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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2022] EWCA Crim 1311



No. 202200406 B4

Royal Courts of Justice

Thursday, 15 September 2022

Before:

LORD JUSTICE SINGH
MR JUSTICE HENSHAW

REX
V
AMRIK SINGH BACHRA

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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

MR W CHIPPERFIELD appeared on behalf of the Appellant.

J U D G M E N T

LORD JUSTICE SINGH:

- 1 This is a renewed application for leave to appeal against conviction.
- 2 On 12 January 2022 in the Crown Court at Aylesbury the applicant (then aged 24) was convicted of Counts 1 to 3 on the indictment. Counts 1 to 2 were possessing a controlled drug of Class A with intent contrary to s.5(3) of the Misuse of Drugs Act 1971. Count 3 was possessing a controlled drug of Class B with intent contrary to the same provision.
- 3 On 2 February 2022 the applicant was sentenced by HHJ Payne to a sentence of three years and six months' imprisonment on the first two counts and a concurrent six months' imprisonment sentence on Count 3. That made a total sentence of three years and six months. Other appropriate orders were made.
- 4 The facts can be summarised for present purposes as follows. On 21 August 2018 police officers noticed a black BMW being driven at speed along Mansion Lane in Iver. They followed the vehicle and found that it had been parked in a nearby country lane. The driver had decamped from the vehicle and was running away. Two officers pursued him on foot, whilst the third officer stayed with the vehicle.
- 5 The driver, who was later identified as the applicant, was caught, arrested and detained whilst the officers searched the vehicle. Inside the driver's door they found nine cling film wraps containing a white powder and re-sealable bags which contained white and brown powder. In the central console of the vehicle they found two bags. They also found some re-sealable bags in the door, a black Nokia mobile phone on the driver's seat, a black Nokia mobile phone in the driver's door and a white iPhone. The various substances were analysed and found to contain the following:
 - (1) Nine clear cling film wraps containing 2.6 grams of heroin.
 - (2) Re-sealable plastic bags containing 1.18 grams of cocaine.
 - (3) Two bags containing cannabis and 1.96 grams of heroin.
- 6 At the trial, the prosecution case was that the applicant had been in possession of the drugs with the intention of supplying them to others. To prove that case, the prosecution relied upon the following pieces of evidence:
 - (1) Evidence from PC Martin and PC Kennedy in relation to stopping the applicant, searching his vehicle and his subsequent arrest.
 - (2) Evidence from DC Callow in relation to the applicant's interview and the fact that he answered no comment to the questions put to him.
 - (3) Agreed facts in relation to the analysis of the drugs and the examination of the applicant's mobile phones.
 - (4) Expert evidence from Mr Bryn Lewis in relation to the analysis of the drugs and the evidence from the applicant's mobile phone. He gave evidence in relation to the street value of the drugs involved (heroin, cocaine and cannabis), the fact that he would expect someone bulk buying drugs for their own use to have one packet rather than separate bags, as the latter would have been prepared for street dealing, and a method of ordering drugs in comparison to the messages and calls on the applicant's mobile phones.

- (5) Evidence from DC Manning, the officer in the case, in relation to the investigation and the fact that they could not download the data from the applicant's iPhone since it was protected with a personal identification number.
- 7 The defence case was that the applicant had the drugs in his possession for his own personal use. He did not give evidence at trial, but it was submitted that on the prosecution case it was not possible to be sure of his guilt. The applicant had admitted upon arrest that he was a regular cannabis user, but it was not accepted that he had possession of the drugs with the intention of supplying them. The issue for the jury therefore was whether they were sure that the applicant had possession of the drugs with the intention of supplying them.
- 8 After the prosecution case had closed, the defence made a submission of no case to answer. The judge gave a ruling rejecting that submission. He rehearsed the facts and the evidence that had been called. He reminded himself of the test set out by this court in *R v Galbraith* [1981] 1 WLR 1039 and the fact that this case fell within the second category referred to in that decision; namely, that the prosecution evidence, taken at its highest, was such that a jury, properly directed, could not properly convict.
- 9 The prosecution relied upon evidence in relation to the fact that the drugs were found in the applicant's possession; the expert evidence that street dealers would ordinarily have drugs in smaller quantities so that they were easier to sell, and messages on the applicant's phone which appeared to suggest that the applicant had been involved in dealing class A drugs.
- 10 Accordingly, the judge ruled that on the evidence before the jury there was a case to answer in relation to Counts 1 and 2.
- 11 In making this application for leave to appeal, Mr Chipperfield advances two grounds. First, he submits that the judge erred in refusing the submission of no case to answer. The evidence in the case is purely circumstantial and he submits insufficient for a properly directed jury to convict. Secondly, he submits that this court should allow to be admitted fresh evidence in the form of witness statements from DS Duffin and PC Faithful, two police officers who have provided witness statements in unrelated cases which were also prosecuted by Thames Valley Police, which suggest that the expert opinion of Mr Lewis in the present case was incorrect. The fresh evidence it is submitted demonstrates that it is wrong to suggest that intent to supply can be inferred by possession of multiple single units of the same drug.
- 12 We have had the advantage of seeing the prosecution's Respondent's Notice in which the following grounds of opposition are set out:
- (1) Whilst the crown's case was based entirely on circumstantial evidence, there was sufficient evidence for the jury to be sure of the applicant's guilt. The judge did not err in refusing the submission of no case to answer.
 - (2) Mr Lewis was competent to give expert evidence in this case. He dealt with questions from counsel in an honest way and his answers in relation to the text messages were not necessarily inconsistent or indicative that he had ceased to be impartial. The fresh evidence does not undermine the safety of the convictions.
- 13 In refusing leave to appeal on the papers, the single judge gave the following reasons:

"Submission of no case

1. There was sufficient evidence to be left to the jury from which they could be sure that the proper inference was that the defendant was dealing in class A heroin and cocaine as well as cannabis at the relevant time.
2. Such an inference could be drawn from the nine wraps containing 2.60 grams of heroin and 3 clear plastic bags containing 1.96 grams of cocaine plus the existence of 3 mobile phones in the applicant's vehicle, even if there was only one message found on the phones potentially supportive of class A dealing.
3. These primary facts were supported by the admissible evidence of the prosecution expert Mr Lewis. His expertise and the bona fide nature of the opinions expressed were not and could not be challenged. He pointed to factors making it less likely that the class A drugs were for personal use including the packaging into smaller units rather than a single quantity.
4. The Judge was right to leave the issue of what to make of the evidence to the jury to decide.

Fresh evidence

5. Two earlier statements dating from 2017 are now produced albeit with no form W. There was no defence expert at trial and there could have been had this been considered an important feature of the case. The evidence does not appear to be fresh in the sense of not available at trial with reasonable diligence or when and how they came to light.
6. The issue of how a personal user might be expected to buy a significant quantity of drugs in bulk for personal use is not a free standing issue, but whether in the particular context this was such a possible explanation of events as to preclude the jury being satisfied of the inference of supply.
7. Given the factual context of the present case, I am not persuaded that the new evidence would be admitted as forming evidence likely to undermine the safety of the convictions."

- 14 We entirely agree with the reasons given by the single judge, both in relation to the ground relating to the submission of no case to answer and the ground suggesting that this was fresh evidence which ought to be admitted under s.23 of the Criminal Appeal Act 1968. We are not persuaded that it is arguable that the criteria in s.23 are met in the present case.
- 15 At the hearing before us, Mr Chipperfield has focused his submissions, understandably, not on his first ground of appeal, but on his second. In particular, he has criticised the expert evidence of Mr Lewis and said that it was evidence which flies in the face of the experience of anyone familiar with the criminal justice system in this country. He has also drawn our attention to the witness statement in particular of Mr Duffin. He readily accepts that Mr Lewis had provided a report of what evidence he would give in November 2020 and that, in principle, the evidence of a defence expert could have been obtained in advance of the trial in the present case. He informs this court that he simply thought that Mr Lewis had made a mistake in his report and this was therefore down to his oversight rather than anything else.

- 16 Having considered those submissions, we remain of the view that the single judge was entirely right for the reasons which he gave. The fundamental points are as follows:
- (1) This was classically an issue of fact which was within the province of the jury. The judge was right to reject the submission of no case to answer.
 - (2) The criteria for fresh evidence in s.23 are clearly not met. The evidence, if it was thought to be important, could reasonably have been obtained in advance of the trial in the present case.
- 17 For those reasons, we refuse this renewed application for leave to appeal.
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Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital*

This transcript has been approved by the Judge