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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/03232/B3
[2024] EWCA Crim 311



Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 13th February 2024

B e f o r e:

THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
(Baroness Carr of Walton-on-the-Hill)

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MRS JUSTICE FARBEY DBE

R E X

- v -

JACQUELINE FALCON

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr L Orrett appeared on behalf of the Applicant

Mr P Jarvis appeared on behalf of the Crown

J U D G M E N T
(Approved)

Tuesday 13th February 2024

THE LADY CHIEF JUSTICE: I shall ask Lord Justice Holroyde, the Vice-President of the Court of Appeal, Criminal Division, to deliver the judgment of the court.

LORD JUSTICE HOLROYDE:

1. In 2014 this applicant, Mrs Jacqueline Falcon came under suspicion in the course of her employment as a post clerk at the Hadston Post Office in Northumberland. She was prosecuted by the Crown Prosecution Service ("CPS") for an offence of fraud, contrary to section 1 of the Fraud Act 2006. Her case was committed to the Crown Court at Newcastle Upon Tyne.

2. She pleaded guilty, and on 2nd September 2015 she was sentenced to three months' imprisonment, suspended for 12 months, and ordered to pay compensation of £933.69. She was also required to pay the statutory surcharge of £80.

3. She now applies for an extension of time of more than eight years in which to apply for leave to appeal against her conviction and for leave to adduce fresh evidence in support of her appeal. Her applications have been referred to the full court by the Registrar.

4. For reasons which we shall shortly explain, the respondent (the CPS) has helpfully indicated that it does not oppose the applications. It is nonetheless a matter for this court alone to consider the applications and to decide in accordance with the Criminal Appeal Act 1968 whether the conviction is unsafe.

5. A brief summary of the facts is sufficient for present purposes. At the time of the alleged offence the appellant was in her early 30s, married and with the care of her young children.

She was of good character. She had worked at Hadston and in other post offices since the age of 18, but had never received any formal training on the Horizon accounting system which had been installed by Post Office Limited ("POL"). She was a diligent employee, but stated that her employer, the Post Master, was quick to find fault and invariably insisted on deducting money from the applicant's wages to make good any mistakes.

6. In early December 2014, when completing her usual cash declaration at the end of the day, the applicant found that she was £933.69 short. She was unable to ascertain how that discrepancy had arisen. She felt unable to report it to the Post Master for fear that the missing sum would be deducted from her wages in the approach to Christmas. She therefore resorted over a number of weeks to falsifying the figures in order to hide the discrepancy until she could either resolve it or make good the loss herself at a later stage. In mid-February 2015, however, her employer found out what had happened and reported the matter to the police.

7. When interviewed under caution, the applicant admitted falsification of the figures. She answered all the questions she was asked. She explained that when she found the discrepancy she assumed that there must have been an administrative error, or an error made either by her or by the Post Master. She made clear that she had not taken any money.

8. In the course of the police investigation a specific inquiry was made by the CPS of a POL security manager, a Mr Ryan, as to whether there could have been some administrative error which explained the discrepancy. The answer to the inquiry contained nothing to suggest that the deficiency could have been caused by one of the bugs and defects which POL by then knew to exist in the Horizon system. Mr Ryan later provided a witness statement and exhibited a significant number of Horizon documents, but again made no reference to any possibility of a problem with that system.

9. The applicant has recently provided a witness statement in which she describes the traumatic experience of being prosecuted, the embarrassment and distress which she and her family suffered as a result of being shunned by their village community after her arrest, and her fear when she appeared before the Crown Court. She indicates that her employer was wrongly telling people that she had been sacked for stealing. She also indicates that for unconnected reasons, it was in any event a particularly difficult period for her. She suffered anxiety and panic attacks, and barely left her house. If she had been told that POL knew of problems with the Horizon system, she would have acted differently. As it was, she pleaded guilty and received the sentence to which we have referred.

10. It was not until about late 2022 or early 2023, when she received a letter from the Criminal Cases Review Commission alerting her to possible grounds of appeal, that the applicant became aware of the problems with Horizon, to which we now turn.

11. This court has heard a series of cases in which former sub-postmasters, sub-postmistresses and Post Office employees (collectively referred to for convenience as "SPMs") have challenged their criminal convictions on the basis of the unreliability of data produced by Horizon. The series began with *R v Josephine Hamilton and Others* [2021] EWCA Crim 577. Subsequent cases included *R v Margaret White and Others* [2022] EWCA Crim 435. The judgments in all of those cases are publicly available. It is sufficient for present purposes for us to summarise their effect very briefly.

12. In each of those cases this court has had to consider whether the prosecution of the applicant or appellant concerned was an abuse of the process of the court, and whether the conviction is unsafe. The principles on which the court has acted and the reasons why a guilty plea does not necessarily bar an appeal against conviction were explained in *Hamilton*.

The court there used the shorthand term "Horizon case" to identify a case in which the reliability of Horizon data was essential to the prosecution and there was no independent evidence of an actual loss from the account of the SPM concerned, as opposed to a Horizon-generated shortage.

13. The court referred to and adopted findings made by Fraser J (as he then was) in civil proceedings brought in the High Court by SPMs against POL. Those findings established two key features which were in existence throughout the period of many years with which the High Court was concerned: first, that there had been serious problems with Horizon which gave rise to a material risk that an apparent shortfall in the accounts of a branch post office did not in fact reflect missing cash or stock, but was caused by one of the known bugs, errors or defects in Horizon; and secondly, that POL, despite knowing of the serious problems, had failed to consider or to make appropriate disclosure of those problems to prosecuted employees. POL had, on the contrary, asserted that Horizon was robust and reliable, and had effectively steamrolled over any SPM who sought to challenge its accuracy.

14. This court found that in cases where Horizon data was essential to the prosecution, there was no basis for the criminal proceedings if the Horizon data was not reliable. POL's failures of investigation and disclosure prevented the accused SPMs from challenging – or challenging effectively – the reliability of the data. In short, POL, as prosecutor, brought serious criminal charges against the SPMs on the basis of Horizon data, and by failing to discharge its duties of disclosure it prevented them from having a fair trial on the issue of whether that data was reliable. This court further found that by representing Horizon as reliable, and refusing to countenance any suggestion to the contrary, POL effectively sought to reverse the burden of proof. It treated what was no more than a shortfall shown by an unreliable accounting system as an incontrovertible loss and it proceeded as if it were for the accused to prove that no such loss had occurred.

15. Denied any disclosure of material capable of undermining the prosecution case, defendants were inevitably unable to discharge that improper burden. As each prosecution proceeded to its successful conclusion, the asserted reliability of Horizon was, on the face of it, reinforced. Defendants were prosecuted, convicted and sentenced on the basis that the Horizon data must be correct, and cash must therefore be missing, when in fact there could be no confidence as to that foundation.

16. This court concluded that in Horizon cases the prosecutions were an abuse of the process of the court, both because it was not possible for the trial process to be fair (category 1 abuse) and because it was an affront to the conscience of the court for the defendant concerned to face prosecution (category 2 abuse).

17. Returning to the present case, we note that the Notice of Appeal drafted by counsel and solicitors, kindly acting *pro bono*, was lodged on 15th September 2023. The Registrar swiftly granted representation orders to enable the necessary preparation to be undertaken, inquiries made with the CPS, and perfected grounds of appeal thereafter filed.

18. The respondent CPS, having made the necessary inquiries and reviewed documents received from POL, filed a Respondent's Notice on 22nd January 2024, in which it confirmed that the applications would not be opposed. The Criminal Appeal Office was thereafter able to progress the case swiftly to today's hearing.

19. For the appellant, Mr Orrett submits that this is a Horizon case; that the prosecution of the applicant was an abuse of the process; and that her conviction is unsafe. He submits that the applicant's guilty plea was entered in ignorance of important matters concerning the reliability of Horizon, which had subsequently become much better known. There was a

failure to disclose to her information which would have caused those then acting for her to advise her in very different terms. Mr Orrett focuses on category 1 abuse, and does not actively pursue submissions as to category 2.

20. For the respondent, Mr Jarvis accepts that this is a Horizon case and that the conviction is unsafe. He points out that the CPS took appropriate steps to obtain evidence and information from POL, but, like the applicant, was proceeding in ignorance of material facts known to POL. As a result, there was a failure of disclosure. The respondent has confirmed that had it known at the time of POL's failure of disclosure, it would either not have charged the applicant or would have discontinued any proceedings prior to her arraignment. He submits that the prosecution was not an affront to the conscience of the court, because the CPS as prosecutor did nothing improper. He submits that any finding of category 1 abuse of the process should only have been made on the basis that failings on the part of POL made it impossible for the applicant to have a fair trial.

21. We are grateful to both counsel and to all those who have assisted them in the preparation and presentation of the case.

22. Having considered the evidence and the submissions, we are satisfied that the respondent's concessions are rightly and properly made. Although this case was prosecuted by the CPS, rather than by POL, it was a Horizon case in which the reliability of Horizon data was essential to the prosecution and there was no independent evidence of the alleged, or any, actual loss. Despite what was said by the applicant in interview, no relevant investigation was carried out by POL; and despite the inquiry which the CPS rightly made of POL, no disclosure was made to the CPS of the concerns about Horizon which POL knew to exist. The CPS was, therefore, unable to make the disclosure to which the applicant was entitled.

23. The applicant pleaded guilty because the failures by POL meant that she and her legal representatives were kept in ignorance of material evidence which went directly to the issue of her alleged guilt.

24. The CPS, reliant as it was on the provision of relevant information and evidence by POL, did not act improperly in prosecuting the applicant. For that reason, although this court has reached a different conclusion in cases which were prosecuted by POL, we accept that these proceedings brought by the CPS did not fall into the exceptional category of case in which the prosecution of the applicant was a category 2 abuse of the process. We are, however, sure that as a result of POL's failures of investigation and disclosure, the applicant could not have a fair trial, and her prosecution was in that respect a category 1 abuse of the process. We are also sure that, notwithstanding her guilty plea, the applicant's conviction is unsafe.

25. We therefore grant the necessary extension of time; we grant leave to appeal; we formally receive the applicant's recent witness statement as fresh evidence; we allow the appeal; and we quash Mrs Falcon's conviction.

THE LADY CHIEF JUSTICE:

26. I add this to the court's judgment. This is the 71st Horizon conviction that has been quashed by this court. Mrs Falcon's appeal was commenced in mid-September 2023. The Registrar granted legal aid for legal representatives to advise and assist her. Her final grounds of appeal were lodged by the beginning of December. The appeal itself has been disposed of just over three weeks after the respondent then indicated that the appeal based on category 1 abuse of process would not be opposed.

27. Today's hearing has lasted some 30 minutes in total, including delivery of our oral judgment.

28. The court has been, and remains, committed to the efficient and swift dispatch of Horizon appeals. This year to date six applications have been received, the most recent of which has arrived this week. Four that were unopposed have already been quashed – two within 14 days of Notice of Appeal being received by the Court of Appeal Office, and two within seven days.

29. These matters have proceeded under the fast track approach which has been implemented. The Registrar seeks confirmation within 14 days of receipt of an Appeal Notice in a Horizon case, whether or not an appeal will be opposed and, if so, whether on either or both category 1 and category 2 abuse cases. At the same time, legal aid is granted for experienced solicitors and counsel to act for the applicant. Where an appeal is unopposed, the appeal can be listed on an expedited basis.

30. With the co-operation of all parties, for which we are grateful, the court has been able to quash these Horizon convictions speedily.

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

Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk