions, can criminal property come from tax evasion or tax avoidance?"

At trial the jury had heard no evidence about the use of the MSB to evade tax. It was never put to Solanki that the property with which he was dealing might have been chargeable to tax. No reference was made to tax in any of the closing speeches or in the summing-up.

32. On the basis that there was no evidence led by the prosecution, directly or indirectly, to link the monies allegedly laundered to tax evasion or tax avoidance, counsel then appearing for Solanki suggested the following direction be given to the jury:

"Tax avoidance is not a crime, whereas tax evasion is a criminal offence. In this case there is no evidence to link the alleged monies to tax evasion, which may in some cases result in criminal property. It is important the jury do not speculate in their deliberations as to how the monies were created."

33. In the event, after hearing representations, the Recorder directed the jury in the following way:

"As I have already directed you, criminal property is property which is the benefit of another person's crime. Such a crime could be fraud, including tax fraud committed by someone else – in other words, the benefit of any crime committed by a person other than [Laxy] or one of the defendants personally. There is no direct evidence of any particular crime, including tax fraud, being committed. Question 2 of your Route to Verdict depends upon whether there is an irresistible inference, so that you are sure, that some of the monies were the benefit of another person's crime, whether tax fraud or another crime."

34. The second ruling arose out of an argument advanced on behalf of the appellants: that it was appropriate to direct the jury in accordance with *R v Brown* (1984) 79 Cr App R 115, because of how the prosecution had presented and closed its case. The appellants said that the prosecution had presented its case on the basis that there was at least one if not more sources sending monies through Laxy to launder the profits of criminal property. It was argued that it was necessary to tell the jury that in order to convict they must be agreed not only as to the guilt of the accused, but also as to the basis on which he was guilty. The transactions conducted through Laxy were, said the appellant, equivalent to the false statement referred to in *Brown*, and, accordingly, it was essential that the jury find the same transaction or monies were the result of criminal property. The Recorder rejected that submission.

35. In the grounds of appeal on which leave has been granted, Mr Cammerman has advanced two points: first, that the Recorder wrongly directed the jury in response to their question about tax; and secondly, that the Recorder wrongly failed to give a direction in accordance with *Brown*.

36. In his late application for leave to appeal against conviction, which we have granted, Patel relies on the same two grounds.

37. We have also had the benefit of a Respondent's Notice. In their response to the first ground of appeal, the Crown submit that the direction was correct and appropriate to the circumstances of this case, and that it was not necessary to define the ingredients of the offence of cheat for the following reasons:

(1) The prosecution case was that Solanki was concerned in an arrangement to launder criminal property by or on behalf of others through the use of his business to receive and transmit their money, rather than to launder the proceeds of his own criminal conduct;

(2) The prosecution did not place any evidence of the underlying criminality before the jury and could not say of which crime or crimes the money was the proceeds;

(3) The issue for the jury was whether they were sure that the money was the proceeds of crime(s). There was no need for them to come to any conclusion as to what particular crime(s) that was;

(4) In the circumstances of this case it would have been a misdirection for the jury to be told that the underlying crime could not be a crime of fraud, including tax fraud;

(5) The case of *R v Anwar* [2013] EWCA Crim 1865 is distinguishable.

The Crown also submit that this was not one of those cases in which a *Brown* direction was required.

The First Ground of Appeal against Conviction

38. As we have said, the only count in the indictment in this case alleged that the two appellants, together with others unknown, had entered into or become concerned in a money laundering arrangement, contrary to section 328(1) of the 2002 Act.

39. We also note the definition of "criminal property" in section 340:

"(3) Property is criminal property if –

- (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(4) It is immaterial –

- (a) who carries out the conduct;
- (b) who benefits from it;
- (c) whether the conduct occurred before or after the passing of this Act."

40. In *R v Anwoir and Others* [2008] EWCA Crim 1354; [2008] 2 Cr App R 36, this court reviewed earlier authorities and concluded that there are two ways in which the Crown can prove that property is derived from crime: first, that it derived from conduct of a specific kind or kinds and that conduct of that kind or those kinds was unlawful; or, secondly, the evidence of the circumstances in which the property was handled were such as to give rise to the irresistible inference that it could only be derived from crime: see [21] in the judgment of the court which was delivered by Latham LJ.

41. The first ground of appeal relates to the way in which the Recorder answered a question raised in a jury note. The Recorder explained the approach he would take in a ruling he gave on 25th September 2018. He found the decision of the court in *Anwar* to be distinguishable. He did so on the basis that, upon analysis, *Anwar* concerned a section 327/329 offence and that it was clear from that authority "that the appellant was charged with laundering his own proceeds". The Recorder said that that was very different from the present case "in which there is no evidence at all that has been put before the jury of the underlying criminality". The Recorder considered that in that situation the jury would not be assisted by a direction about the ingredients of any offence. It would not only be unnecessary, but it would be undesirable and would provide a distraction for the jury to be directed about the ingredients of tax evasion merely because they had raised it.

42. In *Anwar*, the judgment of the court was given by Davis LJ. It was noted that none of the three counts on the indictment in that case, which alleged possession of criminal property, contrary to section 329(1)(c), and disguising or converting criminal property, contrary to section 327(1)(b) and (c) of the 2002 Act, included any specific allegations as to the precise nature or type of the criminal conduct in question. In that case the prosecution made clear at trial that they did not allege any particular kind of criminal conduct. In a nutshell, their case was that the circumstances were such that it was an irresistible inference that the cash represented, and the acquisition of cars derived from, the proceeds of unspecified crime. In that case the jury asked the following question:

"Can tax evasion in the UK constitute criminal conduct for the purposes of this case?"

43. Having discussed the matter with counsel, the trial judge, so far as material, directed the jury as follows:

"To answer your question shortly, members of the jury, for the purposes of this case can tax evasion constitute criminal conduct? Well, tax evasion is a criminal offence in the United Kingdom, so that that is the long and short of it."

44. This court in *Anwar* referred to its earlier decisions in *R v Gabriel* [2006] EWCA Crim 229; [2007] 2 Cr App R 11, and *R v Yip* [2010] EWCA Crim 1381. The relevant part of the reasoning of the court appears at [35] to [45]. This court concluded that the jury had been materially misdirected and that the conviction was unsafe. At [41] Davis LJ said that the judge had had two choices. The first (and in the court's view the correct) was to instruct the jury that tax evasion had never been part of the prosecution, that it had never been the subject of any evidence, and that the jury should simply not speculate any further on that matter. The second possible approach was to give the jury some legal instruction as to the elements of "tax evasion", perhaps after ascertaining just what the jury may have had in mind: see [42].

45. At [43] Davis LJ said that, in the result, the judge had adopted neither course in answering the jury note. She simply summarised the respective cases and then gave the answer which we have quoted earlier. Therefore, the jury were never told of the legal elements of the offence; nor were they ever reminded of the total lack of evidence on the point.

46. In the present case, counsel for the appellants submit that there is no material distinction which can be drawn from *Anwar*. We do not accept those submissions. Counsel for the appellants emphasised what was said by Davis LJ in *Anwar* at [8] and submit that the material facts of that case are indistinguishable from the present. Davis LJ said:

"8. In opening the case at trial the prosecution made clear – and this, indeed, accorded with the indictment – that it was not alleging any particular kind of criminal conduct. Its case was, in a nutshell, that the circumstances were such that it was an irresistible inference that the cash represented, and the acquisition of the cars derived from, the proceeds of unspecified crime. ..."

47. However, in our view, it is important to place what was said in *Anwar* in its particular factual context. At [10] of the judgment, Davis LJ noted that oral evidence had been given at the trial by both the appellant in that case and also by his sister. In his evidence the appellant had said that he had funded the purchase of the car in question in part from the sale of bridal gold jewellery originating in Pakistan, which had generated around £14,850. At [12] Davis LJ noted that, during the course of the appellant's evidence, the jury had put in a note asking the question whether the gold imported had been declared to HMRC and what was the duty/VAT paid. The judge's response to that question was to the effect that the jury simply had to decide the case on the evidence as presented to them. In the course of her summing-up, the judge gave the standard direction on such matters: that the jury would simply have to decide the case on the evidence; that there would be no more evidence; and that they should not speculate about what other evidence they might have heard.

48. It is clear from a reading of the judgment of Davis LJ as a whole that had matters been left there, this court would not have considered that there was any difficulty with the way in which the trial had been conducted. As he observed at [17], the problem arose from a later jury note which was sent in two hours after they had retired to deliberate. That was the note which asked the question about whether tax evasion in the UK can constitute criminal conduct for the purposes of that case.

49. In our view, it is important to note that Davis LJ considered that the case before the court in *Anwar* was materially indistinguishable from the case of *Yip*. That was a case, as Davis LJ himself recorded at [32], where the Crown had not sought to allege a specific kind of conduct by the defendant that was unlawful "other than by cheating the Revenue". In that case it was, therefore, incumbent on the trial judge to instruct the jury at least as to the essential elements of the offence of cheating the Revenue.

50. In our view, the reason why *Anwar* was considered to be materially indistinguishable from *Yip* is because there had been raised during the course of the evidence the possibility in the jury's mind that the gold originating in Pakistan might not have been declared to HMRC and there might not have been the proper duty or VAT paid on it. Similar facts are quite simply absent from the present case. In our view, the present case is distinguishable from that of *Yip* and, therefore, from that of *Anwar*.

The Second Ground of Appeal against Conviction

51. The second ground of appeal against conviction arises from a ruling which the Recorder made, again on 25th September 2018, on an application made to him on the day after the jury had retired to consider their verdicts. The application was that he should give the jury a direction in accordance with *Brown*. The Recorder said that the scope for a *Brown* direction is limited. It arises where the indictment alleges through its particulars that the offence was committed in more than one way: for example, where full particulars are given as to why a defendant is grossly negligent in a case of gross negligence manslaughter, or where specific fraudulent statements are alleged in the indictment. He said that in some cases it will be necessary to direct the jury that, before they can convict, they must be unanimous, leaving aside issues of majority verdicts, on one or more particulars. He continued:

"By contrast, it is not the case that the jury must be unanimous about which piece of evidence they accept, so long as they are unanimous about the essential elements of the offence."

The Recorder continued that, in the present case:

"... the essential elements of the offence relevant to this issue are that the property was criminal property. There are no particulars within the indictment specifying what that criminal property was. If each member of the jury is sure that there was criminal property, that is sufficient ..."

52. The Recorder said that, even if he had been wrong about that, it was clear that the need to give a *Brown* direction is rare. In the circumstances of this case he concluded that a *Brown* direction was not required. He also observed that the possibility of a *Brown* direction was raised but not pursued by counsel for Solanki when he first addressed him on possible legal directions. The matter was not raised after the prosecution closing speech, nor after the Recorder had concluded his summing-up and invited counsel to indicate, before the jury retired, whether there were any other matters they wished to raise. Nor was it raised either when the Recorder had circulated in draft the first part of his summing-up, before counsel's closing speeches, nor following the second part of his summing-up after those speeches.

53. It is important to appreciate that what this court said in *Brown*, at page 119, has to be placed in its factual context. In *Brown* the appellant was charged with fraudulently inducing investments, contrary to section 13(1)(a) of the Prevention of Fraud (Investments) Act 1958. The particulars alleged were that he had fraudulently induced four persons to enter into agreements to acquire shares in a company by making misleading statements. At the trial, the jury asked the judge the following question:

"If the individual members of the jury find him guilty of different parts of the count, is he guilty of the whole count, and is the verdict of guilty unanimous?"

The trial judge directed the jury that it was sufficient if all were agreed that there was a dishonest inducement, even if they differed as to the statement in the particulars which they relied upon as the inducement. The appellant appealed on the ground that the jury had been misdirected. The appeal was allowed and his conviction was quashed.

54. In giving the judgment of the court, at page 119, Eveleigh LJ said:

"In a case such as that with which we are now dealing, the following principles apply:

1. Each ingredient of the offence must be proved to the satisfaction of each and every member of the jury (subject to the majority direction).
2. However, where a number of matters are specified in the charge as together constituting one ingredient in the offence, and any one

of them is capable of doing so, then it is enough to establish the ingredient that any one of them is proved; but (because of the first principle above) any such matter must be proved to the satisfaction of the whole jury. The jury should be directed accordingly, and it should be made clear to them as well that they should all be satisfied that the statement upon which they are agreed was an inducement as alleged."

55. *Brown* was approved by the House of Lords in *R v Chargot Ltd* [2008] UKHL 73; [2009] 2 All ER 645, at [26] in the speech of Lord Hope of Craighead. We note in passing that, in that passage, Lord Hope stressed that, so long as the jury are agreed on the essential elements alleged in the indictment, "they do not need to be agreed on all the details of the evidence".

56. The position was recently explained by this court in *R v Phillips* [2019] EWCA Crim 577, in which the judgment was given by Hamblen LJ (as he then was). At [69] he said:

"... The situation dealt with in *Brown* was one where each count in the indictment contained particulars of a number of different statements relied upon by the prosecution as constituting fraudulent inducements."

At [70] Hamblen LJ said that the court agreed with the prosecution that that was very different from the situation in that case. In that case "there were no such multiple particulars, any one of which could form the basis of convictions". At [74] he said:

"This is not a case in which two distinct incidents were being alleged, either of which might constitute the offence charged or where there were different offences."

Finally, at [75], Hamblen LJ recalled that this court stated in *R v Mitchell* 26 HLR 394 that a *Brown* direction:

"... will be necessary only in comparatively rare cases. In the great majority of cases, particularly cases alleging dishonesty and cases where the allegations stand or fall together, such a direction will not be necessary. It is of the first importance that the directions for juries should not be overburdened with unnecessary warnings and directions which serve only to confuse them."

In the circumstances of that case, the court said that no *Brown* direction was required.

57. We have reached the conclusion that none was required or appropriate in the present case either. We recall, first, the terms of the particulars of offence in the only count on the indictment, which we have set out earlier. The jury had to be sure of each of the elements in that count. We

have been shown the written legal directions which the Recorder gave to the jury, including his direction on the elements of the offence which had to be proved. No complaint is made on this appeal about that legal direction. In his direction, the Recorder included the following:

"... One way of proving that money comes from crime is to prove a specific offence was committed; for example, to show that a particular person had carried out a drug deal, had obtained a particular quantity of cash in exchange, and then given it to Laxy. That is not always possible, as you may think that criminals will take steps to keep the person committing the crime away from the money chain, so even if the police become aware that large sums of money are being transferred, it will not be apparent how that money was obtained. So the law also allows you to draw inferences. If the evidence that the circumstances in which the property was handled were such as to give rise to an irresistible inference that it could only have been derived from crime, then you could also be sure that the money was the benefit from another person's offending ..."

58. We have also been shown the written Route to Verdict, which the Recorder provided to the jury. Question 2 read:

"Was any of this money criminal property?"

It was made clear that if the jury were not sure about that, their verdict had to be not guilty.

59. In our view, it is clear from the way in which the Recorder directed the jury and from the issues which were live ones at the trial that this was not an indictment which required the jury to be satisfied that any particular money was criminal property. Indeed, as the prosecution have submitted in the Respondent's Notice, that would have been to drive a coach and horses through the essential nature of the case advanced by them at trial. It was precisely because they could not prove that any particular item of money was derived from crime that they relied on the second limb of *Anwoir*, namely that there was an irresistible inference that it could only have been derived from crime.

60. We also note that, in accordance with good modern practice (in appropriate cases), the Recorder gave a split summing-up. He gave his written directions on the law before closing speeches and he then summarised the evidence after those speeches. In doing so, he gave counsel ample opportunity to comment on the draft legal directions. Again in accordance with good practice, he asked counsel if there was anything else they wished to raise before he finished his summing-up and the jury retired to deliberate. Counsel then appearing did not take any of those opportunities to suggest that there was any need for a *Brown* direction. Indeed, this was not done until after the jury had already retired to consider their verdict.

61. In the circumstances of this case, we are satisfied that there was no need for a *Brown* direction to be given. Accordingly, the appeals against conviction are dismissed.

The Applications for Leave to Appeal against Sentence

62. In his sentencing remarks, the Recorder said that this was a professional, multi-million pound money laundering operation co-ordinated by Solanki, who was its money laundering reporting officer.

63. The use of false and hijacked identities to pass off criminal property as legitimate was systematic and carried out over a long period of time. The scheme had an international reach with a criminal flow of monies to Dubai and on to India. It was a sophisticated offence.

64. The Recorder was satisfied that each defendant knew – and not merely suspected – that they were dealing with criminal property.

65. The Recorder took the view that Solanki had performed a leading role and had abused his position as the money laundering reporting officer.

66. The Recorder also took the view that Patel had a leading role, albeit that it was subordinate to that of Solanki. He said that the relevant period for any calculation of quantum for the purpose of sentencing should be limited to the period from 8th October 2013 to 21st July 2014, although he would sentence Patel on the basis that his involvement had commenced only in February 2014.

67. The prosecution submitted that the Recorder could safely conclude that the clear majority of the wholesale trade conducted through Laxcy during the relevant period was "dirty" money. The Recorder was satisfied that at least £5 million during the period from October 2013 to July 2014 was criminal property. However, taking all matters into account, he said that he would sentence on a figure of no more than £3 million in Solanki's case; whilst in Patel's case that figure would be £1.8 million, for reasons which we shall explain.

68. The Recorder referred to the definitive guideline issued by the Sentencing Council on fraud, bribery and money laundering offences, with effect from October 2014. He placed Solanki in category 2 for harm, whilst Patel was placed in category 3. The culpability of each was assessed to fall within category A because, as we have said, the Recorder assessed both as having played a leading role, although that of Patel was subordinate to that of Solanki. The Recorder observed that neither had any previous convictions and that in each case there had been a lapse of time since their arrests, which had not been their fault. Each had various medical issues and family responsibilities.

69. In the application brought on behalf of Solanki, it is said that the sentence was passed on the wrong evidential basis; and, in any event, it was manifestly excessive.

70. In the application brought on behalf of Patel, it is submitted that the sentence was manifestly excessive for two reasons: first, that the Recorder erred in determining that the Patel fell within culpability category A; and secondly, that the Recorder placed insufficient weight on his personal mitigation.

71. Following the convictions, the case was originally listed for sentence on 2nd November 2018. On that date there was extensive legal argument concerning the quantum of the laundering which was applicable as the basis of sentence.

72. On 3rd November 2018, the Recorder circulated his ruling that the exhibits to which objection was taken on the part of the defence, and which the Crown wished to introduce, would be admitted. The final sentencing hearing was then fixed for 7th December 2018, when further brief legal argument was heard and the sentences were passed.

73. On behalf of Patel, it is observed before us that, although there was an extensive argument before the Recorder as to which category in the definitive guideline was applicable, ultimately the court sentenced on the basis that the offending fell within category 3 harm. Accordingly, there is no appeal by Patel based upon quantum or the categorisation of harm. The only grounds of appeal, as we have said, concerned the role which he played (and therefore the categorisation for the purpose of culpability) and his personal mitigation.

74. Nevertheless, at paragraph 14 of the skeleton argument in relation to sentence, on behalf of Patel it is said that, having seen Solanki's full submissions on quantum, he supports that argument in general terms. If Solanki is successful in his argument, then that will also have an effect upon Patel. He submits in that case that he should have been sentenced on the basis that the quantum should be reduced from £1.8 million to £1.25 million. That reduction would not change the harm category, but it would bring it down within the spectrum in category 3.

75. In the skeleton argument relating to sentence on behalf of Solanki, there are two grounds of appeal raised. First, it is said that the starting quantum of £3 million was both wrong in fact and in principle; that it included evidence which had been excluded before the trial by His Honour Judge Cole on 10th August 2018; and that the quantum ought to have been restricted to the evidence adduced before the jury and should therefore have been limited to around £1.25 million (that being 50 per cent of £2.5 million, about which it is said evidence was placed before the jury).

76. Secondly, it is submitted that even if the correct quantum was £3 million, a sentence of eight years' imprisonment was manifestly excessive, having regard to the guideline.

77. As the guideline states, harm is initially assessed by reference to the value of the money laundered. There are six categories set out by reference to the quantum. Category 2 concerns the range £2 million to £10 million, with a starting point based on £5 million. Category 3 is a range of £500,000 to £2 million, with a starting point based on £1 million. To complete the assessment of harm, the court should then take into account the level of harm associated with the underlying offence to determine whether it warrants upward adjustment.

78. Culpability is categorised by reference to three categories: A, B and C, where A is high culpability; B is medium; and C is lesser culpability.

79. The suggested sentence for a category 2A case is a starting point of eight years' custody, with a suggested range of six to nine years' custody.

80. The suggested sentence for a category 3A case is a starting point of seven years' custody, with a range of five to eight years' custody.

81. As we have said, on behalf of Solanki it is submitted that the Recorder passed sentence on the wrong evidential basis. It is said that he should have taken a figure of around £1.25 million. That is arrived at by dividing £2.5 million, about which the jury heard at trial, by 50 per cent.

82. In any event, it is submitted that the sentence was manifestly excessive, having regard to the mitigation that there was: for example, good character; delay; poor health; and significant family hardship.

83. At paragraph 15 of the skeleton argument on sentence, Solanki refers to the decision of this court in *R v Cairns and Others* [2013] EWCA Crim 467, at [8] to [10] in the judgment given by Leveson LJ.

84. It is submitted that a *Newton* hearing would not have been appropriate in this case after a trial. It is submitted that the Recorder should have sentenced on the basis of the evidence that was adduced by the Crown before the jury and should not have taken into account evidence which had been excluded from their consideration. It is further submitted that the Recorder, in effect, reversed the earlier decision by Judge Cole, given prior to the trial, to exclude certain evidence under section 78 of the Police and Criminal Evidence Act 1984 ("PACE"). That was the evidence of exhibits JDY/2-5.

85. We do not accept those submissions. In order properly to understand the context of the first ground of appeal against sentence, it is important to appreciate that there were two rulings made. The first was given on 10th August 2018 by Judge Cole. The second ruling was given by Mr Recorder Hall on 2nd November 2018, the reasons for which were given in writing on the following day.

86. At the hearing on 10th August 2018, Judge Cole was asked by the defence to stay the prosecution on the ground that a fair trial would not be possible in the light of the prosecution's failure to make full disclosure.

87. Earlier in the proceedings, the judge had refused the Crown's application to adjourn the trial. He had noted that there had already been one trial date moved. By the time of the hearing before Judge Cole on 10th August, the Crown said that they were now trial ready, subject to one important concession which they were prepared to make in favour of the defence. They said that full analysis had not been undertaken of three computer downloads, which were exhibits JDY/2-5. However, the Crown indicated that they would be hard pressed to resist an order ruling out the admission of those pieces of evidence under section 78 of PACE. This would have the effect of dramatically shrinking the potential quantum of the fraud alleged, from £16 million down to £3 million.

88. Judge Cole accepted the Crown's position. He refused the defence application to stay the prosecution and ruled that a fair trial was perfectly possible. He also noted that Solanki was the owner of the business and was better placed than anyone to know what assisted him and his employee within the computer material which the Crown were prepared to abandon. The judge therefore ruled that exhibits JDY/2-5 were inadmissible because of the late service by the prosecution of the material. He did not encourage the wasting of the court's time by lengthy re-litigation of these issues before the trial judge but gave liberty to re-apply before the trial judge. That is important, in our view, in the light of what subsequently happened after conviction before Mr Recorder Hall.

89. On 2nd November 2018, the Recorder made a ruling admitting into evidence two spreadsheets extracted from exhibits RDY/2 and 5. The Recorder was of the view that matters had developed since the hearing before Judge Cole in August. In particular, he observed that during the trial it was Solanki himself who had introduced his own spreadsheets by way of defence evidence. These spreadsheets covered roughly a seven week period between May and June 2014 and were extracted from exhibits RDY/2 and 5.

90. The prosecution now wished to rely on the wholesale figures taken from the two spreadsheets, for the period October 2013 to July 2014. The Recorder noted that, although the indictment period ran from 2010, the prosecution had limited their analysis to the period starting in October 2013. The wholesale figure during that period was said to be £10 million. The Crown asked the court to sentence on the basis that 50 per cent of that could reliably be proven to be the volume of criminal money passing through Laxcy – in other words, £5 million.

91. In his written ruling of 3rd November 2018, the Recorder admitted the two spreadsheets and

refused to exclude that evidence under section 78 of PACE. He did not consider that admitting the evidence amounted to an abuse of process, because circumstances had changed since the ruling of Judge Cole in August, and also because he proposed to avoid any possibility of unfairness by capping the maximum quantum at £3 million. That, of course, was the figure mentioned before Judge Cole in August. That was generous to the defence because otherwise the schedules might have suggested that the actual amount laundered was £5 million.

92. In his written reasons, Mr Recorder Hall said that it was open to the court to re-admit the rest of the spreadsheets if: (a) it is necessary for the purpose of determining the quantum of the fraud for the purpose of sentence; (b) the defence had sufficient opportunity to deal with the re-introduced evidence; and (c) the effect of doing so was not to contradict the basis upon which Judge Cole had excluded the evidence, so as to create a sense of injustice.

93. The Recorder concluded that it was necessary to re-admit the evidence in order to arrive at a fair and accurate basis for sentence. He again observed that it was Solanki himself who had adduced parts of the spreadsheets at this trial and therefore it was necessary to permit the prosecution to adduce the rest, subject to ensuring fairness.

94. The Recorder said that it was common ground that in principle a court can admit, for the purpose of sentencing, evidence that was not heard by the jury, at least for the purposes of a *Newton* hearing: see *R v Finch* (1993) 14 Cr App R(S) 226. The Recorder said that, although the course embarked upon in the present case had not been described as a *Newton* hearing, in substance there was no material difference. This was because he proposed to give the defence an opportunity to challenge or rebut the evidence adduced by the prosecution. He adjourned the hearing to permit Solanki an opportunity to do so. He extended the same opportunity to Patel if he so chose.

95. In addition, the Recorder said that it was important that both should only be sentenced for the offence of which they had been convicted by the jury. Judge Cole had permitted the prosecution to proceed on the basis that a £16 million fraud was to become a £3 million fraud. It followed that the Recorder would cap the maximum at £3 million.

95. When passing sentence on 7th December 2019, the Recorder returned to the issue of quantum at pages 6-9 of his sentencing remarks. He referred to his earlier ruling of November and the fact that he had adjourned the hearing to enable Solanki and Patel to consider whether they wished to call evidence in rebuttal, but that neither had sought to do so.

96. The Recorder also accepted that in the case of Patel the relevant period should be confined to February to July 2014. In the case of Solanki, he sentenced only in relation to the period October 2013 to July 2014. He was prepared to discount the total amount of wholesale business in that period of £10 million by 50 per cent, but on the basis that he was sure that at least £5 million was criminal property: see page 7F of the transcript of the sentencing remarks.

97. However, for the reasons he had set out in his November ruling, the Recorder said that it would be wrong to sentence Solanki for any more than £3 million: see page 8D. He did not agree that the observations of Judge Cole in August had any greater significance than that there would be a £3 million cap. He had to sentence on the basis of the evidence which he had heard, rather than on the factual basis upon which the abuse and adjournment arguments were presented before Judge Cole.

98. The Recorder then turned to the issue of quantum in Patel's case. He said that that should begin on 3rd February 2014. He found the wholesale amount in that period was £6.5 million. Half

of that figure would be £3.25 million, but it would be wrong to take a quantum of more than £3 million. He did not agree that a 50 per cent discount should then be applied to the figure of £3 million, because that figure was the ceiling to the quantum of criminal property. There was no need to apply a further discount to that figure in order to exclude legitimate property. However, the Recorder had not lost sight of the fact that Patel was involved for a shorter period than Solanki. He proposed to deal with that by applying a 40 per cent discount (that is four out of the total ten months of the quantum period). That is how the Recorder arrived at a figure of £1.8 million.

99. In our judgment, the Recorder was well entitled to take the approach to quantum which he did and which he carefully explained, both in his ruling in November and in his sentencing remarks in December 2018. That did not in any way contradict anything which had been decided by Judge Cole. As the Recorder said, events had moved on, in particular because Solanki had himself adduced part of the relevant spreadsheets at the trial. Against that background, the Recorder was entitled to permit the prosecution to adduce other parts of that evidence.

100. Further, the Recorder gave ample opportunity to each of the applicants to contest the evidence which the prosecution now wished to adduce. He adjourned the hearing for that purpose. This ensured fairness.

101. Finally, the Recorder imposed a cap of £3 million, when the evidence before him might have justified his going above that figure. That was sufficient to allay any sense of injustice because it might have been perceived that he was going behind the ruling of Judge Cole in August. He was not.

102. As the Recorder carefully explained, he was not then required to discount that figure (or indeed any lower figure of £2.5 million, as was submitted before us) by 50 per cent to arrive at a figure of £1.25 million.

103. In our judgment, there was no inconsistency between his approach and the verdicts of the jury, as we have said earlier in dismissing the appeals against conviction. The precise quantum was not an issue that the jury were required to decide at the trial. It was no part of the count on the indictment.

104. Nor do we accept the ground advanced on behalf of Solanki, that the Recorder gave insufficient weight to mitigation. In the circumstances of this case, which was a sophisticated, multi-million pound, cross-border money laundering operation, and where Solanki was the ring-leader and furthermore had statutory responsibilities, the Recorder was well entitled to impose a sentence of eight years' imprisonment. That sentence was not, arguably, manifestly excessive.

105. We turn to Patel's renewed application for leave to appeal against sentence. We have seen the detailed reasons given by the single judge when refusing leave on the papers. We respectfully agree with those reasons. We do not accept the submissions made on behalf of Patel before us.

106. In his sentencing remarks, at pages 3-4, the Recorder said that he would sentence Patel on the basis that he was involved in the offending in the period from February to July 2014. Having regard to the definition of a "leading role" in the guideline, the Recorder found that this was sophisticated offending and that it was committed over a sustained period of time. Patel had been part of a group activity. At pages 4-5, he then returned to the question whether Patel himself had performed a leading role. He was sure that he had, although it was not *the* leading role. He said that Patel was highly trusted. He had handled parcels of money and collected and transferred them. Secondly, it was his handwriting which was on an envelope stating "Not Used IDs Leicester". He did not accept that Patel was simply writing something which he did not

understand. This was Patel working out which IDs were of use to the scheme. Thirdly, the Recorder said that the texts on the mobile phone which Patel had used referred to hundreds of thousands of US dollars. These were clearly related to the machinery of the fraud. The Recorder inferred that Patel was aware of the machinery. Patel had handled false documents. The Recorder rejected the account, as he was sure the jury had as well, that Patel's fingerprints were on false documents only because he had tidied the garage. He noted Patel's qualifications and his previous employment in banking. He was satisfied that Patel was not a mere "foot soldier" akin to other employees. It was obvious to the Recorder that he had sought in interview to minimise his role. He told the police, falsely, that he was essentially someone who simply carried the parcels for Solanki.

107. The Recorder also took into account, as supporting evidence, what Solanki had said in his evidence at trial. He said that he, Patel and another knew all the "nitty gritty". The Recorder found that evidence to be striking. Although Solanki must have been disbelieved by the jury about his own role, what he said about the three of them not only had the ring of truth about it, but was also corroborated by other evidence.

108. Finally, the Recorder said that Patel had not given evidence at his trial. Although of course that was his right, it had the consequence that there was nothing to rebut the inference which the Recorder drew: that Patel had performed a leading role. He was sure that it was a leading role, although it was one that was subordinate to that of Solanki.

109. In our judgment, that reasoning by the Recorder cannot be faulted. He was best placed to assess the role which Patel had played in the offending, having heard all of the evidence at the trial.

110. The Recorder sentenced Patel at pages 12-13 of the transcript of his sentencing remarks. He placed the offence in category 3 because of the quantum of £1.8 million. There was high culpability. The starting point suggested in the guideline of seven years' custody is for a case where £1 million has been laundered. This case was, therefore, towards the top end of the bracket. Factors increasing seriousness were that the offence was committed across borders, of which Patel was fully aware. He had played a part in a professional, cross-border money laundering operation running into over £1 million during his involvement.

111. It is important to bear in mind, as the Recorder had said earlier, at page 9E-F, that this was a professional, multi-million pound money laundering operation.

112. The Recorder took into account factors reducing seriousness: the fact that Patel had no previous convictions or cautions; and that there was a lapse of time since his apprehension, which was not his fault. On the other hand, the activity was not originally legitimate because Patel was sentenced in respect of the period starting only in February 2014. By that time the activity was very much illegitimate.

113. The Recorder took into account his personal mitigation. Patel was married with children. He was the sole breadwinner. His wife had little education and understanding of the English language, and there was a risk of hardship. The Recorder took into account the decision of this court in *R v Petherick* [2012] EWCA Crim 2214; [2013] 1 Cr App R(S) 116, at [17] to [25] in the judgment of Hughes LJ, concerning Article 8 of the European Convention on Human Rights, which is set out in Schedule 1 to the Human Rights Act 1998.

114. The Recorder acknowledged that a custodial sentence would undoubtedly interfere with the applicant's private and family life and that of the rest of his family. But he needed to ensure that

the degree of interference was necessary and proportionate. He noted that Patel had decided to offend even though he had young children and therefore had run the risk that he would be caught and sentenced. The Recorder made a downwards adjustment because the children were so young.

115. In our judgment, none of that reasoning can possibly faulted. The Recorder fully took into account such mitigation as was available to Patel. The sentence which he imposed of six years' imprisonment was not, arguably, wrong in principle or manifestly excessive.

Conclusion

116. In the result, we grant Patel's application for leave to appeal out of time against conviction. We dismiss the appeals against conviction of both appellants. We also refuse both applicants leave to appeal against sentence.

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

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