



Neutral Citation Number: [2025] EWCA Crim 65

Case No: 202304464 B2 and 202304487 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 February 2025

Before:

LORD JUSTICE JEREMY BAKER
MR JUSTICE SAINI

and

HER HONOUR JUDGE TRACEY LLOYD-CLARKE
RECORDER OF CARDIFF

Between:

BGV
- and -
REX

Appellant

Respondent

Mr Tom Wainwright (instructed by **Southwell and Partners**) for the **Appellant**
Mr James Marsland (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 21 January 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 5 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Jeremy Baker:

Introduction

1. On 11 April 2008, the appellant appeared in the Crown Court and pleaded guilty on indictment to an offence of Possession of a False Identity Document with Intent, contrary to section 25(1)(b) of the Identity Cards Act 2006, in respect of which he was sentenced to 12 months' imprisonment.
2. The appellant appeals against conviction and sentence by leave of the Single Judge who granted an extension of time of over 15 years and made an order for his anonymity.
3. It is submitted that at the time of committing the offence the appellant was a victim of modern slavery and that had that been known to the Crown Prosecution Service ("CPS"), then in accordance with its own guidance, the appellant would or might not have been prosecuted on the ground that the dominant force of compulsion arising from his forced labour was sufficient to reduce the appellant's culpability to a point where it would not have been in the public interest to prosecute him. Alternatively, the court would have stayed the prosecution as an abuse of its own process, or significantly reduced the sentence imposed upon him.
4. On 14 November 2024, the Full Court ordered that the appellant attend court to give evidence at the hearing of his appeal which took place before us on 21 January 2025.
5. The appellant seeks leave to introduce fresh evidence, pursuant to section 23 of the Criminal Evidence Act 1968, concerning the circumstances leading up to and since the Single Competent Authority's ("SCA") conclusive grounds decision, dated 8 March 2022, that the appellant was a victim of modern slavery in the UK during 2003 – 3 April 2008 for the specific purpose of forced labour.
6. We have considered the evidence for the purposes of this appeal *de bene esse*.
7. We have also considered whether the order for the appellant's anonymity order under section 11 of the Contempt of Court Act 1981 should continue, on the basis that, the SCA having made a conclusive grounds decision that he was a victim of modern slavery, the risk to the appellant of being re-trafficked for criminal exploitation in the United Kingdom ("UK") is such that in accordance with the principles identified in *R v AAD* [2022] EWCA Crim 106 ("*AAD*"), it is necessary for such an order to be made. We bear in mind the normal rule of open justice. However, we consider that having regard to the risk involved in this case it is necessary to make such an order.

The offence

8. On 3 April 2008, the appellant was stopped at a UK airport attempting to board a flight to Canada, having used a British passport belonging to someone else.
9. The appellant was arrested and interviewed, during the course of which he made no comment, but stated that he wished to claim asylum in the UK.

10. When he appeared in the Crown Court on 11 April 2008, the appellant was represented by Solicitors and Counsel, who have no independent recollection of the event. Furthermore, no contemporaneous documentation is available from either the court, the appellant, or the respondent, save for the indictment and a transcript of the sentencing remarks of the judge, which do not assist as to the circumstances leading up to the appellant's possession of the passport at the airport.

Chronology of events

11. On 22 April 2008, the appellant was interviewed whilst in custody by the Immigration Service. He stated that he had travelled from Sudan to France, via Spain, by land and sea, mostly in the back of a trailer with a number of others, as a result of a friend, who was a priest, having paid someone to do so. Once in France he had been provided with a train ticket and travelled by train to the UK in March 2008. Once in the UK he had been on the streets for a few days when he met a man who allowed him to stay at his house for a few more days. The appellant stated that he had informed the man about his problems, as a result of which the man had provided him with a ticket to Canada and a passport, and had driven him to the airport, where he was arrested seeking to board the flight to Canada.
12. On 28 April 2008, the appellant was served with a notice of liability for deportation, which was followed on 9 May 2008 by the service of a notice of liability for removal.
13. On 15 May 2008, the Immigration Advisory Service wrote to the Home Office, in relation to the appellant's claim for asylum in which it was stated that the appellant was from Sudan. The letter explained that the appellant's father was an elder in his village and had been present in a Catholic church which had been attacked by Muslims, as a result of which his father had been killed and the appellant had fled the village and come to the UK.
14. On 28 May 2008, the appellant signed a witness statement in which he stated that in addition to his father having been killed, so too was his elder brother, and his mother had had a stroke. He stated that whilst visiting his mother in hospital he had met a priest who allowed him to live with him for about a month, who then took him to meet some people who arranged for him to travel to Europe, ending up in France. He confirmed that he was then provided with a train ticket and travelled by train to London in about mid-March 2008. He also confirmed the previous account of being on the street initially and then meeting a man who told him it would be best for him to travel to Canada and sought to facilitate the journey by providing him with a passport and ticket. He stated that he feared being returned to Sudan, where as a Christian he would be persecuted by Muslims.
15. On 2 August 2008, the appellant's application for asylum was refused, and on 17 September 2008, the Secretary of State ordered the appellant's deportation.
16. On 23 September 2008, the appellant appealed against the refusal of his asylum claim and the making of the deportation order, which was considered by a panel on 12 November 2008, and refused on 20 November 2008.

17. On 4 December 2008, the appellant's application for reconsideration of his asylum claim was refused, following which he sought to appeal to the High Court, but his appeal rights became exhausted on 27 February 2009.
18. On 6 May 2009, the Secretary of State made a deportation order in respect of the appellant and he was granted bail on 17 June 2009.
19. On 28 April 2010, the appellant applied to revoke the deportation order, which was refused on 9 May 2011.
20. On 2 October 2012, the appellant's application for an EEA residence card was refused, and on 8 September 2013 he was stopped by the police. Although he provided the police with the name which he had been using up until that time, when the police searched his property, they found that the appellant had a Nigerian passport in a different name, which is accepted to be his true identity.
21. On 21 November 2013, the appellant's further application for an EEA residence card was refused, and his appeal against that refusal was dismissed by the First-tier Tribunal on 1 May 2014.
22. On 21 July 2015, the appellant applied for indefinite leave to remain, which was refused on 28 September 2015, as was a further application with additional representations on 22 January 2020.
23. On 24 January 2020, the appellant was detained pending removal to Nigeria.
24. On 27 January 2020, the appellant made an application for asylum which was refused on 29 January 2020.
25. In support of that application the appellant had signed a written statement dated 26 January 2020, in which he stated that if he were returned to Nigeria he would be assaulted. He explained that his father had been part of a group which was fighting for independence from Nigeria, called Biafra. He stated that as a result of this both of his parents were killed in the course of an incident which he witnessed in 2001. Moreover, he had also suffered a lot of injuries during the incident, including being stabbed with a machete to his left arm and right hip. He was also stabbed between his eyes with a broken bottle and forced to drink something.
26. On 27 February 2020, the appellant made an application for judicial review, and his removal was deferred until 3 March 2020.
27. On 11 March 2020, the appellant applied for bail, which was refused on 16 March 2020, although a referral was made to the National Referral Mechanism, ("NRM").
28. The NRM referral form set out in its narrative, that the appellant had come to France with missionaries in 2003 in order for him to be able to claim asylum. However, those in whose hands the appellant was left told him not to claim asylum in France but in the UK. The appellant explained that he had travelled to the UK in June 2003 and that those who received him in the UK told him that he could not claim asylum and asked him for money to pay for the cost of his travel. He said that he did not have any money, so they

sent him to work for a construction company as a labourer. He said that he worked in the UK for about 5 years and gave the money he earned to those who were looking after him, until eventually they said that he could travel to Canada to claim asylum.

29. On 29 March 2020, the appellant was examined by Dr Jabber. The appellant told him that,

“In England the people that received him said he needed to pay for the costs that incurred and also his living costs so forced him to work on construction sites. He was beaten regularly and deprived of his rights. He recalls them picking him up and dropping him to work. He repeatedly asked them how much he owes and they did not answer him. In 2005 they made an offer to him of getting him a visa to Canada which they gave to him. Unfortunately, this was fake and he was arrested and sent to prison. From the beatings he has separate scars to those mentioned in the previous R36 and these include: 1 scar on the R side of the neck. 2 scar on the R lower limb.”

30. Dr Jabber opined that,

“The scars he describes are consistent with his account.”

Moreover,

“He complains of low mood, nightmares, flashbacks, insomnia and poor sleep. He has been prescribed antidepressants and I am concerned that this may represent undiagnosed PTSD from the traumatic events described above and from the events described in the previous R35.”

31. On 2 April 2020, the SCA, provided a negative reasonable grounds decision, which was reviewed by them and on 1 May 2020, they provided a positive reasonable grounds decision.
32. On 10 June 2020, the appellant’s then solicitors, Duncan Lewis, made further written representations to the SCA, which were subsequently supported by further documentation including, a report from the Consultant Forensic Psychologist, Dr Lisa Davies, dated 29 September 2020 which concluded that there were a number of trafficking indicators in the appellant’s account of his experiences, and that he reported symptoms which were consistent with him having been trafficked and which met the diagnostic criteria for PTSD.
33. The solicitors also provided a report from Elizabeth Flint, an expert in human trafficking and modern slavery, dated 16 December 2020, which concluded that the appellant had been trafficked and held in debt bondage to his traffickers who financially exploited him, by forcing him to work in the construction industry. He was also criminally exploited via document fraud.

34. The SCA provided their conclusive grounds decision in writing on 8 March 2022. It is apparent from the written decision that the SCA considered the various accounts which the appellant had provided to the authorities and others since his arrest in 2008.
35. It also noted that there were a number of indicators which supported the appellant's account of having been trafficked and subjected to modern slavery whilst in the UK, including,
- i. External information from the US State Department Trafficking Persons Report 2021 in relation to the UK.
 - ii. The report from Dr Lisa Davies, dated 29 September 2020.
 - iii. A report from the appellant's GP dated 3 June 2020, to the effect that the appellant was being treated for anxiety and depression.
 - iv. A report dated 8 July 2021 from an NHS psychology therapy service, which was providing weekly counselling sessions to the appellant.
 - v. The report from Elizabeth Flint, dated 16 December 2020.
36. The SCA concluded that,

“Overall, it is considered that you were transported from Sudan to Libya to France then to the UK, you were transferred from the missionaries in Sudan to a man in the UK who they knew and received you, you were recruited while in the UK on a building site and you were harboured in the house – therefore you meet part ‘a.’ Furthermore, it is considered that you were deceived, you were coerced, you were beaten and subjected to force and your vulnerability was abused as the traffickers knew you were an illegal entrant to the UK and promised you a visa, thus meeting ‘b.’ Lastly, it is considered that you were forced to work, in which you did not receive any pay, and therefore you meet part ‘c.’

The inconsistencies noted in your account have been outlined above. Looking at the evidence in the round, it is considered that your account has met the required threshold, namely ‘on the balance of probabilities’ it is more likely than not to have occurred.

DECISION

Applying the standard of proof ‘on the balance of probabilities,’ it is accepted you were a victim of modern slavery in during 2003 until 03/04/2008 for the specific purpose of forced labour.”

37. More recently, the appellant has provided two witness statements, dated 28 November 2023 and 17 April 2024, and he was cross-examined on behalf of the respondent before us at the hearing of this appeal.
38. The appellant stated that when, following his arrest, he was interviewed by the police in 2008, he did not have a solicitor present at the interview. He explained that he did not mention in the course of his interview or at court to his legal representatives that he had been forced to work in the construction industry whilst in the UK, due to threats having been made to him by those responsible in respect of whom he was in fear, due to the violence that had already been inflicted on him.
39. He stated that although he had spent time in Sudan prior to coming to the UK, he acknowledged that the account which he had initially provided of his family having experienced violence in Sudan was incorrect, rather it had occurred in Nigeria. He explained that the reason why he did not tell the truth during the early stages of his time in the UK, was because although he wished to remain in the UK, if he was to be deported, he wanted to be sent to Sudan, rather than Nigeria where he had a fear of further persecution and violence being inflicted upon him.
40. The appellant explained that in about 2012 he had met and was living with an EEA national and had therefore applied for an EEA residence card, which required him to provide evidence of his identity. It was in those circumstances that he had obtained a Nigerian passport, to which he was entitled, which was subsequently found by the police.
41. Therefore, after his application for EEA residency was refused, and he made a further application for asylum in the UK, he informed the authorities of what had really occurred both prior to coming to the UK and thereafter, namely that his family had been subjected to violence whilst in Nigeria, and that having fled to the UK via Sudan in 2001, he had been forced to work in the construction industry and subjected to violence.
42. He explained that after he arrived in the UK, he had been promised assistance with obtaining a visa to remain, but that this did not materialise. He stated that he had sought to raise the issue with those who were effectively holding him, and eventually they told him that he would have to claim asylum in Canada and provided him with the false passport.

Submissions

43. On behalf of the appellant, it is submitted that the SCA's conclusive grounds decision should be respected, and that we should accept that the appellant was a victim of modern slavery whilst in the UK in the period leading up to his arrest in 2008. Although it is acknowledged that the appellant has given inconsistent accounts of his trafficking and time in the UK, not only are these understandable given his status as a victim of trafficking and modern slavery, but the appellant has now explained much of the reasons for these inconsistent accounts.

44. It is submitted that had these matters been known to the CPS at the time, then in accordance with their own guidance, the appellant would not have been prosecuted for the offence to which he pleaded guilty, as there was a sufficient nexus between the appellant's treatment in the UK and the commission of the offence, such that it would not have been in the public interest to do so.
45. Accordingly, the appellant invites us to quash the conviction.
46. On behalf of the respondent, it is submitted that the central issue for the court is the appellant's credibility, in that if the court does decide to respect the SCA's conclusive grounds decision, then it is conceded that in the light of the CPS guidance at the time, it would have been accepted that it would not have been in the public interest to prosecute the appellant, because there was a sufficient nexus between the compulsion under which the appellant was being held and the commission of the offence.
47. However, the respondent submits that in view of the different accounts which the appellant has provided over the years since his arrest in 2008, we should not accept that he had been trafficked into the UK and, in particular, that he was a victim of modern slavery at the material time.

Discussion

48. The proper approach to the court's consideration of a submission that the prosecution of an individual who is alleged to have been a victim of trafficking and/or modern slavery is an abuse of process has been usefully summarised in *AFU* [2023] EWCA Crim 23, in particular at [112 – 113] which emphasised the relevance of the degree to which the prosecution complied with its own guidance. Albeit, this has to be read in the light of *AH* [2023] EWCA Crim 808, in which it was pointed out that a failure by the CPS to comply with its own guidance will not be decisive and that it is still necessary to review the decision by reference to rationality, as well as procedural fairness, in order to determine whether the prosecution was entitled to consider that the prosecution was in the public interest.
49. Moreover, when considering the public interest for these purposes, Gross LJ in *GS* [2018] EWCA Crim 1824, formulated the test for the court as follows, at [76],

“This question can be formulated indistinguishably in one of two ways which emerge from the authorities: was this a case where either: (1) the dominant force of compulsion, in the context of a very serious offence, was sufficient to reduce the Applicant's criminality or culpability to or below a point where it was not in the Public Interest for her to be prosecuted? or (2) the Applicant would or might well not have been prosecuted in the Public Interest? If yes, then the proper course would be to quash the conviction.”

50. However, in view of the concession made on behalf of the respondent in this case, it will not be necessary for us to consider these issues in any great detail, as it is accepted

that, in the event that we are prepared to respect the SCA's conclusive grounds decision, the appellant would have been unlikely to be prosecuted for the offence, as there would have been the necessary nexus of compulsion between the trafficking and the offending so as to render it not in the public interest to prosecute him in accordance with the CPS guidance at the time.

51. Therefore, we have concentrated our thoughts on the issue as to whether we should respect the SCA's conclusive grounds decision, and in this regard, although such decisions are not admissible at trial, they are admissible on appeal when it is considered that the individual's trafficking status has been overlooked or inadequately considered (*Breconi* [2021] EWCA Crim 731). Moreover, although it is not binding, the decision of the SCA as "*a specialist authority with particular expertise and knowledge in this area of trafficking*", will usually be respected unless there is sufficient justification for not doing so, such as the presence of "*evidence to contradict it or significant evidence that was not considered*" by the SCA, (*L(C)* [2013] EWCA Crim 991; *JXP* [2019] EWCA Crim 1280; *AAD* [2022] EWCA Crim 106).
52. We understand some of the concerns which the respondent has as regards the credibility of the appellant's evidence, in that after declining to answer questions in the course of the police interview following his arrest in 2008, he has provided inconsistent accounts both as to his origins and as to what happened to him after he entered the UK. Moreover, we accept that, after hearing from the appellant in evidence at the hearing, he could not be described as an impressive witness and at times his evidence was difficult to follow.
53. However, it appears to us that standing back from the minutiae of the accounts provided by the appellant, there is some logic to the framework of explanation which the appellant has provided as to the provision of these different accounts during his time in the UK.
54. Firstly, it is not uncommon for those, like the appellant, who enter the UK illegally, to have their journeys facilitated by individuals who proceed to exploit their relatively vulnerable situation, including by forcing them to work in circumstances which amount to modern slavery.
55. Secondly, we accept that if, as the appellant contends, he had been constrained to work in the construction industry by the use of threats, and on occasion violence, after his arrival into the UK, then either through lack of understanding as to the authorities' likely response to such a disclosure, or through the fear of retribution, the appellant may have decided not to disclose the full circumstances leading up to his arrest in 2008.
56. Thirdly, although at first sight it is perhaps curious that the appellant claimed to have originated from Sudan, rather than as the respondent accepts, Nigeria, it is certainly possible that the appellant was concerned that, if his application for asylum in the UK failed, then he should be returned to a country where he and his family had not been subjected to serious violence, including the death of some members of his family.
57. Fourthly, the very fact that the appellant was arrested whilst attempting to travel to Canada may more rationally be understood in the event, as submitted on his behalf, that those who had been controlling the appellant had decided that, bearing in mind his repeated requests for assistance with obtaining a visa to enable him to remain in the

UK, his usefulness had come to an end and that they wished to avoid him disclosing to the authorities what had happened to him since his arrival in the UK.

58. Certainly, if it were the case that the appellant wanted at all costs to remain in the UK, it would be illogical for him to have sought to attempt to board a flight to Canada.
59. We are conscious that, apart from receiving evidence in person from the appellant, the SCA had all of the material which we have considered during the course of the hearing, and, as the SCA's decision made clear, they were well aware of the inconsistencies in the accounts provided by the appellant, but nevertheless concluded that on the balance of probabilities, the appellant had been a victim of modern slavery in the UK between 2003 – 2008. Moreover, although it is difficult to describe the various reports from the experts in this case as wholly independent, in that to a significant degree their conclusions are based on the veracity of the appellant's current account, nevertheless they like the SCA have expertise in this area, and are supportive of the appellant's position that he had been trafficked and was a victim of modern slavery whilst in the UK.

Conclusion

60. Bearing all of these matters in mind, we consider that there is insufficient justification for not respecting the SCA's conclusive grounds decision that the appellant was a victim of modern slavery in the UK during 2003 – 3 April 2008, such that in view of the respondent's acceptance that had this been known at the time, the CPS would not have prosecuted the appellant for the offence to which he pleaded guilty, on the basis that in accordance with their guidance it would not have been considered to be in the public interest to do so, it is appropriate for us to allow the appeal against conviction.
61. Accordingly, we will quash the appellant's conviction and there will be no order for a re-trial.