No: 201902087/B5-201902489/B5
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2020] EWCA Crim 688

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 22 May 2020

(VIRTUAL COURT)
B e f o r e:
LORD JUSTICE SINGH

MR JUSTICE SPENCER

MR JUSTICE CHAMBERLAIN

R E G I N A
v

ARTHUR BOXALL

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Mr T Forte appeared on behalf of the **Applicant**

J U D G M E N T

MR JUSTICE SPENCER:

1. This is a renewed application for leave to appeal against conviction and sentence following refusal by the single judge.

2. On 8 May 2019, in the Crown Court at Kingston-upon-Thames, the applicant, who is now 53 years of age, was convicted by the jury of conspiracy to supply a controlled drug of Class A, cocaine. A co-defendant, Dean Melody, had previously pleaded guilty to the same conspiracy. The quantity of cocaine involved was 33 kilogrammes, with a wholesale value of around £1 million and a street value of around £2.6 million.

3. On 7 June 2019 the applicant was sentenced by the trial judge, His Honour Judge Stephen John, to a term of 22 years' imprisonment. Melody was sentenced to 12 years' imprisonment, with 25% credit for his guilty plea. It follows that, after trial, Melody's sentence would have been 16 years. The judge sentenced on the basis that the applicant had played a *leading* role in the conspiracy, for the purpose of the Sentencing Council guideline, whereas Melody had played only a *significant* role.

4. We are grateful to Mr Forte for his written and oral submissions and in particular for his helpful skeleton argument in which he has focused realistically on the central issues.

5. The question for us is whether we are persuaded that any of his grounds of appeal are arguable with a realistic prospect of success.

Conviction

6. We deal first with the appeal against conviction. There is only one ground of appeal. It is contended that the judge was wrong to allow the Crown's application to adduce evidence of and associated with the convictions of a third party, Kevin Doyle, for possession of cocaine with intent to supply, those offences having been committed some 3 months *after* this conspiracy. Doyle was not alleged to be a party to this conspiracy. The judge admitted the evidence under section 100(1)(b) of the Criminal Justice Act 2003, on the basis that it had substantial probative value in relation to a matter in issue in the proceedings which was of substantial importance in the context of the case as a whole, namely whether the applicant was a party to the conspiracy or was innocently present at the material times.

7. In order to put the ground of appeal and the judge's ruling in context, it is necessary to summarise the relevant facts very briefly. They are set out fully in the Criminal Appeal Office summary which is well known to the applicant and his legal team.

8. On 25 and 26 October 2018 police officers with the National Crime Agency carried out

surveillance on two transit vans being driven by the applicant and the co-defendant Melody. On 25 October the transit vans were observed travelling north from Essex in convoy. The applicant and Melody drove towards Merseyside where they stayed overnight nearby at a hotel in Skelmersdale. The following day they returned south.

9. During the return journey on 26 October they were observed at the Stafford Services on the M6 motorway. They resumed their journey southbound travelling in convoy. They were stopped by police officers on the M1 motorway south of the Toddington Services and detained whilst a drugs search took place. The applicant gave a false explanation for the journey north, claiming that he had travelled to see a woman he had arranged to meet on a dating website but she had not turned up. The applicant accepted in due course that this was a false story made up on the spur of the moment. Following arrest he gave a "no comment" interview.

10. Concealed in Melody's van the police found 32 kilograms of cocaine beneath a tool box with a false bottom, and a further kilogram of cocaine was found on top of the tools (so 33 kilos in total). On analysis, the bulk of the cocaine (26 out of 33 kilos) was of a very high purity, in the range of 86% to 95%; the remaining 7 kilos were in the range of 59% to 69% purity which was still high. The purer the cocaine the closer it is likely to be to the source of importation.

11. In the applicant's van the police found an encrypted BQ Aquaris phone. It was an agreed fact that such phones are known to be used by organised crime groups and are very expensive to rent (a figure of £7,000 per annum was mentioned in evidence). Cell site evidence "co-located" this BQ phone with the applicant's other phones in the weeks preceding the journey.

12. Behind the sun visor in the applicant's van the police found two old £10 notes (withdrawn from circulation) and a scrap of paper on which the serial numbers of those banknotes were written. It was an agreed fact that such banknotes are often used as tokens by those involved in the exchange of money for drugs to ensure that they are dealing with the right person.

13. Also on that scrap of paper was written the number "33" and a series of other numbers and letters. The prosecution suggested that the relevant part of the entry read "33 x 1" and tallied with the 33 blocks of cocaine each weighing 1 kilo found in Melody's van. The cocaine, the prosecution suggested, must have been collected in the Merseyside area, and that was the reason for the two of them to travel north and back.

14. Other phones were seized from the applicant and from Melody. Analysis of those phones showed that the applicant was in contact with Melody in the run up to and on the eve of the journey north as well as during the journeys themselves.

15. We now come to the relevance of the third party, Kevin Doyle. His name appeared as a contact in the applicant's phone and in Melody's phone. Analysis of the applicant's phone showed that he was in contact with Doyle the day before the journey north and on both subsequent days. Doyle had also attempted to contact the applicant after the applicant was arrested.

16. The prosecution case was that the applicant and Melody made this two-day journey, driving in convoy, a round trip of some 440 miles, solely in order to collect 33 x 1 kilo blocks of high purity cocaine, and that a very large amount of money must have been paid over for the cocaine.

17. The applicant's case was that Melody must have collected and hidden the cocaine and did so wholly without the applicant's knowledge. They had travelled up to Merseyside because Melody had said there was the firm prospect of two or three days' well paid work there (we should explain that the applicant was by trade a drainage engineer) but in the event he was told the work had fallen through. His case was that Melody had asked him to look after the BQ phone at the Stafford Services on the return trip because he, Melody, was sick of receiving nuisance calls from his girlfriend. The two £10 notes were old ones from a jar at home, the applicant said, in which he kept accumulated loose change. He thought the two old banknotes might be worth something and he was going to check the serial numbers. He did not know why he had written those serial numbers on the piece of paper. The writing did not mean '33 kilos'. The "33" was part of a postcode he had written down in relation to an address in Essex.

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18. The prosecution sought to undermine the applicant's innocent explanation for his presence with Melody on the journey north and back and his lack of any knowledge of the cocaine found in Melody's van, and his innocent explanation for the items found in his own van.

19. It was in this connection that the prosecution applied to introduce evidence of Doyle's conviction in March 2019 for possessing cocaine. Doyle had pleaded guilty to possessing five 1 kilo blocks of high purity cocaine with intent to supply, arising from his arrest at the entrance to a cafe called "Roman Bagel" in London on 25 January 2019. Two kilos were found on his person and in his van; 3 kilos were found at his home when it was searched.

20. The prosecution also sought to introduce:

(i) evidence that there was extensive phone contact between Doyle and the applicant on 24, 25 and 26 October, some of those contacts during the lengthy journeys the applicant was making in close convoy with Melody;

(ii) evidence that when Doyle was arrested on 25 January 2019 he was in possession of an encrypted BQ Aquaris phone similar to that found in the applicant's van;

(iii) evidence that Doyle's mobile number was saved as a contact on the applicant's phone and

on Melody's phone and

(iv) evidence that Doyle's mobile number was saved on the applicant's phone as "Bagel" - the name of the cafe at the entrance to which Doyle was arrested in possession of cocaine on 25 January.

21. The prosecution applied to adduce this evidence in relation to Doyle in two alternative ways: first, under section 98 of the Criminal Justice Act 2003, on the basis that it was evidence "to do with the facts" of the offence with which the applicant was charged; second, under section 100(1)(b) of the Act in the way we have already explained. Counsel's written submissions on both sides focused on the section 98 route to admissibility. In the event, the judge refused to admit the evidence under section 98 but he was satisfied it was admissible under section 100(1)(b) and admitted it on that basis.

22. A central plank of the defence argument before the judge was that to admit the evidence relating to Doyle and his drug dealing would be "no more than thinly veiled guilt by association". Reference was made to observations by Pill LJ in R v Ahmed [2007] EWCA Crim 1636, at [16]. The judge rejected this argument. He was satisfied that Ahmed was plainly distinguishable and turned on its own facts. The judge concluded his ruling as follows:

> "21. Finally, although I was not addressed on the matter, I should add that, following *R v Braithwaite* [2010] 2 Cr App R(S) 18 (128), since the conditions of s. 100 are met, there is no residual statutory discretion to refuse to admit the evidence, the matter … requiring the exercise of judgment rather than discretion."

23. That was a reference to the judgment of this court in the leading case of *Braithwaite* given by Hughes LJ, in the context of a defence application under section 100(1)(b) of the Act - an important distinguishing feature of that case to which we shall return.

24. In his summing-up and in his written directions of law the judge set out the basis on which the prosecution suggested that the evidence concerning Doyle tended to rebut the applicant's innocent explanation for his trips with Melody. At the end of that part of the directions of law the judge said:

> "It is important that you have firmly in mind that there can be no suggestion that Doyle was a party to the conspiracy with which the defendant is charged. It is equally important that you have firmly in mind that the evidence concerning Doyle should not be used by you in any way as adding to the prosecution's case by the use by you of faulty (and wrong) reasoning of 'guilt by association.'"

25. The judge identified in his summing-up nine strands of the prosecution's circumstantial case, only one of which (number 4) referred to Doyle:

> "... the defendant is both before and during the journey in telephone contact with Doyle, a man who pleaded guilty to possession with intent to supply five kilos of cocaine found in his possession three months later."

26. In his grounds of appeal Mr Forte contends that the judge was wrong to permit the Crown to adduce the convictions and supporting evidence of Doyle's drugs criminality. The effect of that "guilt by association" material in undermining the defence of innocent association must have been stark and renders the verdict unsafe. Mr Forte submits that there was no proper analysis in the judge's ruling of how the evidence had "substantial probative value". However one looks at it, he says, the reality is that the evidence in relation to Doyle amounted to no more than guilt by association. The admission of the evidence made an already difficult case utterly impossible and cast such an overarching pall over the case that any progress the defence had made in undermining the prosecution case was rendered as naught.

27. We have the advantage of written submissions from the Crown in the respondent's notice. It is submitted that the judge applied the correct test and reached a correct and proper conclusion. Although his reasoning was only briefly explained in his ruling, the respondent's notice points out that his reasoning is laid out fully and clearly in the judge's written directions to the jury and, it is said, his reasoning is unimpeachable. In any event, it is said the evidence overall was so overwhelming that the conviction is safe.

28. In his skeleton argument for today's hearing Mr Forte emphasises how rarely this court has had to consider an appeal in relation to a *prosecution* application to adduce non-defendant bad character evidence under section 100 of the Act. Mr Forte has conducted a very thorough search of the relevant databases in the law reports to assist in that task. He initially identified only two remotely similar cases: R v Wright [2013] EWCA Crim 820 and R v Buaduwah-Esandol [2005] EWCA Crim 3580. We agree that those cases are readily distinguishable from the present case.

29. Mr Forte, from a later search of the authorities, also drew our attention to further cases where prosecution applications under section 100 have been considered by this court. The first is R v Doyle [2017] EWCA Crim 340; the second is R v Livesey [2019] EWCA Crim 87. Again, those authorities turn on their special facts and, as Mr Forte put it in his oral submissions, all the authorities to which he has referred us are fact specific. Nevertheless, we think that Livesey has some similarities to the present situation and we shall return to it.

30. Our own researches had identified a further authority which we think has some similarities to the present case and we drew that authority to Mr Forte's attention a day or two ago; that is the case of R v Rand & Ors [2006] EWCA Crim 3021. It was a very complex money laundering conspiracy with many defendants. Two of the relevant

defendant's co-conspirators who had pleaded guilty had convictions for smuggling. They were not on trial with the relevant defendant but there was evidence of association between the relevant defendant and these two other men during the period of the conspiracy and the prosecution sought to introduce evidence of those conversations and meetings along with their convictions for smuggling.

31. The issues in the relevant defendant's case included whether the source of the cash he handled was criminal and, if it was, whether he knew it was criminal. This court upheld the judge's ruling that the history of smuggling by the two co-conspirators was relevant and admissible as it had substantial probative value. We note that in the course of the court's judgment Hughes LJ acknowledged that even though the evidence met the threshold for admissibility, it would have been at least open to the judge to exclude the evidence under section 78 of the Police and Criminal Evidence Act 1984 ("PACE") as having an unfair impact on the trial.

32. More generally, at [63] Hughes LJ said this:

> "…Other people's histories and convictions of this kind are likely to be relevant in cases where the allegation is of money laundering. Evidence of the company which a defendant keeps, and the circumstances in which he keeps it, will often be a significant part of proving a criminal operation, whether it is charged as a conspiracy or whether it is not. But when it is, it is of importance that the judge explain carefully to what issues the evidence goes. Judges do need to be aware that evidence of this kind, if care is not taken, can become simply a generalised and unfocused cloud of suspicion. Without care, the reasoning that, here is a defendant who must be a crook, without asking whether he is guilty as charged, can become a tempting trap for jurors. Judges accordingly need to do all that they can to ensure that jurors reason properly."

33. Mr Forte submits that the judge in the present case fell into error in saying at the conclusion of his ruling (which we have already quoted) that there was no residual statutory discretion to refuse to admit the evidence whilst the conditions of section 100 are met. He submits that the single judge refusing leave similarly fell into error in saying that:

> "Once [the judge] reached that point in his deliberations he had no discretion about admitting the evidence; he was required to allow the evidence to go before the jury..."

34. In our view, the position is, as a matter of law, that it was still open to the judge to accede to an application under section 78 of PACE to exclude the evidence even though the evidence was admissible under section 100(1)(b). We note that this interpretation has the support of Professor JR Spencer in his monograph "Evidence of Bad Character" (Third edition, 2016) at paragraph 3.53:

> "Where the prosecution evidence is concerned, section 78 of PACE gives the court a general discretion to exclude if it considers that the admission of the evidence in question would have 'an adverse effect on the fairness of the proceedings'; and it could be that, despite the Court of Appeal's emphatic words in *Braithwaite* and *Dizaei*, a court does have a discretionary power to exclude evidence otherwise admissible by section 100 where it is tendered by the Crown."

35. In the present case no application was made to exclude the evidence under section 78 of PACE either in the course of submissions to the judge prior to his ruling, or once the judge had given his ruling on section 100. We have had to consider whether the fact that the judge may have overlooked the availability of section 78 of PACE, neither party having drawn his attention to the point, affords a ground of appeal. We should say that when we asked Mr Forte about this matter he accepted very candidly that it had not occurred to him at the time to make an application to exclude the evidence under section 78. The reason for that was that he was so surprised the judge had allowed the prosecution's application under section 100, the argument having centred principally on section 98.

36. The matter having now been raised before us, we are required to consider whether, even arguably, a section 78 application to exclude the evidence could conceivably have been successful. We shall return to that issue.

37. Mr Forte also contended in his skeleton argument, and has repeated and enlarged on that contention in his oral submissions this morning, that the judge's ruling was wrong because it could not sensibly be inferred that Doyle was involved in drug dealing at the time of the events in which the applicant and Melody were concerned (October 2018), which was 3 months before the drug dealing in January 2019 which led to his conviction. Mr Forte takes issue here with the Crown's assertion that the substantial probative value of the evidence arises from the proposition that a person seen to be involved in organised crime group drug supply in January (as was Doyle) is much more likely than an ordinary person to have been involved in such supply the previous October, and the applicant being in contact with such a person at material times during the journeys in October made it more likely that the applicant was himself involved in organised crime group drugs supply.

38. Mr Forte acknowledges that there was a strong case against the applicant in any event but he submits that it is impossible to say that with confidence that the jury would inevitably have come to the same conclusion had the evidence relating to Doyle been excluded from their consideration.

39. We have considered all these submissions very carefully. We are not persuaded that there is any arguable ground of appeal against conviction. These are our reasons.

40. The fact that this was an unusual application under section 100, made by the prosecution rather than by the defence, is irrelevant provided the application was soundly based. Appeals in this court arising from prosecution applications under section 100 may be few and far between but that does not affect the principles to be followed in applying the statutory provisions. The case of Rand, to which we have referred already, is a good example.

41. The case of Livesey, to which Mr Forte drew our attention this morning, also affords an example of how such material can become relevant and admissible. There the issue arose in relation to an address book found in possession of the relevant defendant who was charged with conspiracy to supply drugs, which contained the names and details of a large number of individuals, many of whom had previous convictions for drug dealing and the like. It was held by the trial judge that the evidence of the previous convictions and criminal background of those individuals was admissible under section 100(1)(b) of the Act, on the basis that it had sufficient probative value in relation to a material issue in the case. This court upheld that ruling. We note in passing that again, as in the case of Rand, the trial judge in that case had been referred to section 78 of PACE and had considered that provision as well in reaching his conclusion. We reject Mr Forte's submission that to admit the evidence in the present case amounted to "inappropriate stretching" of the principle or “broadening it too far”. This case is simply another example of the myriad factual situations which can arise.

42. The judge's reasoning in his ruling, when dealing with this application under section 100 as opposed to section 98, was economical but at paragraph 11.5 of the ruling he correctly identified the "matter in issue" which was of "substantial importance in the context of the case as a whole", namely whether the defendant was a party to the conspiracy or innocently present at the material times. We note that this is precisely how the application was put under section 100(1)(b) in the bad character notice dated 2 April 2019.

43. The judge was satisfied that the evidence of Doyle's subsequent similar trafficking in kilos of cocaine had "substantial probative value" on that central issue. In his ruling he did not expand on his conclusion but he had earlier identified the strands on which the prosecution relied and those were repeated in his directions of law to the jury at paragraph 20-22 of his written directions. That was clearly his reasoning for admitting the evidence.

44. The Doyle evidence went to rebut the applicant's innocent explanation for the various pieces of incriminating evidence, for example: the old £10 bank notes used as tokens, the

serial numbers of which he had written on the scrap paper found behind the sun visor in the van; the "33 x 1" written on the same piece of paper, equating to the 33 kilograms of the cocaine which were collected but which the applicant said was simply part of a postcode; his possession of a BQ encrypted phone which the applicant said was Melody's phone although the cell citing suggested that the applicant had used it.

45. All these alleged innocent explanations had properly to be examined by the jury in the context of the applicant's contemporaneous association with Doyle, a man involved in very similar large-scale drug dealing in kilo quantities of high purity cocaine and a man in possession on arrest of a similar BQ encrypted phone. The prosecution were entitled to point to the accumulation of improbable coincidences in the light of that association.

46. Particularly striking and potent, in our view, was the evidence that on the applicant's phone Doyle's number was saved as "Bagel" and the name of the cafe where Doyle was arrested with a kilo of cocaine 3 months later was "Roman Bagel". The judge highlighted this in ruling at paragraph 8 and it featured in the directions of law at paragraph 21.6.

47. As to the gap in time between the events in October 2018 and Doyle's drug dealing 3 months later, we do not think that gap matters in the context of such serious criminality, with the hallmarks of organised crime group activity including the use of a similar encrypted BQ phone.

48. The only point which was potentially arguable and initially troubled us was the new point raised by Mr Forte in his skeleton argument in relation to section 78 of PACE. The judge proceeded on the basis that once he had concluded that the evidence had substantial probative value, there was no "residual statutory discretion" to exclude it. He cited the very clear statement to that effect by this court in Braithwaite.

49. For the reasons we have already explained, we accept that because this was a prosecution rather than a defence application under section 100, there remained the possibility of an application by the defence, under section 78 PACE, to exclude otherwise admissible evidence. However, the fact is that no such application was made for the reasons Mr Forte gave. Had such an application been made, we are quite satisfied it could not conceivably have succeeded. The judge would have been required to consider whether the probative value of the evidence exceeded its prejudicial effect. Although sometimes described as a "discretion", the exercise of that judgment under section 78 is more properly described as an evaluative decision in ensuring there is a fair trial in accordance with Article 6 ECHR: see R v Twigg [2019] 1 WLR 1533 at [42]ff .

50. By definition the judge was already satisfied that the Doyle evidence had substantial probative value, that is to say the required enhanced degree of relevance. The countervailing prejudicial effect was no more than the bare assertion that to admit the

evidence would amount to inviting the jury to assume guilt by association. In his oral submissions, when we put this point to him this morning, Mr Forte accepted that this was the only real prejudice which could have been put forward under section 78 although he did not accept that his concession in any way minimised the prejudice.

51. However, that was an argument which the judge had already considered and rejected. The judge was right to distinguish the case of Ahmed, which was very different on its facts, where this court understandably expressed concerns that in the absence of true probative evidence the jury might have fallen into the trap of assuming guilt by association. The present case was very different: there was abundant other evidence of guilt. Furthermore, any prejudice could be and was mitigated by the directions of law which the judge gave the jury in writing and orally, which clearly explained the potential relevance of the evidence and warned against its improper and unjustified use. Those directions were approved by counsel. We think the judge properly diverted the jury from the potential looseness of reasoning which Hughes LJ warned against in Rand in the passage at [63] which we have already quoted. Had anything further been required in the directions in this case to minimise the prejudice, we are sure that Mr Forte would have raised it with the judge at the time. Accordingly, we are not persuaded that the section 78 point affords any arguable ground of appeal either.

52. In reality this was a very strong case indeed, in which the evidence relating to Doyle formed a comparatively small part of the Crown's circumstantial case. The judge's summing-up was accurate, fair and balanced. It is not arguable that the applicant's conviction is unsafe or that the trial was in any way unfair.

Sentence

53. We turn to the application for leave to appeal against sentence. Again, in the end, there is in reality only one point. Mr Forte submits in his skeleton argument that the judge was wrong to conclude that the applicant had played a *leading* role rather than merely a *significant* role. In his skeleton argument he accepts that if the applicant's role was truly a leading role, a sentence of 22 years is unappealable for a conspiracy involving 33 kilos of cocaine, the bulk of which was of very high purity.

54. It also follows, it seems to us, that if the judge was correct in ascribing a *leading* role to the applicant, there was a proper justification for the distinction drawn between the applicant's sentence of 22 years and Melody's sentence of 16 years for a *significant* role. In that event, the second or linked ground of appeal based on disparity would fall away.

55. The real issue, therefore, is whether the judge was entitled to find as he did that the applicant's role in this very serious Class A drugs conspiracy was a *leading* role.

56. In dealing with culpability and the assessment of whether a defendant plays a *leading*,

significant or *lesser* role the relevant Sentencing Council's Guideline lists a number of characteristics, one or more of which may demonstrate the offender's role, although the lists are not exhaustive. The judge was satisfied that the extremely high level purity of this cocaine indicated that the applicant was very close to the import source. That is one characteristic of a *leading* role although, as the judge pointed out, it applied to Melody as well.

57. In addition however, the judge inevitably concluded that a very substantial sum of money must have been required to buy this cocaine at a wholesale value of around £1 million. The applicant was in possession of the encrypted BQ mobile phone. The judge was satisfied that the phone was substantially, if not wholly, in use by the applicant, not only during the two days of the journey north and back but for at least 3 weeks in advance. That indicated organisation or planning prior to the journey.

58. The judge was satisfied that the banknotes in the applicant's van which were used as tokens to prove identity, the scrap of paper referring to 33 blocks of cocaine (each 1 kilo) and the fact that telephone usage before and during the journey travelling in convoy with Melody, all demonstrated that the applicant's role was greater than Melody's role. As the judge put it:

> "I accept that others would have been above you in the hierarchy but, in my judgment, you were in a leading role. A leading role does not mean the overlord's role."

59. The judge was satisfied that he was in the best position to determine the applicant's role having presided over the trial. He was satisfied that the applicant was directly involved on the financial side of this extremely valuable consignment, as well as with the transport and exchange of the drugs. The judge did not accept that the applicant's leading role in the conspiracy was necessarily confined to this single consignment.

60. In his skeleton argument and in his oral submissions Mr Forte has developed his argument that there was in reality little to choose between the applicant and Melody in terms of culpability and role, although he accepts that Melody should properly have received a sentence somewhat less than the applicant. However, the thrust of Mr Forte's submission is that, taking each of the judge's findings in turn, they cannot justify his conclusion that the applicant played a *leading* role.
61. Mr Forte developed those arguments before us orally. He also drew our attention to a number of authorities, which we do not think it is necessary to cite by name, to support his point, in general terms, that if 22 years was the appropriate sentence for this applicant in connection with 33 kilos of cocaine, what would the sentence be for the man above him in the chain, looking at other cases where long sentences have been passed? The answer to that, however, as Mr Forte himself acknowledged, is that there will inevitably be a bunching of sentences when one reaches the level of 20 years plus.

62. We have considered all Mr Forte's submissions carefully. As the single judge said in refusing leave, the judge was uniquely well placed to assess the roles played by each of the defendants. We think the judge was fully entitled to conclude that the applicant played a leading role. On the basis of the judge's findings it is clear that the applicant was at least organising, if not directing, the buying and selling of this cocaine on a commercial scale. He had close links to the original source demonstrated by the purity of the bulk of the cocaine. He had the expectation of substantial financial gain. Melody was clearly playing a supporting role to that of the applicant, as the judge found. True the drugs were recovered from Melody's van but the crucial items for effecting the exchange of drugs for money were found in the claimant's vehicle: the two bank notes used as tokens, the numbers of which could only have been written down for identification purposes, and the scribbled note that the consignment to be collected was 33 x 1 kilo blocks. All that, and the trust which was reposed principally in the applicant, goes to support the judge's conclusion that his was a leading role.

63. As we are quite satisfied that the judge was fully entitled and correct to categorise the applicant's offending as a leading role, the sentence of 22 years was within the appropriate range and fully justified. As the judge put it, the applicant's lack of previous convictions and good character, which we do not overlook, could not bulk large in a case of this gravity.

64. For all these reasons, and despite Mr Forte's very able, tenacious and focused submissions, the application for leave to appeal against sentence is also refused.