

Neutral Citation Number: [2019] EWCA Crim 1377

No: 201803114/B2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday 12 July 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE PHILLIPS

MR JUSTICE CHOUDHURY

R E G I N A

v

MARI ADRIANUS VAN GERWEN

Computer Aided Transcript of the Stenograph Notes 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)

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.

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.

Non-Counsel Application

J U D G M E N T

(Approved)

1. MR JUSTICE PHILLIPS: On 24 January 2018 in the Crown Court at Canterbury, the applicant was convicted of fraudulent evasion of the prohibition on the importation of a controlled class A drug, namely cocaine, contrary to section 170(2) of the Customs and Excise Management Act 1979. He was sentenced to 17 years' imprisonment by His Honour Judge Rupert Lowe. He renews his application for an extension of time of 155 days in which to apply for leave to appeal against conviction and leave to adduce fresh evidence, leave having been refused by the single judge.
2. The facts are that on 13 July 2017 a Dutch horsebox, of which the applicant was the driver and sole occupant, was intercepted by UK Border Forces at Dover. Inside a concealed interior partition was found 50 kilograms of high purity cocaine, worth a little under £4 million.
3. The applicant's defence was that he was an innocent dupe who did not know of the presence of the cocaine. However, the prosecution adduced bad character evidence in relation to a similar incident in 2015 in which the applicant had been stopped in Berkshire driving a horsebox also with a hidden compartment driven from Holland containing 10 kilograms of cocaine. At a trial in 2016 he had accepted that he knew of the presence of cocaine, but claimed that he had been acting under duress from threats of death or serious violence, resulting in his acquittal.
4. The applicant applies to adduce fresh evidence from two new witnesses who, he says, can give evidence in support of his case that someone hid the drugs in the partition of his horsebox whilst it had been rented.
5. The single judge, in refusing leave, said this:

"No good reasons are given for an extension of time, or the length of time sought, not least in circumstances where similar enquiries could have been made before trial, and there was also a delay in making the application after contact with new witnesses was first made. The application for an extension of time is refused.

In any event, upon examination of the new evidence, the requirements of section 23(a)-(d) [of the Criminal Appeal Act 1968] are not met and your conviction is not arguably unsafe.

The inconsistencies between the fresh evidence and the evidence called by you at trial, the circumstances in which the evidence was allegedly obtained, and the questionable character of the witnesses concerned (impacting on their credibility) mean that the evidence does not appear capable of belief, and given the (apparent) ease with which the evidence is said to have been obtained, and the fact that Mr Abdulrahman could (presumably) have identified Mr Krastev to the defence in advance of the trial, there is no reasonable explanation for the failure to adduce the evidence at trial.

In any event, and whatever the position in relation to sections 23(2)(a)

and/or (d) the short answer is that the evidence does not afford any ground for allowing the appeal (section 23(2)(b), and the conviction is not arguably unsafe. In this regard:

1. The central issue for the jury was as to your knowledge of the presence of 50 kilogrammes of cocaine in your horsebox in a specially designed compartment. It is clear that the jury must have concluded that you did know the presence of such drugs. Nothing in the new evidence sought to be introduced goes to that central question of knowledge.

2. The prosecution case was not that you placed the cocaine in the horsebox but rather that you were fully aware that your horsebox had been adapted for the purpose of transporting cocaine and that you were fully involved in the enterprise of importing the drug. On such a case it mattered not who loaded the drugs or when.

3. The case against you was a strong one, and is not one that is impacted by the fresh evidence sought to be introduced."

The single judge then set out the numerous reasons why the fresh evidence did not impact the strength of the case against the applicant.

6. We entirely agree with the single judge's analysis. We consider that there is no ground for an extension of time and in any event the application to adduce fresh evidence is refused. The applicant's conviction is not arguably unsafe. His applications are refused

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