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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/00283/B1, 2023/00285/B1
2023/00286/B1, 2023/00287/B1, 2023/00288/B1
2023/00289/B1 & 2023/00291/B1
[2023] EWCA Crim 205

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 16th February 2023

B e f o r e:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE BRYAN

SIR NIGEL DAVIS

R E X

- v -

JASON ROWAN
CATHERINE ROWAN
STEPHEN TOMLINSON
DAVID BEESON,
CHRISTOPHER SIMPSON
BOHDAN ZACHARKO
PHILIP EREMENKO

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Mr C Nelson QC and Mr S Trefgarne appeared on behalf of the Applicant Crown

Mr O Osman and Mr T Smith appeared on behalf of the Respondent **J ROWAN**
Mr N Sekhon and Mr S M Sharma appeared on behalf of the Respondent **C ROWAN**
Mr G Wills appeared on behalf of the Respondent **TOMLINSON**
Mr A Fitch-Holland and Mr L Chignell appeared on behalf of the Respondent **BEESON**
Mr J Rivett and Miss K A Rowan appeared on behalf of the Respondent **SIMPSON**
Mr D Keating and Lady G Waszkewitz appeared on behalf of the Respondent **ZACHARKO**
Mr M Radstone and Miss B Brasoveanu appeared on behalf of the Respondent **EREMENKO**

J U D G M E N T
(Approved)

Thursday 16th February 2023

LORD JUSTICE HOLROYDE:

1. By virtue of section 71 of the Criminal Justice Act 2003, no publication may include a report of these proceedings, save for certain basic facts, until the conclusion of the trial of the respondents, unless this court otherwise orders. We shall return to the issue of reporting restrictions at the conclusion of this judgment.

2. This is an application by the prosecution for leave to appeal, pursuant to section 58 of the Criminal Justice Act 2003, against a ruling in relation to a trial on indictment. The seven defendants in that trial (the respondents to this application) are accused of fraudulent activity in relation to the sale by a number of companies of home improvement products. The prosecution allege that customers, most of whom were elderly, were induced by false representations to buy products which they did not need and/or to buy products at greatly inflated prices.

3. The trial has begun, although the jury has not yet heard any evidence. This application has been expedited so that the trial can, if appropriate, continue.

4. For convenience we shall refer to the respondents simply as "D1" to "D7". The roles ascribed to each of them by the prosecution can be summarised as follows. D1 was in charge of all the companies. D2 worked in the offices, dealing with requests for refunds or repayment of deposits. D3 was for a time the number 2 in the operation and dealt with customer complaints. D4 and D5 were experienced sales representatives for each of the companies, targeting vulnerable customers and mis-selling products; they are said to have been the most active of the many salesmen employed by the companies. D6 began as a sales representative and later became sales manager. D7 for a time managed the training of

company personnel and trained sales representatives in improper sales techniques.

5. The indictment contained seven counts, to which all defendants have pleaded not guilty. Count 1 charges all seven with conspiracy to commit fraud, contrary to section 1 of the Criminal Law Act 1977. The particulars allege that the defendants conspired "together and with others" to make representations to members of the public which they knew were or might be untrue or misleading, in order to induce them to enter into agreements with a number of named companies. Count 2 charges D1, D3, D6 and D7 with fraudulent trading in relation to the business of one of those companies; count 3 charges D1, D3 and D6 with fraudulent trading in relation to a second company; and count 4 charges them with fraudulent trading in respect of a third. The remaining counts charge money laundering offences against individual defendants.

6. Given the nature of the appeal, we say as little as possible about the facts of the case. It is, however, necessary in order to address the issues which arise in this application to give some detail about the course of the trial thus far.

7. The trading activities of the companies attracted the attention of an investigative television programme. The television company covertly recorded two films, to which we shall refer for convenience as "Films A and B". The prosecution wished to adduce both films in evidence. Film A was a recording of D7 training company personnel. The prosecution case was that it showed the teaching of the improper sales techniques which were practised on customers. Film B was a recording of a "sting" operation in which a sales representative was invited to call on an actress posing as a potential customer. The prosecution case was that it showed an example of the improper sales techniques being used.

8. The actress in Film B is not to be called as a prosecution witness. The salesman who

visited her has not been charged and is not to be called as a prosecution witness. Apart from D4, D5 and D6, none of the 20 or more other persons who acted as sales representatives for the companies has been charged, and none is to be called as a prosecution witness.

9. Defence counsel applied to exclude evidence relating to Films A and B. Their written submissions were primarily based on complaints of suggested inappropriate interaction between the prosecuting authority and the television company, and failures of disclosure. It was submitted that this evidence was inadmissible and that in the alternative it should be excluded on grounds of unfairness, pursuant to section 78 of the Police and Criminal Evidence Act 1984 ("PACE"). The principal arguments in relation to unfairness were that the covert filming was carried out with the acquiescence of the prosecution, but the defendants were denied the safeguards which they should have been afforded under the Regulation of Investigatory Powers Act 2000, and that the prosecution had failed in their duty of disclosure.

10. In a written submission on behalf of D1, a third argument was advanced to the effect that D1 had not been present at the recording of Film B and therefore could not speak to it. That third submission was specifically described as "not a principal argument".

11. Evidence was called by the prosecution on the voir dire in relation to the defendants' principal arguments. Oral submissions were made on Thursday 19th January 2023. In the course of his further submissions that afternoon, counsel for D1, who effectively took the lead in all the submissions on behalf of the defendants, referred to the "entirely separate matter" of Film B. It was, he submitted, prejudicial because the salesman concerned was neither a co-defendant nor a witness and, accordingly "we have no ability at all to challenge this evidence". He added that even if the court was against him on his "substantive submissions", Film B was in a category of its own. Counsel later reiterated that no one would

be able to question the salesman shown in Film B to ask what was in his mind and whether he had been trained to act as he did. Counsel for D7 similarly submitted that he would be unable to question the salesman as to whether he had acted in accordance with training given by D7.

12. Prosecution counsel responded that it was the prosecution's case that the salesman was a co-conspirator and that Film B showed him using the techniques in which D7 trained sales representatives. Counsel submitted that the film was real evidence of statements in furtherance of the conspiracy, which established the existence of the conspiracy. There was no prejudice to the defendants, he submitted, because their cases were that any sales representative who had told lies to a customer had done so of his own accord, and not in pursuance of company policy.

13. Counsel for D7 then submitted that if the salesman was said to be a co-conspirator, the prosecution should have charged him, and they should not be permitted to "have it both ways". Prosecution counsel, in response, made clear that it was the prosecution case that all the sales representatives were co-conspirators, albeit that they had not all been charged. He said that if the defendants wished him to name all those alleged to be co-conspirators, the indictment could be amended accordingly. He added that the allegation against the other sales representatives had been clearly stated in his note of opening, which had been circulated in December 2022, and that no one had previously suggested that it was necessary for them all to be named in the indictment.

14. On Friday 20th January 2023, the judge gave her ruling. She rejected the principal submissions made on behalf of the defendants. She found on the evidence which she had heard that there had been no behaviour on the part of the prosecuting authority which had such an impact on the fairness of the proceedings that the evidence of the covert film should not be admitted. Film A, she said, was real evidence properly admitted and she did not take

the view that it should be excluded.

15. The judge said, however, that Film B, on which the prosecution wished to rely as an illustration of techniques said to be devised, promoted and employed by the defendants, was in "an entirely different category". She accepted that Film B was highly probative, but continued:

> "However, in the absence of the main protagonist, there is no possible way the defence can test what the thought processes and motivations of that particular individual was on that occasion. Whether he was acting on instructions given by the company, as part of a common plan to defraud customers, or whether he was acting independently of any advice or training he had been given for reasons of his own on that occasion simply cannot be tested."

16. The judge then referred to the fact that the salesman had not been charged, and to the indication that the prosecution might apply to name him and others in the indictment. She rejected that suggestion. She said:

> "In my judgment, to name an alleged co-conspirator in an indictment, against whom a decision was made not to prosecute, or indeed no decision was made to prosecute, would be wrong. Conspiracy involves criminal activity on the part of each of those alleged to be co-conspirators. It is self-contradictory to decline to charge a person, perhaps for evidential or other reasons, while seeking to rely in a subsequent prosecution on alleged wrong-doing by the same individual, and in my judgment would not be proper."

The judge concluded that if the prosecution wanted to use the behaviour of the salesman shown in Film B as an example of the criminal activity, "they should have charged him".

17. For those reasons the judge ruled that to admit Film B in evidence would have such an

adverse effect on the fairness of the proceedings that she ought not to admit it. Brief further oral submissions followed before the court adjourned until Monday 23rd January.

18. Counsel worked diligently on the case over the weekend. On the Sunday afternoon the prosecution sent out written submissions about Film B, and defence counsel collectively sent a further application to exclude evidence, pursuant to section 78 of PACE. Neither of those documents was a response to the other: they were emailed at around the same time.

19. In the submissions on behalf of the prosecution, counsel expressed concern that the admissibility of Film B may not have been fully argued. They did not apply to re-open the judge's exercise of her discretion under section 78 of PACE, but expressed willingness to assist if the judge felt that further argument would be appropriate. They referred to the need for prosecuting authorities to consider the public interest as part of any decision to charge, and to the considerations of resources and proportionality which were taken into account in a decision to prosecute the alleged leaders of the conspiracy, but not those less involved. They submitted that it would be correct in law to apply to amend the indictment to include a schedule of all the alleged co-conspirators. In this regard they referred to a passage at chapter 33, paragraph 47, of the 2023 edition of Archbold.

20. In their further application, defence counsel submitted that the court should exclude the evidence of all prosecution witnesses who had been customers of the defendants' companies and who had dealt with sales representatives other than those in the dock. The basis of this application was "the defence's inability to test key aspects of their testimony, specifically evidence relating to the behaviour and/or thinking of the identified salesperson". Counsel relied on key points from the ruling which the judge had given in relation to Film B.

21. In response, the prosecution submitted that evidence of what a complainant says was said

to him or her by a sales representative is always admissible in the trial of a fraud such as is alleged here. Such evidence is adduced not to prove that what was said by the sales representative was true, but rather to prove that lies and half-truths were being told in accordance with a system planned and encouraged by those running the business. They pointed out that if a sales representative was charged, his state of mind at a material time could only be questioned by other defendants if he chose to give evidence. They suggested that, in reality, the defendants who occupied managerial roles would be more prejudiced if the sales representatives did give evidence about the instructions they had received.

22. The judge heard oral submissions on the morning of Monday 23rd January and then gave her ruling on what she described as "the admissibility of further evidence in the same category as that which I have already ruled inadmissible". Although the further evidence would be given by witnesses who had dealt with sales representatives, rather than by the playing of a covertly recorded film, the judge said that it remained her view that the evidence "would give rise to unfairness, as it would prevent the defence from being able to challenge evidence which is evidence of wrongdoing by others of the precise same nature and on all fours with that faced by the defendants in the dock". She therefore excluded, pursuant to section 78 of PACE, all the evidence of customers' dealings with sales representatives who had not been charged.

23. We are told by prosecution counsel that the practical effect of that ruling would be that the prosecution would be unable to use any of the evidence of 30 complainants, and unable to use part of the evidence of another nine complainants.

24. The prosecution applied for, and were granted, an adjournment until the following day to consider their position. They then gave notice of their intention to appeal, pursuant to section 58 of the 2003 Act, and gave the "acquittal undertaking" required by section 58(8).

25. Section 58 of the 2003 Act gives the prosecution a right of appeal against a ruling in relation to a trial on indictment. By section 58(4):

> "The prosecution may not appeal in respect of the ruling unless —
>
> (a) following the making of the ruling, it —
>
> (i) informs the court that it intends to appeal, or
>
> (ii) requests an adjournment to consider whether to appeal, and
>
> (b) if such an adjournment is granted, it informs the court following the adjournment that it intends to appeal."

26. That provision is supplemented by rule 38.2 of the Criminal Procedure Rules, which states:

> "(1) An appellant must tell the Crown Court judge of any decision to appeal —
>
> (a) immediately after the ruling against which the appellant wants to appeal; or
>
> (b) on the expiry of the time to decide whether to appeal allowed under paragraph (2).
>
> (2) If an appellant wants time to decide whether to appeal —
>
> (a) the appellant must ask the Crown Court judge immediately after the ruling; and
>
> (b) the general rule is that the judge must not require the appellant to decide there and then but instead must allow until the next business day."

27. By section 61 of the 2003 Act, on an appeal under section 58 this court may confirm,

reverse or vary any ruling to which the appeal relates.

28. By section 67, however, this court may not reverse a ruling unless it is satisfied:

> "(a) that the ruling was wrong in law,
>
> (b) that the ruling involved an error of law or principle, or
>
> (c) that the ruling was a ruling that it was not reasonable for the judge to have made."

29. The prosecution's grounds of appeal relate to the rulings given on both 20th and 23rd January which, it is submitted, amounted to one ruling. The grounds are: first, that the ruling involved an error of law or principle; and secondly, that the judge's exercise of her discretion under section 78 of PACE was unreasonable.

30. The defendants submit that this application must be confined to the ruling given on 23rd January, because the prosecution did not immediately give notice of their intention to appeal against the ruling on 20th January, or request an adjournment to consider doing so.

31. It is accepted on behalf of the defendants that the prosecution complied with section 58(4) in relation to the ruling on 23rd January, but counsel submit that that ruling, whilst obviously disadvantageous to the prosecution, was neither wrong in law, nor unreasonable.

32. Those core submissions have been greatly amplified in the written and oral submissions of counsel, for which we are grateful. We will not mention every point which has been raised, but we have them all in mind. Three broad issues arise, which we will address in what seems to us the most logical order.

33. First, we must consider whether the ruling given on 20th January was wrong in any of the three ways to which section 67 of the 2003 Act refers. With all respect to the judge, we have no doubt that it was. In fairness to her, we say at once that, as will be apparent from our summary of the circumstances in which that ruling was given, the focus of the submissions, and therefore the focus of the judge, was on the defence arguments based on the suggested interaction between the prosecuting authority and the television company, and on the suggested failures of disclosure. Although the judge had directed that all legal submissions should be notified in early December 2022, no challenge had previously been made to the clear assertions in the draft opening that the sales representatives were all parties to the conspiracy, and it had not been suggested that it would be unlawful or unfair for the prosecution to present their case in that way, when most of the sales representatives had not been charged.

34. The discrete submission that it would be unfair for the prosecution to adduce Film B in evidence had not been fully articulated in writing and was made only briefly in oral submissions. We agree with Mr Nelson KC for the prosecution that, as a result, the point was not fully argued. Had the argument been properly identified in advance by the defence, and had the prosecution therefore had the opportunity to address it fully and to make submissions about the law, the judge would have been much better informed when making her decision.

35. Be that as it may, the defence argument and the judge's ruling involved an error of law or principle. The passage in Archbold, to which reference has been made, reflects the well-established principles in relation to the naming in an indictment of co-conspirators. More importantly for present purposes, there is no rule of law or established principle which requires the prosecution always to charge every person who is said to have been party to a conspiracy. There may be compelling reasons why such a person cannot be charged: for example, because he has died, or is outside the jurisdiction, or, as in *R v Austin* [2011]

EWCA Crim 345, because he was acquitted at an earlier trial. Even where an alleged co-conspirator might in principle be charged, there may well be compelling reasons why it is not in the public interest to do so. In a large scale conspiracy, a requirement to charge all alleged parties to the conspiracy would often result in there being so many defendants that a series of long trials would be necessary, at disproportionate cost in time and resources, and with the attendant undesirable possibility of inconsistent verdicts. Such an approach will be inconsistent with the overriding objective set out in the Criminal Procedure Rules and with principles of case management. *R v Bashir* [2019] EWCA Crim 2288 provides an example of a case in which the prosecution were required to prove that students enrolled at a bogus college were complicit in the criminal activity of those operating the dishonest scheme. The students were neither prosecuted, nor called as witnesses, but this court held that there was evidence from which the jury could properly infer the necessary complicity.

36. We note that in *R v Austin*, at [26], Thomas LJ (as he then was) said:

> "… The acquittal in a previous trial, whether by reason of a verdict of the jury or on the direction of the judge, is a bar to re-trying that defendant, save in the narrow circumstances permitted by Part 10 of the Criminal Justice Act 2003. However that acquittal cannot in a subsequent trial of other conspirators be a general bar to the Crown alleging that person was a party to the conspiracy. There can be many reasons why a defendant is acquitted and the evidence in the second trial may be different. However, the question in the subsequent trial where such an issue arises is whether it is unfair to the other conspirators or improper for the Crown to be able to assert that an acquitted person was a party to a conspiracy. As a matter of principle there can be no general bar …"

37. There being, therefore, no general bar in the circumstances of an earlier acquittal of an alleged co-conspirator, we observe that it would be very surprising if there were a general bar in the circumstances of a decision by the prosecution, taken on proper grounds, not to charge all the persons said to have been involved in a conspiracy. In such circumstances, of course,

it would again be necessary to consider whether the course taken by the prosecution resulted in unfairness to those who had been charged. A fact-specific decision will be necessary in each case in which such an issue arises. An illustration was provided by Mr Nelson KC in the course of his oral submissions, when he informed the court that the prosecution had decided at trial that the evidence against an eighth charged defendant was insufficient, and that accordingly no evidence would be offered. Mr Nelson made plain that it would have been no part of the prosecution's case subsequently to allege that the former defendant, acquitted on that basis, had been a party to the conspiracy.

38. It was, therefore, an error of law or principle for defence counsel to suggest, and for the judge in one of the passages we have quoted from her ruling on 20th January to state as a general proposition, that it would be self-contradictory, or wrong, or not proper for the prosecution to conduct a trial on the basis that a number of persons who had not been charged were parties to the alleged conspiracy with those in the dock. That general proposition was one of her two reasons – and it appears to have been her principal reason – for ruling as she did. The error of law or principle therefore deprives the ruling of its foundation.

39. As to the judge's exercise of her discretion, we bear very much in mind that in *R v B* [2008] EWCA Crim 1144, at [29] the court emphasised that leave to appeal under section 67 will not be given "unless it is seriously arguable not that the discretionary jurisdiction might have been exercised differently, but that it was unreasonable for it to have been exercised in the way that it was". We also bear in mind that, in the same ruling, the judge had exercised her discretion in favour of the prosecution in relation to other matters. We are, however, satisfied that, in excluding the evidence of Film B on grounds of unfairness, she exercised her discretion under section 78 of PACE in a way which it was not reasonable for her to do.

40. Film B showed a salesman dealing with a customer or apparent customer in a manner

which the prosecution alleged was consistent with the approach and training adopted by those in managerial positions. The defence statement of each of the defendants is broadly to the effect that he or she was not party to any conspiracy, acted honestly and properly throughout, and had no influence or control over, or involvement in, any dishonest representations which any salesman may have made to any customer. No defendant would be impeded in advancing such a defence by Film B being shown to the jury. Any defendant who wished to adduce evidence either to the effect that he had taken no part in training the salesman, or that he had trained the salesman to conduct himself honestly, would be able to do so, and would not be at risk of being contradicted by testimony by the salesman. In their oral submissions to us today, no defence counsel was able to identify any unfair prejudice of any substance. Nor, with respect, did the judge do so. We therefore cannot accept the submission that the defendants would suffer serious, unfair prejudice if Film B were shown to the jury.

41. No one suggested – and the judge did not find – that the prosecution were obliged to call as a witness a salesman whom they accused of dishonesty. The suggested prejudice is accordingly said to flow from the fact that the salesman had not been charged. But even if he had been charged, he might have pleaded guilty. If he had pleaded not guilty and stood trial with these defendants, he might have chosen not to give evidence. If he had been one of 20 or more salesmen who had all been charged, he might not even have appeared in the same trial as these defendants. In any of those situations the defendants would have been in the same position as they are at present so far as cross-examination of the salesman is concerned.

42. If the salesman had been tried with these defendants, and if he had given evidence, it is a matter of speculation whether his evidence would have been helpful or unhelpful to any individual defendant. Thus, the high water mark of the suggested prejudice is that a defendant would be unable to take the course, which he might or might not have been able to do if the salesman had been charged, of asking a question in cross-examination of the

salesman which might or might not have received a favourable answer. In those circumstances it was, in our judgment, not open to the judge to find that the prejudicial effect of the evidence so far outweighed its probative value that it should be excluded. She therefore exercised her discretion in a way which it was not reasonable for her to do.

43. We must next consider whether, notwithstanding the view we take of the judge's decision on 20th January to exclude Film B, the prosecution are unable to appeal against that decision. In this regard it is well-established by case law that section 58(4) of the 2003 Act sets out conditions precedent to the bringing of an appeal, and that the requirements of that section must be strictly observed: see, for example, *R v M* [2012] EWCA Crim 792, in which the court confirmed that the use of the word "immediately" in what is now rule 38.2, correctly reflects the requirement of section 58(4) of the Act. The court also held that the requirement to request an adjournment or to give notice of the decision to appeal "immediately following the ruling" means there and then, and in any event before anything has happened. The facts of *R v M* and of *R v CMH* [2009] EWCA Crim 2614 provide illustrations of the strictness of the approach which has been taken to the need to fulfil the conditions precedent.

44. We have reflected on the effect of the statutory requirements in a case where, as here, a judge initially makes a ruling which the prosecution believe to be wrong, but which does not gravely weaken their case, and then makes a further ruling which greatly increases the adverse effect upon the prosecution of the first decision. By section 74(1) of the 2003 Act, "ruling" is defined for this purpose as including "a decision, determination, direction, finding, notice, order, refusal, rejection or requirement".

45. In our view, a question of fact and degree will arise in each such case as to whether in all the circumstances it is fair to regard two decisions, etc, as being two stages of a single ruling. If, for example, after a ruling the prosecution immediately asked for clarification, or

immediately asked the judge to rule specifically on a particular aspect of the decision, and if the ensuing discussion caused the judge to take time to reflect, before adding to the ruling on the following day, then it may well be fair to treat that as a single ruling for the purposes of section 58(4). The position would be different if the request for clarification or expansion was not made immediately. As part of the fact-specific consideration of an issue of this nature, the court may need to reflect on whether the giving of two separate rulings had been brought about by some failure on the part of the defence to make submissions at an appropriate time, and in accordance with any direction given, so as to enable all matters to be addressed in a single ruling.

46. In the present case, we have concluded that the rulings on 20th and 23rd January cannot be treated as a single ruling. The prosecution were placed in a most difficult position, and we well understand why prosecution counsel proceeded as they did. It seems to us, however, that the strict approach which we must take to the statutory conditions precedent requires us to regard the ruling on 20th January as a first ruling, and the ruling on 23rd January, which was the judge's decision on an application which had only been made by the defence on the previous day, as a distinct, second ruling. In the event, the prosecution did not, immediately after the ruling on 20th January, either inform the court of an intention to appeal, or request an adjournment to consider whether to appeal, and the opportunity to appeal was therefore lost.

47. We have, nonetheless, indicated our views on the first broad issue, because they are directly relevant to the third issue, namely, whether the ruling on 23rd January was wrong in any of the three ways to which section 67 of the Act refers. Again, with respect to the judge, we have no doubt that it was. The second ruling was based upon the first and, in our view, involved the same error of law or principle. It was also a ruling which it was not reasonable for the judge to make. As with the earlier ruling, there was, again, no substance in the assertion that the defendants would be unfairly prejudiced because they could not challenge

the evidence of wrongdoing by sales representatives who had not been charged. Once again, no counsel has been able to identify any unfair prejudice, and the judge did not explain any basis for her finding.

48. Given that none of the defendants had been present when the sales representatives were speaking to the customers, they could not, in any event, put forward any affirmative case as to what had been said by the sales representative, and could not do more than question the reliability of a customer's recollection.

49. So far as the absence from the trial of the sales representatives themselves is concerned, we have already make clear that the only prejudice was the loss of a potential opportunity to ask questions in cross-examination which may or may not have assisted the defence. Once again, each defendant remained able to advance his or her defence and to give evidence if they chose. Any prejudice was, therefore, heavily outweighed by the probative value of the evidence.

50. For those reasons, we grant leave to appeal against the ruling of 23rd January alone. We allow the appeal and reverse the judge's decision on that date.

51. In the result, the judge's ruling excluding Film B from evidence stands. But the evidence of customers concerning dealings with sales representatives who have not been charged is no longer excluded. The trial will continue on that basis.

52. Mr Nelson, that concludes our ruling. We indicated that we would return to the question of reporting restrictions.

53. **MR NELSON:** Yes.

54. **LORD JUSTICE HOLROYDE:** By section 71, unless we otherwise order, no publication shall include a report of this appeal or of the application for leave to appeal, in so far as it was unsuccessful, save for the specified particulars which section 71(8) permits to be reported.

55. The trial is under way. It is likely to last roughly how long?

56. **MR NELSON:** Eight weeks.

57. **LORD JUSTICE HOLROYDE:** Right. We have considered whether anything in the judgment which we have just delivered is of such importance for other cases that we ought to endeavour to produce some form of edited judgment, which may allow reporting, at least in part. Our provisional view, subject to any submissions we are about to receive, is that in the fact-specific circumstances of our ruling, that simply is not practicable. In view of the risk of something being published which inadvertently causes prejudice to the administration of justice in the ongoing trial, the safer course is to maintain the section 71 restrictions, knowing that it should only be a matter of weeks before the trial has concluded and the whole judgment can properly be reported.

58. **MR NELSON:** We agree.

59. **LORD JUSTICE HOLROYDE:** Thank you. Does any defence counsel wish to make any contrary submissions or any representations?

60: **ALL DEFENCE COUNSEL:** No, thank you.

61. **LORD JUSTICE HOLROYDE:** Does any representative of the media or law reporters wish to make any representation to the contrary?

62: **A LAW REPORTER:** No, thank you, my Lord.

63. **LORD JUSTICE HOLROYDE:** Thank you. Very well. Then we confirm that the reporting restrictions in section 71 do apply to this appeal and to the application for leave to appeal, save to the very limited extent for which section 71(8) provides.

POSTSCRIPT:

64. On 13 July 2023 the court was informed that the trial proceedings had been concluded: the respondent offered no evidence against the defendant Catherine Rowan; the other accused stood trial, and all were convicted. The order made pursuant to section 71 of the Criminal Justice Act therefore no longer prevents publication of the matters mentioned in section 71(7). Accordingly, this judgment may now be reported.

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

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