

No. 2004/01739/A7

Neutral Citation Number: [2004] EWCA Crim 1271  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Tuesday 4 May 2004

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES  
(The Lord Woolf of Barnes)

MR JUSTICE AIKENS

and

MR JUSTICE FULFORD

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R E G I N A

- v -

VINCENT D

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(Official Shorthand Writers to the Court)  
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MR D NOLAN appeared on behalf of THE APPELLANT

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J U D G M E N T

(As Approved by the Court)

Tuesday 4 May 2004

THE LORD CHIEF JUSTICE: I will ask Mr Justice Aikens to give the judgment of the court.

MR JUSTICE AIKENS:

1. This case arises out of an incident that took place during the trial of the brother of the appellant. We call the brother "GD". The incident took place on 11 March 2004. The case raises an important question of how the court should deal with a person who improperly and illegally takes a photograph in court in the course of a criminal trial. Because the latest generation of mobile phones frequently have the ability to take photographs, the problem of people illegally taking photographs in court is growing. It is, in our view, a very disturbing problem.
2. The trial of GD, before His Honour Judge Clark in the Crown Court at Liverpool, was both complex and lengthy. It concerned significant dealings in class A drugs. The Crown alleged that GD was at the top of an organisation based in the Blackburn area. We understand from Mr Nolan, who has represented the appellant today, that this trial was completed last Thursday, 29 April 2004. The jury could not agree on a verdict in relation to GD and there will have to be a retrial.
3. At the trial, because of the nature of the offences alleged and because of other matters, GD was classed as a "double Category A" prisoner. Security around him at the trial was very significant. He was taken to court daily under the tightest possible security. In court he sat in a secure dock. The public was only allowed to go into the public gallery of the court after searches had been made. However, we understand that mobile phones were allowed to be taken by members of the public into the public gallery of the court.
4. The case involved one witness who is on the "Witness Protection Scheme". That person was somebody who had previously pleaded guilty and who had received a sentence of seven years' imprisonment. In passing sentence, the judge indicated that he would have imposed a sentence of 28 years' imprisonment but for the assistance that had been given by way of statements. A great deal of security surrounded that witness. However, we are told by Mr Nolan that none of the photographs with which this court is concerned was a photograph of that particular witness.
5. On 11 March 2004, as the day's hearing was about to finish, the appellant was seen to lean towards the secure dock from his seat in the public gallery so that his brother GD could see him. The appellant was seen to use a mobile telephone which had a camera facility. The appellant took a picture of GD in the secure dock.
6. At the request of the judge, officers in the public gallery arrested the appellant and seized his mobile phone. The appellant was remanded in custody overnight, pending an appearance in court the following day.
7. The appellant's mobile phone was examined. A number of photographs were recovered. The vast majority of them are entirely innocent. However, there were three photographs that gave the judge concern. We have seen those photographs. The first was taken in the canteen area of the Liverpool Crown Court. The second was taken from the public gallery of the court, facing towards the witness box and the bench. It was of poor quality and it is not

possible to discern the identity of the people photographed. However, it is possible to see in the photograph that there was someone in the witness box. The figure of the judge is also visible. The judge observed that he considered the fact that a witness had been photographed as being more serious than the fact that he, (the judge), had been photographed. The third photograph shows GD sitting in the secure dock. In the background it is possible to see a prison officer. That officer had been part of the escort that had brought GD to court.

8. The police and the prosecuting authorities were particularly concerned by all three photographs. They were troubled by the fact that if the mobile phone had not been taken from the appellant, the photograph of GD could have been enhanced and the identity of the prison officer revealed, notwithstanding the fact that the photograph was of poor quality.
9. On 12 March 2004, Judge Clark dealt with all these matters as a criminal contempt of court, as he was entitled to do. The appellant pleaded guilty. We note that taking photographs in a court is a criminal offence under section 41 of the Criminal Justice Act 1925. That offence is punishable summarily by a fine.
10. In mitigation the appellant indicated, first, that the photograph in the canteen area had been taken by his girlfriend, who is a non-UK national. It was said that the photograph was taken in a spirit of fun and that there was nothing sinister about it. Secondly, in relation to the photograph of the witness box, it was said by the appellant that he had not taken the photograph at all. He said that it had been taken by his girlfriend. In passing sentence the judge made it clear that he did not accept that the appellant's girlfriend took the photograph. The judge said that, even if she had, the appellant must have known it was being done and it was his mobile phone that had been used. Thirdly, in relation to the photograph of his brother in the dock (the third photograph), the appellant said that it had been his intention to send that photograph by text to his 18 year old daughter as a birthday greeting from her uncle, GD, the defendant in court. The appellant explained that his daughter had not seen her uncle for a significant period of time because GD had been in custody.
11. The judge sentenced the appellant to twelve months' imprisonment. In passing sentence the judge stated that in the circumstances of this case he felt that it was right to pass sentence straight away rather than wait until the end of the trial, which was due to go on for many more weeks. The judge regarded the occurrence as a "chilling development" of what could happen to disturb the course of a serious and lengthy trial. The judge noted that there were no authorities on the approach to this type of contempt of court. However, he indicated that a message should be sent out that illegal photography in court would be met by a sentence of imprisonment. The judge also noted that it was possible that some members of the jury could have been frightened and that the trial, which had gone on for three weeks at that date and which had been arranged many months before, might have had to be abandoned. He noted that the offence had taken place in the only secure dock court in Merseyside. The court would not wish photographic evidence to be available which told the public at large of the configuration of the dock and the plan of the court.
12. Because this offence was dealt with by the judge as a criminal contempt, there is an automatic right of appeal under section 13 of the Administration of Justice Act 1960.
13. Before us Mr Nolan has urged several matters in support of his submission that this sentence was wrong in principle or manifestly excessive. Mr Nolan has submitted that the appellant admitted taking the third photograph, but that he did not intend to put them to any nefarious use. These were not photographs of the jury and they were of very poor quality. Mr Nolan pointed out that the appellant made an unreserved apology. He also submitted that the judge

effectively accepted that the photographs were not to be put to any nefarious use by the appellant. He submitted that in the circumstances this sentence was too long. He observed that although the appellant had a number of convictions, some of which concerned illegal drugs, none was relevant to the present offence.

14. Mr Nolan drew our attention to a number of authorities concerning sentences for contempt of court, in particular those cases where there has been an attempt to influence witnesses or witnesses have been the subject of verbal abuse. All those cases resulted in prison sentences. However, we do not consider that any of those cases are helpful to the present issue before the court. As far as we and counsel are aware, this is the first case to come before this court which concerns the sentence to be imposed on a person for contempt of court when the contempt consists of illegally taking photographs with a third generation mobile phone in the course of a criminal trial.
15. We do not wish to lay down any general guidelines in this case, but some comments may be helpful. It is well known that taking photographs using mobile phones in court has become a major problem and concern in both the Magistrates' Courts and the Crown Courts of England and Wales. It is also of concern in the civil courts. The reason for this concern will be obvious after a moment's thought. Intimidation of juries and witnesses is a growing problem generally in criminal cases. Recently there have even been physical attacks on prosecuting counsel in a case. A person could use photographs of members of the jury or a witness or advocates or even a judge in order to try to intimidate them or to take other reprisals. Witnesses who are only seen on a screen or who are meant to be known only by an initial could possibly be identified. The anonymity of dock officers or policemen who are involved in a case could be compromised if a photograph is taken and is used to identify them. It is clear, therefore, that illegal photography in court has the potential gravely to prejudice the administration of criminal justice.
16. The particular concern is not confined to the intended purpose of the person taking the photographs. Photographs can easily be passed on to others by electronic means. Once in the hands of others, the potential for misuse by others is very great. That is a matter which the courts must take into account if faced with a case of illegal photography in court. Other factors which will be likely to influence sentence must include: first, the nature of the trial; secondly, the potential disruption of the trial as a result of the illegal photographs being taken; and thirdly, the potential for misuse of the particular photographs involved. We entirely accept the approach of the judge that in an appropriate case immediate imprisonment is likely. There may be factors of mitigation such as a guilty plea, the youth of the offender, a genuine apology, or ignorance or naivety on the part of the person involved.
17. In this case the particular aggravating feature was that this was a long and serious trial of a "double category A" prisoner. The appellant must have known the serious nature of the trial of his brother and his status as a "double category A" prisoner. We are not impressed with the suggestion that the photographs were taken in ignorance of the prohibition on courtroom photography. The potential for considerable disruption of this long and expensive trial is clear.
18. In the circumstances of this case, in particular bearing in mind the nature of the case and the status of GD, and the fact that at least one protected witness was involved in the trial, we take the view that the sentence imposed, although severe, cannot be interfered with. For less serious offences, and where security is less of an issue, then a much shorter sentence of imprisonment may well be appropriate. In some cases the "clang of the prison gates" will be enough. In other cases, for instance where a foreign tourist has inadvertently taken a

photograph, perhaps in ignorance of English law, then it may be that imprisonment is not appropriate and that a fine would be the correct sentence. But in this case, having considered the matter very carefully, we uphold the sentence of twelve months' imprisonment. This appeal is dismissed.