

Neutral Citation Number: [2019] EWCA Crim 1445

No: 2018 02043 C4

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Tuesday 16 July 2019

**B e f o r e:**

**LORD JUSTICE COULSON**

**MRS JUSTICE CUTTS DBE**

**HIS HONOUR JUDGE MICHAEL CHAMBERS QC**

**APPLICATION FOR LEAVE TO APPEAL AGAINST A CONFISCATION ORDER**

**R E G I N A**

v

**IAN MICHAEL EDWARDS**

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)

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**Mr Eugene Hickey** appeared on behalf of the **Applicant**

**J U D G M E N T**  
(As approved)

1. **JUDGE MICHAEL CHAMBERS:** The applicant, Ian Michael Edwards, now aged 33, renews his application for leave to appeal against sentence, leave having been refused by the single judge. The application is directed solely in relation to the terms of the confiscation order.
2. On 26th April 2016 the applicant was sentenced to a total of 14 years' imprisonment by His Honour Judge Paul Thomas QC sitting in the Crown Court at Swansea following guilty pleas to offences of conspiracy to supply class A and also class B drugs.
3. The case concerned two organised crime groups: one operating in Merseyside and the other in South and West Wales. The Merseyside group was headed by the applicant. He was responsible for facilitating the supply of large quantities of cocaine into South and West Wales. Throughout the conspiracy he had direct contact with the South and West Wales' members and received orders from the head of that group, a man named Roberts. He also organised the delivery of the drugs through a network of couriers, (reflected in counts 1 to 3). The applicant was also responsible for trafficking drugs (namely cocaine and cannabis) to other organised crime groups throughout the United Kingdom.
4. The conspiracies were said to have operated between November 2014 and November 2015. During that time just over 2.5 kgs of cocaine were seized, with a purity ranging from 65% to 81%. However, it was the prosecution case that this figure did not represent the total amount of drugs that were trafficked. On the basis of 34 trips the street value of the drugs transported from Liverpool to South Wales throughout the conspiracy was originally estimated at £18.5 million.
5. At sentence, the prosecution application for a confiscation order under the provisions of the Proceeds of Crime Act 2002 ("the Act") was adjourned. It was heard on 27th April 2018, again before His Honour Judge Thomas QC, who made a confiscation order on terms which ultimately were agreed and approved by the court.
6. The applicant was ordered to pay a confiscation order of £80,150 pursuant to section 6 of the Act, to be paid within 3 months or, in default, to serve 9 months' imprisonment.
7. The prosecution accepted, ultimately, that the benefit figure was £2,021,600. The parties agreed that there was an available amount of £103,500, which was made up of hidden assets of £100,000 and two watches worth £3,500. After deducting the value of the watches which had already been seized and forfeited and a sum of £23,350 in cash also already seized, the confiscation order reflected what was said to be the outstanding available balance, namely £80,150.
8. On 25th March 2015 the police had executed a search warrant at the applicant's home address. A number of items were seized, including the cash of £23,350, but also a mobile telephone which contained images showing a large quantity of cash which had been stored in a kitchen cupboard at the premises, estimated (by agreement) to show at least one hundred bundles of £1,000. The prosecution contended that the £100,000 formed part of

the available amount as a hidden asset being the proceeds of drug dealing.

9. The grounds of appeal against the confiscation order are that the learned judge was wrong in law to rule that he could not take account of the defendant's "business expenses" when it came to calculating the available amount.
10. The transcript shows that during a preliminary discussion to clarify the outstanding issues the learned judge expressed surprise in robust terms as to what was stated in the defence section 17 response, namely that it was being contended that, after the deduction of the £23,350 which had been found, the remaining balance of approximately £76,000 could and should have been deducted to reflect the defendant's "payments to his co-workers and his suppliers".
11. In the original grounds of appeal it was submitted that this amounted to a ruling and one that was incorrect as a matter of law, and, further, that the applicant was unable to have the opportunity to put forward his case and evidence on this point.
12. We have been referred to what was said by this court in R v Comiskey (1991) 93 Cr App R 227, in particular at page 6, and also R v Jie Yu & Elaine Lin [2015] EWCA Crim 1076 at paragraph 30. It is said, correctly, that those authorities support the proposition which was contended for in the lower court.
13. Under section 7 of the Act it is for the defendant to prove on the balance of probabilities that the recoverable amount is lower than the benefit figure. Thus, where there are hidden assets it is for the defendant to establish that as a matter of law any expenses incurred could, and as a matter of fact should, be deducted.
14. In relation to the first point, as to whether there was a ruling by the learned judge, Mr Eugene Hickey, who did not appear below, has very properly and realistically accepted that what occurred did not amount to a ruling in law. That is a view that, with respect, accords with our view having carefully considered the transcript. The learned judge had merely made a preliminary indication; indeed, at page 6B of the transcript the learned judge expressly sought justification for the proposition being made. The learned judge was entitled to be provided with assistance from counsel as to any relevant authority, and given the esoteric and sometimes unexpected complexities of confiscation proceedings, he is obviously not to be criticised.
15. The applicant took advantage of the adjournment properly afforded by the learned judge and decided not to pursue any legal submissions or call evidence, but instead agreed to the terms of the order. It is submitted by Mr Hickey that it could be said that counsel, Mr Sharpe, had been placed in a difficult position.
16. We respectfully do not agree. The learned judge very properly afforded counsel the opportunity to make a full and proper application and submission, citing the appropriate authorities. Secondly, Mr Sharpe was afforded the opportunity to review the evidence with the applicant.

17. In our judgment it would have been an uphill task, given the circumstances of the case, for the applicant to have adduced evidence which would have led to a reduction in the amount available. The Respondent's Notice highlights the inconsistencies with the applicant's account. It is not suggested that there is any documentary or other evidence available apart from the applicant's own account which may have made any difference. Again, Mr Hickey very properly concedes that it cannot be said in this case that had the applicant been afforded the opportunity to give evidence it would have made any difference to the end result. It is also properly recognised that this is not a case in which it can be said that there was negligence by the legal representation at first instance which would have made any difference.
18. The high watermark of Mr Hickey's submissions is that perhaps the combined effect of the indication by the learned judge and the failure to adduce evidence might have meant a different outcome. Again, it is rightly conceded there is little weight in that argument. We respectfully agree that ultimately it cannot be concluded that there would have been any different outcome. We are quite satisfied that the order was safe in all the circumstances. Accordingly, for the reasons set out by the learned single judge we agree and endorse that ruling in refusing this application ourselves.
19. Again we record our gratitude for the very measured and proper way in which this application has been conducted by Mr Hickey.

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

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