

**WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.**

**This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.**

NCN: [2023] EWCA Crim 942

IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Case No: 2021/01918/B4, 2015/00167/B4



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Wednesday 26<sup>th</sup> July 2023

**B e f o r e:**

**LADY JUSTICE MACUR DBE**

**MR JUSTICE MORRIS**

**SIR NIGEL SWEENEY**

---

**R E X**

**- v -**

**JONATHAN MICHAEL MOORBY**

---

Computer Aided Transcription of Epiq Europe Ltd,  
Lower Ground, 18-22 Furnival Street, London EC4A 1JS  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

---

**Mr N J Lumley KC** appeared on behalf of the Appellant

**Miss K Melly KC** appeared on behalf of the Crown

---

**J U D G M E N T**

---

Wednesday 26<sup>th</sup> July 2023

**LADY JUSTICE MACUR:**

**Introduction**

1. On 15<sup>th</sup> December 2014, Jonathan Moorby, (“the applicant”), was convicted of separate counts of possession of a controlled drug of Class A and Class B with intent contrary to section 5(3) of the Misuse of Drugs Act 1971, respectively . On the same day he was sentenced to 15 years' imprisonment on count 1 and to a concurrent term of four years' imprisonment on count 2. Forfeiture and destruction of the drugs was ordered.

2. He was tried, convicted, and sentenced in his absence. He was represented throughout the proceedings by counsel, Mr Soppitt.

3. The trial was initially listed to commence in July 2014. On 30<sup>th</sup> June 2014, Miriam Woodhouse (the mother of Katy Woodhouse, a prosecution witness) alleged that she had been approached by a man and given a message for Kim from "Sandwich John". That message suggested that Kim, whom Miriam took to be Katy, should not proceed to give evidence in the forthcoming trial and in return would be financially recompensed. The trial was taken out of the list so that that allegation could be investigated. A man by the name of Wilton was subsequently convicted of attempting to pervert the course of justice in relation to this meeting. The prosecution say that Sandwich John was a nick name of the applicant.

4. In fact, on 19<sup>th</sup> June 2014 the applicant had already left the jurisdiction on a one-way air ticket to India and would not have been available for trial in July in any event. However, there is evidence that, despite his departure from the jurisdiction, he received telephone calls from Wilton at times relevant to the incident on 30<sup>th</sup> June and which we mention below in other respects.

5. The applicant's instructions are that he departed the jurisdiction, fearful that he would not receive justice because of the adverse intention of police officers, and one in particular, to "fit him up" to be the scapegoat in relation to a large quantity of drugs found in Katy Woodhouse's house on 25<sup>th</sup> February 2012.

6. His case that he was not responsible and was being "fitted up" was advanced during the cross-examination of witnesses at the adjourned trial, which commenced in December 2014. Specifically, his case was that he had never been to Katy Woodhouse's house; that he had no involvement whatsoever in drugs that were discovered on the premises; and that Katy Woodhouse had been led to name him by Detective Sergeant Fitzpatrick, ("DSF") and demonstrably so in that during the second interview that DSF conducted with Katy Woodhouse, she changed a material date of a meeting she said that she had had with the applicant to discuss the warehousing of drugs. The significance of this change of date is referred to below.

7. The application for an extension of time of 2,353 days in which to apply for leave to appeal against conviction has been referred to the full court by the single judge. No complaint was made immediately post trial, or is made now, about the judge's summing up or any other procedural aspect of the trial which took place in December 2014. Rather, the application is made based on material disclosed to the defence by the CPS in February 2021, in line with its ongoing duty of disclosure. The material relates to information regarding the unofficial communications between DSF and Katy Woodhouse that were revealed in WhatsApp messages dated between 2018 and 2021. The applicant also renews his application for leave to appeal against sentence following refusal by the single judge.

8. DS Fitzpatrick is currently suspended from duty and awaits disciplinary proceedings into

his misconduct, which includes a charge relating to his contact with Katy Woodhouse. In that contact DSF disclosed information to Katy Woodhouse that was not concerned with the outstanding trial of the charge against the applicant for attempting to pervert the course of justice, by reason of Wilton's visit to Miriam Woodhouse. The disclosed messages are the basis of an application to admit new evidence, pursuant to section 23 of the Criminal Appeal Act 1968, and which founds the submissions that the integrity of the convictions are thereby impugned.

9. Mr Lumley KC appears on behalf of the applicant. Miss Melly KC appears on behalf of the respondent. Neither was involved in the trial in 2014.

10. This application first came on for hearing before this court in February 2022. We adjourned the application part-heard to await information regarding the IOPC Report which would inform prospective disciplinary proceedings and/or also, potentially, a criminal charging decision in respect of misconduct in public office.

11. The report was available shortly after the application was adjourned, but the prosecution decision was slow in the making. However, it is now known that DS Fitzpatrick will not face criminal charges.

12. However, disciplinary proceedings are in focus and an IOPC Report is to hand. Draft disciplinary charges will be further considered going forward.

13. The IOPC Report has been reviewed by Miss Melly in the course of ongoing duty of disclosure. A copy of the Report has been lodged with the Registrar of Criminal Appeals. As it presently stands, DSF will face six allegations of gross misconduct.

14. We have required Miss Melly to provide the nature of all of the draft charges against DSF, which extend beyond the remit of the present case, to Mr Lumley so to inform further representations to us if appropriate, on the basis of the charges as they presently stand. In summary, apart from the allegations concerning Katy Woodhouse, as we have indicated above, they also relate to “surveillance compromises” in an unrelated case in 2020.

15. Mr Lumley conceded in February 2022 that the substance of the WhatsApp messages, as they are known to exist and have been disclosed passing between DSF and Katy Woodhouse, do not provide a "silver bullet" in relation to the application. However, they are, he submits, indicative of the impropriety and misconduct of DSF for the purpose of his further submissions.

16. Before turning to those further submissions, we mention another matter which came to Mr Lumley's attention during the interim between February 2022 and today, regarding the possibility that DSF's (mis)conduct in a subsequent trial has spawned another appeal. That case, *R v Allcock and Others*, awaits disposal. The information supplied by counsel in that appeal led Mr Lumley to make an application to adjourn the hearing today. In a note dated 19<sup>th</sup> July, Mr Lumley indicated his understanding of DSF's involvement in *Allcock*, and which suggested impropriety. Consequently, this court directed the CPS to respond to the points he had made within the note and to provide details of DSF's involvement in that case.

17. The CPS response is dated 20<sup>th</sup> July 2023. It corrects several misapprehensions. In summary, we are satisfied that DSF's brief appearance as a potential expert witness in *Allcock*, in relation to the interpretation of primary evidence which he had no involvement in either ascertaining or collecting, has no bearing whatsoever on the issues already disclosed in the disciplinary charges he potentially faces or in this application. Based on the prosecution note, we nevertheless conclude that there is no objective evidence of any wrongdoing on the

part of DSF and that this particular line of inquiry appears to us to be entirely irrelevant to these proceedings. However, we make it clear that Mr Lumley acted entirely properly in pursuing this line of investigation. He has been assiduous in his approach to it, as in all other matters dealing with the extant application .

18. Nevertheless, Mr Lumley has maintained his application to adjourn this hearing to await the decision of the Disciplinary Panel. We have refused his application for the reasons that will become apparent in our judgment hereafter.

### **The Facts Behind the Conviction**

19. On 25<sup>th</sup> February 2012, Cleveland Police Officers searched the house occupied by Katy Woodhouse in Greenside, Ingleby Barwick. They found a significant quantity of drugs – almost 1 kilogram of cocaine and almost 4 kilograms of amphetamine. In addition, there were cutting agents and other drugs paraphernalia. The cocaine was found to have a high purity content and would have been diluted to street level purity to achieve a value in the region of £550,000. The amphetamine, when diluted, would have had a value of over £600,000.

20. The prosecution case was that the applicant had used Katy Woodhouse's property to warehouse the drugs.

21. Katy Woodhouse was arrested following the search of her property. She has subsequently been prosecuted and sentenced to 20 months' imprisonment. That sentence reflected the fact that she had signed a witness agreement to provide evidence against the applicant. However, before that witness agreement was signed, there were several interviews in which she was tasked to provide the identities of others involved.

22. Immediately following her arrest, Katy Woodhouse was interviewed by DSF. In the first interview she said that she had been approached by the applicant in the previous August and asked to store benzocaine for money. He knew that she was financially compromised. She had agreed. He had delivered the drugs and had attended at her property approximately 15 times thereafter, before the police raid on 25<sup>th</sup> February 2012. She said that his visits would always be in accordance with the conditions of his electronically monitored curfew.

23. In a subsequent interview, conducted by DSF on 17<sup>th</sup> July 2012, Katy Woodhouse 'corrected' herself and said that in fact she had been approached by the applicant when walking her dog in November/December. This was a significant and material change, since it transpires that the applicant had been in prison in August 2011. The clear inference that we are asked to draw is that Katy Woodhouse was malignly influenced to change the date to accord with the applicant's release by DSF.

24. Katy Woodhouse was further interviewed on 23<sup>rd</sup> January 2013 and again on 12<sup>th</sup> April 2013. The interview conducted in January 2013 did not involve DS Fitzpatrick. On 12<sup>th</sup> April 2013, DSF raised the question of Katy Woodhouse entering into a witness agreement with the prosecution to give evidence against the applicant.

25. These matters and other comments by DSF are relied upon by Mr Lumley as an indication of his unprofessional intervention. He submits that DSF's malign intent and influence upon "the central witness in the case against the applicant" (emphasis provided) is demonstrated by his affirmative or other commentary upon the information Katy Woodhouse provided, and by himself providing information inappropriately to Katy Woodhouse during the interviews.

26. DSF gave evidence during the applicant's trial. He was cross-examined by Mr Soppitt to

the effect that he had told Katy Woodhouse on becoming aware that at the time when Katy Woodhouse that she was mistaken about the first time she said she had been asked by the applicant to store benzocaine, since DSF had become aware that the applicant was in prison In August 2011. DS Fitzpatrick denied that allegation, as Mr Lumley submitted, he was bound to do so.

27. In his summing up the judge remind the jury of Katy Woodhouse's evidence. He gave a strong and robust direction that they must approach her evidence with extreme caution. She was an accomplice and she had signed a witness agreement in relation to giving evidence against the applicant. In these circumstances the judge directed the jury to look for other evidence in the case, that was capable of supporting her evidence, or, as he indicated, which by itself supported the prosecution case against the applicant.

28. That other evidence potentially came from Abi Booth. She was the daughter of Katy Woodhouse and lived at the same address with her at all relevant times. At the time of the trial, she was 15 years old. In 2012 she had been 11 years old. She was 'ABE' interviewed by the police in 2012, separately from her mother and not by DSF, during which she referred to a male visitor to the house. She said that she had seen the male visitor once as he came down the stairs, and had heard him at other times when he called out that he, "Jonathan", was just about to leave.

29. Abi attended an identification parade on 10<sup>th</sup> April 2012. She positively identified the man whom she had seen once in the address where she lived with her mother in February 2012, prior to the police raid. The person she identified was the applicant.

30. Additionally, the prosecution relied upon the connection between the applicant and Wilton, who as we indicated above, was subsequently convicted of attempting to pervert the



course of justice in relation to his visit to Miriam Woodhouse's home.

31. The prosecution also relied on the bad character of the applicant, who had previously been convicted on several occasions of possession with intent to supply Class A drugs. In particular, in 2003 during his trial for similar offences, there was similar fact evidence that he had used the home of a financially vulnerable female in which to warehouse the drugs.

32. We have referred to the way this hearing came before us. Mr Lumley's central submission is that the involvement of DSF, by virtue of his misconduct, as indicated by the allegations made against him in disciplinary proceedings, contaminates the whole case and renders the convictions unsafe. He submits, with vigour, that DSF's bad character is not divisible and that his involvement in other matters outside this case is nevertheless pertinent to the convictions that followed. DSF may well be found to have been guilty of gross professional misconduct, and had failed to uphold the strict code of conduct. Consequently, he would far better be able to be portrayed to the jury to have influenced the evidence of Katy Woodhouse than would have been the case in 2014, and they would likely have been left in doubt as to the applicant's involvement in the offences disclosed by the raid.

33. In response, Miss Melly, submits that the evidence in the case against the applicant was not confined to the evidence of Katy Woodhouse; that DCF was not central to the prosecution case in any respect other than as an interviewing officer; and that there was other compelling evidence from which we may be re-assured of the safety of the conviction. She refers not only to the evidence Abi, but also the other matters to which we have referred, none of which could have been influenced or interfered with by DSF and which are themselves matters of record. Further, Miss Melly points to the independent verification of facts disclosed by Katy Woodhouse during her interviews with the police which are independent from DSF, namely her knowledge of the applicant and the manner in which she first came to know of him and

subsequently, the fact that of a dawning realisation that when the applicant visited the house it was with a view to dealing with more than benzocaine.

### **Discussion**

34. We have no doubt that the issue of DSF's alleged misconduct, in regard to matters still to be determined, was sufficient to make the application to adduce the WhatsApp conversations between Katy Woodhouse and DS Fitzpatrick as fresh evidence, and as indicating potential taint and consequently to undermine the safety of the convictions entirely reasonable. Further, we have proceeded to determine this application on the basis of the worst possible case scenario so far as DSF is concerned. That is, we have assumed for the purpose of this application that he is guilty of professional misconduct revealed by the allegations made against him in the IOPC Report and which therefore impugns his integrity. However, we conclude that DSF's misconduct, lack of integrity or dishonesty is not determinative of any prospective appeal. Whether it does undermine the safety of a conviction will depend upon an analysis of all of the evidence before the jury.

35. We start with by considering the part that DSF played in the proceedings. Mr Lumley informs us that DSF's role was not merely that of an interviewing officer; he was also the disclosure officer. However, this last role is of no apparent significance since we note that there is no scientific or fingerprint identification evidence which links the applicant to this case.

36. We observe that, objectively, it appears entirely unlikely that if DFS was involved in a conspiracy to corrupt Katy Woodhouse's evidence from the start, as is suggested by the applicant, he would not have failed to investigate when the applicant was at large. However, we proceed, as indicated, on the basis that he may have provided information to Katy Woodhouse regarding the date of the applicant's release from prison, which led her to change

the date when she said she was first approached from August to December in her first and second interviews respectively, and that DSF's answers in cross-examination about this issue would be unreliable. Further, we agree with Mr Lumley's categorisation of DSF's behaviour as entirely unprofessional when conducting interviews with Katy Woodhouse, by either 'praising' the change in date, explaining why he was pleased that the date had been changed by reference to the applicant's bad character, and otherwise making adverse remarks about the applicant, which are apparent on the face of the transcribed interviews.

37. Nevertheless, Katy Woodhouse was cross-examined about the different dates that she gave in her first and second interview. She maintained that she had made a mistake, and the prosecution was able to highlight that in her first interview, that she had met the applicant just before 6 pm, when it was dark, which it would not be in late August, although it would be in November/December. Mr Lumley realistically concedes that the change of date may be as a result of a genuine mistake, but emphasises that the ammunition provided by recent material going to the character of DSF would be key to her cross-examination on this point before the jury.

38. If we were satisfied that Katy Woodhouse was 'central' to the case against the applicant and was the sole witness of fact against him, we agree that there is an arguable case that the conviction was fundamentally contaminated, so as to grant leave to appeal against conviction. As it is, we are not satisfied that she was central to the case, nor that her evidence was the sole basis of the applicant's conviction.

39. In summing up the case, the judge directed the jury, without demur or subsequent criticism, that if they were satisfied on the evidence of Abi Booth that the applicant had been in the house in February 2012 before the police raid, this would be compelling evidence which entitled the jury to convict the applicant.

40. Mr Lumley agrees that Abi Booth's evidence may rightly be described as compelling in all the circumstances. However, he points to those parts of the transcript of evidence in which Katy Woodhouse conceded that she had conducted computer researches about the applicant and which she agreed showed at least one image of the applicant. At trial it was suggested to the jury that Abi may also have carried out such research.

41. Abi was cross-examined to this effect during trial. As Mr Lumley concedes, she rejected that she had done any search of the applicant's name, and she was consistent in the evidence before the jury: she had seen the applicant in her mother's property in February 2012 and that she had heard the name "Jonathan".

42. We agree that the evidence, containing two strands of identification, by a child aged 11, is rightly described as compelling. It is clear the judge gave appropriate direction concerning identification evidence and stressed the danger associated with a witness who had made a single sighting.

43. Abi's evidence undoubtedly supported that of Katy Woodhouse. We do not accept that it can reasonably be assumed that DSF contaminated the evidence of Abi Booth. Abi Booth's evidence at trial was consistent with the evidence she ingenuously gave in the ABE interview regarding the visit of the applicant to her mother's address. She did so without reference, or apparent knowledge of the purpose for his attendance. Seen in the context of the other strands of the prosecution case, it is undoubtedly cogent and compelling and, absent any misdirection by the judge leads us to conclude, regardless of outstanding matters which may lead to findings of misconduct against DSF, that it is unarguable that the applicant's convictions are unsafe.

44. Consequently, we extend time, refuse the application to admit fresh evidence since , taken at its highest the information revealed in the WhatsApp messages , and otherwise in the IOPC report does not undermine the safety of the conviction, and consequently refuse permission to appeal.

45. There is also outstanding a renewed application for leave to appeal against sentence. The application was considered by the single judge in 2015. At that time the applicant was still at large. The single judge was satisfied on receipt of a letter from the applicant's solicitors, that they had authority to proceed with the application in the applicant's absence from the jurisdiction. The single judge refused permission; the applicant was a supplier of Class A and Class B drugs; he had warehoused considerable quantities of the drugs in the home of Katy Woodhouse and her young daughter placing her at ostensible risk. The single judge's mistake in thinking Abi was 9 years of age, is of no consequence.

46. In 2014, Mr Soppitt submitted that based upon the quantity and purity of the drugs, and the leading role ascribed to the applicant, meant that the offending fell within category 2 of the Sentencing Council Guidelines. However, the judge took into account the applicant's previous convictions, the fact that the applicant was on licence at the time of the extant offences, the purity of the drugs, the closeness to the source, and the involvement of Katy Woodhouse who was vulnerable by virtue of her financial circumstances, and elevated the categorisation..

47. Mr Lumley has provided written submissions as to sentence. Again, realistically, he concedes that the judge, who presided over the trial in 2014, was entitled to have regard to those matters to which we have referred and to which the single judge referred in refusing the application. Unbeknownst to the single judge – or indeed to the judge who passed sentence – at the time of his absence from this jurisdiction the applicant continued in his trade of

possession of drugs with intent to supply in Thailand. He has subsequently been convicted on his own plea in relation to that and is serving a sentence accordingly.

48. We note that continuing involvement cannot impact upon the sentence that was imposed in 2014. However, bearing in mind all the relevant aggravating features, we are in no doubt that the judge was fully entitled to elevate the categorisation of this offending and to treat the applicant as having a leading role. There was no mitigation.

49. In those circumstances it is not arguable that the total sentence was manifestly excessive. We refuse the renewed application. The sentence was condign and entirely in keeping with the circumstances of the case. Accordingly, the renewed application for leave to appeal against sentence is refused, and the application for leave to appeal against sentence is refused.

**MR LUMLEY:** My Lady, there is a representation order which covers my engagement in these proceedings, for which I am obviously grateful. I could not have conducted these proceedings without the sustained involvement of my instructing solicitor. It is an unusual case. I have lost count of the number of consultations that have been arranged remotely, which Mr Cheng, my solicitor, has attended, the countless instructions he has had to take from Mr Moorby and his constant engagement with me and my team in responding to various documents and so on. I just wonder whether it is the sort of case where the court might extend the representation order to cover the solicitor also in this case.

(The court conferred)

48. **LADY JUSTICE MACUR:** Yes.

49. **MR LUMLEY:** Thank you.

50. **LADY JUSTICE MACUR:** Any other matters?

51. **MISS MELLY:** No, thank you.

---

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

Lower Ground, 18-22 Fumival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk

---