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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT WARWICK
(HIS HONOUR JUDGE COOKE) [T20197371]
[2024] EWCA Crim 1592

Case No 2023/03238/B3

Tuesday 10 December 2024

B e f o r e:

LORD JUSTICE HOLGATE

MR JUSTICE BRYAN

MRS JUSTICE THORNTON

R E X

- v -

ALISSIA DANKS

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Mr T Montgomery appeared on behalf of the Applicant

J U D G M E N T



Tuesday 10 December 2024

LORD JUSTICE HOLGATE:

1. On 21 August 2023, following a trial in the Crown Court at Warwick before His Honour Judge Cooke and a jury, the applicant (then aged 29) was convicted of conspiracy to handle stolen goods, contrary to section 1 of the Criminal Law Act 1977 (count 1). On 4 October 2024 she was sentenced to 21 months' imprisonment, suspended for 12 months, with an unpaid work requirement of 80 hours. The applicant renews her application for leave to appeal against conviction following refusal by the single judge.

2. The facts of the case have been set out in a detailed note prepared by the Criminal Appeals Office. We need only outline the background to the proposed grounds of appeal.

3. Between July 2014 and September 2015 cars and vans were stolen throughout the country, mostly in London, by unidentified individuals. Registration plates were changed in order to evade Automatic Number Plate Recognition when the vehicles were being moved. The Vehicle Identification Numbers were filed off and changed. The cars were listed for sale, with a contact number that was changed for each sale. Buyers were provided with a forged V5C.

4. The case involved two separate conspiracies. Count 1, with which the applicant was charged, related to the sale of stolen vehicles in Coventry or at Frander Farm in Weston Super Mare. This was the home of Anne-Marie, Alan, Derek and Joy Maidment, all of whom pleaded guilty to their roles in the conspiracy. Count 2 involved the sale of vehicles from other addresses in the Midlands.

5. Both conspiracies involved different groups of co-conspirators, but they were linked by a co-defendant, Sidney Fletcher who organised the operations. A seller would often speak with

Fletcher in the first instance, who then arranged for the sale to be carried out by someone else. These individuals received cash which Fletcher then collected, or money was transferred into bank accounts and then withdrawn. Generally, co-conspirators were paid £500 for each car they helped to sell.

6. There were 39 separate events of car thefts and subsequent sales or recoveries across both conspiracies, 22 of which related to count 1. Many co-defendants, including Fletcher, pleaded guilty to their role in the conspiracy before the applicant's trial began.

7. The co-defendant, Ben Villiers was the applicant's partner. The co-defendant, Dawn Slater is her mother. In September 2014, Villiers lived at 21 Harefield Road, Coventry. He then moved in with the applicant at Marlwood Bungalow in Bedworth, which was Slater's address. The co-defendant, Karra McMahon was a childhood friend of the applicant who visited the applicant at the bungalow.

8. The prosecution case was that the applicant travelled to collect recently stolen vehicles, and also in convoy with other stolen vehicles being moved for sale in order to carry co-conspirators on the return journey. Cars were hired for this purpose. The applicant paid partly for the hire charge for one such vehicle. On one occasion the applicant was involved in changing the registration plates on a stolen vehicle. The vehicles were then photographed at the address where she lived.

9. In summary, the prosecution relied on:

- (1) Telephone evidence that the applicant was in phone contact with co-conspirators at relevant times;
- (2) The agreed fact that the applicant had paid part of the charge for the car hired by Slater in May 2015;
- (3) ANPR images showing the applicant driving Slater's rental car, and on

another occasion sitting in the passenger seat of the car;

(4) Evidence on cell-site data showing the applicant's telephone travelling with and/or in convoy with co-defendants at material times;

(5) The evidence of Yvonne Allison that she saw three people, said to be the applicant, Slater and Villiers, changing the registration plates of an Audi Q3;

(6) Voice notes between the applicant and her brother where they discussed their mother being involved in "ringing cars for gypsies";

(7) The evidence of PC Morris that after the applicant was interviewed, she met co-conspirators at Hollyhurst Farm – a location used to prepare cloned vehicles.

10. The Summary provided by the Criminal Appeal Office identifies the events in which the applicant was said to have been involved, some of which also included her mother and/or her partner. For example, on 29 May 2015 Villiers was stopped by police whilst driving the stolen Audi Q3, for which the number plates had been changed. The prosecution case was that Villiers was transporting the Q3 to Frasander Farm for sale, with the applicant in convoy to bring him back. Villiers phoned the applicant to alert her that the police were following him, at which point she doubled back and travelled to the area of Slater's home.

11. The applicant was arrested on 8 July 2015. In her first interview, she denied driving her mother's hire car. She said that she did not have a licence. She later accepted that she had driven "the white car", which was hired by Slater as a birthday present so that she could go to Blackpool with Villiers. She shared her phone with Villiers because he did not have one. She said that he had built up a drug debt, and was driving the Audi in which he was arrested to pay off some of that debt. She had never seen the Audi before then.

12. After the arrest of Villiers and the interviews of McMahon, Slater and the applicant, all four of the co-conspirators travelled to Hollyhurst Farm for a meeting with another man. Evidence was given that this location had been used to prepare cloned vehicles. Given that Villiers, McMahon and Slater subsequently pleaded guilty to their part in the first conspiracy,

the prosecution said that the jury could infer the applicant's involvement from her presence at this meeting.

13. She was interviewed for a second time some ten months later, in May 2016, when she answered "No comment" to all questions asked.

14. The defence case was one of denial of participation in the conspiracy. It was submitted that the prosecution case was so weak that it did not call for an answer. The applicant did not give evidence at the trial, nor did she call any witnesses on her behalf.

15. The defence arranged for the recording of the applicant's first interview to be played in full to the jury. The defence put to PC Morris that she had decided to proceed without a solicitor, had answered all of the questions asked of her and had come across as answering those questions unhesitatingly.

16. The applicant also relied upon the following evidences which had been adduced as part of the prosecution case:

(1) The prosecution witness Sean O'Shea gave evidence that when he and Villiers were living at the same address, Villiers said that he did not have a telephone. He gave O'Shea the applicant's telephone number as a point of contact. There was no evidence before the jury as to which calls and texts on any given date were sent by Villiers and which by the applicant.

(2) Yvonne Allison took part in an identification procedure in which she failed to pick out the applicant. She described a person who was slimish and with dark eyes, which did not correspond to the applicant.

17. Because the defence had advanced a case that the applicant had co-operated with the police in her first interview, the prosecution applied to the judge to put before the jury a summary of the questions or topics raised with the applicant in the second interview at which she had given

"No comment" answers. The defence opposed the application.

18. Counsel for the prosecution submitted that the applicant's first interview dealt very generally with matters such as her finances, associations and use of hire cars. Her second interview was a specific exploration of the allegations she faced. The pre-interview disclosure was detailed, and the questions in that second interview were in line with that disclosure. It was submitted that it would be perfectly proper for the prosecution to submit to the jury that the applicant had given a thorough first interview, but that as soon as she was questioned on the specifics she did not provide any account. It was submitted that the Crown would be prevented from making this case without the jury knowing anything about what was raised during the second interview. Furthermore, there would be a risk of the jury being misled if they did not receive this additional information. However, the prosecution accepted that if the applicant did not give evidence, no adverse inference could be drawn from her second interview, and the application they made was not an attempt to circumvent that principle.

19. Counsel for the applicant submitted to the judge that the orthodox position, where there had been one full comment interview and a further "no comment" interview was that the jury were simply told of the fact that there was a second interview on a particular date, the length of the interview, and that the applicant had answered "No comment" to all questions. The defence did not intend to suggest to the jury that the second interview was simply a repetition of the first; but the defence would submit to the jury that in the first interview the applicant had been prompt, impressive and had answered all of the questions. It was not necessary for the jury to assess the second interview in order to decide whether they agreed with that submission. Counsel then submitted that section 34 of the Criminal Justice and Public Order Act 1994 would not be engaged, unless the applicant relied on a matter that she had neglected to mention in the interview. If the jury were told about the specific topics or questions that the applicant was asked, the danger was that they would hold her failure to answer against her. That risk

was borne out by the prosecution's suggestion that a further judicial direction relating to adverse inferences would be necessary.

20. In his ruling, the judge referred to an earlier email setting out his initial view that the topics raised during the second interview should not be put before the jury. However, since then he had read the transcript of both interviews and had listened to the tape of the first. The contrast between the two interviews of the police approach to questioning and the material with which the applicant was confronted could not be more stark. The first interview was a general discussion of the applicant's lifestyle, association and use of hire cars. Even the charge she now faced was not clarified at that stage. By contrast, in the second interview the applicant was asked specific questions about her knowledge of and involvement with the handling of specific stolen goods.

21. Counsel for the defence had stated that he played the first interview recording to the jury in order to present them with a picture of how openly, unhesitatingly and straightforwardly the applicant answered questions. The judge said that the jury could only consider this point if they had a reasonably full picture of the applicant's approach to police questioning overall. Without it, there was a risk of them being misled.

22. Defence counsel had also criticised the vagueness of the first interview, and that illustrated the extent of this risk. With no insight into the subject matter covered in the second interview, the jury might conclude that it covered the same ground. That danger could only be cured by the provision of a short summary of the topics raised in that further interview.

23. The judge also said that there was some force in the prosecution's submission that this situation was analogous to a "mixed comment" interview. The judge referred to section 15B-42 of Archbold, under the heading of "Partial Admissions", which cited *R v Sharp* (1988) 86

Cr App R 274 and *R v Aziz* [1996] 1 AC 41, as authority that the plain intention of the 1994 Act is that a partly adverse statement is admitted in evidence so that the tribunal of fact can be permitted to consider the whole statement, both the incriminating and the exculpatory parts.

24. The judge said that he would not allow reliance upon the list of topics to result in a *de facto* inference against the applicant. There would be no section 34 direction leaving scope for an adverse inference, unless the applicant chose to give evidence and raised matters which he did not answer in interview. The jury would be directed that they must not take that impermissible line of reasoning. They would be directed that the only relevance of the second interview topics was for them to judge the defence point about the applicant's response to police questioning in the first interview.

25. Mr Montgomery has made submissions on behalf of the applicant, both in writing and orally this morning, in which he seeks leave to appeal on five grounds. Each of those grounds is set out in some detail in his Perfected Advice. We have also considered the Respondent's Notice prepared by Mr Close who appeared at the trial on behalf of the prosecution, together with Mr Montgomery's reply to that Notice.

26. We will deal with the proposed grounds of appeal in a slightly different order. We will give only a brief summary of each ground of appeal, but we have fully considered each of the points raised and the cross-references given to the various supporting documents.

Ground 3: The judge erred by directing the jury that the topics in the second interview were relevant to their judgment of the applicant's stance in her first interview.

27. Mr Montgomery submits that this direction connected two unconnected matters and undermined the applicant's entitlement not to have her "no comment" stance held against her,

given that she had placed no reliance on matters that were not mentioned in the second interview. The judge misstated the defence position in his legal directions. The jury were directed that they were only in a position to judge whether the defence submission that the applicant was open and co-operative with the investigation was a good one if they were aware of the topics about which she declined to answer questions in her second interview.

28. However, it was never the defence position that the applicant had been co-operative with the investigation throughout. Instead, she was co-operative in her first interview. That was a matter in relation to which the jury should have been able to assess the merits, without reference to the second interview. Given that the applicant did not give evidence, her first interview was extremely important. The judge's misdirection unfairly negated that important defence point.

Ground 2: The judge erred in allowing the topics of the second interview to be introduced via re-examination of the officer in the case.

29. Counsel submitted that the judge's statement that there was a stark contrast in the police approach to questioning in the two interviews was immaterial, as section 34 was not engaged in any event. The judge's conclusion that the jury could only assess the defence point about the first interview by looking at the topics raised in the second was unfounded. There was no basis for the judge to treat the defence description of the first interview as "vague", as creating a risk of the jury being misled as to the applicant's overall stance. Nor was there a risk that they might conclude that the second interview had covered the same ground as the first. The judge made a false analogy between this situation and an interview containing mixed inculpatory and exculpatory passages, where the jury might receive the full interview.

Ground 4: The prosecution speech breached the law governing adverse inferences in relation to a "no comment" interview.

30. Counsel submitted that in his closing speech, prosecuting counsel invited the jury to draw an adverse inference, not just from the applicant declining evidence, but also from her silence in her second interview. The judge did not correct that position to the jury.

31. **Ground 1**: Counsel submitted that the judge gave repeated and unnecessary demonstrations of inappropriate, personal animosity towards defence counsel; that a reasonable observer would have shared the same view. This caused the applicant to fear that things had gone wrong with the administration of justice in relation to her trial. This animosity manifested itself in a number of ways set out in the Perfected Advice. Mr Montgomery submits that this is a case to which the observations of this court in *R v Lashley* [2005] EWCA Crim 2016 at [48] apply.

Ground 5: The summing up was unfair and unbalanced.

32. Counsel submitted that the summing up was unfair and unbalanced in a number of respects which have been summarised in the Summary by the Criminal Appeal Office. For example, it is said that in his summing up the judge did not summarise neutrally the defence points on inadequacies in the identification procedure. The judge's comments on the applicant not having given evidence dealing with the non-identification gave the impression to the jury that it was for the applicant to prove that she had not been present at the relevant times.

33. The judge is also criticised for the way in which he dealt with mobile telephone evidence. He implied that something less than being sure of the applicant's guilt would suffice in order for a conviction to be returned.

34. Further, counsel submits that the judge failed in the main part of his summing up to remind the jury that it was the applicant's case that the case against her was so weak that it did not call

for her to give evidence. In fact, the judge did remind the jury of this part of the defence case, prefaced by the words: "I have been asked by Mr Montgomery to remind you ...". It is suggested that this was presented to the jury merely as a sop or an afterthought. This point is also advanced in the context of the judge's criticism of Mr Montgomery's closing speech – a matter which is raised under Ground 1.

35. Lastly, it is suggested that the judge was "relentlessly critical" of the applicant's decision not to give evidence. His words made it certain that the jury would hold this fact against her.

Discussion

Ground 3

36. No criticism is made, or could be made, about the directions the judge gave to the jury about the applicant's decision not to give evidence at her trial for the purposes of section 35 of the 1994 Act.

37. In the next section of his written directions, the judge said this:

"The second principle is that only where certain criteria are met may a jury draw an adverse inference against a defendant arising from their failure to speak of matters in interview which are then brought up at trial, effectively concluding that what is relied on at trial has been made up since the interview. Plainly, Alissia Danks is not in that position. She has not given evidence herself, nor called any evidence. She has chosen instead to 'put the prosecution to proof' – i.e. to suggest via her barrister that the prosecution evidence is insufficient to establish her guilt. Since she has not advanced a factual case at all, it cannot be said that she is now relying on matters she could have raised in interview. I therefore direct you, as a matter of law, that you must not hold against her her decision not to answer questions in the May 2017 (sic) interview."

38. We note that in the transcript the judge corrected the reference in the written directions to

"May 2017" to read "May 2016". Rightly, Mr Montgomery, on behalf of the applicant, makes no criticism of that paragraph, which, importantly, dealt with the second interview. Those directions formed part of the context for the following paragraph in the directions, which is the subject of the criticism in Ground 3 and is also relevant to Grounds 2 and 4:

"Mr Montgomery on her behalf chose to play the recording of her first interview and he questioned PC Morris about how Miss Danks had elected to proceed without a solicitor, answered all the questions and came across as answering unhesitatingly. You are only in a position to judge whether the defence point that she was open and co-operative with the investigation is a good, bad or indifferent one if you are aware of the topics about which she declined to answer questions in the later interview. That is the sole reason you have been given that summary via the officer of the second interview topics. For the reasons I have explained, her 'no comment' stance in that interview has no further significance than that and must not be held against her in any other way."

39. In our judgment there is no arguable basis for criticising those directions. In the specific circumstances of this case it was relevant for the jury to be given a summary of the topics for the second interview. The defence chose to make a positive point in support of the applicant's case about the first interview, namely her candour. Indeed, Mr Montgomery tells us that he even went so far as to say to the jury that in the first interview the applicant was fluent, confident and convincing. He says that she was "impressive", and that that is why he insisted on the recording being played to the jury. But it was the defence who had also said that the police questioning in that first interview was "vague". That was because at that stage they were not able to put forward specific allegations of the kind which were addressed before and during the second interview.

40. Admission of a summary of the topics of the second interview was appropriate so that the jury could take them into account when assessing how much significance or weight to give to the positive point made by the defence about the first interview. But the judge was careful to

make it clear to the jury that those topics only went to that one issue. This was something which he later described to the jury as the "tight parameters" he had set for them on this aspect. He also made it plain to the jury – at least twice in the written directions – that they could not go any further, to hold the applicant's "no comment" responses to the questions in the second interview against her. This complied with the principles set out in the 1994 Act. There was no risk of the jury drawing an improper adverse inference against the applicant. The directions did not negate the point made by the defence about the first interview. Instead, the matter was correctly left to the jury in a balanced manner for them to assess.

Ground 2

41. This ground is not arguable. Having identified the proper purpose for which the judge admitted the summary of the topics for the second interview, the individual criticisms made by Mr Montgomery of certain of the judge's reasons in his earlier ruling on that subject fall away. For example, section 34 of the 1994 did not render the "stark contrast" between the two interviews immaterial to the jury's assessment of the point which the applicant chose to advance about the first interview. In addition, the analogy drawn by the judge with "mixed interviews" was apposite.

Ground 4

42. This ground is not arguable. The prosecution was entitled to refer to the applicant's "no comment" stance in their closing speech, so long as they abided by the judge's directions to the jury. With respect, Mr Montgomery's criticism of what they said involves somewhat selective references to the transcript. When the relevant passage is read fairly and as a whole, there can be no argument that the prosecution breached the judge's directions, or the law on "no comment" interviews where a defendant has elected not to give evidence in the trial.

Ground 1

43. This ground is not arguable. We take as a prime example of the complaints what happened as a result of the submissions made in the closing speech for the defence. It is clear from Mr Montgomery's reply to the Respondent's Notice that in his speech he said to the jury that the topics for the second interview were irrelevant – indeed, "a complete and utter irrelevance". That contradicted the legal directions which the judge had given to the jury. It was improper. The judge said nothing until the speech was concluded. He had to explain to the jury, unequivocally, why the submissions made by counsel were incorrect and were to be disregarded. This was something that counsel brought on himself. In the circumstances, the judge's remarks were well justified. Then, in order to protect the applicant, the judge went on to say that she was not responsible for the remarks which had been made in closing. He directed the jury firmly not to hold this incident against her.

44. We have considered each of the other complaints made under Ground 1. It is sufficient for us to say that they do not, whether individually or cumulatively, come anywhere near the threshold for this court to intervene as it did in *Lashley*. Having read lengthy extracts from the transcript dealing with the submissions of counsel, it is apparent that the judge in this trial exercised considerable patience. Where necessary he exercised his case management powers robustly in response to the manner in which the applicant's case was being conducted. The remarks complained of were generally made in the absence of the jury. Anything said in front of the jury was not, in our judgment, improper. When the transcript is read properly and in context, none of the criticisms of the judge is justified. Indeed, by way of example, we note that when the judge asked defence counsel to explain the areas of cross-examination he wished to pursue with a particular witness, the judge sought to protect the applicant's position correctly by asking counsel whether a particular point he was proposing to make in cross-examination was actually in the applicant's interest. He asked counsel to reflect on that overnight.

Ground 5

45. This ground, too, is unarguable. It is sufficient for us to say that we agree with each of the responses set out in the Respondent's Notice.

46. For all these reasons, and for the reasons that he gave, the single judge was correct to refuse leave to appeal. None of the criticisms levelled against the judge is arguable. We would add that there was ample evidence of the applicant's guilt in relation to count 1. It is not arguable that her conviction is unsafe. Accordingly, the renewed application for leave to appeal against conviction is refused.

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

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