IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2020] EWCA Crim 1360
CASE NO 2019 04531 B4

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 16 October 2020

LORD JUSTICE MALES

MRS JUSTICE CHEEMA-GRUBB DBE

HIS HONOUR JUDGE EDMUNDS QC

REGINA
v
PATRICK CLEERE

Computer Aided Transcript 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)
MR D PARVIN appeared on behalf of the Appellant
MR R SELLERS appeared on behalf of the Crown

J U D G M E N T

LORD JUSTICE MALES:

1. On 21st November 2019, at Harrow Crown Court, the appellant Patrick Cleere, now aged 67, was convicted of one count of perverting the course of public justice. He was subsequently sentenced to 18 months' imprisonment to run consecutively to a sentence which he was already serving. His former wife was also convicted and received a suspended sentence. Other defendants were acquitted. He now appeals against conviction by leave of the single judge.
2. The ground of appeal is that the judge was wrong to allow the prosecution to adduce evidence of the appellant's previous conviction for fraud, a fraud which had been perpetrated on elderly victims. It was a roofing fraud. It was the trial which led to that conviction for fraud which gave rise to the facts of the present offence.
3. The appellant was due to stand trial at Blackfriars Crown Court on 16th July 2018 accused of the roofing fraud. It was a case which was expected to last some weeks, although we were told that it had had a fairly chequered history with a number of adjournments and that the appellant had instructed his counsel to apply for a further adjournment that morning. On the morning when the trial was due to start the appellant, together with members of his family and friends, including those who in due course became his co-defendants on the perversion of the course of justice allegation, arrived outside Blackfriars Crown Court. From about 9.15 they located themselves in the vicinity of the court entrance and approached members of the public who were making their way into and out of the court building. They explained that they were representing a company called Candleverse, which sells candles online, and invited those they approached to visit the company website. In what might be thought an unusual marketing strategy, they handed out £20 notes to the people they approached together with Candleverse business cards. We were told that a total of £2,000 was collected in due course from those to whom this money had been handed out. Clearly, Candleverse would need to sell a lot of candles to recoup this outlay and show a profit. Those approached included lawyers, court staff, police officers, defendants, witnesses and jurors, both those who were serving on juries in other cases and those who might be selected to serve on the jury to try the appellant for fraud.
4. The prosecution case was that the appellant had made a deliberate attempt to frustrate his trial because he knew that jurors would be instructed to bring to the attention of court staff anything or anyone that they recognised. Thus it would be inevitable that jurors who had been handed cash and Candleverse business cards would raise this and would not be able to participate in the trial; indeed, Candleverse was to feature in the trial as the appellant was a director of the company. It was not alleged to have been involved in criminal activity itself, but it was a name which the jurors would hear and thus, having received these business cards and been given money, would be duty bound to raise that and would be unable to serve or to continue to serve. The prosecution said that the appellant's object to abort the trial was achieved, and indeed the court decided that it could not start the trial on that day (16th July) due to jury contamination. The trial was adjourned.
5. It did take place in due course and the appellant was convicted and sentenced. It is that conviction which gives rise to the present appeal, the submission being that, at the trial for perverting the course of justice, the judge ought not to have allowed evidence of the

fact of that conviction to be put before the jury.

6. The defence case, as set out in the defence case statement and in the appellant's evidence at trial, accepted that he together with co-defendants had attended the area around Blackfriars Crown Court and had handed out the money and business cards. He said that this was conducted as part of a legitimate strategy to promote the Candleverse business and that the material and money had been handed out to potential customers with a view to inviting them to make a purchase from the Candleverse website. He denied that he had any intention of interfering with the criminal proceedings. It was a promotional strategy which took place on that date and at that location simply as a matter of convenience. The cash was intended to be an incentive to visit the website and was supposed to be used towards the purchase of candles, although it was cash which was handed out without any strings attached to the way in which it would be used. It was not, for example, a money off voucher or anything of that nature.
7. In his evidence the appellant added that he had expected only to be at court for a short period of time on 16th July and had intended to carry out a promotion at Borough Market once he was free to leave court. However, when he arrived outside the court building in the morning he decided to do a practice run so that those helping him with the promotion could get use to the promotion and how people would react to being handed cash. He said that he had carried out the promotion with success elsewhere. Indeed, he called a witness in his support (a lady called Rita Choudhury, who was employed at WH Smith in Ealing) who gave evidence that she had been handed a £20 note and a Candleverse business card on an occasion when she had been working in Ealing. The prosecution were not in a position to challenge that evidence in any significant respect because no notice had been given, either in the defence statement or in any other way, that this witness would be called or even that such marketing had been carried out on previous occasions in Ealing.
8. In opening the case the jury were told, of course, that the appellant had been due to stand trial at Blackfriars Crown Court on the morning in question, but they were not told either the nature of the offence with which he was charged or the fact that he was convicted. There were apparently attempts to agree some wording to deal with that position, but in the event that was overtaken by what occurred during the appellant's cross-examination and the judge's ruling which then followed.
9. During cross-examination by counsel acting for the co-accused Rita Cleere (the appellant's former wife) evidence was given which we must set out. It appears that counsel acting for the appellant's former wife had previously represented the appellant both in the fraud trial which eventually took place and at earlier stages of the present proceedings. In the light of that, the questions which were asked were somewhat unfortunate in our view. We set them out now:

> "Q. At the time that we're looking at, July 2018, what was your primary occupation? What were you doing?
> A. I cared for my grandson Kian for years, and permanently for the last two or three years it's just me and him living together. Prior to that, since he's born I've always been with him, in the sense of being around him.
>
> Q. Why did you have to care for Kian?

A. He is classic autistic, he is doubly incontinent, he doesn't speak, but he is a living angel.

Q. What level of care does he require?
A. 24/7. He's not -- I don't see it as a burden to care. It's just care for him. He is --as I said, we are like that. We don't have any -- we have 100% non-verbal communication, so it's not like -- basically doubly incontinent is the big issue."

10. At that point, the judge intervened, perhaps not surprisingly, to question the relevance of this evidence. Counsel then moved to a different topic.
11. That led to an application by the Crown to adduce bad character evidence of the appellant, namely his conviction for the fraud trial. It was submitted that the answers in cross-examination to counsel for the appellant's wife had asserted good character and had given a false or misleading impression to the jury so that the evidence became admissible under the bad character provisions of the Criminal Justice Act 2003, in particular section 101(1)(f).
12. The judge acceded to that application, and in a ruling which he gave in due course he decided that the evidence was admissible under two of the provisions of section 101. His reasons were as follows:

"Having listened recently to his evidence, and taking his evidence in the round, Mr Cleere was clearly trying to give the jury the impression of a thoroughly altruistic and hardworking legitimate businessman. That was certainly his intention. I find that section 105(2)(a) applies, that a defendant is treated as responsible for the making of an assertion if the assertion is made by the defendant in the proceedings. I am of the view that the clear impression running though his evidence was the one I have stated, considering the combined effect of his evidence that -- his company had a spiritual dimension, and the example he gave of a parent grieving for a deceased child; the long history and expertise behind the family business, Candleverse, and the very high quality of its product; his role as a carer for a grandson, with full details being given of the child's disabilities in answer to the simple question -- what was your occupation in July 2018; the fact that the trial was the last thing on his mind. This impression was not inadvertent, but very much the intention of the defendant in my view, having listened to the evidence. ... There is nothing to suggest that what the defendant said about his grandson is untrue, nor what he said about the company and its product. However, the evidence he gave in sum total would leave the jury with a wholly misleading impression of him. This is to be balanced by the jury hearing of the single conviction he was tried for at Blackfriars -- a roofing fraud on the vulnerable and elderly. There is nothing unfair or disproportionate about this, it simply equips the jury with a more truthful and balanced picture of the defendant, both the good and the bad aspects of his character. This is especially so as he chose to emphasise the caring side of

his character to the jury, which may well be true, but taken in isolation is misleading. I have considered my discretion to exclude under Section 78 of PACE, and consider that the introduction of this single conviction, and not any of the other 50 previous convictions recorded against him, achieves the right balance."

13. The judge ruled also that Gateway (d) was passed because the evidence was relevant to an important matter in issue between the prosecution and defence. That arose because the appellant said in evidence that the trial was the last thing on his mind that day. The judge said it was therefore relevant for the jury to know the nature of the allegation, which was serious, and the fact that the appellant was in fact guilty of it.
14. In the event, however, when he came to direct the jury, the judge did not direct them on that possibility, and it is unnecessary therefore to say any more about it. The summing-up and the submissions on this appeal have been concerned with the question of false or misleading impression. We note that the section refers not only to a false impression but also to a misleading one and this is the basis on which the judge admitted the evidence. It appears that the evidence given was in fact true, but the judge formed the view that it was misleading for the reasons which he explained.
15. When he came to direct the jury, the judge referred to the aborted proceedings as being concerned with a conspiracy to defraud homeowners, including the elderly, in connection with a roofing fraud. He referred also to the appellant's evidence about building up the Candleverse company over many years and being a legitimate business, and his evidence about being the full-time carer for a seriously disabled grandson and saying that the case on 16th July 2018 was the last thing on the appellant's mind. The judge said that the appellant was perfectly entitled to ask the jury to consider those matters in his favour, but that as a result the prosecution had been allowed to present evidence which showed that there may be another side to his character apart from those worthy aspects, namely the fact that he was found guilty of the conspiracy to defraud for which he was due to be tried and that it involved the defrauding of elderly home owners in a roofing fraud. The judge directed the jury that the prosecution asserted that the appellant was trying to mislead them when he gave evidence about being a caring person and a legitimate businessman, while the defence said that it was not misleading because what he had said about Candleverse and the care of his grandson was true. The judge said that if they were sure that the appellant was trying to mislead them, that would not mean that he was trying to mislead them about everything, but it was evidence that they could use in deciding whether or not he was a truthful witness. If they were not sure that the appellant was trying to mislead them then the previous conviction would not be relevant. He went on to warn them in standard terms that the conviction only formed a part of the evidence, that they should not convict the appellant only or mainly because of it and should not be prejudiced against him, and that it did not necessarily follow that he was guilty of the fraud.
16. On appeal, Mr Parvin for the appellant has submitted that the judge was wrong to allow the evidence of that conviction to go before the jury, together with the information about the nature of the fraud, in circumstances where the parties had been careful up to that point not to provide the jury with information about the nature of the allegations or the fact of the conviction. He submitted that this would have a seriously adverse effect so as to render the trial unsafe and emphasised the fact that the appellant's answers were not

suggested to be untrue. He was in fact the carer for his grandson, who suffered from the disabilities about which the appellant had given evidence. He accepted, however, realistically and necessarily, that this evidence did present the appellant in a positive light. It therefore did give a positive impression to the jury, but he submitted that it was not such that the evidence should have been admitted. The appellant had little or no choice but to answer the question which had been put to him in cross-examination. He could not have anticipated the application which would then follow.

17. For the prosecution, Mr Sellers has supported the decision made by the judge, submitting that the evidence did give a false impression, and that the gateway in question is not limited to allowing bad character to be given when the evidence given or assertion by the defence is untrue. He emphasised that the trial judge was best placed to decide how to deal with this matter.
18. It seems to us that the judge was right to say that the evidence did amount to giving a misleading impression. The evidence went further, and unnecessarily further, than simply answering the question which had been asked, which was limited to what the appellant's primary occupation was at the time of the proposed Blackfriars trial in July 2018. The appellant took the opportunity not only to say that he was the carer for his grandson but to emphasise the disabilities from which his grandson sadly suffers and to emphasise the positive aspects of the appellant's character in caring for him in a devoted manner. We would accept, therefore, that the judge was entitled to consider that this passed through the relevant gateway, but this does not necessarily mean that the evidence had to be admitted in accordance with the prosecution application. The judge referred to having considered an exercise of discretion to exclude this evidence, although he said that he thought admitting it created the right balance.
19. We would respectfully part company with the judge on that issue, having regard to the way in which the evidence came out, which was effectively on the spur of the moment in response to cross-examination by a co-defendant's counsel, and to the serious impact upon the trial and the picture therefore that the jury would have had that adducing this evidence resulted in. It would have effectively transformed the jury's view of the proceedings in Blackfriars by giving them the information in question. We think therefore it would have been better if this evidence had been excluded.
20. However, the question ultimately is whether this conviction is safe. In giving permission to appeal the single judge drew express attention to this question and commented that the nature of the appellant's case was far-fetched and that it may well be concluded that the jury would have reached the same conclusion without knowing about the conviction and that this is something which the full court would need to consider. We have considered that matter with considerable care, and we have reached the firm view, in agreement with the provisional view reached by the single judge, that the defence here was far-fetched and that the conviction in the circumstances which we have described was entirely safe. For that reason we dismiss this appeal.

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