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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Couts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT STOKE ON TRENT
(MR RECORDER NICHOLLS) [T20190346 & T20210237]
Case No 2023/04118/B4, 2023/04121/B4
20242024/01378/B4 & 2024/01629/B4

Friday 13 September 2024

NCN:[2024] EWCA Crim 1108

B e f o r e:

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

MR JUSTICE HOLGATE

MR JUSTICE ANDREW BAKER

R E X

- v -

JOE FRIZELL
RAYMOND PAUL BOWDEN

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Miss C Hodgetts appeared on behalf of the Applicant Joe Frizell
Mr J Ryder KC appeared on behalf of the Applicant Raymond Paul Bowden

Mr K Slack and Miss H Clegg appeared on behalf of the Environment Agency

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J U D G M E N T

Friday 13 September 2024

LORD JUSTICE HOLROYDE: I shall ask Mr Justice Holgate to give the judgment of the court.

MR JUSTICE HOLGATE:

1. On 30 October 2023, following a trial in the Crown Court at Stoke-on-Trent before Mr Recorder Nicholls and a jury, the applicant Joe Frizell was convicted of two offences of depositing controlled waste on land, contrary to section 33(1)(a) and section 33(6) of the Environmental Protection Act 1990. The applicant Raymond Bowden was convicted of one offence of operating a regulated facility without an environmental permit, contrary to regulations 12(1) and 38(1)(a) of the Environmental Permitting (England and Wales) Regulations 2010.

2. There were a number of co-defendants, to only one of whom we need refer at this stage. On 27 September 2019, at the plea and trial preparation hearing, Stefan Paraszko pleaded guilty on the same count of operating a regulated facility without an environmental permit.

3. The prosecutor was the Environment Agency ("the EA").

4. On 2 April 2024, the Recorder sentenced Frizell to a total of two years' imprisonment for the two offences of illegal depositing of controlled waste, and Bowden to 30 months' imprisonment for the illegal operation of a regulated facility. Paraszko was sentenced to 11 months' imprisonment suspended for 18 months, with a requirement of 240 hours' unpaid work. The judge also disqualified each of these defendants from serving as company directors.

5. The applicants, Frizell and Bowden, have applied for leave to appeal against both conviction and sentence. They have also applied to the court to make an order under section 23A of the Criminal Appeal Act 1968 requiring the Criminal Cases Review Commission ("CCRC") to investigate alleged jury irregularities and to report to this court. In support of that application, both applicants have applied to rely upon fresh evidence from nine witnesses. In addition to the applicants, these comprise close relations and a fellow director who were co-defendants in the trial. The Registrar has referred all of these applications to the full court. The matters came before us in a rolled-up hearing.

6. This case involves the illegal dumping of waste mainly on land known as Bonnie Braes Farm ("the Farm"), located adjacent to the A500, near Audley in Staffordshire. The illegal dumping was on a massive scale and took place between March 2014 and early 2015.

Evidence at the trial

7. Bowden and his wife, Julie Bowden, purchased the Farm in December 2012. In 2014, part of the land was transferred to a company named Talke Land Reclamation Limited ("Talke"). Talke was owned by Paraszko, a long-standing friend of Bowden. On 14 March 2014, Paraszko registered with the EA a “U1 exemption” for the Farm, which permitted up to 1,000 tonnes of waste soil and stones to be brought on to the site, providing it was to be used for construction.

8. The prosecution’s case was that the U1 permit was a ruse, and that the Farm was used instead as an illegal tip for demolition and construction waste trucked in from sites across Staffordshire. The land transfer to Talke was a smokescreen to distance Bowden from the illegal tipping. Various hauliers paid about £850,000 to Bowden's company, Jumbo Waste and Metals Limited ("Jumbo Waste"), to dump controlled waste at the Farm illegally.

9. Officials from both Staffordshire County Council and the EA visited the Farm between 1 May 2014 and February 2015. On 1 May 2014, Amy Ross from the Council saw vehicles displaying "Frizells" and "VWJ" signage depositing waste soil and hardcore at the Farm. She spoke to Bowden at the site. He told her that the tipping was for agricultural improvement and would be completed within weeks.

10. On 9th May 2014, Ms Ross had a telephone conversation with Bowden. She told him that as there was no planning permission in place, all importation of waste should cease immediately. Bowden replied that he had a letter from either Parliament or the High Court confirming that no permission was required for agricultural reclamation. Ms Ross told Bowden that planning contravention notices would be served to obtain further information. He asked that these be sent to the Farm and he would ensure that they were completed.

11. Ms Ross revisited the site on 11 June 2014 and photographed a tipper truck with Frizell signage. A tipper truck with VWJ signage blocked the road in front of her vehicle. Two people working on the site were intimidating towards her.

12. During a site inspection on 18 June 2014, EA Officer John Woolley recorded that significant quantities of waste, not covered by the U1 exemption, had been brought on to the Farm, burying a drain that crossed the site. Another EA officer noted that in some areas the height of the tipping was six to seven metres above the surrounding land. When Bowden arrived on site, he told the EA officer that the work was being carried out by Talke to reclaim the land from a former industrial use and that they had taken legal advice about the works.

13. On 18 November 2014, Mr Woolley noted that the waste deposited was crushing the eastern boundary fence and spilling onto adjacent farmland. On 15 January 2015, another EA official witnessed 20 to 25 fully-loaded tipper trucks either having entered the Farm or

queuing along the approach road to do so.

14. On 17 February 2015, Mr Woolley estimated that a further 30,000 tonnes of waste had been imported since his visit on 18 November. A watercourse was partially covered by waste spilling across the site boundary and the water had changed colour as it passed underneath. The waste appeared to contain asbestos. Other EA officials saw further tipping and they recorded the registration numbers of two tipper trucks. Those trucks turned out to be registered to Ray Bowden Cars Limited. They had been bought in November 2014 and on the sales invoices Jumbo Waste was identified as being either the purchaser, or the delivery address.

15. On 10 March 2015, the EA de-registered the U1 exemption. On 22 April 2015, an injunction was granted to the Council by consent against Paraszko, Talke, Bowden and Julie Bowden. The order prohibited any importation of waste on to the Farm.

16. The EA carried out enquiries into the various hauliers they had seen tipping on the site. The two main hauliers were TW Frizell (Haulage and Plant Hire) Limited ("TW Frizell") and VWJ Earthmoving Limited ("VWJ"). TW Frizell was operated by the applicant Frizell and VWJ was operated by a co-defendant, Victoria Webb-Johnson.

17. The EA used its statutory powers to compel TW Frizell to provide their waste transfer notes for 1 March 2014 to 31 July 2015. The company handed over ten waste transfer notes, none of which referred to deposits at the Farm. The EA approached several companies who had engaged TW Frizell to collect their waste, including Network Rail. Before engaging TW Frizell, Network Rail had insisted that the transfer notes for its waste included its final destination before making payment. Those notes stated that the waste had been deposited at Hough Mill Quarry ("Hough Mill") and were purportedly signed off by a representative of

the Mill.

18. The EA obtained the invoices issued by Hough Mill to TW Frizell for the same period. These did not correspond with the movement of the Network Rail waste claimed by TW Frizell on the transfer notes it had provided. Hough Mill's onsite diary, which recorded the daily deposits of waste, did not correspond with the dates on the invoices purportedly issued by Hough Mill to TW Frizell. The managing director of Hough Mill was unable to confirm that any of the waste transfer notes issued to Network Rail were genuine.

19. This illegal tipping of waste caused considerable harm. In 2016 aerial mapping of the Farm was carried out. This showed a volume increase of over 69,000 cubic metres. Mr Woolley estimated that 192,000 tonnes of waste had been deposited. The EA collected 137 samples from ten boreholes on site. Scientific analysis showed that 62 samples contained asbestos, a hazardous waste. The tipping damaged the culvert and drainage system running under the site, which resulted in regular flooding of a neighbour's farmland. The floodwater damaged the perimeter fence, the purpose of which was to prevent the escape of livestock onto the A500. The flooded land was rendered useless for crop production and livestock grazing. An important National Grid pipeline under the tipping site used to supply gas to Stoke-on-Trent was put at risk. Ground investigation and pipeline inspection cost £70,000.

20. The prosecution case was that Bowden (in conjunction with Paraszko) was responsible for the company Jumbo Waste, which operated the illegal tip at the Farm without an environmental permit.

21. The prosecution case against Frizell was that he had connived or consented to the illegal deposit of waste at the Farm, or was negligent in the discharge of his duty as a director of TW Frizell to ensure that the law was obeyed. Between March 2014 and November 2015, TW

Frizell paid over £519,000 in fees to Jumbo Waste to deposit the waste at the Farm.

22. To prove its case, the prosecution relied in summary upon the following:

(1) Evidence from County Council and EA officials who carried out the site visits to the Farm and produced photographic evidence;

(2) Evidence from PC Jeremy Moore, who saw a Frizell vehicle tip waste at the Farm on 24 February 2015;

(3) Evidence from Mr Beechcroft who had deposited 18 loads at the Farm in January 2015 and paid invoices from Jumbo Waste;

(4) Evidence from the co-defendant Webb-Johnson who ran VWJ, and her guilty plea to depositing controlled waste at the Farm. She said that the developers at the Farm were Paraszko and Bowden;

(5) Evidence from EA investigators, Sharon Owen and Ray Jones. Mr Jones gave evidence of loads of waste to the Farm from construction sites operated by national housebuilders and by Network Rail;

(6) Evidence from witnesses from the housebuilders and Network Rail that they contracted with TW Frizell for the deposition of waste from their sites and on the basis that this would only take place at an authorised tip;

(7) Evidence from William Moors, the owner of a haulage company, Moorsons, which hired two trucks and their drivers to TW Frizell. The trucks were seen tipping at the Farm. The drivers said that they were directed by TW Frizell where to tip their loads;

(8) Evidence from Frank Murray and Patrick Murray from Hough Mill that they did not recognise any of the signatures on the waste transfer notes. They were recalled following the discovery by the defence during the trial of delivery documents down the back of a filing cabinet. They said that none of the deliveries referred to resulted in an invoice being paid. The prosecution said that these documents were forgeries.

23. The defence case for Bowden was that he was not involved in the operation of the farm tip and that he had no concerns about it. He gave evidence. He said that he had purchased the Farm in 2012 when the farmhouse was derelict and the land adjacent to the A500 was in a very poor condition. He had planned to restore the farmhouse, but never did. Paraszko carried out some work on the house, and then Bowden transferred a parcel of land to him in lieu of payment.

24. Bowden was aware that Paraszko was operating a tip on the land, but he was not involved in the operation of it. It did not bother him that the land was raised eight to ten metres. What Paraszko did with the land was nothing to do with him and there was nothing he could do to stop it. He did not complain to the EA, to the County Council, or to the police as it was none of his business. There had been no encroachment on to his land.

25. Bowden said that he knew nothing about who was running Jumbo Waste, or why his wife Julie Bowden and his daughter Jade Bowden had resigned as directors of that company when he had become a director. He could not say why Julie Bowden owned 95 per cent of the shares of the company. He said that he would have known if Jumbo Waste had received a payment for tipping at the Farm.

26. Bowden said that he visited the Farm virtually every day for about an hour. He noticed that Mr Woolley was at the site at least twice a week. As to the tipper trucks seen on site on 17 February 2015, they should not have been tipping there and the drivers had made a mistake. He said that Ms Ross had been inaccurate about what had been said in the conversations on 1 and 9 May 2014.

27. The defence case for Frizell was that he denied dumping illegal waste at the Farm and had no knowledge that the site was being used illegally. He gave evidence to that effect. He said that Paraszko gave Webb-Johnson's company preferential treatment and would not have allowed Frizell to deposit waste. He had no knowledge that the site was being used illegally until he was advised by the County Council of a stop notice.

28. Frizell said that TW Frizell trucks were frequently seen on the site because they were either on hire to Talke, when he had no control of their usage, or because they were delivering recycled materials to the Farm. He said that there were no payments from Talke

for this hire. They had not paid their invoices. He accepted that in those circumstances it had been a bad business decision to continue leasing vehicles to that company.

29. Frizell denied collecting 906 loads from "Your Homes". He stated that the company had grossly overestimated the amount of waste that needed to be moved, which had been financially beneficial to him. He said that no one at TW Frizell instructed Moorsons to take loads to the Farm.

30. He referred to worksheets which were said to have fallen down the back of a filing cabinet. He confirmed that these were compiled with reference to documents completed by drivers who, when they arrived at Hough Mill, had found the relevant hut empty or could not locate Patrick Murray. In those circumstances the drivers had filled in a separate sheet with the required information. He denied that the worksheets were forgeries.

31. Frizell called as witnesses two TW Frizell drivers who denied taking any loads to the Farm.

The applications for leave to appeal against conviction

32. Miss Chaynee Hodgetts appears for Frizell. Mr John Ryder KC appears for Bowden in this court (but did not appear at the trial). Mr Kevin Slack and Miss Holly Clegg appear for the Environment Agency. We are grateful to all counsel for their helpful written and oral submissions. We begin with the applications for leave to appeal against conviction.

33. We summarise the grounds previously relied upon in the perfected grounds of appeal for Bowden. Under ground (1), it was argued that the Recorder erred in not discharging the jury after the evidence of the co-defendant Webb-Johnson was given. Under ground (2), it was argued that the Recorder's summing up was biased and too brief to do justice to Bowden's

case. It lasted only 1 hour 37 minutes for a trial which had taken more than 7 weeks. The applicant's 6 day case takes up only 4 pages of transcript. The summing up left the jury with an unfair interpretation of the evidence and there were misdirections.

34. Ground (3) alleged that there were significant jury irregularities which fall into the rare and exceptional category of cases identified in *R v Adams* [2007] 1 Cr App R 34 as warranting further enquiry. In summary, there were three matters: first, some members of the jury had decided that Bowden was guilty before they heard the evidence and they persuaded other jurors of his guilt; secondly, there was unwarranted personal contact between a prosecution witness (Sharon Owen) and members of the jury; and thirdly, a juror had complained to an usher during the trial that the other members of the jury hated him.

35. In Frizell's proposed grounds of appeal against conviction it was submitted: (1) there is evidence that some jurors were so overwhelmed by peer pressure that it led to the wholesale repudiation of their oaths; (2) there is evidence that other jurors had wilfully repudiated their own oaths by determining guilt or innocence prior to hearing most of the evidence and contrary to the directions they had been given as jurors; accordingly, the court should direct the CCRC to investigate those matters. Thirdly, it was said that the judge misdirected the jury in relation to the need for unanimous verdicts. In a document served on 12 September 2024 Ms Hodgetts refined these grounds.

36. On 11 September 2024, the court received a Notice of Application from Mr Ryder on behalf of Bowden abandoning grounds (1) and (3), and seeking to refine ground (2). The applicant now accepts that grounds (1) and (3) are not properly arguable. However, Frizell maintains his grounds alleging jury irregularity.

Discussion

37. We deal, first of all, with the points which have been raised on jury irregularities.

38. The trial ran between 10 September and 30 October 2023. It is common ground that in his preliminary remarks at the beginning of the trial, the Recorder gave a proper direction to the jury complying with para. 8.3.5 of the Criminal Practice Direction 2023. In addition, each member of the jury was given a copy of the notice "Your Legal Responsibilities as a Juror" and asked to read it and to keep it with their summons. As this court said in *R v Haji* [2024] EWCA Crim 955 at [24], in both these ways jurors at the outset of the trial were clearly informed of their collective responsibility to ensure compliance with the rules, along with their obligation to report to the judge, or the jury officer, or an usher, any concern about something said or done by another juror or person, or a breach of the rules. They were told that they had to do this promptly, and in any event before the end of the trial. They were warned about the possible consequences if that did not happen and the trial had to be aborted.

39. We also note that in his summing up to the jury the Recorder said, just before they retired to begin their deliberations, that they should choose someone to chair their discussions and to ensure that:

> "People are not talking over each other and each member of the jury has the chance to have his or her say. I hope it goes without saying that the views of each member of the jury should be listened to courteously and respectfully, even if others disagree with what is being said."

40. To put matters into context, we summarise the jury's verdicts. In addition to the two applicants, the jury convicted James Bowden (the applicant Bowden's son), Jumbo Waste and TW Frizell of either operating a regulated facility without a permit, or illegally deposing waste. But they also acquitted Julie and Jade Bowden (the wife and daughter of the applicant Bowden), Trevor and Ann Frizell (the parents of the applicant Frizell), and Norman Brown (a director of TW Frizell) of whichever of those two charges they had been accused. All

verdicts were unanimous, including the verdicts in respect of the applicants.

41. The parties have agreed that we should deal with the applications to admit fresh evidence today, without any of the witnesses being called. We will summarise that evidence.

42. The statements of the applicant Joe Frizell, Trevor Frizell, Ann Frizell and Norman Brown relate to a female juror who, after the verdicts, was said to be waiting outside court. She spoke to them as a group as they were walking to the car park. There are variations between the statements. Ann Frizell and Norman Brown say that they struggle to remember the exact words spoken. But the gist of it was that the juror said that she was sorry, because she did not think the trial had been fair. She thought that some of the jurors were "jobsworths" who wanted "you" guilty from the start. Norman Brown says that the juror was referring to Joe Frizell. In his statement he added that the juror said: "She had lasted as long as she could, but she could not take any more pressure in there. She mentioned about two or three others as well". The juror also said that the jury had only decided to find Julie and Jade Brown not guilty that morning (the third day on which the jury had deliberated).

43. The statements from Julie and Jade Bowden appear to relate to the same juror. They say that she spoke to them separately as she was in her car and about to drive out of the car park. Jade Bowden says that the juror said to her: "Tell your dad I'm sorry, I tried my hardest. They were all jobsworths who decided that you were guilty from the start and would not listen to any arguments about lack of proof". It is said that she also stated that until lunchtime on 30 October other jurors were going to find that Julie and Jade Bowden were also guilty, but they were persuaded to change their minds.

44. Julie Bowden made a similar statement as to what the juror said. She also says that the juror made an offensive remark about the foreman, and then added that he was a churchgoer.

45. Raymond and James Bowden state that early on in the trial they heard Ms Owen say to the foreman of the jury that she had been working on the case for 10 years and that the accused had ruined a Cheshire village. They also say that on two occasions during defence evidence they overheard the EA investigator, Sharon Owen, and a female member of the jury talking during a lunch break. On the first occasion the juror spoke about something she had bought at the shops. The second conversation was about arrangements the juror had made to go to a public house for a drink at the end of the week and a suggestion by Ms Owens that she might join her. These conversations are said to have been overheard when father and son were in the same queue.

46. Sharon Owen has made a statement in which she says that after the conclusion of the trial she saw a female juror having a conversation with Trevor Frizell, with Norman Brown directly in front, the applicant Frizell to the right and Ann Frizell to the left. She heard the juror say: "I'm glad that is all over. I bet you are. It has taken longer than I thought it would being on a jury". Trevor Frizell agreed, saying: "I never want to go through anything like that again". They continued to chat and Miss Owen walked past them. As she left in her car, she saw the juror still chatting. She denies having any interaction with jurors during the trial.

47. Where, as in this case, jurors have been given clear instructions about their legal obligations as a juror, including their collective responsibility, and where a juror does not inform the court but remains silent about any alleged irregularity during the trial, the court will almost certainly make an assumption that none has occurred. The circumstances in which the court will need to hear evidence from a juror (or jurors) are likely to be rare and exceptional (see *Adams* at [180]).

48. A similar statement was made by the Lord Chief Justice in *R v Lewis* [2013] EWCA

Crim 776 at [25]. Given the protections in place, there is an "overwhelming inference" that concerns raised by a juror, for example after a verdict with which he or she disagreed, may simply be a protest at that decision.

49. We also note from the authorities that where a juror has assented to a verdict, his or her concerns about the trial may be referable to second thoughts, or a subsequent adverse reaction to having been persuaded by other jurors to arrive at a particular decision. For example, reactions attributed to alleged bullying may in fact arise because of the stress of the trial and the responsibilities of being a juror (see *Lewis* at [26]). Sometimes a juror may wish to appear to disassociate themselves from a verdict with which in truth he or she actually agreed when it was reached in the jury room and then announced in open court without demur.

50. The presumption on which the court operates is that if a juror falls below the standards expected, other jurors will report that to the judge during the trial and before the verdict. Inquiries should not be ordered in such cases and the finality of the verdict must be accepted, unless there is "other strong and compelling evidence". To act otherwise would be neither fair nor just (see *R v Baybasin* [2014] 1 Cr App R 19 at [63]).

51. In the light of the statements and the submissions we have received, we do not think it necessary or appropriate to direct that there be any investigation carried out by the CCRC of alleged jury irregularity. We consider that the issues can properly and fairly be resolved on the materials before the court.

52. Some of the witness statements refer to an issue which occurred with a juror midway through the trial. On Thursday 5 October 2023, a juror had reported that all the other jurors hated him. He was doing his utmost to get on with them, but failing to do so. But on Monday 9 October, the Recorder announced that the juror had withdrawn his concern. Not

surprisingly, none of the advocates asked for the Recorder to take any further action on this matter. Nothing more was heard about any difficulty affecting the juror during the rest of the trial. There is no justification for asking the CCRC to investigate this matter.

53. The applicant Ramond Bowden said that he saw Ms Owen talking to two different jurors, one early on in the trial and the other during defence evidence. James Bowden's statement is in virtually identical terms. Potentially their most serious allegation is that during the prosecution case, Ms Owen said to a juror, who later became the foreman, that she had been on the case for ten years and that the defendants had created a real mess and had ruined a lovely Cheshire village. That would have been a clear breach of the directions given by the Recorder to the jury, and yet that juror did not report the matter to the court. More to the point, events which, if they had occurred, ought to have been of obvious concern to the defendants at the time, were not raised by them with the judge. They have failed to address that point. Allegations of this nature put forward in witness statements after the verdicts, indeed, some four and a half months later, carry no weight to support a ground of appeal based on jury irregularity, and they do not justify investigation by the CCRC.

54. The allegation that some jurors had made up their mind about Bowden's guilt at the beginning of the trial was based solely on evidence about what was said by one juror after the verdicts had been returned, in a brief conversation outside the court building. No juror raised any concern about this with the judge during the trial. The juror in question did not say to any of the witnesses why she did not do this. There was ample opportunity during the course of a trial which lasted over seven weeks for her, or any other juror, to do so. She did not give any details to explain why she thought that certain jurors had closed minds from the beginning. In addition, the prosecution points out that the jury were actively engaged during the trial and had sent numerous notes to the Recorder about the evidence being placed before them. The jury acquitted some defendants while convicting others. They changed their

minds, we are told, about whether to convict Julie and Jade Bowden.

55. The only issue during the trial about any behaviour of the jury was the solitary matter raised on 5 October, which was resolved. In accordance with established principle, it is to be presumed that if there had been any real concern on the part of a juror that one or more of the other jurors had closed minds, or were biased, that would have been raised with the court during the trial. It was not, and the evidence of what is alleged to have been said subsequently by one juror is wholly inadequate to displace the normal presumption.

56. In all these circumstances we consider that Mr Ryder was entirely correct to abandon Bowden's application for leave to appeal against conviction in relation to jury irregularity.

57. In relation to Frizell's application for leave, Miss Hodgetts emphasised two points in her refined grounds of appeal: first, that because a number of jurors had allegedly made up their minds from the beginning of the trial that Frizell was guilty, this amounted to a wholesale repudiation of those jurors' oaths. This was said to feed into the second submission: that because some jury members were placed under undue pressure by other jury members, there was a wholesale repudiation of those jurors' oaths.

58. We have already dealt with the first point. The second submission is based solely on the undated witness statement of Norman Brown. Although several witness statements say that the juror spoke to the Frizells and Mr Brown as a group, none of the other witnesses in that group suggest that this juror alleged that one or more jurors had been placed under undue pressure to reach guilty verdicts by other members of the jury. The same is also true of the statements of Julie and Jade Bowden. Furthermore, Mr Brown struggles to recollect the words used by the juror and he wrongly connects that person with the juror referred to by the Recorder on 5 October 2023. Mr Brown does not suggest that the juror indicated that she had

returned a verdict with which she herself did not agree. We consider that this material is so weak as not to call for investigation by the CCRC or to give rise to any arguable ground of appeal.

59. We next turn to deal with Frizell's criticism of the Recorder's direction to the jury on returning verdicts. He simply told them to disregard anything they had heard about majority verdicts and did not say that if the time should come when he could accept a majority verdict, he would call the jury back into court and give further directions. That was an omission. But the question for us is whether that could render the convictions unsafe.

60. We note that the Recorder also said that the jury should "endeavour" to reach unanimous verdicts. He also explained that when they returned to court to deliver their verdicts the foreman would be asked whether they had reached a verdict on a particular count on which they were all agreed and the answer would simply be "Yes" or "No". The overall effect of the directions was not to say that the jury would have to reach unanimous verdicts and that the court would not accept anything else at any stage. Plainly, if the jury had reached the position where they did not think that they could reach unanimous verdicts with further time, they could have sent the Recorder a note to that effect. Here the jury deliberated over three days. During that period the Recorder did not mention the subject of unanimous verdicts again to the jury and at no stage did they indicate that they could not reach such verdicts.

61. On Friday 27 October 2023, in the absence of the jury, the Recorder said that he did not propose to give a majority direction until Wednesday 1 November. None of the advocates disagreed with that suggestion.

62. In all these circumstances we do not consider that it is arguable on this ground that the convictions against either Frizell, or indeed Bowden, are unsafe. The case against each of

them was strong and supported by ample evidence.

63. Lastly, we turn to Bowden’s ground (2) which was refined by Mr Ryder. In his note for the court, Mr Ryder has rightly moved away from criticising the length of the summing up as too short. There has never been any criticism of the legal directions given. With regard to the summing up of the evidence, it is not suggested that any point of substance which could have assisted Bowden was omitted by the Recorder. Indeed, if there had been such a point, it would and should have been raised at the time by trial counsel.

64. The only point now raised by Bowden is that the summing up, viewed as a whole, lacked balance. It is submitted that it was heavily weighted in favour of the prosecution case. Mr Ryder criticises the structure of the summing up, but he accepts that the Recorder dealt with matters which had been raised during the trial.

65. For our part, we do not accept that the summing up was structured in such a way as to give rise to unfair prejudice to Bowden's case; still less that it was intended to do so. In our view, the Recorder sought to assist the jury by dealing together with the prosecution and defence evidence and submissions on the same topic, so that the jury had the benefit of a themed approach, rather than, for example, a “notebook summary” in which each of the answers was gone through individually, in a repetitive manner and at inordinate length.

66. Mr Ryder sought to illustrate his criticism of the summing up by referring to the way in which the Recorder dealt with the evidence of Webb-Johnson. We note the following points. First, at page 8G of the transcript the Recorder reminded the jury of the legal direction that he had given them about the need for caution in dealing with her evidence. Second, the judge then summarised the points which the defence had made “robustly” to undermine her credibility. It is not suggested that anything material was omitted. Third, the judge went on to

summarise points which went the other way. Mr Ryder accepted that all of those points did reflect the evidence that had been given during the trial and that it was proper for the judge to include them at some point in his summing up. Fourth, Mr Slack, on behalf of the EA, referred to several places in the transcript where the Recorder included points favouring the defence case. Read fairly and as a whole, this part of the summing up did not lack proper balance in relation to the cases advanced at the trial.

67. Mr Ryder also drew attention to the passage where the Recorder pulled together Bowden's answers to a series of questions where on each occasion he had simply said: "I haven't got a clue". Mr Ryder said that this was dealt with in an ironic way and failed to give any explanation for those answers. But in response to questions from the court Mr Ryder accepted that if there had been any such explanation which the Recorder had omitted to include in his summing up, then trial counsel would have been expected to point that out to the Recorder before the jury retired to start their deliberations, so that any appropriate addition to the summing up could have been made. But trial counsel did not do that and Mr Ryder did not suggest that there was any such explanation which the judge failed to include in his summing up.

68. There is no merit in the further criticism made of page 13C of the summing up where the judge referred to Bowden's control of the access road and thereby his ability to prevent the tipping from taking place. As Mr Slack submitted, that simply reflected the case put by the prosecution, based upon what Bowden himself had said during his interview.

69. The case against each of the applicants was strong. In fairness to the prosecution as well as to the defendants, the summing up had to reflect that position. We do not consider that it is arguable that the Recorder descended improperly into the arena in his summing up and took on the role of an advocate for the prosecution. Instead, he reflected the points that had been made on both sides of the trial.

70. Standing back, we are satisfied that the Recorder's summing up cannot be criticised under ground (2). It was consonant with the principles which have been recently summarised by this court in *R v Digby* [2020] EWCA Crim 1815, in particular at [8] to [10].

71. For all these reasons, we conclude that none of the proposed grounds of appeal against conviction is arguable.

The applications for leave to appeal against sentence

72. We turn to deal with the applications for leave to appeal against sentence.

73. Frizell was aged at 48 at conviction and sentence. He was of previous good character. Bowden was aged 64 at conviction and sentence. He had six convictions between 1971 and 1981. His last conviction was for an offence of assault occasioning actual bodily harm in 1981, for which he received a sentence of nine months' imprisonment, suspended for two years.

74. We have considered the pre-sentence reports which were before the Crown Court. In the report prepared on Frizell, it was said that he continued to maintain his innocence. He told the author that he intended to appeal against conviction. He was involved in an accident in Spain in 2021, in which he broke his back and neck and suffered brain damage. He had not been able to work since then. He had ongoing issues with cognition and memory loss, for which he continued to be treated. He posed a low risk of re-offending. He posed no direct risk to any individuals, and posed a low risk of harm to the public. If the court considered a non-custodial sentence to be appropriate, his risk could be appropriately managed in the community.

75. We have also considered the detailed neuropsychological report, date 24 August 2023. It

says that there was insufficient evidence to point to impairment consistent with hypoxic injury. Overall, the applicant's performance against a range of tasks designed to assess higher level cognitive functions fell within expected limits and were largely consistent with pre-morbid intellectual function. His performance on many of the more complicated tests was largely indistinguishable from the average person of his age who had not suffered a brain injury.

76. In the interview for his pre-sentence report, Bowden continued to maintain his innocence and said he would appeal. He said Paraszko had been the responsible party. Bowden owned and ran Jumbo Waste, but neither he nor the company had anything to do with Paraszko or the illegal deposition of waste. He attributed his previous convictions to a difficult childhood. He was taken into care as a child and spent several years in care homes. He had worked hard throughout his life and had a strong work ethic. Recently his marriage had broken down and divorce proceedings had commenced. He was now unfit for work because of health problems. He had bowel cancer and arthritis, and suffered from depression and anxiety. He posed a low risk of further offending and a low risk of harm to the public. Again, if the court considered a non-custodial sentence appropriate, his risk could be appropriately managed in the community.

77. We have also considered the report from Bowden's general practitioner.

The judge's sentencing remarks

78. In his sentencing remarks the Recorder said that he had had regard to the guidelines on environmental offences, community and custodial sentences, and on reduction for guilty pleas.

79. During 2014 to 2015 the operators of the tip ignored the obvious concerns of the County

Council and the EA during their site visits. The Recorder decided that at least 100,000 tonnes of waste had been dumped, which had raised the land by up to seven metres. Not all of the waste was inert. Hazardous asbestos had been tipped. The cost of restoring the land to its former state was about £10 million, which would fall on council tax payers, given the lack of funds available to those responsible. The site was an eyesore. The weight of the waste caused a culvert to collapse, so that a neighbour's land floods every time it rains. Costly pumping is needed in heavy rain. There was regular congestion on country lanes which were unsuitable for the tipper trucks, and they caused damage to the roads. There was a serious risk of fracture to the high pressure gas pipes. All of these factors were relevant to the assessment of harm.

80. Paraszko was 66 years old. His previous convictions were not relevant. He had a close working relationship with Bowden and the Jumbo group of companies. He was in poor physical health and posed a low risk of re-offending. His offence fell into category 1 harm and deliberate culpability. Paraszko had pleaded guilty four and a half years earlier and had been awaiting sentence. He was given 25 per cent credit for his guilty plea. The Recorder noted that he had served two terms of imprisonment of six weeks and then nine months for contempt of court for failing to remove the waste in compliance with the court's order. The Recorder said that the sentence after trial would have been 27 months' custody, which he reduced to 20 months after credit for the guilty plea. He further reduced the sentence to 11 months' imprisonment to take into account the time served for the contempt. He then said that because of the delay in sentencing, for which Paraszko was not to blame, he would suspend the sentence for 18 months.

81. In the case of Bowden, the Recorder said that he would disregard his earlier convictions. He noted from the pre-sentence report the applicant's difficult upbringing and the fact that he had broken out of a cycle of poverty by becoming an intelligent and astute businessman.

Bowden was the controlling mind of Jumbo Waste for the majority of the indictment period, and he played a leading role in the creation and operation of the tip. He was at the Farm almost daily. He must have been aware of the concerns of the authorities. The case was one of category 1 harm and deliberate culpability. There had been a deliberate breach of the law over many months and in contravention of warnings, an Enforcement Notice and a Stop Notice for financial gain. The applicant should therefore be sentenced at the top end of the sentencing bracket. The Recorder found that delay was not a significant factor since the applicant could have been dealt with sooner if he had pleaded guilty. The Recorder concluded that mitigation, including his health and ongoing need for treatment, reduced the sentence to 30 months.

82. The Recorder said that Frizell was of previous good character and had accepted that he had been the controlling mind of TW Frizell. The Recorder confirmed that he had taken into account, amongst other things, the neuropsychological assessment, the applicant's references and the pre-sentence report. This, too, was a case of category 1 harm and deliberate culpability, at the top of the category range. He had been deliberately involved in substantial deliveries of waste throughout the indictment period and had been fully aware that the tip was unlicensed and illegal, as was evidenced by the bogus invoices for the hire of the Frizell trucks, waste transfer notes and Hough Mill work sheets. The Recorder made it clear that he only had regard to those matters in order to support his finding that the offending had been deliberate, and not to increase the sentence he would impose. Taking into account the applicant's health issues and mitigation, the sentence was two years' imprisonment, which had to be immediate in order to achieve adequate punishment.

83. We have read the prison reports on both applicants, which are satisfactory. On 10 September 2024, the court was informed that Frizell is now on Home Detention Curfew.

The proposed grounds of appeal against sentence

84. We summarise the grounds of appeal against sentence. In the case of Frizell it is said firstly that the sentence imposed was manifestly excessive because the Recorder erred in not taking into account the applicant's brain injury from which his recovery is ongoing, including the impact of custody on his prognosis, his ability to access ongoing medical care, and to cope with his condition in custody. The Recorder also erred in not taking into account his type 1 diabetes and ongoing mental health problems.

85. Secondly, it is submitted that there was no parity with the sentence imposed on Paraszko whose custodial sentence was suspended, but whose healthcare needs were no more severe than those of the Frizell, even if more obvious.

86. Thirdly, it is submitted that the sentence imposed was wrong in principle in that it was not necessary to impose a custodial sentence, and that if it was, then such a sentence should have been suspended. In this regard it is said that the Recorder failed properly to consider the findings set out in the pre-sentence report which had supported a non-custodial sentence, given the low risk of re-offending. It is also submitted that the Recorder failed properly to consider the guidelines on suspended sentence orders.

87. Fourthly, it was submitted that there was potential judicial bias in the Recorder's approach to sentencing in that only the two defendants who filed an application for leave to appeal against conviction were given an immediate custodial sentence. We say straightaway, however, that during the course of argument counsel abandoned that point. Clearly the issue for the court is whether the sentence imposed was manifestly excessive or wrong in principle. If it was not, then it is difficult to see how an allegation of this nature can alter that conclusion or entitle the court to intervene.

88. Fifthly, it was submitted that the Recorder expressed a clear and unfounded view that the documents recovered during the trial by Mr Frizell's son (who was acquitted) and which were relied upon by the applicant, were created for the purposes of the trial. The Recorder encouraged the prosecuting authority to investigate offences of forgery or perverting the course of justice. The Recorder erred in taking these documents into account when assessing culpability and he displayed bias.

89. In Bowden's grounds of appeal (as originally drafted) it was submitted firstly, that the applicant and Paraszko were equally culpable, yet the sentence before credit for plea in respect of Bowden was significantly higher, which was not justifiable.

90. Secondly, it was submitted that the Recorder had erred in not suspending the custodial sentence imposed, but Mr Ryder told the court that this ground is no longer pursued.

Discussion

91. We have no doubt that the offending of both Bowden and Frizell fell within category 1 harm and deliberate culpability. The applicants intentionally breached or flagrantly disregarded the law. The Council and the EA made plain to them their objections to what was taking place, and yet they persisted in the waste disposal operation on a large scale for about a year. They could not conceivably have thought that their actions were lawful.

92. The category 1 harm involved the deposition of hazardous material, and a major adverse effect on amenity value, a watercourse and other property. The restoration of the site requires the major costs to which we have referred. All this was aggravated by the offending over an extended period of time and the commission of the offending for financial gain.

93. The starting point for an offence in this category is 18 months' custody, within a range of one to three years. The Recorder cannot be criticised for concluding that the offending in this case fell at the top of that range, 36 months.

94. The Recorder explicitly took into account Frizell's ill-health. We note that the neuropsychology report does not address either the impact of custody on Frizell's condition, or on his ongoing care. In our judgment the Recorder made a substantial reduction in sentence when arriving at the figure of two years. That reduction was sufficient to address this consideration, as well as mitigation in general.

95. The Recorder expressly took into account the contents of the pre-sentence report which recognised that a custodial sentence was a possible outcome. Frizell maintained his innocence, and the author indicated only limited scope for any rehabilitation. The report merely said that the applicant's risk could be managed in the community if the court should decide that Frizell should retain his liberty.

96. On the issue of whether the sentence should have been suspended, the Recorder plainly did refer to and apply the relevant guidelines. He concluded that the offending was so serious that adequate punishment could only be achieved by immediate custody. He regarded that as the overriding consideration. This was a matter of balance and judgment for the Recorder who conducted the trial. He cannot arguably be criticised for reaching that conclusion.

97. We also reject the complaint of disparity with the suspended sentence imposed on Paraszko. Miss Hodgetts suggests that the Recorder failed to treat the applicant's brain injury as seriously as the ill-health of Paraszko. We have already referred to the limitations of the neuropsychology report. The circumstances of Frizell and Paraszko were different. The Recorder gave specific reasons in each case for arriving at the different sentences he imposed. There was no inconsistency on his part. The outcome does not indicate disparity.

98. The fourth ground in the application for leave to appeal against sentence was abandoned during the course of argument. But we should state publicly that there is no basis for suggesting either actual, or an appearance of, bias on the part of the Recorder. It was said that bias arose from the intention of both applicants to appeal against their convictions. However, there is absolutely no material to support the bare assertion that the applicants' intention to appeal against conviction had any effect on sentence.

99. Nor is there anything in the complaint about the Recorder's reference in his sentencing remarks to the documents found at the back of the filing cabinet. He made it clear that that factor went only to the issue of whether Frizell's offending was "deliberate" and was not a separate aggravating factor. That was a permissible approach with which the sentence imposed was entirely consistent. As regards the Recorder's reference to consideration being given to a further investigation of other possible offences, it is plain that that did not affect the sentence imposed by the court. Again, there is no basis for alleging bias.

100. For all these reasons we have reached the firm conclusion that the proposed grounds of appeal against sentence in the case of Frizell are not arguable.

101. We turn to deal with Bowden's application for leave to appeal against sentence. Mr Ryder accepted that this was a category 1 case with deliberate culpability and the aggravating features identified by the Recorder.

102. In paragraph 32 of the proposed grounds of appeal it is said that the Recorder set a starting point of 30 months' imprisonment, and that this was inconsistent with the starting point in Paraszko's case of 27 months. In actual fact neither of those figures was a "starting point". That term refers to the figure specified as such for the relevant category in the definitive guideline. Here the Recorder's figures represented, as he said, the sentence he

considered to be appropriate following a trial in each case. It is plain, in our judgment, that the Recorder arrived at those sentences having started in both cases with a common adjustment to the category starting point, to reach the top of the category range, namely three years. In the case of Paraszko, this was reduced to 27 months; in the case of Bowden, this was reduced to 30 months. But the Recorder gave adequate reasons for differentiating between the two. They reflected the differences in the aggravating and mitigating features which he attributed to each offender.

103. Mr Ryder abandoned the earlier suggestion that the sentence should have been suspended. Therefore, the application for leave to appeal against sentence in Bowden's case now focuses on one contention. It is said that the length of the sentence to immediate custody should have been significantly lower than 30 months. Reliance is place upon Bowden's personal mitigation, including his ill health, evidence of good character, a realistic prospect of rehabilitation, the delay that has occurred, and the absence of any further offending since the commission of the offence.

104. Despite Mr Ryder's attractively presented submissions on behalf of Bowden, we do not consider it arguable that the Recorder imposed a sentence which was manifestly excessive. Even if that sentence might be regarded as severe, it nonetheless properly reflected the serious nature of the applicant's offending and all the mitigation that was available to him.

105. For all these reasons, we conclude that Bowden's application for leave to appeal against sentence is not arguable.

106. We refuse the applications to adduce fresh evidence and to refer any issue to the CCRC for investigation and we refuse each of the applications for leave to appeal against both conviction and sentence.

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

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