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Neutral Citation Number: [2023] EWCA Crim 734

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202300527/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 7 June 2023

Before:

LORD JUSTICE LEWIS
MRS JUSTICE LAMBERT DBE
THE RECORDER OF LONDON
HIS HONOUR JUDGE LUCRAFT KC
(Sitting as a Judge of the CACD)

REX
V
CRAIG SIMPSON

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MR D TAYLOR appeared on behalf of the Appellant

J U D G M E N T

1. LORD JUSTICE LEWIS: On 21 November 2022 in the Crown Court at Manchester, the appellant, Craig Lawrence Simpson, was convicted of one offence of encouraging or assisting the commission of one or more offences, believing that one or more offences would be committed. He was sentenced to eight years' imprisonment. He appeals against sentence with the leave of the single judge.
2. The facts can be stated shortly. Over the period between January and June 2017 an Organised Crime Group imported a large quantity of cocaine into the United Kingdom. The system was that a crate would be delivered to a legitimate haulage company, Sovereign Speed, at their depot near Schiphol Airport. A yellow tracker label would be attached to the crate. The crate would be flown to Send Direct at Manchester Airport. It would be collected within about one hour of arrival. Cases containing 40 kilograms of cocaine each were delivered on five occasions in 2017, namely 20 April, 27 April, 17 May, 7 June and 14 June.
3. The appellant's role in this importation was to prevent the purchasers of the cocaine from knowing exactly where and how the crates arrived into the United Kingdom. This was done by the appellant picking up a van, leaving the driver behind and travelling a short distance to Send Direct at Manchester Airport. At Send Direct the appellant would produce a printout of the delivery note to prove he was entitled to take the crate. The appellant used a false name, "Ian Allen" when collecting the crate. Provided that he had the delivery note for each crate, Send Direct would hand over the crate to him. The crate would then be loaded into the van. The appellant would then drive back to where he had left the driver of the van. That driver then drove off with the crate containing the cocaine.
4. Usually the appellant would arrive at Send Direct an hour or two after the crate had

arrived. The reason the appellant knew when to arrive at Send Direct was because each crate was tracked and the appellant had access to the tracking information.

5. As we have said, each of the five cargoes contained approximately 40 kilograms of cocaine, making a total of approximately 200 kilograms of cocaine.
6. On 14 June 2017 a wooden crate that was later seized at Coquelles was delivered to Sovereign Speed. Enquiries with Sovereign Speed produced CCTV from their depot in Schiphol. Footage during the period between 18 April and 14 June 2017 showed an unknown man delivering crates linked to the intercepted crate to the Sovereign Speed depot using two Dutch-registered vans. The crate intercepted at Coquelles was ultimately destined for Send Direct near Manchester Airport. A yellow tracker had been attached at Schiphol and as indicated, the appellant had access to the tracking information. Consequently, when the crate was stopped at Coquelles the appellant knew it had been stopped. When the crate did eventually arrive in Manchester he did not turn up to collect it from Send Direct. He left the United Kingdom on 17 June 2017. He then spent four years in Spain before being extradited.
7. The appellant was charged with two offences. The first (count 1) was fraudulently evading a prohibition on importation and the particulars were that he was knowingly concerned in the importation of class A drugs, namely cocaine. He was acquitted of that offence.
8. Count 2 was an offence of encouraging or assisting the commission of one or more offences. The particulars were that between 1 January 2017 and 16 June 2017 the appellant did an act, namely collected crates, which was capable of encouraging or assisting in the commission of one or more offences, namely evading the prohibition on the importation of certain goods and evading duty, believing that one or more of the

offences would be committed and that his act would assist or encourage in the commission of one or more of the offences.

9. The appellant's defence statement said that he was not engaged in the importation of cocaine. It further said that he did not believe his acts were capable of encouraging or assisting the commission of an offence. He said that he was simply doing driving work for a company and the defence statement gave explanations as to why the appellant collected the van and went to the depot in the way he did, why he drove the van back, why he used a false name and why he had left the United Kingdom.
10. As we have said, he was acquitted of being knowingly concerned in the importation of cocaine. He was however convicted of the offence of encouraging or assisting the commission of one or more crimes.
11. The appellant was aged 47 at the time of sentencing. He had a long record of previous convictions, comprising 26 convictions involving 146 offences. He had convictions for four drug offences, including one of possessing heroin with intent to supply for which he had been sentenced to four years' imprisonment in 1998. The last conviction was in 2008. The judge also had before her a pre-sentence report.
12. The sentencing judge said that the appellant had been convicted of assisting in the commission of one or more crimes, contrary to section 46 of the Serious Crime Act 2007. In effect he had been convicted of being knowingly involved in a smuggling operation that included prohibited items and/or dutiable goods.
13. The judge said that she had taken account of the drugs guideline for both class A drugs, because this operation in fact involved cocaine, and class B drugs which would come under the auspices of prohibited items as reflected in count 2. The judge treated it as a Category 1 offence within the drugs guideline because of the amount of drugs involved.

The judge treated the appellant as performing an important and very trusted role, acting as the buffer between those above him in the chain and the customers. She had no doubt that the appellant knew that this was a sophisticated and valuable smuggling operation. Under the guidelines for drug offences that would amount to a significant role as the appellant was performing an operational role, there was an expectation of significant financial gain and the judge was sure that the appellant was aware of the scale of the operation. As the judge said, for a substantive class A drugs offence that would give a starting point of 10 years and a range of 9 to 12 years' custody and for a substantive class B drugs offence a starting point of five-and-a-half years with a range up to seven years' imprisonment. The judge expressly said however that she had to acknowledge that the appellant had been acquitted of knowingly being concerned in the importation of cocaine.

14. The sentencing judge also said that she had considered the sentencing guidelines, in so far as they were of any assistance, in relation to fraud and the evasion of duty. For the appropriate category that would have resulted in a sentence with a range of up to six-and-a-half years' custody.
15. The sentencing judge said that she had taken the mitigation into account but that was very limited, given that it involved a gap in the record of offending and also the appellant's family situation. There were aggravating features, namely the previous convictions for drugs, the fact that the appellant was unlawfully at large for a period of four years and the offences which were committed did in fact involve cocaine. The judge said that the appropriate sentence was one of eight years' imprisonment.
16. Mr Taylor for the appellant submits that the jury could have convicted the appellant on the basis that he had been assisting in the importation of drugs which was subject to duty, which was being evaded, rather than assisting in drug smuggling. He submitted that it

was not fair therefore to sentence the appellant by reference to the drugs guideline and the appellant should have been given the benefit of the doubt and sentenced by reference to the guidelines appropriate to a revenue offence. The offence could be treated as a Category 4 offence within those guidelines and that would have led to a sentence with a starting point of five-and-a-half years and a range of four years to six-and-a-half years. He submitted therefore that a sentence of eight years' imprisonment was manifestly excessive.

17. First, the starting point is to consider the offence for which the appellant was convicted. Sections 44 to 46 of the Serious Crime Act 2007 creates three offences dealing with assisting or encouraging the commission of offences. Section 46 is the provision applicable here. It is the third of that set of offences. It is in the following terms so far as material:

"Encouraging or assisting offences believing one or more will be committed

- (1) A person commits an offence if—
- (a) he does an act capable of encouraging or assisting the commission of one or more of a number of offences; and
 - (b) he believes—
 - (i) that one or more of those offences will be committed (but has no belief as to which); and
 - (ii) that his act will encourage or assist the commission of one or more of them.
- (2) It is immaterial for the purposes of subsection (1)(b)(ii) whether the person has any belief as to which offence will be encouraged or assisted."

18. Section 47, so far as material, adds a further important ingredient to the section 46 offence, providing as follows:

"(4) If it is alleged under section 46(1)(b) that a person (D) believed that one or more of a number of offences would be committed and that his act would encourage or assist the commission of one or more of them, it is sufficient to prove that he believed—

- (a) that one or more of a number of acts would be done which would amount to the commission of one or more of those offences; and
- (b) that his act would encourage or assist the doing of one or more of those acts."

19. This distinct offence therefore is directed against lending encouragement or assistance to the commission of one or more offences. The criminality is doing something which the person believes will encourage or assist in the commission of one or more offences and it is not necessary for the purposes of section 46 to identify which offence or offences the person believed would be committed. That was recognised by this court in *R v Sadique* [2013] 2 Cr.App.R 31.

20. Secondly, the maximum penalty for an offence contrary to section 46 is prescribed by section 58 of the 2007 Act. That provides so far as material as follows:

"(4) Subsections (5) to (7) apply if a person is convicted of an offence under section 46 by reference to more than one offence ('the reference offences').

.....

(6) If none of the reference offences is murder but one or more of them is punishable with imprisonment, he is liable—

- (a) to imprisonment for a term not exceeding the maximum term provided for any one of those offences (taking the longer or the longest term as the

limit for the purposes of this paragraph where the terms provided differ) ... "

21. The effect of those statutory provisions is that in the case of an offence contrary to section 46, committed by reference to more than one offence, the offender is liable for the maximum penalty applicable to the most serious of those offences. That is so even though he has no belief as to which of the reference offences will be committed. In those circumstances it is appropriate to take into account the guidelines for the most serious offence and to consider also the guidelines for other offences that the offender might have been assisting. Thus in *R v Rowlands* [2020] 1 Cr.App.R (S) 31 the appellant was charged with enabling or assisting the commission of the supply of class A and class B drugs. As the court said at paragraph 16:

"The appellant believed that the benzocaine which he sold would be used in the supply of controlled drugs. He had no particular belief as to whether any specific supply would be of drugs of class A, or drugs of class B, or both. But he believed that offences of supply would be committed and he believed that his sale of the benzocaine would assist those offences. The fact that he had no particular belief as to the class of drug which would be supplied cannot be equated with a belief that only drugs of class B would be supplied."

22. In those circumstances the court held that the sentencing judge in that case was correct to look at the guidelines for both class A drugs and class B drugs. The court recognised that the culpability of an offender who believed that he might be assisting in either the commission of class A or class B drugs might be lower than an offender who believed that he was assisting in the commission of offences involving only class A drugs.

23. In the present case the sentencing judge carried out the sentencing in the way envisaged by this court in *R v Rowlands*. The appellant was convicted of doing acts which encouraged or assisted in the commission of either the import of prohibited goods or the

import of goods subject to duty. Prohibited goods would include class A drugs or class B drugs but the judge had to bear in mind that the appellant did not believe that the offences related to cocaine in light of his acquittal on count 1.

24. The criminality involved therefore was assisting in the commission of offences believing, whilst not knowing, that that could involve the importation of drugs or of goods subject to duty. There is nothing to suggest that the appellant believed that he was only assisting in the import of goods subject to duty, such as alcohol. In the light of that, the judge was correct to have regard to the sentencing guideline for drugs offences and also to consider other potentially relevant guidelines such as those for revenue offences.

25. In terms of the drug guideline, the sentencing judge, having heard the evidence, considered that the appellant played a significant role in the operation. She also expressly acknowledged in determining the culpability of the appellant that he had been acquitted of knowingly importing cocaine. In fixing the appropriate sentence the judge looked at the guidelines for class A drugs where the starting point was 10 years and the range was 9 to 12 years. In relation to class B drugs the starting point there was five-and-a-half years and the range up to seven years. The judge also looked at the guidelines on revenue fraud. There, treating it as a Category 4 offence would lead to sentences in a range of up to six-and-a-half years.

26. In all those circumstances the sentencing judge fixed the appropriate sentence at eight years' imprisonment. That did reflect the criminality involved, namely assisting in the commission of one or more offences believing that one or more of them would be committed. Further, the sentence did reflect the appellant's culpability. At the very least he assisted in offences which he believed could be drugs offences (although he did not believe the drugs were cocaine) or offences involving goods subject to duty. The

sentence was lower than the starting point for the substantive class A drugs offence. It was slightly above the category for class B drugs offences. But in the circumstances a sentence of eight years' imprisonment was not manifestly excessive by reference to the guideline for drug offences, given the scale of the operation, the involvement of the appellant, his previous convictions and the absence of any real substantial mitigation. Even if the operation had been fixed by reference to the guidelines on the evasion of duty on goods, a sentence of eight years, although severe, would not have been manifestly excessive. There would have had to have been an upward adjustment to reflect the fact that this involved a large scale operation with the appellant demonstrating high culpability over a period of time. Whilst we doubt that it is appropriate to try and fix the sentence within Category 4, given that this was in fact a drug smuggling operation and not a revenue fraud, a sentence of eight years' imprisonment would not be manifestly excessive even by reference to those guidelines.

27. For those reasons, this appeal is dismissed.

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

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