IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Couts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT WINCHESTER
(MR RECORDER HAGGAN KC)
Case No 2024/00405/B1 & 2024//00407/B1
NCN:[2024] EWCA Crim 1383

Thursday 31 October 2024

B e f o r e:

LORD JUSTICE WILLIAM DAVIS

MR JUSTICE MURRAY

HIS HONOUR JUDGE SHAUN SMITH KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

REX

- v -

DEVANNI GOODWIN

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Miss S Begum appeared on behalf of the Applicant

Mr C Pix appeared on behalf of the Crown

J U D G M E N T

Thursday 31 October 2024

LORD JUSTICE WILLIAM DAVIS: I shall ask Mr Justice Murray to give the judgment of the court.

MR JUSTICE MURRAY:

1. On 15 September 2023 in the Crown Court at Winchester before Mr Recorder Haggan KC and a jury, the applicant, Devanni Goodwin, then aged 24, was convicted by a majority of 10 to 2 on each of two counts of being concerned in supplying a controlled drug of Class A to another, one count relating to heroin and the other count relating to crack cocaine.

2. On 9 November 2023, at the same court, Mr Recorder Haggan KC sentenced the applicant to three years and six months' imprisonment.

3. The applicant's application for an extension of time of 111 days in which to apply for leave to appeal against conviction has been referred to the full court by the single judge.

4. The ground of appeal against conviction is that the conviction was rendered unsafe by the failure of the judge to deal correctly with certain jury notes that he received on the day the jury returned their verdicts.

5. The applicant had also applied for an extension of time of 20 days in which to renew his application for leave to appeal against sentence, following refusal by the single judge. We understand that this application has now been abandoned.

6. The applicant is represented before us today by Miss Shahida Begum, who represented him at his trial and sentencing.

7. The prosecution is represented by Mr Christopher Pix, who represented the prosecution at the applicant's trial and sentencing.

8. In the perfected grounds of appeal, Ms Begum explains the reasons for the late filing of the application for leave to appeal against conviction. The principal reason was the difficulty that the applicant's legal team had in obtaining access to the applicant in order to obtain instructions, particularly following his having been moved to another prison without notice, after a conference had been arranged. It is submitted that that was no fault of the applicant. Ms Begum submitted that if the grounds are arguable, then it would be in the interests of justice to allow the necessary extension of time.

The facts of the offences

9. In December 2022, a police officer, PC Bunt, conducted a visit to a known Class A drug user in Andover. While at that person's house, the officer was given access to their mobile phone. He saw text messages from a drugs line offering Class A drugs for sale – heroin and crack cocaine. The drug line was called the "Debo" line. It was a county lines drug operation being run between London and Andover.

10. As a result of this information, on 10 January 2023 the Metropolitan Police executed a search warrant at the applicant's home address in Lambeth, London. Three mobile phone numbers identified as relevant were linked to the applicant. One was his personal mobile

number, which ended with the digits 8720. The other two were for the Debo line. One number ended with the digits 2101 and the other ended with the digits 3810. No Debo line SIM cards were found at the applicant's address.

11. The available phone data showed that the 2101 line was in active use between 19 October 2022 and 31 October 2022. The 3810 line was in active use from 31 October 2022 until the date of the search, 10 January 2023.

12. On 11 January 2023, the applicant was interviewed under caution. He received telephone advice from a solicitor but did not have one present for the interview. In interview he replied "no comment" to questions.

The trial

13. The prosecution case was that the applicant was the holder of the Debo line and was offering for sale heroin (which formed the basis of count 1 on the indictment), and crack cocaine (which formed the basis of count 2).

14. The applicant accepted that he was involved in the supply of Class A drugs and that on occasions between 19 October 2022 and 10 January 2023 he had control of the Debo line. The defence case was that the applicant was a victim of modern slavery and that he was compelled to become involved in the supply of Class A drugs out of fear for his own safety.

15. The applicant gave evidence during which he said, among other things, the following:

    a. He described a troubled family background.

    b. He said that he had become involved in county lines when he was around 16 years old. He said that older people drew him in and bought him gifts, shoes, and tracksuits, as well as cannabis. He felt that he could not say no to these people, and he was scared of them.

    c. Prior to the current offences, he had been involved in the supply of drugs. He began storing drugs at his grandmother's house. One day he was robbed at knifepoint, and the drugs were stolen. This led to him owing a drugs debt. He was sent to Essex to sell drugs to pay off the debt.

    d. On 3 March 2018, he was attacked and stabbed in Essex. During the attack the drugs and phone line he was holding were stolen. As a result of the attack, he did not go out for a number of months. He was eventually found by the owners of the drugs and forced to go back to work selling drugs. Instead of sending him to Essex, this time he was sent to Andover.

16. The applicant had a previous conviction regarding the supply of drugs and the Debo line. On 18 March 2021 the applicant was stopped whilst in a vehicle being driven from London to Andover. He tried to run from police but was stopped and found to be in possession of Class A drugs. On 7 June 2021, the applicant pleaded guilty to four counts, two of possessing Class A drugs (heroin and crack cocaine) with intent to supply, and two counts of being concerned in the supply of Class A drugs (again, heroin and crack cocaine). By his plea of guilty, the applicant accepted being a member of the Debo network, supplying drugs between Andover and London.

17. In relation to the previous conviction, the following evidence was before the jury in the

form of Agreed Facts:

a. The applicant accepted being the holder of the Debo phone line at times between September 2020 until his arrest on 18 March 2021.

b. The applicant had initially been forced to carry out drug dealing activities to pay off a drug debt and had been stabbed in the past.

c. The applicant was given the phone to look after and his responsibilities were to send out the bulk messages to potential buyers, to attend to responses and to exchange the drugs for money.

d. The applicant would not be trusted with a large amount of drugs so would have to travel back to London to re-stock and drop off the money.

e. The items were already pre-packed in wraps for him to give to the end user.

18. The applicant was sentenced in relation to this prior conviction on 6 August 2021. He was released from his prison sentence on 12 May 2022. He said that after he was released he managed to keep a low profile for a few months before he was located and forced again to become involved in the supply of drugs. He accepted that he had the phone line for most of the indictment period up until his arrest on 10 January 2023.

19. The issue for the jury was set out in a written route to verdict and was whether the applicant had a defence pursuant to section 45 of the Modern Slavery Act 2015.

20. The grounds of appeal against conviction principally concern what occurred on the day that the jury returned their verdicts. The trial had commenced on Monday, 11 September 2023. The jury was sent into retirement to consider their verdicts on Thursday, 14 September 2023 at 11:38 am.

21. At the end of his summing up, before sending the jury out, the judge gave the jury the usual assurance that they were under no pressure of time and that if they did not reach verdicts that day, they would be brought back to court at the usual time, given further directions and sent home for the day. They were also told that no verdicts would be taken between 1:00 and 2:00 pm to allow everyone concerned with the trial to have their lunch break. There were no questions or notes from the jury that day and, as promised, the judge sent them home with the usual directions at the end of the day, at about 4:15 pm.

22. After the jury left court, Mr Pix for the Crown asked if the judge was minded to give a majority direction the following day. The judge indicated that his usual practice was to wait until the jury sent a note indicating that they were in difficulty. In this case he considered that they had a lot to think about, and he did not want to rush them. He assured both counsel that if he received a note indicating that it would be helpful to have a majority direction, then he would discuss that with them and then would probably give the majority direction. Ms Begum asked the judge whether the jury were aware of the procedure by which they could send notes if in difficulty. The judge confirmed that the jury had instructions on that as part of the information they had concerning their jury service.

23. On Friday morning, the jury retired again. The judge reassembled court at 12:14 pm and indicated to counsel, before the jury came back into court, that he would give a majority direction. He made no mention then of having received any notes from the jury. At that stage, the jury had been deliberating for nearly six and a half hours. There was no

objection from counsel to the judge giving a majority direction. The jury were brought in and given that direction.

24. The jury returned at 2:04 pm and, as we have already summarised, returned a guilty verdict on each count by a majority of 10 to 2.

25. The judge ordered a pre-sentence report, and the sentencing hearing was listed for 9 November 2023. The jury were then released.

26. After the departure of the jury, the judge mentioned to counsel that he had received "some letters" that morning from jurors, not expressing any issues in relation to sitting on the jury but simply stating that if the trial went into the following week it would cause them "real difficulty" for reasons that appeared to the judge to be "very sound". He had considered, when he received these communications from the jury, that it was not a matter that he needed to deal with then. He indicated to counsel that he further considered that, as the verdicts had been delivered, no problem arose.

Submissions

27. In her written submissions in support of the grounds of appeal against conviction, as developed orally before us this morning, Ms Begun submitted that the jury notes received by the judge on Friday, 15 September 2023 should have been disclosed to counsel before the majority direction was given. The jury was anxious about the trial going into another week, yet the judge and counsel knew that that would not happen as the judge would not be available.

28. Ms Begum submitted that if the judge had informed counsel about the notes that he had received that morning from some members of the jury, then she would have had the opportunity to make appropriate submissions, as indeed would Mr Pix. For example, she considers that she might have raised with the judge whether it was appropriate to give a majority direction on that day in light of those jury notes. She might have sought to ask the judge have the jurors into court in order to reassure them that they would not have to return the following week, even if no verdict had been reached. Ms Begum submitted that, given the judge's failure to give the jury that assurance – or indeed to respond to their notes at all – there was a real risk that the jury felt pressured to reach their verdicts that day, and therefore did not make their decisions solely on the evidence.

29. Ms Begum submitted that the judge's failure to disclose the jury notes was a material irregularity that rendered the conviction unsafe in this finely balanced case that involved the careful consideration of a modern slavery defence, as reflected in the detailed route to verdict. The fact that each verdict was by a majority of 10 to 2 raises, she submitted, the level of unease, because even if just one juror felt pressure, despite misgivings, to agree with the majority in order to conclude the matter that day, then the conviction was unsafe.

30. For the prosecution, Mr Pix noted that the judge had reassured the jury when sending them out the previous day that they were under no pressure of time. The jury received a majority direction before lunch, at 12:14 pm, and returned their verdicts just after 2:00 pm, which meant that they had essentially decided their verdicts over a relatively short period of time after having the majority direction, with plenty of time for further deliberation remaining that afternoon. This was a case, Mr Pix submitted, where the trial came to a natural end and no unfair pressure was brought to bear on the jurors. The judge should have shared the jury notes with counsel when they were received, but the conviction was not unsafe as a result of his failure to do so. In oral submissions, Mr Pix

also stressed that this was not a complex case. Most of the facts were agreed. The defence was a modern slavery defence. The case turned on whether or not the jury believed the applicant's evidence. Also, there were no notes from the jury at any point during their deliberations to indicate that the jury had had any difficulty following the judge's directions.

Decision

31. We begin by noting that we have not seen any of the notes that the judge received on the morning of 15 September 2023. The Crown Court at Winchester has no record of them. They were never uploaded to the DCS, nor were they recorded on any court log. This is of concern, but there is little more that we can say about that. We have no information as to why these jury notes are missing. We have only, therefore, the transcript of what the judge said to counsel in court about the jury notes after the verdicts had been delivered and the jury had departed.

32. We do not know how many notes there were, but the judge appears to have received a few of them. Given the judge's reference to having received "some letters", it appears that there were at least two, and more likely three or more, notes from jurors wishing the judge to know that if the trial went into the following week, it would cause them real difficulty. The judge accepted that they had good reasons for their concerns, but we do not know what those reasons were.

33. In relation to jury notes received once a jury has gone into retirement and before it has delivered its verdicts, the Court of Appeal gave the following guidance in *R v Gorman* (1987) 85 Cr App R 121, at 126-127:

> "… it seems to us that certain propositions can now be set out as to what should be done by a judge who receives a communication from a jury which has retired to consider its verdict.
>
> First of all, if the communication raises something unconnected with the trial, for example a request that some message be sent to a relative of one of the jurors, it can simply be dealt with without any reference to counsel and without bringing the jury back to court. We have been helpfully referred to a decision of this Court reported in *Connor*, *The Times*, June 26, 1985, where that very situation seems to have arisen.
>
> Secondly, in almost every other case a judge should state in open court the nature and content of the communication which he has received from the jury and, if he considers it helpful so to do, seek the assistance of counsel. This assistance will normally be sought before the jury is asked to return to court, and then, when the jury returns, the judge will deal with their communication.
>
> Exceptionally if, as in the present case, the communication from the jury contains information which the jury need not, and indeed should not, have imparted, such as details of voting figures, as we have called them, then, so far as possible the communication should be dealt with in the normal way, save that the judge should not disclose the detailed information which the jury ought not to have revealed.

> We may add, before parting with the case, that the object of these procedures, which should never be lost sight of, is this: first of all, to ensure that there is no suspicion of any private or secret communication between the court and jury, and secondly, to enable the judge to give proper and accurate assistance to the jury upon any matter of law or fact which is troubling them. If those principles are borne in mind, the judge will, one imagines, be able to avoid the danger of committing any material irregularity."

34. More recently, in *R v Ball* [2018] EWCA Crim 2896 at [19], the Court of Appeal confirmed that the Criminal Procedure Rules have not changed the position as set out in *Gorman*. Undoubtedly, therefore, the judge should, in accordance with the principles set out in *Gorman* and CrimPR r 25.14, have shared the jury notes that he received on the morning of 15 September with counsel and given them the opportunity to make representations. He should have done that before he gave the majority direction.

35. The question for us is whether his failure to do so rendered the applicant's convictions unsafe.

36. We are concerned that we do not have any of the jury notes and therefore, as we have said, we do not know how many there were or what precisely they said. We have already noted that the judge's failure to follow the guidance in *Gorman* and in the Criminal Procedure Rules in relation to those jury notes was a material irregularity.

37. We think that there is merit in the submissions made by Ms Begum that the judge's failure to provide any response to the jurors raises a doubt about the safety of the applicant's conviction. It appears that more than one of the jurors was seriously concerned, without justification as it happens, about the trial lasting into the following week if verdicts were not reached on 15 September. Their anxiety on the point had led them to write notes to the judge. Counsel could not make submissions at the time about how the judge should deal with those notes, given that he had failed to bring the notes to the attention of counsel until after the verdicts had been delivered and the jury had departed.

38. We bear in mind that the judge, when he first sent out the jury to commence their deliberations, had made it clear that they were under no pressure of time, although we also note that he did not repeat that assurance when he sent them out again on the Friday, or at the time that he gave the majority direction.

39. The jury had been deliberating for nearly six and a half hours by the time the majority direction was given. They reached their verdicts promptly after that, when there was plenty of time remaining in the court day – the whole of an afternoon, in fact. We have borne all of this in mind.

40. Apart from the judge's failure to raise the jury notes with counsel and to provide a response to timing concerns raised by the relevant jurors, there is no suggestion that the jury were put under any improper pressure to reach their verdicts by the end of that week.

41. We are, however, concerned that the lack of a response from the judge to the notes could have led at least one juror, if not more, to have felt pressure to vote with the majority for an improper reason, namely, to bring the jury's task to an end on that day. This concern is heightened by the fact that the verdicts were by a majority of 10 to 2.

42. On this basis we consider that the conviction is unsafe.

43. Having reached that conclusion, and accepting that the delay in the filing of the applicant's application for leave to appeal against conviction was not his fault, we grant the necessary extension of time in which to apply for leave to appeal, and we grant leave to appeal against conviction. We also allow the appeal and quash the conviction on both counts.

44. **LORD JUSTICE WILLIAM DAVIS:** Do you ask for a retrial?

45. **MR PIX:** My Lord, yes. They are my instructions. I bear in mind Archbold at 7-111, but, of course, there are various things that the court should bear in mind in the public interest. In particular, the appeal has succeeded not because of an issue with evidence, but because of an error of judgment, and therefore the Crown seek a retrial.

46. **LORD JUSTICE WILLIAM DAVIS:** All right. We had better retire to consider that. Ms Begum, you would say that there should not be a retrial because the appellant has served his sentence, and there were real doubts about the evidence anyway?

47. **MS BEGUM:** Yes. Do I need to address the court any further?

48. **LORD JUSTICE WILLIAM DAVIS:** Well, if we are against you, we will give you a further opportunity to address us. All right?

49. **MS BEGUM:** I am grateful.

(The court retired to confer)

50. **LORD JUSTICE WILLIAM DAVIS:** We decline to make an order that this case be retried. If nothing else, the appellant has served the custodial part of his sentence, and he is now on home detention curfew. Thank you both very much indeed for your expeditious submissions.
