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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 11 October 2018

B e f o r e:

LORD JUSTICE HADDON-CAVE

MR JUSTICE JEREMY BAKER

MRS JUSTICE CUTTS

R E G I N A
v
MOHAMMED ABDI GODIR

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MR AHMED NADIM appeared on behalf of the **Appellant**
MR KEVIN DENT appeared on behalf of the Crown

J U D G M E N T
(Approved)

1. **LORD JUSTICE HADDON-CAVE**: On 23rd February 2018 in the Crown Court at Leeds the appellant, Mohammed Godir, now aged 44, was convicted before Mr Recorder Cran QC by a jury of one count of being knowingly concerned in a fraudulent activity undertaken with a view to obtaining payments of tax credits, contrary to section 35 of the Tax Credit Act 2003, and was convicted of one count of fraudulent evasion of income tax, contrary to section 106A of the Taxes Management Act 1970 (counts 4 and 5).

2. On 6th June 2018, in the same court, before the same judge, Recorder Cran QC, the appellant was sentenced to a community order for eighteen months, with an unpaid work requirement of 75 hours, to be completed by 5th December 2019. We understand from the appellant's counsel, Mr Nadim, that the appellant has completed the community order (unpaid work) requirement already.

3. The appellant was acquitted of another count, count 4: taking steps with a view to fraudulent evasion of VAT, contrary to section 72 of the VAT Act 1994.

4. A co-accused, Ilyas Hode, was similarly convicted on one count of being knowingly concerned in fraudulent activity, contrary to section 35 and one count of fraudulent evasion of income tax, contrary to section 106 (as above) (counts 2 and 3) and sentenced to a suspended sentence order of six months' imprisonment suspended for 24 months on each count concurrent.

5. The appellant appeals against conviction with leave of the single judge on the second of two grounds, the first ground being a point raised in relation to the jury.

6. The facts were briefly these. A company called Siti Security and Cleaning Services Ltd was formed on 5th September 2014. The co-accused Hode and the appellant were both listed as company directors. The appellant resigned three days later on 8th September, and the company ceased trading in May 2016.

7. Another company, Top Alliance Management Ltd, was formed on 4th April 2016. The appellant was a sole director. In the tax-year 2015-2016, the appellant submitted a tax return showing an income of £14,710 and expenses of just under £5,000. The prosecution case was that he under-declared his income, as his bank account showed he had received an income of £25,189. The prosecution argued that the appellant made income tax and national insurance contributions of £304 when based on a higher income figure. His returns should have been £2,739 approximately. In addition, based on the alleged under-declaration, the prosecution case was that the appellant received £5,496 more by way of income tax credits than that to which he was entitled.

8. The co-accused Hode was tried with the appellant as there was a considerable overlap in the evidence relied on by the prosecution in relation to each of them.

9. The appellant gave evidence. His case was that there was no under-declaration on his part and the monies belonged to a friend and had been wrongly ascribed to him by way

of income by the prosecution. His friend did not have a bank account and was encountering difficulties opening one, so he (the appellant) allowed his friend to receive legitimate income from his employment using the appellant's account.

10. Leave to appeal was granted by the single judge on the appellant's second ground, namely that:

> "The learned Recorder erred in directing the jury that they may convict the appellant on counts 4 and 5 if they found him to have conducted himself 'recklessly', a type of *mens rea* that is not an ingredient of the particular offences."

11. We have been much assisted today by the submissions of Mr Nadim, counsel for the defendant, and by Mr Dent, counsel for the Crown.

12. <u>Analysis</u>

13. The appellant was convicted under count 5, an offence under section 35 of the Tax Credit Act 2003:

> "Offence of fraud
>
> 35
>
> (1) A person commits an offence if he is knowingly concerned in any fraudulent activity undertaken with a view to obtaining payments of a tax credit by him or any other person."

14. The appellant was convicted under count 6 of an offence under section 106A of the Taxes Management Act 1980 of "knowingly" being concerned with the fraudulent evasion of income tax.

15. In the course of his summing-up the learned Recorder dealt with the ingredients of each of these two offences in the same way, in the same terms:

> "The issues on each of these counts are the same -
>
> I. Was there an under-declaration of income?
>
> Ii. If so, was that under-declaration made knowingly, or recklessly, not caring whether it was accurate or not?
>
> Iii. If so, was it made dishonestly."

The judge also provided a 'route to verdict' document to the jury which contained the same approach in law:

> "Godir - counts 5 and 6.
>
> 1. Was that an under-declaration of the net income? If Yes, go to

below. If No, not guilty.

2. If so, was that under-declaration made knowingly, or recklessly, not caring whether it was accurate or not? If yes, go to 3 below. If No, not guilty.

3. If so, was it made dishonestly? If Yes, guilty. If No, not guilty."

16. It is common ground that the judge's direction and the route to verdict contained a clear misdirection as to the law. "Knowingly" is something different in law from "recklessness". Knowingly connotes something more than mere recklessness. In simple terms, one can be said to *know* something if one is absolutely sure that it is so. Being reckless, on the other hand, means merely taking unjustified risks (see R v G [2004] 1 AC 1034; Blackstone 2018 paragraph A2.6 and A2.14).

17. "Wilful blindness" can equate to knowledge in some circumstances but that, again, is different to "recklessness".

18. The learned Recorder directed the jury that they could convict if they found either knowledge or recklessness. This was plainly wrong in law and impermissible. The terms of section 35 and section 106A above are clear: both offences are offences of specific intention, requiring proof by the prosecution of "knowledge". As was explained by Bush J in R v Panayi (No 2) [1989] 1 WLR 187, which concerned an offence of being knowingly concerned in the fraudulent evasion of a prohibition, contrary to section 170 of the Customs and Excise Management Act 1979 (at page 192):

> "Though it is possible in some cases to equate recklessness with knowledge or general intent, this cannot be done in this kind of case where the specific intent is required of being Knowingly concerned in any fraudulent evasion. In any event the judge seems to have directed the jury that it was something less than recklessness that was required - taking a risk, a form of criminal negligence."

19. At trial the appellant denied that he had knowingly under-declared his income for the purposes of obtaining tax credit. He said in evidence that he had allowed a third party, a Mr Ali, who did not have a bank account of his own, to use his account. We cannot rule out the possibility that the jury convicted the appellant on the basis that he had been (merely) reckless as to his under-declaration rather than that he had known his declaration not to be his true income. In these circumstances, we have concluded that the appellant's convictions on counts 5 and 6 are unsafe and cannot stand.

20. There is currently no extant appeal by the co-defendant Mr Hode, but we understand from counsel that his legal team has been notified of this current appeal. It is for his legal advisers to take whatever steps they consider necessary in relation to his similar convictions under counts 2 and 3.

21. It is unfortunate that such a basic mistake was made by the learned Recorder and that he did not heed the submissions of counsel at the time as to the proper approach in law to the question of knowledge.

22. Retrial

23. The Crown invites the court to order a retrial under section 7 of the Criminal Appeal Act 1968. It is submitted that the original trial did not reveal any inherent deficiencies in the Crown's case, which relied largely on documentary evidence. Mr Nadim has submitted, with force, that there is no real justification for a retrial on counts 4 and 5 in relation to the appellant, given that the appellant has already completed the punishment that was meted out upon him in relation to counts 4 and 5, namely the community order work. In addition, it appears, and is accepted by Mr Dent helpfully for the Crown, that there has been an income tax overpayment by the Appellant of £5,000, and therefore the deficiency of £5,500 has nearly been rectified.

24. In those circumstances, in our view, there is an overwhelming case for not having a retrial, as Mr Nadim submits. Accordingly, we quash the conviction of Mr Godir under counts 5 and 6, and we order that there should be no retrial.

25. We further direct (although we have already intimated it) that Mr Hode's legal advisers should be informed of the result of this appeal.

26. MR DENT: Yes.

27. LORD JUSTICE HADDON-CAVE: On behalf of the court, can I thank both counsel for your very helpful, clear and measured submissions in this case.

28. MR NADIM: Thank you.

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165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400

Email: Rcj, epiqglobal.co.uk