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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

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THE CROWN COURT OF NORTHERN IRELAND

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THE QUEEN

-v-

DAMIEN McDAID

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Ruling on No Case to Answer
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McBRIDE J

Introduction

[1] The defendant, a solicitor, is charged with 8 counts of false accounting contrary to section 17 (1) (a) of the Theft Act (Northern Ireland) 1969. The particulars of each count relate to claims made by the defendant to the Northern Ireland Legal Services Agency between 25 July 2010 and 6 January 2012 for payment of fees for work carried out on behalf of legally aided clients. After the Crown closed its case the defence submitted that the evidence did not disclose a case to answer in respect of each of the 8 counts of alleged false accounting contrary to section 17 (1) (a) of the Theft Act (Northern Ireland) 1969.

Relevant legal principles

[2] The leading authority on the test a trial judge should apply in determining whether there is a case to answer is R v Galbraith (1981) 2 All ER 1060. Lord Lane CJ said at page 1042 B to D:-

“How then should the judge approach a submission of ‘no case’?”

(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

...

There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge."

[3] The defence application is based on the first limb of the test set out in Galbraith.

[4] The test of there being "no evidence that the crime alleged has been committed by the defendant", according to Blackstone's Criminal Practice, 2018 paragraph D16.56 is:

"intended to convey the same meaning as the words of Lord Parker CJ in his *Practice Direction (Submission of No Case)* (1962) 1 WLR 227, when he told Magistrates that submissions of no case to answer at summary trial should be upheld, *inter alia*, if "there has been no evidence to prove an essential element in the alleged offence."

[5] Examples of such cases include where an essential prosecution witness has failed to come up to proof, or where there is no direct evidence as to an element of the offence and the inferences which the prosecution ask the court to draw from the circumstantial evidence are inferences, which in the judge's view, no reasonable jury could properly draw.

[6] The burden is on the prosecution to prove each of the essential elements of the offence of false accounting. The prosecution must do this in respect of each of the eight counts of alleged false accounting. Thus, if there is no evidence to prove an essential element of the offence of false accounting the submission of no case to answer must succeed in respect of that alleged offence.

[7] If however there is some evidence, which taken at face value, establishes each essential element of the alleged offence of false accounting, then each such offence should normally be left to the jury.

The Alleged Offences

[8] The prosecution alleges that that the defendant is guilty of eight counts of false accounting contrary to section 17(1)(a) of the Theft Act (Northern Ireland) 1969. The particulars of the first count are that the defendant,

“... on a date unknown between 25 July 2010 and 6 January 2012,

in the County Court Division of Londonderry, dishonestly with a view to gain for himself (*sic*), or another or with intent to cause loss to another, falsified documents required for an accounting purpose namely schedules of work done attached to letters to the Northern Ireland Legal Services in respect of Legal Aid Certificate Numbers CO/09/05/01364,CO/10/08/03964, AB/10/07/03606,AB/10/08/03967, AB/10/08/03965,AB/10/07/03648and AB/10/08/03961 by making or concurring in the making of entries therein which were or may have been misleading, false or deceptive in a material particular, in that they purported to show hours actually spent engaged in representation of the said Legal Aid Certificate Numbers CO/09/05/01364, CO/10/08/03964,AB/10/07/03606, AB/10/08/03967,AB/10/08/03965, AB/10/07/03648 and AB/10/08/03961 on 26 July 2010, when they did not.”

The particulars in respect of the remaining seven counts are set out in identical terms save that each count relates to claim forms which made claims for payment for work carried out on a different date. The relevant dates being 30 July 2010, 13 August 2010, 3 September 2010, 24 September 2010, 22 August 2011, 24 October 2011 and 29 December 2011.

The essential elements of the offence of False Accounting

[9] Section 17 (1) (a) of the Theft Act (Northern Ireland) 1969 provides:-

“Where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another,-

- (a) Destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose...”

[10] The essential elements of the offence of false accounting are as follows:-

- (a) The defendant submitted documents which were made or required for an accounting purpose.
- (b) The documents were made with a view to gain for the defendant.
- (c) The defendant either made or concurred in falsifying these documents and
- (d) The defendant acted dishonestly.

[11] “Documents required for accounting purposes” includes all documents made or required for an accounting purpose.

[12] “With a view to gain” involves nothing more than an intent to gain or avoid a loss even on a temporary basis.

[13] In accordance with section 17 (2) of the Theft Act (NI) 1969 a person is to be treated as falsifying a document:-

“ ... if he makes or concurs in making in a document an entry which is or may be misleading, false or deceptive in a material particular.”

[14] A person acts dishonestly in a case of false accounting if he is dishonest in the *Ghosh* (1982) QB 1053 sense. That is a 2 part test and the jury must first be directed to decide:-

“...whether according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that is the end of the matter and the prosecution fails.”

If however the defendant’s conduct is considered dishonest by those standards, the jury must then consider the second question which is,

“...whether the defendant himself must have realised that what he was doing was [by the standards of reasonable and honest people] dishonest.”

[15] The first part of the test concerns the acceptability of the defendant’s behaviour according to the standards of reasonable honest people and not the defendant’s own standards. The second limb is focussed on the defendant’s *mens rea*. At page 1064 E-G of *Ghosh* the Court of Appeal gave further explanation of the second question when it said:

“In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the defendant himself knew that he was acting dishonestly. It is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest...”.

Submissions of Defence counsel

[16] Mr McAteer, of counsel, who appeared on behalf of the defendant, submitted that the prosecution had failed to produce any evidence that each of the crimes alleged had been committed by the defendant. In particular he submitted that although the prosecution had given the jury a bundle of all the claim forms (Rep 7 forms) which contained the breakdown of hours claimed in respect of each legal aid certificate number set out in the particulars of each count, the prosecution had failed to prove each of these documents. Secondly he submitted that the prosecution had failed to prove vital components of each charge as it had not produced evidence showing that each specific entry made in each claim form was fraudulent. By way of example the prosecution had not proved that the claim for a 1 hour consultation on 26 July 2010 was fraudulent. He submitted that it was not sufficient for the prosecution to simply prove that the defendant made a number of claims in respect of work done for different clients on a given date which in their totality exceeded either 24 hours or exceeded what would reasonably be expected to be done in one day. He submitted that it was necessary for the prosecution to specifically prove each and every entry on each claim forms which it alleged was false and to produce evidence of falsity. This was because the defendant was entitled to know the specifics of each charge.

Submissions of Prosecution counsel

[17] Mr McCollum QC on behalf of the Crown submitted that the Crown had proved all the necessary elements of the alleged offences. In particular he submitted that there was evidence by prosecution witnesses proving the claim forms and in addition the defendant had accepted in interview that he had signed and submitted all the claim forms the subject of the counts. He further submitted that there was evidence before the court establishing all the essential ingredients of the each offence of false accounting. In particular there was evidence that the claims were submitted

with a “view to gain” as they were claims for payment. Secondly the documents were false as they claimed either more than 24 hours in a given day or claimed hours which he would not reasonably be expected to have worked. He submitted the defendant had accepted this proposition during interview when he said “*it’s impossible to make that claim*”. Thirdly he submitted that the entirety of the evidence was sufficient for the jury to find there was dishonesty on the part of the defendant.

Consideration

[18] The evidence given on behalf of the Crown included the evidence of Mr Thompson, a senior fraud officer employed by the Northern Ireland Legal Services Agency, Mr Andrews the Chief Executive of the Northern Ireland Legal Services Agency and Detective Sergeant Craig, the investigating officer.

[19] Mr Thompson gave evidence that he had personally analysed the claim forms submitted by the defendant to the Legal Services Agency between 1/1/10 – 20/12/11. He had seen and was familiar with the bundle of documents contained in the bundle given to the jury and had analysed the documents in that bundle to prepare the spread sheet at “DHT10” which he then formally proved in evidence. The spreadsheet was a summary of the documents in the jury bundle and Mr Thompson explained that for the date corresponding to each separate count he had set out the relevant certificate numbers, the hours claimed on each certificate and the total hours claimed for each date. The spread sheets showed that the following hours were claimed:-

- 22.50 hours on 26/7/10,
- 26.35 hours on 30/7/10,
- 24.30 hours on 13/8/10,
- 33.35 hours on 3/9/10,
- 25.42 hours on 24/9/10,
- 23.53 hours on 22/8/11,
- 61.58 hours on 24/10/11 and
- 49.54 hours on 29/12/11.

[20] The claims submitted by the defendant also included covering letters which enclosed the claim forms (“Rep7”). In these letters the defendant stated:

“We look forward to hearing from you with full payment in the amount of £...”

[21] Detective Sergeant Craig confirmed the claim forms referred to in the spreadsheet all related to claims made by the defendant to the Legal Services Agency. She further proved the interviews with the defendant. In the course of these interviews the defendant accepted at page 445 that he signed all the individual claim forms and further stated at page 454 that the claim in respect of 26 July 2010 for a total of 7 different clients on that date with a total claim of 22.50 hours was, *"we'll accept completely that it's impossible to make that claim."*

[22] I am satisfied that the documents in the jury bundle have been proved and I am also satisfied that taken at face value the prosecution has led evidence upon which a jury may find that each essential element of each count of false accounting is established.

[23] The defence accepted, in the event that the court found the documents in the jury bundle were proved, that there was evidence to establish that the defendant submitted documents which were made or required for an accounting purpose and accepted there was evidence to establish that the documents were submitted with a view to gain. They further conceded that the issue of dishonesty was one for the jury. They disputed however that the prosecution had led evidence to demonstrate that the defendant made or concurred in falsifying the documents.

[24] I consider that there is evidence before the court, namely the documents in the jury bundle comprising the Rep7s and the spreadsheet summary, that the defendant claimed for work on the dates referred to in each count which was either in excess of 24 hours or in excess of the number of hours someone could reasonably be expected to work in a day. I am satisfied that this is evidence upon which the jury could find that the documents were falsified as it is open to the jury to find that the defendant by making claims in excess of 24 hours and claims for work amounting to 22.50 hours and 23.53 hours *"concurred in making in a document an entry which is or may be misleading, false or deceptive in a material sense"*. Further the defendant's acceptance at interview, in respect of the claim for 22.50 hours, *"It's impossible to make that claim"* is further evidence upon which the jury may find the claims made by the defendant were false, misleading or deceptive as the defendant accepted it was just not possible to work the hours claimed in a 24 hour day.

[25] I reject the defendant's argument that the prosecution must prove every individual claim made in each claim form is false. The statute only requires that the prosecution prove that the defendant falsified documents. Each Rep7 is a document and as the amounts claimed in all the Rep7s for the specific dates set out in each count either totalled more than 24 hours or more than the hours one can reasonably work in a day, I consider that this is evidence upon which the jury could find the defendant falsified documents. Given the extent of the claims made on the dates specified in each count, some of the entries made in the Rep7 forms must have been false and therefore there is evidence upon which the jury could find that the defendant made an entry in a document which *"is or may be misleading false or deceptive in a material particular."*

[26] I am further satisfied that there is sufficient evidence upon which the jury could find there was dishonesty on the part of the defendant as there is evidence that the defendant made claims for payment for work done on a given date which either exceeded 24 hours or were in excess of the hours one could reasonably work in a 24 hour period.

Conclusion

[27] I am satisfied that the evidence of the prosecution including the defendant's police interviews, when taken at face value, establishes the essential elements of each of the offences. I am therefore satisfied that the case should be left to the jury as there is sufficient evidence from which the jury, properly directed, could reasonably find that the defendant is guilty of each of the alleged offences of false accounting. For all these reasons, I dismiss the defence application of no case to answer.