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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2024/00267/B3, 2024/00344/B3
2004/00349/B3
[2024] EWCA Crim 317



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 1st February 2024

B e f o r e :

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

MR JUSTICE PICKEN

MRS JUSTICE FARBEY DBE

R E X

- v -

ALAN JOHN REYNOLDS
NILUFAR ALI
DAVINDER BANGAY

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Miss K O'Raghallaigh appeared on behalf each of the Applicants

Mr S Baker KC appeared on behalf of the Crown

J U D G M E N T
(Approved)

Thursday 1st February 2024

LORD JUSTICE HOLROYDE:

1. These three applicants worked for Post Office Limited or its predecessors, to which we shall refer for convenience as "POL". Each of the applicants was accused by POL of being responsible for a shortfall in the accounts of the sub-post offices where they worked. They were prosecuted by POL. The prosecution case was based on evidence from POL's Horizon accounting system. Each pleaded guilty to and was sentenced for an offence of dishonesty.

2. The applicants now apply for a long extension of time in which to apply for leave to appeal against their convictions which they contend are unsafe, notwithstanding their guilty pleas. Each also applies to adduce fresh evidence in the form of statements setting out their recollection of how the proceedings were dealt with. The Registrar has referred their applications to the full court. Because the three cases have common features and raise common issues, they have been listed for hearing together.

3. The applications have been swiftly processed by the Criminal Appeal Office ("the CAO"), which is experienced in dealing with applications of this nature. The respondent has helpfully made clear that the applications and appeals are not opposed. It is, nonetheless, a matter for this court alone to consider the applications and to decide in each case, in accordance with the Criminal Appeal Act 1968, whether the conviction is unsafe. We have been able to do so at today's hearing only a short time after the Notices of Appeal were received in the CAO. Indeed, in two of the cases, less than a week has passed since those Notices were received.

4. For present purposes we can summarise briefly the facts of each of the cases.

5. Mr Alan Reynolds was the sub-postmaster at the Rainford sub-Post Office near St Helens. In September 2009, his estranged wife, who worked with him, notified a manager of discrepancies at the branch. An audit was conducted and revealed an apparent shortfall of £12,941.97. When interviewed under caution, Mr Reynolds denied having taken any of the apparently missing money. He said that some 12 months earlier he had found a loss of £8,000 when he was balancing. He generally had no problem with his balancing and so initially thought that he must have made a mistake, but could not find any error. He then thought that the unexplained loss would be resolved subsequently by a transaction correction, and he said that he had falsely altered the figures in order to achieve a balance, without which he would not have been able to continue the business of the Post Office. As time went on, and the loss remained unexplained, he continued to falsify the accounts. He told POL's investigators that he was convinced there was some sort of glitch in the system.

6. A prosecution was commenced and Mr Reynolds was charged on an indictment in the Crown Court at Liverpool. The particulars alleged that between 1st September 2008 and 10th October 2009 he had made false representations on a Horizon final balance, namely that the cash was greater than the true figure.

7. On 18th October 2010 (which was his 64th birthday), Mr Reynolds pleaded guilty to an offence of fraud. He did so on the following specific basis, which was agreed by the prosecution:

"Approximately 12 months prior to his interview the [applicant] became aware of a deficit or shortfall. In order words, the [applicant] realised that the branch was showing a loss. The [applicant] did not know how this loss had occurred but accepts that as the sub-postmaster of the branch, the responsibility must ultimately lie with him."

8. A legal executive within POL's Criminal Law Division recorded in a memo about that basis of plea that he had advised prosecution counsel that they would not accept any criticism of the Horizon system during the sentencing process.

9. Mr Reynolds was subsequently sentenced to a two year community order, with requirements of supervision and 150 hours' unpaid work. A confiscation order was made against him in the sum of £11,523.23, with six months' imprisonment in default. As a matter of safe inference, that sum must have been paid by Mr Reynolds. It should be noted that in the course of the confiscation proceedings the solicitors then representing Mr Reynolds specifically alleged that the deficiency had arisen from "a defective accounting system operated by Royal Mail".

10. Miss Nilufar Ali, aged in her early 20s at the material time, was employed as a counter clerk in the Post Office at King's Cross, London. In 2007 an investigation was carried out into suspected fraudulent activity involving the rejection of postage labels and stamp reversals. Data from the Horizon system showed stamp reversals totalling £3,486. Miss Ali, who happened to be off work that day because she was unwell, was called into the Post Office and questioned. She admitted that she fraudulently rejected some postage labels in order to create a cash surplus, which she then used to make good apparent shortfalls in her stock. She said that she had first done this in late 2006 and had done it more frequently since about February 2007. She assisted the investigators by identifying on a schedule those records which she had falsified. She said that she did not know why there were shortfalls in her stock, but she denied having spent the money herself, and said that she had only committed the frauds to cover the losses when she was no longer able to make good the deficiencies out of her own salary. She was promptly suspended and dismissed the following day.

11. A prosecution followed. Miss Ali was charged with four offences of theft. The total sum alleged to have been stolen was £3,486. On 26th March 2008, in the Crown Court at Southwark, she pleaded guilty to the four offences on the following basis:

"The [applicant] accepts that she fraudulently said that postage labels had not been printed correctly in order to cover large shortfalls in her till. She accepts that this was dishonest. However, her only intention in doing this was to cover up the shortfalls in the till for which she would otherwise have had to pay out of her wages. She had no intent to personally gain financially from her acts and at no time gained financially from her acts."

12. Miss Ali recalls that the sentence imposed upon her, concurrently on each charge, was one of ten months' imprisonment, suspended for two years, with requirements of unpaid work and a curfew between 8 pm and 5 am for a period of six months. The Crown Court record is no longer available; and the internal records of POL make no reference to the suspended term of imprisonment. Nothing turns on any difference of recollection in this regard, but we are bound to say that we are confident that Miss Ali will remember whether or not she received a prison sentence.

13. Mr Davinder Bangay was the sub-postmaster at Heathfield sub-Post Office in Middlesex. An audit of the branch in November 2010 revealed a shortfall of £16,086.15. When interviewed under caution in January 2011, Mr Bangay said that about two months earlier there had been a shortfall. He believed that it was a shortage of £16,000 in a cash remittance received at the branch. Although he did not know what the true explanation was, he conjectured that the cash inside the remittance pouch may have been short. He had thereafter falsified the cash figure on his Horizon balance in order to conceal the shortfall, whilst he built up the funds with which he intended to repay the missing money himself. He denied that he had stolen any of the money.

14. On 10th August 2011, in the Crown Court at Isleworth, Mr Bangay pleaded guilty to an offence of fraud. The particulars were that between 1st September 2010 and 17th November 2010 he dishonestly made false representations as to the amount of money held as cash in hand in the accounts of Heathfield Post Office, intending to make a gain for himself or another, or to expose POL to a risk of loss. He was subsequently sentenced to eight months' imprisonment, suspended for 12 months, with a requirement of 100 hours unpaid work. Confiscation proceedings were commenced, but were not pursued because Mr Bangay paid the entire sum of £16,086.15, which was alleged to be missing. He was obliged to borrow from his parents in order to do so. His parents, understandably, were deeply distressed by the criminal conviction of their son.

15. As is well known, this court has heard a series of cases in which former sub-postmasters, sub-postmistresses and other 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 the Horizon system. 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.

16. In each of those earlier 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.

17. 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.

18. The 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 at any rate from 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 proceeded as if it were for the accused to prove that no such loss had occurred.

19. 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.

20. The 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 and because it was an affront to the conscience of the court for the defendant concerned to face prosecution.

21. Returning to the present cases, we have been assisted by the written and oral submissions of Mr Baker KC for the respondent and Miss O'Raghallaigh for each of the applicants. Each has expressed gratitude for the speed with which these cases have been brought before the court and has rightly emphasised the importance of the court's ability to deal with cases swiftly. We are grateful to both counsel and to all the legal representatives on both sides for the very considerable assistance they have given the court.

22. The present legal representatives of POL have recently taken proactive steps to assist former SPMs who appear to have been wrongly convicted in Horizon cases. They have conducted an extensive review of such documentation as is still available. Where the review has led to the conclusion in a particular case that the reliability of Horizon is likely to have been essential to the prosecution, they have written to the SPM saying that their conviction appears to be unsafe and that, although it will be a matter for the court to decide, POL would not oppose an appeal. The SPMs concerned have been strongly encouraged to commence an appeal. As Mr Baker has rightly emphasised, the fact that a particular SPM has not received such a letter is of course no bar to an appeal being brought; nor is it any necessary indication that an appeal would be opposed. The steps taken, by sending what have been referred to as "triage letters", have been intended to identify those cases in which an appeal will not be

resisted and which can therefore be brought before the court expeditiously.

23. Each of these three applicants received such a letter. The letters prompted the present applications, which have been efficiently prepared and brought before the court. Each of the applicants submits that his or her prosecution was an abuse of the process of the court and that the convictions are unsafe. Miss O'Raghallaigh submits in relation to each case that the Horizon system showed shortfalls which the applicant could not understand or explain, and that each applicant had resorted to falsifying the figures only in order to balance the branch account. In each case Horizon data was the only basis for alleging that there was a shortfall, and the applicant concerned said enough in interview to raise a clear need for disclosure of the concerns about Horizon's reliability.

24. Miss O'Raghallaigh's submissions in relation to the individual applicants give rise to the following, amongst other, points. Mr Reynolds (now aged 77 and sadly in poor health) made his position clear in interview, and repeated it in his basis of plea. Given his age and health difficulties, and the passage of many years, he struggles to remember details, but he has made clear that one fact he clearly remembers was that the computer system seemed to him to be wrong.

25. Miss Ali similarly made her position clear in interview and in a basis of plea which, as Miss O'Raghallaigh points out, was arguably inconsistent with her guilt of the offences to which she pleaded guilty, and should perhaps have occasioned further inquiry in itself.

26. Mr Bangay similarly made his position clear in interview.

27. In none of these cases did their explanations prompt any disclosure by POL of the concerns about the reliability of Horizon.

28. There are, as it seems to us, some particularly lamentable features which have become apparent in the case of Mr Reynolds. In June 2010, months before Mr Reynolds' guilty plea, POL were notified by Fujitsu, who had designed and installed the Horizon system, that the extraction of particular data had involved a substantial number of duplicated transaction records. It does not appear that that problem with the extraction of data could in itself have caused any loss at any sub-post office, but it was a worrying indication of a problem with the system. The Rainford sub-Post Office was named in the email chain as one of the branches where the relevant data had been presented to the court and "corrective action may be needed". Despite this, there appears to have been no disclosure to Mr Reynolds' representatives of the possibility of some error in the records. True it is, as Mr Baker rightly points out, that by the time of Mr Reynolds' guilty plea, the measures which Fujitsu had said that it would take to rectify the problem may well have been taken. Nonetheless, as Miss O'Raghallaigh submits, it is obvious that if any disclosure had been made of the existence of a problem even one which had been rectified, those representing Mr Reynolds would have wanted to find out much more about it.

29. But far from making appropriate disclosure, POL relied on a witness statement by a Fujitsu employee asserting that to the best of her knowledge and belief the system was operating properly. Moreover, the legal executive's memo to which we have referred provides further evidence of POL's refusal to acknowledge the defects in Horizon. It does not appear that counsel representing Mr Reynolds in the Crown Court in fact sought to make any criticism of Horizon as part of his mitigation. But, of course, there had been a failure of disclosure which denied him any basis on which to make such criticism. Had proper disclosure given rise to any submissions critical of Horizon, the POL stance of refusing to countenance any such criticism would have come to the fore.

30. Mr Baker KC confirms in this public hearing that none of the appeals is opposed. In each case it is accepted that the SPM denied theft and referred to unexplained shortfalls; that there was no evidence independent of Horizon of any loss; that there was no evidence of any investigation into Horizon's reliability; and that there was a failure by POL to discharge its duties of disclosure,

31. Having considered the evidence and material put before us in each of these cases, we are satisfied that the respondent's concessions are rightly and properly made. Each of the three cases is indeed 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 applicants when interviewed, no relevant investigation appears to have been carried out, and no disclosure was made of the known concerns about Horizon.

32. Each of the applicants pleaded guilty because they and those representing them had been kept in ignorance of material evidence which went directly to the issue of their alleged guilt. We have no doubt that each of the prosecutions was an abuse of the process on both of the grounds we have mentioned. Nor do we have any doubt that, notwithstanding the applicants' guilty pleas, each of the convictions is unsafe.

33. In each of the cases of Mr Reynolds, Miss Ali and Mr Bangay, we therefore grant the extension of time, we formally receive the fresh evidence, we grant leave to appeal, we allow the appeal and we quash all convictions.

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

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