Neutral Citation Number: [2024] EWCA Crim 764

Case No: 2024/00867/B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT KINGSTON-UPON-THAMES
HHJ RAJEEV SHETTY
T20217027

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2024

Before:

THE LADY CARR OF WALTON-ON-THE-HILL
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
MRS JUSTICE CUTTS
and
MR JUSTICE HILLIARD

- -

Between:

William Sartin	**Appellant**
- and -	
Rex	**Respondent**

- -

Darren Snow (instructed by **CLP Solicitors**) for the **Appellant**
Gareth Weetman and Andrew Young (instructed by **The Crown Prosecution Service**) for **Respondent**

Hearing date: 03 July 2024

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Approved Judgment Transcript

This judgment was handed down ex tempore in Court 4 on 03 July 2024 and by release to the National Archives.

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The Lady Carr of Walton-on-the-Hill, LCJ:

Introduction

1. This is an application for leave to appeal the decision of His Honour Judge Shetty ("the Judge") sitting in the Crown Court at Kingston-upon-Thames on 12 February 2024 to continue trial without a jury because of jury tampering, pursuant to section 46 of the Criminal Justice Act 2003 ("section 46") ("the section 46 ruling"). The challenge is brought under section 47 of the Criminal Justice Act 2003 ("section 47").

2. Leave to appeal was refused by the Judge. The application to us for leave, lodged 16 days out of time, has been referred to the full court by the Registrar. We grant leave on the basis that the appeal is arguable and it is in the interests of justice to grant the necessary extension of time. Defence counsel takes full responsibility for the delay, which was based on a misapprehension as to the applicable time limit (of five days) in which to lodge an appeal under section 47: see Criminal Procedure Rules 37.2(b). Whilst the delay is regrettable, the decision to proceed without a jury is clearly of significance and the challenge has arguable merit.

3. There is no outstanding challenge to the Judge's finding that jury tampering had taken place. Earlier today we refused an application by the appellant, Mr Sartin, to adjourn today's hearing in order to explore new evidence relating to such a potential challenge (see the ruling at [2024] EWCA Crim 766).

The Factual Background

4. Mr Sartin, along with eight other co-defendants had been charged with conspiracy to evade the prohibition on the exportation of a controlled drug of Class A. Specifically, this was in relation to the exportation to Australia of a Doosan excavator containing 448 kilograms of MDMA.

5. The Judge heard a bail application for Mr Sartin on 23 December 2021. Bail was refused on the basis that Mr Sartin represented a flight risk. Mr Sartin applied for judicial review of this decision on two grounds: first, that it was irrational to decide that there were substantial grounds for believing that Mr Sartin would fail to surrender to custody; and secondly, that remanding Mr Sartin, given his medical conditions, was an interference with his rights under the European Convention on Human Rights. Mr Justice Lane granted permission to apply for judicial review but dismissed the claim on 6 January 2022.

6. The trial of Mr Sartin's co-defendants took place between February and June 2022 ("the first trial"). At this time, Mr Sartin had recently undergone cancer surgery and was severed from the original trial by the Judge. Six of the eight defendants in the first trial were subsequently convicted and sentenced to custodial terms of up to 28 years' imprisonment.

7. Before Mr Sartin stood trial, a fitness to plead hearing took place on 14 and 15 December 2023, at which the Judge considered evidence from multiple medical experts, including two psychiatrists and a neuropsychologist. The Judge made the following remarks as part of his decision that Mr Sartin was fit to plead:

> "When asked about Mr Sartin's behaviour in the prison video-link suite [Dr Stein] said that the defendant's constant behaviour of putting his head on the desk, putting his hands over his head, and looking asleep, were in fact factors that demonstrated the genuineness of Mr Sartin's symptoms, despite the possibility of them being playacting. …
>
> However, I do conclude that he has somewhat overplayed the level of depression, and, in particular, his memory loss. There was a very stark difference between the level of articulation that was presented to the experts when they were asking him about his memory, and specifically his memory of the case, and, in contrast, when he was dealing with the familial background and the brief intervention that he had in the course of the hearing.
>
> …
>
> Mr Sartin had no problem explaining a lot about himself and his background, and seemed to have difficulty explaining or remembering anything to do with the offence. That is the same kind of thing I observed in court. He was projecting his inability to stay awake, to look aware, and appearing to look dismayed and distraught at other times. Yet, when it came to it, he intervened and spoke fluently and articulately."

8. The trial of Mr Sartin began on 15 January 2024 ("the second trial"), again before the Judge. On the first day of the second trial, Mr Sartin did not attend court, after a reported suicide attempt. The prosecution expressed the concern that Mr Sartin, unhappy with the Judge's ruling on fitness to plead, was "trying to dictate what now happens". The Judge commented that none of the medical reports had indicated any actions towards suicide at the time of the medical assessments. Defence counsel emphasised that the factual matrix was not clear or established; that mental health "does ebb and flow"; and that the suggestion that this was an attempt to delay trial did not make sense because trial was inevitable.

9. At this point the Judge intervened:

> "It is the timing though, is it not …? … on the morning, the very morning, circa the time that he is supposed to be sent to the van, overdose, bag over the head – all sounds pretty desperate stuff. Where he has had, if he was serious about suicide, the best part of, what, three years, there or thereabouts, to implement that."

He went on:

> "… a cynic might look at those facts and think, hmm, sounds like it is a bit of manipulation going on."

10. Defence counsel pressed for a proper assessment of Mr Sartin's mental health issues. He submitted that no one wanted to delay the trial, to which the Judge responded:

> "I think someone does … I know you [counsel] do not."

11. The Judge returned to prosecution counsel, who reminded him of Mr Sartin's presentation of "his head repeatedly on the desk" during the fitness to plead hearing. The Judge stated:

> "Oh, I remember it as if it was yesterday. … I do not mind putting my cards on the table and revealing my all, as it were, that I am deeply suspicious and cynical … about this as an attempt to delay a trial … That is what it appears to be. And of course I appreciate that I might be being presumptuous, but it is timing. Timing and context is everything in this case. It is everything in terms of the circumstances of what we can see, which is … Mr Sartin has got a very nasty condition in terms of cancer that has required surgery … It did appear to me that he was really trying to swing the lead … in respect of exaggerating a depressive condition. Despite there being no act towards suicide in the past, on the morning of the trial, orally having shown his reticence to attend from the ... without trying to sound sarcastic, relative comfort of Thameside, an officer sees him put a bag over his head, is told, or at least the nurse is told that he has overdosed. In fact, there are no objective signs that he has at all … also I think a message somewhere in the ether which is 'hopefully I'll be all right towards the end of this week …' All of that sounds like an attempt to delay the process of justice at the last minute. …"

12. Prosecution counsel then emphasised that it would be open to the defence to raise any further submissions on the following day, and that the Judge would listen to any further material that came to light. The Judge stated that he "certainly had in mind" asking the prison authorities to forward all relevant documentation relating to that day's events. He asked defence counsel to inform Mr Sartin that "if" he found out that it was an attempt to delay the process "of which at the moment [he was] more or less satisfied it was", that would not be a bar to proceeding the next day in Mr Sartin's absence.

13. The Judge listed the matter for trial the next day. Mr Sartin attended.

14. The trial then lasted over four weeks, during the course of which the Judge, amongst other things, made reasonable adjustments to cater for Mr Sartin's depression.

15. On 7 February 2024, the jury retired. On 8 February 2024, at the end of their second day of deliberation, they were sent home just after 4 pm.

16. After the jury had left, a juror telephoned the court to inform the jury officer that a man had been stationed in a car outside the court's main entrance. The man saw the juror and a few others as they were leaving court and started shouting words to the following effect: "You're in court 1, aren't you? You're in court 1. You're in court 1"

repeatedly to the juror and her fellow jurors. The tone was aggressive and intimidating, as if to say: "I know who you are". The man drove off, did a U-turn and parked facing the court entrance from the other side of the road. The juror who saw this said that she was upset and shaken. Another juror had noticed the same activity.

17. Mr Sartin's trial had indeed been taking place in court 1. Further, the man in question had been in the public gallery previously and had hugged Mr Sartin after he had given evidence, saying "Love you Bill", to which Mr Sartin had replied, "Love you too". The man had been ejected from the public gallery of the court by the Judge on an early occasion and had been abusive to the Judge in response to that decision. Further, Mr Sartin had asserted in his evidence that one of the reasons why he had changed his evidence mid-trial was because of pressure from the public gallery.

18. On 9 February 2024, following submission by prosecution and defence counsel, the Judge discharged the jury pursuant to section 46. Both counsel had agreed that the jury should be discharged and so did the Judge. The effect, in his judgment, of these events would be potentially to influence the jury to vote not guilty for fear of being identified. They could also have influenced the jury to believe the alleged pressure to which Mr Sartin had said he was subject, in the context of his change of evidence. Thirdly, it could have led the jury to think that Mr Sartin was guilty because of the intimidatory events that had taken place.

19. The prosecution also submitted that the trial should continue without a jury. By contrast, the defence submitted that there should be a new trial with a new jury.

20. Both parties referred to the very recent guidance in *R v Mohammad (Shahid)* [2024] EWCA Crim 34; [2024] 1 Cr App R 25 ("*Mohammad*"). Counsel for the appellant sought to distinguish Mr Sartin's case from the facts in *Mohammad* on the following grounds:

    a) The jury had been given a majority direction;

    a) The Judge had heard a previous trial in which a lot of similar evidence had been given;

    a) The Judge had expressed comments in the past that were critical of Mr Sartin, such that the reasonable and informed observer would form the view that there was actual or perceived bias.

21. On 11 February 2024, the Judge ruled that he could continue the trial as a Judge sitting without a jury. He concluded:

> "I do not think that there is any actual or perceived bias on the basis of this complaint. There is no reason why I cannot analyse the evidence impartially and without prejudice or favour to Mr Sartin."

He then refused leave to appeal.

The Appellant's Submissions

22. Mr Snow for Mr Sartin, who also appeared below, makes no criticism of the manner in which the Judge conducted the four week trial. It was meticulously and fairly carried out. However, he makes an overarching submission of unfairness, based on the fact that Mr Sartin himself had done nothing wrong, but was nevertheless losing his important right to jury trial. These were unusual circumstances, referring to what are said to be multiple examples of comments and/or conduct by the Judge giving rise to actual or apparent bias. Mr Snow relies on a number of examples which he has set out in a helpful and detailed schedule of what he submits are relevant extracts.

23. In summary only, it is said, first, that the Judge presided over the first trial. This is said to raise the risk that the Judge would be influenced either directly or subconsciously by evidence not before the jury in the second trial. The prosecution's case in the second trial was that Mr Sartin was the "controller" of Tony Borg. Tony Borg had been convicted in the first trial, but had been acknowledged by the Judge to have been in a lesser role and to have been controlled by his co-defendants. Whilst the Judge did not specifically recognise who controlled Tony Borg, the submission is that there is as very real risk that the Judge would be influenced by the evidence in the first trial on this issue.

24. Secondly, it is said that the Judge made specific reference to Mr Sartin's friendship with one of the co-defendants at the time of sentencing the defendants in the first trial. He also referred, it is said, to Tony Borg being under Mr Sartin's control.

25. Thirdly, it is said that bias arises as a result of the Judge's findings as part of the fitness to plead hearing that Mr Sartin had exaggerated or "faked" the extent of his impairment at assessments. This represented a negative assessment of Mr Sartin's honesty and credibility. This evidence was not before the jury, and again the submission is that there is a real risk that this would influence the Judge's assessment of Mr Sartin's evidence.

26. Fourthly, reliance is placed on the Judge's remarks on the first day of the second trial, concerning Mr Sartin's attempted suicide. These are said to include a specific remark that this was a further attempt by Mr Sartin to delay the trial. All of this, it is said, amounts to actual bias, or at least demonstrates the real possibility of bias. Whilst the Judge's views may have been expressed on that day in provisional terms, they were expressed in significant terms. These views, and their perception, are compounded by the fact that Mr Sartin then turned up, without further ado, on the second day of trial.

27. Finally, reliance is placed on the fact that Mr Sartin was refused bail by the Judge. The prosecution had specifically raised the issue that Mr Sartin was a flight risk. This submission, which was not before the jury, is said to be a further issue raising potential unfairness or actual and/or apparent bias against Mr Sartin now that the Judge would be sitting alone to decide the verdict. It is said that the position is further complicated by the fact that Mr Sartin sought and obtained permission to judicially review the bail decision in the High Court.

The Respondent's Submissions

28. The respondent submits that, in line with *Mohammad*, the normal approach in a case in which jury tampering has taken place is for the jury to be discharged and for the trial to continue. It is said that the Judge was particularly well placed to assess the

issues of fairness and the interests of justice. We should accept, it is submitted, his assessment that he will be able to reach a fair conclusion.

29. As to the specific allegations of actual and/or apparent bias, the respondent submits that there is no specific instance in the evidence from the first trial that would materially damage the appellant's case in the second. It is said to be very significant that no one in the first trial ever implicated Mr Sartin directly in any culpable wrongdoing. Even if there had been such material, the Judge would have been able properly to direct himself to disregard it. It is said that there is nothing within the Judge's sentencing remarks in the first trial that could give the appearance of bias or amount to actual bias. The Judge's conclusion as to fitness to plead also, it is said, did not reach the standard required of having "previously rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion": see *Locabail (UK) Limited v Bayfield Properties Limited* [2000] QB 451 ("*Locabail*") at [25]. Mr Weetman for the respondent emphasises that the Judge did in fact find that the appellant was depressed; it was simply a finding that the symptoms and repercussions from that condition had been overplayed. There was no outright finding of malingering as such made by the Judge. The Judge's assessment in this regard is said to have been just, proper and informed. Further, Mr Weetman points to the fact that Mr Sartin was treated fairly and that reasonable adjustments were made throughout the trial.

30. Looking at the trial process as a whole, Mr Weetman also emphasises that Mr Sartin's credibility was robustly tested by the prosecution over four days. Any impression given by Mr Sartin in the pre-trial hearing was "entirely subsumed by the subsequent detailed live evidence".

31. As to Mr Sartin's failure to attend the first day of trial, Mr Weetman submits that all that the Judge was doing was to express concerns and to address just and proper case management issues. Additionally, the evidence about the attempted suicide was in fact unilaterally introduced before the jury by Mr Sartin. The respondent was entitled to challenge that evidence and the jury had to determine Mr Sartin's credibility in light of the same evidence. The Judge was in no different position.

32. Finally as to the refusal of bail, the respondent's submissions at the time were that Mr Sartin's medical condition fell short of demonstrating that care at home was a necessity and that, as with his co-accused, he faced a likely sentence well above the highest bracket in the drug sentencing guidelines. For all these reasons, Mr Weetman seeks to persuade us that there was no unfairness, no actual bias, nor any reasonable perception of bias.

The Law

33. The correct approach and relevant principles to be applied when considering whether to proceed with a trial without a jury because of jury tampering, pursuant to section 46 have been considered recently and authoritatively in *Mohammad*: see in particular the summary at [36]. *Mohammad* makes clear, amongst other things, that "save in unusual circumstances, the normal approach is that … the case should continue" (endorsing *R v Twomey* [2009] EWCA Crim 1035; [2010] 1 WLR 630 at [20]. The time at which the jury tampering occurred and the question of whether the defendant

was at all responsible for the tampering are not relevant to the decision facing a trial judge. Further, it will often be the case that the trial judge is particularly well placed to assess the issues both of fairness and of the interests of justice, and this will be given appropriate weight when any appeal, such as the one before us, is being considered: see *Mohammad* at [36(xi)].

34. Whilst the court in *Mohammad* did not attempt to define "unusual circumstances", it is clear that a disqualifying perception of bias (as in *R v SK* [2009] EWCA Crim 2377; [2010] 1 Cr App R 20; [2010] 1 WLR 2511 ("*SK*")) can amount to "unusual circumstances": see [36(iv)].

35. The law on bias is well established. Actual bias exists where a judge is actually prejudiced in favour of or against a party. Apparent bias will be made out where "the fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the judge was biased": see *Porter v Magill* [2001] UKHL 67; [2002] 2 AC 357 at [103].

36. In *SK*, Lord Judge CJ found (at [43]) that:

> "The judge was personally involved in a vast number of trials which were directly concerned with a fraud in which the appellant was alleged to have been a central figure … he was inevitably aware of a vast body of information affecting their client of which the defence would have been ignorant and which therefore would not have been addressed in the present trial. Every one of those identified in the counts in the present indictment were said to have been jointly involved with the appellant. Each of them was convicted in trials over which Judge X had presided. Some of his observations about the appellant himself in the course of his sentencing remarks were specific to and critical of the appellant."

37. It was held that, taking these considerations together, and examining them in their overall context, the objective bystander would have found that there was a real possibility that the Judge was biased. The Judge had thus been wrong to proceed without a jury.

38. The question of bias is necessarily a case-specific question to be determined on the facts of each case. In *O'Neill v HM Advocate (No 2)* [2013] UKSC 36; [2013] 1 WLR 1992, Lord Hope stated (at [53]) that, in assessing perception of bias:

> "The fair-minded and informed observer would appreciate that [the judge] was a professional judge who had taken the judicial oath and had years of relevant training and experience. He would hear and understand the context in which the remarks were made … it would only be if the judge expressed outspoken opinions about the appellant's character that were entirely gratuitous, and only if the occasions for making them was plainly outside the scope of the proper performance of his duties in conducting the trial that he would doubt the

> professional judge's ability to perform those duties with an objective judicial mind."

39. As *Locabail* at [25] makes clear, as a matter of general principle, if a judge makes an adverse finding on a discrete issue against an individual, that does not mean that they are thereafter unable to reach conclusions on other issues concerning the individual in question. Further, judges necessarily and frequently have to put out of mind material of which they are aware but which is irrelevant to particular matters that they are called upon subsequently to decide.

Analysis on the Facts

40. We turn now to address the detail of the matters relied upon in support of the submission that there was unfairness, actual and/or apparent bias on the part of the Judge such that the Judge ought to have concluded that it was unfair for him to continue the trial without a jury.

41. The assessment is to be carried out at the point of the decision being make under section 46. Thus, the fair-minded and informed observer would know at the point of decision that, amongst other things, the Judge had previously conducted a full and fair trial hitherto, spanning over a period of some four weeks.

42. We address at the outset the overarching complaint of unfairness, based on the fact that Mr Sartin would be losing his right to a jury trial through no fault of his own. The short response to that submission is that Parliament has chosen to enact section 46, which allows for precisely such an outcome.

43. We then consider the individual comments and matters relied upon by Mr Sartin.

Bail and Sentencing Remarks

44. The Judge's refusal of bail (and the subsequent judicial review), as well as the reference to Mr Sartin in the Judge's sentencing remarks of his former co-defendants, do not, in our judgment, advance Mr Sartin's cause.

45. The basis of the decision to refuse bail was that, alongside his co-defendants, Mr Sartin was charged with involvement in a very serious conspiracy. If convicted, he would be facing a very lengthy custodial sentence. The decision to refuse bail did not turn on an assessment of Mr Sartin's credibility as such, but rather on the seriousness of the charges that he was facing. As for the judicial review, the Judge was unaware of that challenge until it was raised by Mr Snow in the context of the section 46 application. More pertinently, the challenge was unsuccessful. There is no sustainable challenge on the basis of actual or apparent bias arising out of these events.

46. Similarly, when sentencing Mr Sartin's co-defendants, the Judge referred to Mr Sartin in the following limited terms (when sentencing Stefan Baldauf):

> "You were good friends with Mr Sartin, who himself was very closely connected with the Grays industrial estate where the drugs were inserted into the machine."

47. This did not amount to any assessment of, or finding, in relation to Mr Sartin's credibility (or culpability). In any event, Mr Sartin does not dispute that he was good friends with Stefan Baldauf, or that he was at least aware of and had visited the Grays industrial estate from time to time. Further, the reference in the sentencing remarks to Tony Borg being under "other conspirators' control" was not specific to Mr Sartin, and did not amount to a clear finding against him in any way. Further, the Judge was there describing what others were saying, as opposed to the Judge's personal assessment. Again, in our judgment, no question of actual or apparent bias properly arises.

The Previous Trial

48. A judge's own assessment that they will be able to reach a true verdict which has regard only to the admissible evidence, although they may have seen other evidence which is not admissible, will normally be accepted: see *Mohammad* at [36(xi)]. As *SK* recognises at [38], the crucial question in a situation where a Judge is aware of other evidence not before the jury is not the ability of the trial Judge to reach a true verdict on the admissible evidence, but rather the perception of the fair minded and informed observer.

49. Unlike the position in *SK*, where the facts were, as the court itself recognised, extreme, the Judge here had not been involved in "a vast number of trials which were directly concerned with a fraud in which the appellant was alleged to have been a central figure": see *SK* at [43]. Here there had been but one earlier trial in which, as the Judge himself noted when giving the section 46 ruling, no defendant had implicated Mr Sartin. The previous trial had taken place almost two years ago, and the Judge stated in terms that the details of the previous trial and the evidence called were no longer fresh in his mind. Further, in so far as there were any differences between the account of Tony Borg in the first trial and the evidence of Mr Sartin in the second trial, they were modest: they did not prevent Tony Borg and Mr Sartin being represented by the same solicitors. Moreover, the evidence in both the second trial and the first trial was largely based on EncroChat messaging (the same messages in each case); and by the conclusion of the second trial, Mr Sartin had admitted not only being connected to Tony Borg, but, more importantly, being the holder of an EncroChat device with messages to and from the co-conspirators in the first trial. The connection was there. Mr Sartin accepted communicating with his co-conspirators and attending meetings with them. He accepted that he worked with Tony Borg and that they knew each other well.

50. So far as the summing up in the first trial is concerned, it is clear from a reading of the transcript that the Judge was doing no more than rehearsing the prosecution and defence cases in the normal way. He was not expressing his own views on the facts, nor giving the appearance of doing so.

51. Finally, the jury in the second trial was aware of the first trial, and aware of the convictions, for example, of Tony Borg and Stefan Baldauf. The Judge was in exactly the same position in this regard as the jury. The fact that the Judge had additionally heard Tony Borg give oral evidence in the first trial does not in any way tip the balance on either actual or apparent bias, not least in circumstances where Tony Borg was, as we have identified, not implicating Mr Sartin in any way.

52. Thus, in our judgment, the Judge's involvement in the first trial did not disqualify him from trying Mr Sartin without a jury.

Fitness to Plead and the First Day of the Second Trail

53. It is convenient to address both the fitness to plead hearing and the first day of the second trial together. On both occasions the Judge had to consider, to a greater or lesser extent, Mr Sartin's credibility relating to the extent of his depression.

54. The Judge had to decide whether or not Mr Sartin was fit to plead. In order to answer this question, it was incumbent on the Judge, amongst other things, to assess the severity of Mr Sartin's depression. Part of that exercise involved an assessment of the reliability of Mr Sartin's self-reporting, although of course Mr Sartin did not himself give direct evidence at that stage. *R v Walls* [2011] EWCA Crim 443 confirms (at [38]) that, in fitness to plead hearings, "a court would be failing in its duty to both the public and a defendant if it did not rigorously examine the evidence and reach its own conclusion".

55. In reaching the conclusion that Mr Sartin was fit to plead, the Judge did, as he recognised when making the section 46 ruling, express a view on the veracity of Mr Sartin's account of his depression to the medical experts. However, he did so in restrained terms, commenting only that Mr Sartin had "somewhat overplayed the level of depression and in particular his memory loss"; and that it seemed to the Judge that Mr Sartin "was keen to demonstrate a state of mind that was favourable to him". Those comments, made in the context of an earlier, separate hearing, were relevant to the exercise that the Judge had to carry out in that hearing. Fundamentally, they do not throw doubt on the Judge's ability to approach Mr Sartin's evidence on different issues with an open mind on a later occasion: see *Locabail* at [25]. This is all the more so, given that Mr Sartin gave detailed oral evidence at his subsequent trial across four days.

56. For the sake of completeness, we record the Judge's use of the word "playacting". However, this was not a finding by the Judge, but rather a summary by him of the evidence of one of the psychiatrists.

57. For these reasons, there is no legitimate complaint either by way of actual or apparent bias based on event arising out of the fitness to plead hearing.

58. Turning to the first day of the second trial, as set out above, Mr Sartin was not produced at court on 15 January 2024. It was reported that he may have taken a paracetamol overdose and placed a bag over his head in an apparent suicide attempt. A discussion took place between the Judge and counsel as to next steps. It centred around whether the trial should be delayed for a week, given Mr Sartin's condition. We have set out the detail of that discussion above.

59. The Judge's comments were forthright, but need to be seen in context. The discussion was inevitable and relevant to the decision that the Judge had to take as to how to proceed with the trial. If, as he clearly suspected, this was a last minute attempt to delay trial, he wanted the strong message to go back to Mr Sartin that he would be able to proceed in his absence. He expressed himself in direct, but not in extreme or unbalanced, terms.

60. Nor were the Judge's comments gratuitous or outside the proper performance of his duties in conducting the trial. On the contrary, the events of the first day of the second trial required him to scrutinise carefully the reasons for Mr Sartin's non-attendance and his credibility in this context.

61. It is right that the question of Mr Sartin's credibility in relation to his non-attendance on the first day of the second trial was also an issue that went before the jury. So much is clear from the Judge's summing up. However, on a fair reading of the first day of the second trial, it is clear that the views being expressed by the Judge were provisional only. There had been a lack of reliable information from the prison. The judge left open the obtaining of more information, and even suggested a line of enquiry himself. We point in particular to the following exchanges:

    i) He stated that he appreciated that his view that this appeared to be an attempt by Mr Sartin to delay trial might be "presumptuous";

    ii) Prosecuting counsel stated that it would be open to the defence to raise any new matters the next day and that the Judge would of course listen to any further material that came to light. The Judge did not disagree;

    iii) Rather, the Judge stated that he "certainly had in mind" a request to the prison authorities to forward to the court all relevant documentation arising from the events of that morning.

62. In short, the Judge did not reach, nor did he appear to reach, any final conclusion on Mr Sartin's credibility. So much is clear from the following comment towards the end of the hearing:

> "And that **if** I find out that it was an attempt to delay the process … then that is not going to be a bar to me proceeding in his absence …" (emphasis added)

63. Further, by the conclusion of trial the Judge had heard oral evidence from Mr Sartin as to the circumstances of and reasons for his non-attendance. He had also heard other evidence on Mr Sartin's credibility more generally. The fair-minded and informed observer would know of this, as they would know that he had conducted the trial meticulously fairly throughout.

64. Additionally, the fair-minded and informed observer would appreciate that the Judge was a professional with years of relevant training and experience, well equipping him to perform his duties with an objective judicial mind. Of course, in making any findings of guilt, the Judge would have to provide reasons after receiving further written and/or oral submissions from the parties as necessary: see section 48(5)(a) of the Criminal Justice Act 2023.

65. In summary, the Judge's comments on the first day of the second trial provide no basis for a finding of actual bias; nor do they leave any real doubt from the perspective of the fair-minded and informed observer as to the Judge's ability to approach Mr Sartin's evidence at the conclusion of trial and following submissions with an open mind.

Conclusion

66. The Judge considered his position in what was an unexpected turn of events at the end of a long trial, and the question of fairness with considerable care. He reached a fully reasoned decision in what was a difficult situation. This is not one of those rare situations where, following jury tampering and discharge of the jury, the trial could not continue fairly by Judge alone.

67. For these reasons the appeal will be dismissed.

68. Further, in the light of our decision, all reporting restrictions over this judgment and over our decision to refuse the application to adjourn will be lifted and there will be no anonymisation of the case.

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

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