IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT WINCHESTER
HIS HONOUR JUDGE DUGDALE T20217096

Neutral Citation Number: [2024] EWCA Crim 1437

CASE NO: 2023 02049/02869 B2

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 7 November 2024

Before:
LORD JUSTICE LEWIS
MR JUSTICE GOSS
HIS HONOUR JUDGE FLEWITT KC

REX
v
MILES CRACKNELL

MR TIM FORTE appeared on behalf of the Applicant

J U D G M E N T

LORD JUSTICE LEWIS:

1. On 25 May 2023, in the Crown Court at Winchester, the applicant Miles Cracknell was convicted of one offence of conspiracy to supply a Class A drugs (namely cocaine), one offence of conspiracy to supply a Class B drug (namely cannabis) and one offence of possession of criminal property. The applicant was sentenced to 15 years' imprisonment for the offence of conspiracy to supply cocaine and 3-and-a-half years for the conspiracy relating to cannabis, that sentence to be served consecutively, making a total custodial period of 18-and-a-half years. The applicant was also sentenced to 4 years for possessing criminal property, that to be served concurrently. The applicant was refused leave to appeal against conviction and sentence by the single judge. He renews those applications for leave today.

2. Dealing first with conviction, the applicant seeks to advance two grounds of appeal. First, he says that the judge was wrong to dismiss an application that there was no case to answer. Secondly, he says that the judge was wrong to admit evidence of a previous conviction for conspiracy to supply cannabis.

3. We deal first with the issue of no case to answer. The applicant was said to be involved in two conspiracies. A significant part of the evidence relied upon by the Crown concerned mobile telephone data said to show contact between the applicant and particular co-conspirators on particular days. The application to the judge below was based on the claim that the data demonstrating those contacts were fundamentally unreliable and that a reasonable jury could not convict on the basis of that data. It was further submitted that the other evidence of contact between the applicant and co-conspirators was not such as, absent the evidence about telephone communications, would enable a jury to convict.

4. The judge dismissed that application. He identified the relevant case law and the relevant test. He said as follows:

> "I am asked to infer from these anomalies that have been pointed out that the data is unsafe. In my judgment, I regret it is simply not possible to draw that inference at all from the anomalies that have been pointed out to me. There has been much cross-examination on the reliability of the data. In my judgment, nothing from that

> cross-examination has really made any difference or raised any significant question as to the reliability of the underlying data that sits in the schedules that we have. It is abundantly clear that a huge amount of work has been carried out on the data to produce the schedules. An interesting factor of this case is that those schedules have now been checked by a number of experts. They have been processed according to the evidence in the same way that phone data is processed by analysts in every other case that have been dealt with it in, in other situations by the same investigating authority. Nothing in the cross-examination has caused me to conclude that the underlying data is unreliable."

Later on in his ruling the judge said this:

> "Nothing that came out of the cross-examination convinces me in any way that the underlying data is unreliable. So what is left? Well, this is a case of multiple links between Mr Cracknell and Mr Morgans and telephones and locations and cell sites and people. Some of those links may be tenuous. Some certainly are not. There are a multiplicity of links, some of which overlie each other, giving support to each other by referencing a number of telephones, a number of names, the time on which certain phones were used, the handset in which a certain SIM had been previously located. A jury may look at all of that and decide that it's not enough to make them sure that the Defendants were involved in the two conspiracies and the money laundering offence. And if they find that, then they will find the Defendants not guilty. Or they may look at it and they may say there is enough evidence here upon which we can infer guilt, in which case they will find them guilty. But I am quite satisfied at this juncture that there is sufficient evidence upon which a reasonable jury, properly directed, could infer guilt if that is the way that they assess the evidence, but that's for them to do, and not me."

5. The judge therefore left the case for the jury to assess the evidence in relation to the data of telephone contacts, together with the other evidence, including evidence as to contacts between the applicant and other co-conspirators.

6. Before us Mr Forte submitted again that the judge below had erred in concluding that the data were not unreliable. He submitted that the judge was wrong to take the stance that the defence had to prove it and he was wrong to treat the data as being sufficiently reliable as to enable the jury to convict. Mr Forte took us through examples where he says there was such anomalies or such errors in the data that the data must be seen to be fundamentally unreliable.

7. The single judge in refusing leave on this ground said this:

> "As to the first ground, the test for the judge was whether there was enough evidence, taking the prosecution case at its highest, upon which a reasonable jury, properly directed, could infer guilt (*R v Wassab Khan* [2013] EWCA Crim 1345). A significant part of the prosecution's case, especially on count 1, turned on phone data and the schedules based on that data. On those subjects there was sustained cross-examination. The judge was entitled to take into account the fact that the schedules had been checked by a number of experts and found to be accurate, and to conclude that nothing in the cross-examination supported a conclusion that the underlying data was unreliable. There was also evidence of multiple other links between [the applicant] and others involved in, or connected to, the conspiracy. The judge had to consider the evidence as a whole and, in my view, he was plainly entitled to conclude that the evidence adduced by the prosecution was sufficient to support a conviction."

8. We agree. There is no justifiable basis for concluding that there was any arguable error on the part of the judge in dismissing the application that there was no case to answer and in deciding to leave the case to the jury.

9. The second ground upon which Mr Forte seeks permission to appeal concerns the decision to admit evidence of a conviction for conspiracy to supply cannabis. In that regard the judge considered the relevant decision of this court in *R v Hanson* [2005] EWCA Crim 824. The judge said this:

> "What is in issue between the Defence and the Prosecution? Well really it is this: does all this evidence prove that either Defendant One and/or Defendant Two were involved in this conspiracy? The crucial question is, is the bad character evidence relevant to that matter that is in issue? Here, an investigation shows multiple connections between the Defendants and events we know have taken place, other defendants in this conspiracy, other telephones and various locations. The issue is going to be whether those connections that are established, if the jury find that is the case, is sufficient to make the jury sure that these two Defendants were involved in a conspiracy to supply cocaine and/or a conspiracy to supply cannabis and/or laundering money. Are they sure about that? Or could what connections they find, if they do find any, simply possibly be innocent ones? That's going to be the issue the jury are going to be focusing on. Are these previous convictions relevant to that issue that the jury have to determine, which is the issue that is in dispute between the Prosecution and the Defence?
>
> In my judgment, they are. These previous convictions involving the supply of cannabis …if one puts it in a wider context, make it more likely that the connections established by the Prosecution, if they are established, are due to the involvement of these Defendants in the conspiracy rather than arising from purely innocent reasons**."**

10. Mr Forte submitted that the decision to admit the evidence of the previous conviction was wrong.

11. The single judge refused that second ground of appeal, saying this:

> "As to the second ground, the issue under gateway D was whether the evidence of [the] previous conviction for supplying cannabis was relevant to an important matter in issue between the Defence and the Prosecution, namely whether [the applicant] was involved in a conspiracy to supply cocaine and/or a conspiracy to supply cannabis. In my view, the judge was entitled to say that it was. The judge considered the CACD decision in *R v Hanson* [above] and it was open to him to conclude that the wholesale supply of drugs is unusual behaviour and that a previous conviction for supply of drugs was relevant to … propensity to commit such offences. Given the time [the applicant]
> had spent in custody, the gap in time between the commission of the two offences did not undermine the significance of the earlier offending."

The judge went on to say that he saw no properly arguable case that the conviction was unsafe.

12. We agree. Neither ground of appeal against conviction is arguable. We refuse the renewed application for leave to appeal against conviction.

13. We turn next to the renewed application for leave to appeal against sentence. The judge considered that both conspiracies involved significant drug-dealing enterprises. The judge, who had of course the advantage of hearing the evidence at trial, concluded that the applicant performed a leading role in both conspiracies in directing and organising the buying and selling of cocaine and cannabis on a commercial scale. The applicant had substantial links and influence over others in the chain; there was an expectation the applicant would make a lot of money from these conspiracies. As the judge noted, the starting point for a category 1 offence based on an indicative quantity of 5 kgs of cocaine with the applicant performing a leading role is 14 years with a range of 12 to 16 years' custody. There were aggravating features: the previous conviction, the use of sophisticated equipment to carry out the conspiracy, and the fact that the conspiracy involved 8 kgs, not 5 kgs. The judge also took account of the personal circumstances and mitigation of the applicant and the delay that had occurred in bringing the charges. The judge considered that

the appropriate sentence for conspiracy in relation to cocaine was 15 years' imprisonment. He imposed a concurrent sentence of 2 years for the possession of criminal property (in this case £187,000).

14. In relation to the conspiracy involving the supply of cannabis, the judge considered that the applicant performed a leading role. The starting point under the guideline for a category 2 offence is based upon an indicative quantity of 40 kgs of cannabis. That in a case of a leading role provides a starting point of 6 years' custody with a range of 4-and-a-half years to 8 years' custody. Here the conspiracy, of course, involved 75 kgs of cannabis. The judge considered that a sentence of 7 years would be appropriate. But having regard to totality he reduced that to 3-and-a-half years' custody to be served consecutively to the sentence for the other offence. That resulted in a total custodial period of 18-and-a-half years.

15. In his written and oral submissions Mr Forte contends that the judge was wrong to assess the applicant as having a leading role for the reasons he identified in his written advice on appeal. He submitted that the applicant should have been seen as performing a significant not a leading role. Alternatively, not all the features of a leading role, he submitted, were present and therefore the sentence should in any event have been within the range of 9 to 12 years not 15 years for the conspiracy to supply cocaine. Mr Forte further submitted that in making the sentence for the second offence consecutive that resulted in an overall sentence of 18-and-a-half years which was disproportionate to the offending involved.

16. First, the judge who had heard the evidence at trial was best placed to assess the role that the applicant performed. We see no proper or justifiable basis for concluding that his assessment that the applicant performed a leading role within the meaning of the guidelines is even arguably wrong. The judge was entitled to reach the conclusion that the sentence imposed for conspiracy to supply cocaine was well within the guidelines and was amply justified in the circumstances.

17. Secondly, as a matter of principle the judge was entitled to impose a consecutive sentence for the other offence of conspiracy. That involved a conspiracy some of whose parties were different from those involved in the first conspiracy and it involved the supply of a different

drug. The real issue is one of totality and whether the overall sentence given the two offences was just having regard to the totality of the offending.

18. The judge did have regard to totality. He reduced the appropriate sentence of 7 years for the cannabis conspiracy by one-half to 3 years and 6 months to reflect considerations of totality. The individual sentences and more importantly the total custodial period was appropriate, proportionate and just to the offending in this case. We would refuse the renewed application for leave to appeal against sentence.