

[2019] EWCA Crim 1910

No: 2019 00788 A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 11 October 2019

B e f o r e:

LORD JUSTICE MALES

MRS JUSTICE CUTTS DBE

HIS HONOUR JUDGE DEAN QC

R E G I N A

v

MOHAMMED HADI

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MS R MARTIN appeared on behalf of the **Appellant**

J U D G M E N T
(APPROVED)

1. **JUDGE DEAN:** On 1st October 2018, in the Crown Court at Worcester before His Honour Judge Cole, the appellant changed his plea to guilty to a single count of conspiracy to commit fraud by false representation. On 11th February 2019, in the same court but now before His Honour Judge Tindal, the appellant was sentenced to 6 years' imprisonment, that term to be consecutive to a term of 8 years' imprisonment imposed in the Crown Court at Leeds on 4th September 2018.
2. A number of co-defendants were dealt with at various stages of the proceedings concerning the appellant. So far as the position of any co-defendant is of any relevance it will be mentioned in the substance of this judgment.
3. The appellant now appeals with leave of the single judge.
4. The appellant is 35 and had appeared before the courts on two previous occasions for two offences. In 2007 he was sentenced to 18 months' imprisonment for conspiracy to defraud. In September 2018 he was, as we have observed, sentenced at Leeds Crown Court to 8 years' imprisonment for conspiracy to defraud. The sentence we now have to consider was ordered to run consecutively to the sentence imposed in Leeds.
5. This case involved what is known as 'courier fraud'. The conspiracy to defraud took place between late April 2016 and 1st June 2016 and was geographically widespread. The method of the fraud was for one of the conspirators (usually a male) to telephone the victim and introduce himself as a police officer investigating a crime relating to the victim's bank, often referring to the particular branch at which the victim's account was held. The caller would ask for the victim's help in the investigation. Depending on the victim's reaction, a mixture of charm, pressure and threat would be used to try to win the victim's cooperation. Sometimes the victim was given the impression, or was told explicitly, that there was someone watching their movements. Not all people could be persuaded to assist, but some (and sufficient for this to be a lucrative criminal enterprise) would agree to assist.
6. The conspirators made the calls from mobile phones using a number of SIM cards. When a victim sought assurance about the call being genuine, the victim was asked to put down the phone and then call either 999 or the non-emergency police number 101. When the victim did this, a different voice (often in fact a woman) would answer and verify what the caller had said. In reality the conspirator had kept the call live by not hanging up the mobile call when the victim hung up the landline. The victim would then be phoned back and asked to provide assistance in one of two ways, or on some occasions both.

7. One method was to ask the victim to go to his or her bank branch, withdraw cash and either give it to a 'courier' or leave it in a place as arranged by the caller. Sometimes the victim was asked to hand over one or more bank cards and their PIN numbers. This required the conspirators then to be present and visible, although automatic teller machine withdrawals were often made at night to try to avoid detection.
8. The second method used was to ask the victim to make cash deposits or transfers to one or more bank accounts as directed by the caller. The victim would sometimes be given a cover story to provide in the event that a bank employee queried the withdrawal as bank employees were trained to do. Due to the widespread notoriety of courier frauds, bank employees had been given training to spot this type of fraud, but some victims proved to be easy prey and were used repeatedly by the conspirators.
9. Often the couriers had to travel to the location of the victim to collect the cash. Sometimes another conspirator would accompany them to watch the victim's movements or for other reasons.
10. A coordinator was in overall control of the conspiracy and was either the caller or working closely with him. The coordinator directed the couriers and the victims. Much use was made of pay-as-you-go mobile phones. There was one number for the coordinator and four for the couriers. Sometimes the conspirators would, for various reasons but including ill-discipline within the fraud, use their own phones when acting as couriers or observers and to communicate directly with the coordinator. This, as it were, failure of the conspirators subsequently assisted the police investigation in identifying the movements of couriers and observers and those using the victims' bank cards to withdraw money. The way the phones were topped-up with credit, both where and by whom, also provided useful information to those who came to investigate this conspiracy.
11. Where funds were deposited into bank accounts, they would usually be transferred on again, often broken up into smaller sums in an effort to obscure the picture and because smaller sums by way of transfer were less likely to attract adverse attention.
12. There appeared to be a pattern in the people chosen as potential victims. They would be elderly people with bank accounts which had sufficient balances to make it worthwhile the conspirators engaging with the victim. All those preyed on at any one time tended to live in one area or one town and the account holders who were contacted at one time often had surnames beginning with the same letter or adjacent letters. The conspirators may have been working their way through lists of phone numbers, perhaps from a phone book. It was not known for sure how they might have found out the age of the potential victims.
13. One of the worst examples of the fraud was the treatment of a victim, Mrs Rose. She

was visited by courier defendants on four consecutive days, with her bank cards being used on three of those days. She was 81 years old at the time and more than £25,000 was stolen from her. Mrs Rose was traumatised by what happened to her, having to move out of her home for a period of time. Other elderly victims suffered similarly, many experiencing humiliation and significant loss of confidence. Examples of the pressure put on other victims included them being threatened with arrest if they did not cooperate or being told what type of car they had or what they were wearing that day to give them the impression they were being watched.

14. In short, this was fraud of a most sinister and harmful nature, the harm being very far from being confined to financial loss. Its scale was described by His Honour Judge Tindal as "vast": 1,800 different landline numbers were called in 2,200 calls. The police in fact only took statements from those who appear to have spoken to the conspirators' phones for more than a certain length of time. The total amount of cash handed over was, or successful bank transfers made, was in the region of £200,000; although some transactions were not successful, such as when victims were dissuaded by bank employees from making withdrawals. Although the period over which the conspiracy was active was short, there was during that time very intensive criminal activity. This fraud was a full-time job for the appellant and others.

15. The prosecution case was that a Rejwanal Islam and the appellant were the key players in the conspiracy, with Islam being slightly the most significant conspirator. The appellant provided the means to commit the fraud. He had contacts, especially of co-accused (a man called Kevin Thomas) who laundered stolen money. Couriers were exposed and needed managing, as did the victims who were to give them the cash and who might be discouraged by suspicious bank staff. It was easier therefore to have money transferred to accounts, accounts provided to Islam by the appellant. Bank system and tripwires meant that these accounts could often only be used once. The appellant and Islam needed to communicate often about the availability of these accounts, including on days when there were no transfers made to accounts. On days when transfers were made, there was a clear pattern of the coordinator (Islam) and the appellant speaking before the first call was made to the victim, indicating that Islam needed to know whether to send a man into the field or could pay the appellant to save himself the trouble. There was a pattern of contact between Islam and the coordinator phone and the appellant, and then contact between the appellant and Kevin Thomas on many dates when victims were contacted. The appellant and the coordinator were also in contact at other times, and often there was triangulation in the calls made between Islam, the couriers and the appellant.

16. On 1st June 2018, in the early hours, the appellant was captured on CCTV buying top-ups in Northolt for two of the phones used to contact the victims.

17. Sentencing the appellant and Islam, the learned judge concluded that there was no

question but that each was central to the fraud and fell squarely into category 1A of the Sentencing Council's Guidelines for Fraud as playing leading sophisticated roles in the conspiracy, involving others through their influence. Islam, the learned judge said, clearly played a central role, as could be seen from the voluminous amounts of telephone evidence. Islam had contact on a long-term basis with a number of other defendants and there was a considerable link between him and the appellant. Islam would be dealt with as the coordinator and manager of the fraud. His previous conviction for involvement in courier fraud was a significant aggravating feature. The judge considered applying a starting point of 8 years but such a starting point would be based on a total fraud of £1 million. It seemed to the judge to be appropriate to take a starting point of 7 years for category 1A and he would be given 15% credit for plea, the judge bearing in mind the personal mitigation open to Islam. He was sentenced to 6 years' imprisonment.

18. The appellant, the learned judge said, was not as central as Islam in the running of the conspiracy, but he was heavily involved in planning it and introducing matters such as accounting terms. He had a very similar previous conviction for a similar operation in Leeds in 2015 for which he was currently serving a long prison sentence. This was, the learned judge said, a critical aggravating feature, not least because this fraud was committed whilst he was under investigation for the Leeds matters. For those reasons a consecutive sentence would be imposed, but the judge said that he would make an adjustment for totality. The sentence imposed by the learned judge would not be as long as the sentence imposed in the Crown Court in Leeds in September 2018. Bearing in mind the appellant was not as central as Islam and weighing that against other matters including his previous conviction and bearing in mind he pleaded guilty after the PTPH hearing but before Islam, with the importance of guilty pleas in the case creating a domino effect in relation to other defendants, the appropriate level of credit was 20%. He was therefore sentenced to 6 years' imprisonment, the sentence being the same as Islam's because the appellant's previous conviction was so much more serious than Islam's and was a much more powerful aggravating feature but that was weighed against the fact that the appellant had a slightly less central role than Islam.

19. The principal complaint in the grounds of appeal relates to the totality of the sentences imposed first in Leeds and then in Worcester. It is therefore necessary, briefly, to mention the facts of the Leeds matters.

20. Before doing so, we should mention that the appellant applied for leave to appeal against the sentence in respect of the sentence imposed in Leeds on 4th September 2018 and that application was refused by the single judge in December last year and has not been renewed.

21. We have had the advantage of a transcript of His Honour Judge Jameson QC's sentencing remarks in the Leeds case. The Leeds matter was also courier fraud. The appellant was convicted after a trial. The fraud was described by His Honour Judge Jameson as

"sophisticated and heartless" and as "poisoning the final years of many of the victims". Almost £250,000 was stolen from the victims. The appellant was a leading light in the conspiracy, involved in organising other defendants and sometimes in direct contact with victims.

22. The appellant was arrested and interviewed under caution concerning the Leeds matters in August 2015. He seemingly did not, after August 2015, participate further in the Leeds conspiracy, but the Worcester conspiracy was up and running by April 2016 and operated for some weeks thereafter.
23. Whether he was on bail or simply released under investigation seems to us to be immaterial. The Worcester conspiracy took place at a time when the appellant knew he was being investigated for a very serious and similar fraud, a fraud of which he was subsequently convicted.
24. The written grounds of appeal complain that His Honour Judge Tindal's calibration of the sentences of Islam and the appellant was faulty.
25. But in our view the learned judge's analysis of their respective roles, their criminality, their past offending and the stage at which they each pleaded guilty was detailed and was accurate.
26. The other ground of appeal concerns totality. It is said that the 14 years' imprisonment represented by the imposition of a consecutive sentence of 6 years' imprisonment was excessive and is disproportionate to the appellant's overall criminality. But His Honour Judge Jameson and His Honour Judge Tindal remarked when sentencing the appellant that the frauds he had been involved in at a leading level was targeted on the old and the vulnerable. They were frauds requiring, as His Honour Judge Jameson put it, "persistence, determination and cunning in abundance". They were frauds which resulted in very significant financial loss, and in part because they targeted the old and the vulnerable, they resulted in a great deal of distress to the many victims.
27. His Honour Judge Jameson was aware that the appellant was likely to plead guilty to the Worcester matter when he dealt with the appellant on 4th September 2018, but of course at that stage the question of totality did not arise. His Honour Judge Tindal was fully aware of the sentence His Honour Judge Jameson had imposed. His Honour Judge Tindal was bound to impose a consecutive sentence for the Worcester fraud. He's not criticised for doing so, and he was bound too to consider the principle of totality. He did so and he stated as much in his sentencing remarks. Although not explicit, it appears that for the standalone Worcester matter, albeit aggravated by the Leeds case, even allowing for credit for the guilty plea, His Honour Judge Tindal had in mind a sentence of 8 years or more, and that he reduced the sentence to 6 years in part at least to reflect the principle of totality.

28. Whilst we accept that His Honour Judge Tindal might have been more clear as regards the extent to which he adjusted the sentence for totality, in this appeal we have to consider whether the consecutive sentence the subject of this appeal is such as to mean that the overall term of 14 years is manifestly excessive. We have outlined the nature of the appellant's offending and we have noted that both of the judges who sentenced the appellant made observations about the wickedness of the fraud and the prominent role of this appellant. Although a total of 14 years' imprisonment represents a stiff overall sentence, we do not consider that the sentence imposed by His Honour Judge Tindal rendered the total sentence this appellant will serve to be manifestly excessive. Accordingly, this appeal will be dismissed.

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