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No: 201401818/A2-201401974/A2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 10th July 2014

B e f o r e:
LORD JUSTICE PITCHFORD
MR JUSTICE OPENSHAW

HIS HONOUR JUDGE MELBOURNE INMAN QC
(Sitting as a Judge of the CACD)
R E G I N A

v

SAIF AL-MESKRY
SHEERAZ KHAN

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Mr T Rushbrooke (Solicitor-Advocate) appeared on behalf of the **Appellant Al-Meskry**

Mr R Ferm appeared on behalf of the **Appellant Khan**

J U D G M E N T
(As Approved by the Court)

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1. LORD JUSTICE PITCHFORD: These are appeals against sentence brought by the appellant, Saif Al-Meskry and Sheeraz Khan with the leave of the single judge. They both pleaded guilty at Bradford Crown Court to two offences of conspiracy, the first to supply the Class A drug heroin and the second to supply the Class A drug cocaine. On 24th March 2014 Al-Meskry was sentenced to nine-and-a-half years' imprisonment concurrent on each count, Khan was sentenced to 11 years' imprisonment concurrent on each count. In his case 164 days were ordered to count for the purposes of section 240A of the Criminal Justice Act 2003.
2. The convictions arise from two searches carried out by the police at premises in Bradford. The first, of Al-Meskry's home, took place on 2nd March 2012. It was clear to the police that the property was being used as a storage facility by drug dealers. They found 88 bags containing 278 grams of heroin and 13 bags containing 28.5 grams of cocaine. Also retrieved were almost 2 kilos of cutting agent, scales, food processors, jugs and bags. The major find took place at Unit 14, Lassarna Court industrial estate on 9th November 2012. Police observed Sheeraz Khan arriving in a van in the company of another man. On inquiry Khan said that he was going to check on his brother's unit. However he left. The police spotted another car, a Volkswagen Golf near to Unit 15. When the police approached that vehicle a male standing nearby went out of sight. The police recovered from the vicinity of the car a bin liner and pressing plates used for "bashing" cocaine. Inside the bin liner were almost 9 kilos of heroin at 14% purity. The police found a third car, a Volkswagen Passat. Inside could be seen a large quantity of cash. When the notes were analysed later, there were found to be contaminated with heroin.
3. It was apparent to the police by this stage that there was some activity within Unit 14. By the time they forced entry the occupants had escaped through a hole in the roof. What they found inside was an industrial scale drugs factory. Crack cocaine was being produced in microwave ovens. The officers found a vast quantity of cutting agent. They recovered 2.7 kilos of crack cocaine and 30 kilos of high purity heroin. The street value of the drugs recovered alone was approaching £2 million. Monthly sales and dealer lists showed a thriving turnover in successive months, £426,000, £378,000 and £146,000 in the month in which the raid occurred. Those figures indicated that, since the average selling price of heroin was £23,000 per kilo, in 3 months the conspiracy had turned over some 40 kilos of heroin. There was evidence that the drugs were being cut to a variety of strengths from "weak" to "full".
4. It was probable on the evidence that the prime mover was a man called Abbas Khan, who later fled the jurisdiction. His DNA and fingerprints were found in several locations within Unit 14, on both objects and paperwork. The appellant Al-Meskry's DNA was found on several articles within Unit 14. The evidence showed that Sheeraz Khan had been instrumental in the rental of Unit 14. His DNA linked him to the Volkswagen Passat in which the contaminated money had been found.
5. A further accused was Tahir Ali. His fingerprints were found along with Abbas Khan's on the monthly sales list. His DNA was recovered from objects within the unit and on a mobile phone found in the Volkswagen Golf. Counsel opening the facts on behalf of the prosecution before the judge ascribed to Tahir Ali a leading role in the conspiracies.

That he submitted was an inference from the fact that Tahir Ali had handled the accounts for the business. It was suggested that only the organisers would have access to such documents. It was also significant, it was suggested, that following the police raid, those who made their escape appeared from the cell site evidence to have congregated at or near Tahir Ali's home address. Following the raid Al-Meskry left the jurisdiction for Muscat and Abu Dhabi but on his return he was arrested. Sheeraz Khan was arrested at his home.

6. The judge concluded that the conspiracies had been in operation for a period of some 8 months in 2012. The judge had the advantage of having presided over a trial of other defendants who pleaded not guilty to the conspiracies. It was apparent from Al-Meskry's first arrest that the conspirators had used other premises in and from March 2012, since it was not until September 2012 that Sheeraz Khan began to make enquiries which led to the rental of Unit 14.
7. Al-Meskry pleaded guilty at the first available opportunity and was the youngest of the defendants at aged 22 years. Sheeraz Khan pleaded guilty shortly after the plea and case management hearing. Accordingly, Al-Meskry was given full credit of one-third, Sheeraz Khan and Tahir Ali one quarter.
8. The judge accepted the prosecution's assessment that the appellants were engaged in a substantial and sustained conspiracy to produce and distribute massive quantities of cocaine and heroin. The judge concluded that he should treat Al-Meskry, Sheeraz Khan and Tahir Ali as playing significant roles in the conspiracies notwithstanding the prosecution case that Tahir Ali played a leading role. He said that having listened to submissions made by Mr Lakha, on Tahir Ali's behalf, he could not be sure that anyone other than Abbas Khan had played a leading role.
9. The judge next considered the question whether the starting point for sentence should lie within the range of 9 to 12 years custody, as for a Category 1 offender whose role was significant, or the commercial scale of the enterprise was such that a starting point outside that range was required. The judge noted that the Sentencing Guideline at page 10 indicated that, depending on the role of the offender, the sentence might be 20 years or more, where the operation was on the most serious and commercial scale involving quantities significantly higher than the indicative quantity of 5 kilograms of heroin and cocaine. In this case the judge was concerned with a turnover of not less than and probably more than 40 kilos of Class A drugs. He concluded that he should take a starting point of 15 years for all three offenders whom he assessed as playing a significant role. Having given the appellant Sheeraz Khan and his co-accused Tahir Ali a discount of just under 25%, the judge imposed a sentence of 11 years in their cases. The judge had indicated that he would award Al-Meskry a full discount and take account of his comparatively young age. He appears to have discounted the starting point to 10 years for the pleas of guilty and then to have made a further reduction of 6 months to reflect the age of the appellant. The judge should first have adjusted the starting point for mitigating factors including the appellant's age and then applied the discount for plea - see in this regard steps 2 and 4 at pages 14 and 15 of the guideline. An assessment of sentence reached as a result of approaching the steps in the wrong order, is capable of producing a result which the sentencing judge does not intend. Had

the judge approached his assessment in the manner recommended by the guideline the sentence he imposed on Al-Meskry would imply an adjusted starting point of just over 14 years to which the one-third discount would be applied.

10. In submissions attractively made and focussed upon the real issue in the case, Mr Ferm on behalf of Sheeraz Khan, and Mr Rushbrooke on behalf of Al-Meskry, contend that notwithstanding the judge's decision to treat all three offenders as taking a significant role, neither of them was involved to the same extent as Tahir Ali. For that reason it is submitted a downward adjustment from the provisional starting point of 15 years was required in their cases. Al-Meskry submitted a basis of plea that was accepted by the prosecution. He was involved throughout the period of the conspiracy from 1st March to 10th November 2012, but he was not an organiser and he was not personally involved at all times during that period. When he was involved his role was to cut and prepare the drugs for sale on the instructions of others further up the scale. Sheeraz Khan's basis of plea was also accepted. He was involved in the later stages of the conspiracies. He helped to obtain the premises to house the factory and gave assistance to the conspiracies as and when required to do so. He was present on the night of 10th November to provide transport. He claimed that his reward was liberal quantities of cocaine for personal use.
11. Tahir Ali's basis of plea was not accepted by the prosecution but the judge, after hearing argument, did accept it. Tahir Ali said that he was recruited by Abbas Khan this August 2012 to be his "gofer". However, he went on to specify the nature of that role which was wide ranging and in our view inconsistent with the term "gofer". Under Abbas Khan's instruction he collected and delivered cash, delivered drugs and assisted others with cutting. He admitted to receiving £2,500 per week, £1,500 per week of which he used to repay a debt of £60,000 that he owed to Abbas Khan. For the purpose of his participation he said that he was provided with mobile telephones and the use of a car. Tahir Ali accepted that he wrote on the dealer's list on Abbas Khan's instructions.
12. The judge observed in the course of his sentencing remarks that Sheeraz Khan had not been explicit about his role in the conspiracy, but that it was clear he had been involved in the renting of factory premises and transport as the conspiracy required.
13. It seems to me us that the judge was entitled on the evidence to reach the conclusions he did. We note that the premise for each of the arguments presented on behalf of the appellants is that Tahir Ali was wrongly treated as at the same level of culpability as were they. In our view the notional starting point cannot be criticised in the case of either of the appellants; nor can the judge's assessment that each of the appellants, for different reasons, had a significant role. We note that, in the case of Al-Meskry he had been involved throughout, but that in case of Sheeraz Khan he had become involved later in September 2012 and only in connection with Unit 14.
14. Having concluded that Tahir Ali was himself at all times under instruction from Abbas Khan, and was involved for a limited period from August 2012, it does not seem to us to be demonstrated that the judge was wrong to place appellants and Tahir Ali in the same bracket of seriousness.

15. We agree, having read the basis of plea and having heard the submissions of counsel for the appellants that Tahir Ali may have been fortunate in having the benefit of the judge's doubt as to the proper assessment of his role. But it does not seem to us to form an arguable basis for advancing an argument of disparity. As we have said, the judge had the advantage that we do not of having heard the evidence in the trial of others for the same conspiracies. We are unable to find that in the case of these two appellants the sentences imposed were either wrong in principle or manifestly excessive. We must therefore dismiss their appeals.