Neutral Citation Number: [2014] EWCA Crim 1420

Case No: 201302954 B1, 201302955 B1 & 201302956 B1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
A REFERENCE BY THE CRIMINAL CASES REVIEW COMMISSION
His Honour Judge Paget QC
T19990958

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/07/2014

Before:

LADY JUSTICE RAFFERTY DBE
MR JUSTICE BURNETT
and
MR JUSTICE HOLROYDE

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Between:

(1) Thomas Gordon KINGSTON	**Appellants**
(2) Thomas REYNOLDS	
(3) Terence O'CONNELL	
- and -	
Regina	**Respondent**

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- -

Alun Jones QC and Andrew Hill (instructed by **Kaim Todner Ltd**) for the **Appellants**
Crispin Aylett QC (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 20th May 2014

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Approved Judgment

Lady Justice Rafferty:

1. On 4 August 2000 at the Central Criminal Court Thomas Kingston (56) and Thomas Reynolds (53) were convicted of conspiracy to supply amphetamine. Terence O'Connell (57) was convicted of doing an act tending and intended to pervert the course of justice. On the same day Kingston and Reynolds were sentenced to three and a half years imprisonment and O'Connell to two years imprisonment.

2. The case has been referred to the Court of Appeal by the Criminal Cases Review Commission ("CCRC") on the basis of fresh evidence as to Neil Putnam, the principal witness for the Crown. Their trial was said by the trial judge to begin and end with him, presented as disgraced, corrupt and dishonest. Post-trial Putnam claimed to have told the police of a corrupt relationship between Detective Sergeant Davidson and an individual near the centre of the McPherson Enquiry into the death of Stephen Lawrence and that his, Putnam's, account of that aspect was suppressed.

3. All three Appellants denied wrongdoing. They, like convicted police officers Clark, Drury**,** and Putnam, are former members of the Metropolitan Police Service South East Regional Crime squad ("SERCS").

The facts led by the Crown to prove the case against the Appellants.

4. On 7 July 1995 Kingston and O'Connell with Putnam and others raided the Clapham address of James Jones. A holdall found in the kitchen had held six packages of amphetamine.

5. Jones told the jury the drugs were delivered in a large white plastic bag, each kilogram said to be worth £3,750. Jones wrote "6 x 3750" on a piece of paper, took the white plastic bag into the kitchen and emptied it on the floor. There were six packages. His son alerted him to the police outside. Jones said he put two packages in a black holdall, leaving two on the floor and two in a blue plastic bag. He threw all the drugs into a cupboard and opened the door.

6. Officers took him into the living room where he remained during a search. Jones heard a call that drugs had been found. He was taken into the kitchen where were two officers and the empty white bag. His best recollection was of two packets in the holdall, two on the floor and two in the blue bag. Once back in the living room, he did not return to the kitchen. It was common ground that the drugs could only have been stolen after he had been shown the packages in the kitchen.

7. Putnam told the jury that after an arrest outside he went inside to find Jones in the living room. Putnam went upstairs to deal with Jones's son and heard a shout that they had "got the gear". Downstairs he tapped on the closed kitchen door. Inside were Kingston and O'Connell. Kingston put two parcels in a carrier bag and gave it to

Putnam, asking, "Will you run with the bag?" telling him to take the drugs to "T.R." (Reynolds) and Putnam did.

8. Kingston admitted to the jury that he was in the kitchen with O'Connell, the drugs in a black holdall. He claimed he had not counted the packages until back at the police station. He said that after Jones had been shown the drugs, with Kingston he stayed in the living room which gave Putnam the chance to steal them. He accepted that his statement was silent as to his move to the living room. Reynolds denied having met Putnam that day or later. O'Connell denied knowing how many packages the holdall held until he returned to the police station.

9. Putnam denied having stolen the drugs and having falsely implicated others so as to improve his standing with the police and further to reduce his sentence.

10. After allegations in 1998 by convicted drug dealer Evelyn Fleckney of SERCS corruption the Metropolitan Police Criminal Investigation Branch, CIB3, ("CIB3") searched Putnam's house under the direction of DCS Yates. Putnam knew he was considered on the fringe of corrupt activities and he was suspended. On 13th July 1998 he admitted to DCS Yates his involvement in two acts of corruption with SERCS officers including Clark and Drury. CIB3 officers removed him to a police station where he was questioned with the knowledge of his solicitor. He stayed there until October 1998 and disclosed his part in other offences further implicating Clark and Drury and, for the first time, the Appellants. He accepted that his first aim had been to implicate only Clark and Drury whom he considered more fully involved in the corruption at SERCS.

11. His second allegation, that he, Kingston, Reynolds, Clark, Drury and another had stolen cash during the search of a house of a suspected fraudster, was not proceeded with.

12. In October 1998 Putnam pleaded guilty to 16 offences committed between 1991 and 1997. As well as substantive offences he admitted perjury on six or so occasions to bolster weak cases.

13. After his evidence for the Crown in the trial of Clark and Drury he was sentenced to 3 years 11 months imprisonment. Their appeals were dismissed on 11th April 2001 but a CCRC referral in 2009 led to a re-trial on four counts, none of which depended solely on the evidence of Putnam. They were acquitted after the Crown offered no evidence due to the unwillingness of a witness to give evidence.

14. By the time Putnam gave evidence at the trial of the Appellants he had been released on licence. Their first appeal in April 2011 was joined to that of Clark and Drury. One Ground was that after the trial of the Appellants another corrupt police officer, Hanrahan, alleged that during a search 54 foreign bonds with a high face value were shown as seized. Later civil proceedings against the Metropolitan Police alleged that

there had been 92. Hanrahan claimed he had been told that Putnam had been involved in attempts to cash them. Putnam denied it.

15. The Appellants in 2011 argued that they would have asked Putnam about this: they suggested he might have admitted it, showing his capacity to behave dishonestly during a search, or denied it, potentially further undermining his credibility.

16. The Court of Appeal, whilst acknowledging the possible relevance of the material, noted that it was common ground that Putnam was disgraced, dishonest and corrupt. Even admitted theft of the bonds would have added nothing significant to his discredit and the matter would have made no difference to the verdicts.

Panorama 2006

17. On 26th July 2006 in a Panorama programme "The boys who killed Stephen Lawrence" Putnam alleged that in 1998 he told the CIB3 under the command of DCS Yates about DS Davidson a former SERCS officer confessing in 1994 to a corrupt relationship with Clifford Norris, father of the suspect David Norris, at the 1993 ineffectual Lawrence investigation. Putnam said the officers who debriefed him said that what he had to say would "blow the Met wide apart" and they withheld this tranche of the information he offered.

18. On 12th October 2011 Putnam repeated the Panorama allegations in a voir dire at the re-trial of Clark and Drury. Mark Ellison QC for the Crown called Graeme McLagan, a journalist who had interviewed Putnam in 2000 for another Panorama programme "Bent Coppers". McLagan confirmed that Putnam did not raise a link between Davidson and Clifford Norris or claim to have told CIB3 officers of it in 1998. McLagan told the court he would have pursued the topic vigorously. Mr Ellison made plain that Putnam could not be relied upon as a witness of truth in any future proceedings.

The Independent Police Complaints Commission ("IPCC")

19. The IPCC investigated Putnam's 2006 Panorama allegations. In September 2006 he repeated them. In 2007 the IPCC found no evidence to substantiate his claims. Its review of its investigation found no new evidence or information to cast doubt on its 2007 conclusions.

Mark Ellison QC's report on the Lawrence Enquiry.

20. In Mr Ellison QC's March 2014 report on issues linked to the Lawrence enquiry he wrote:

"The detail of Neil Putnam's debriefing John Davidson in 1998

The records that survive from Neil Putnam's debriefing in 1998 show that he provided potential evidence of John Davidson's corrupt activity in the South East Regional Crime Squad (SERCS). This alleged activity began shortly after John Davidson arrived at SERCS from the Stephen Lawrence murder investigation in the early summer of 1994. It included:

(i) Recycling drugs and stolen property, often seized as a result of informant information, back to the informant for them to sell for the shared benefit of the informant and officers;

(ii) A history of corrupt relationships with one or two such informants that had gone back years. This explained why he had 'hit the ground running' at SERCS in terms of acting corruptly. It also suggested that he had been involved in corrupt activity including with informants both before and immediately after he had worked on the Stephen Lawrence murder investigation; and

(iii) Involving Neil Putnam and other officers in the squad in collaborating in corrupt activity.

Whilst we do not have the original intelligence available in 1998 to CIB3, we do have the recollection of John Yates, who was in effective day-to-day command of the debriefing process of Neil Putnam. Mr Yates told us about the response that he got after asking the intelligence section of CIB3 what they knew about John Davidson in 1998:

> *"…he had been the subject of intelligence work for years as I understood it…from recollection without doubt somebody that they have been wanting to find something about for a while."*

Findings

In our view, both the intelligence picture suggesting that John Davidson was a corrupt officer and the content of Neil Putnam's debriefing relating to Mr Davidson should have been revealed to the Chairman of the Inquiry.

Anybody who was focused on the vexed issue of the motives behind John Davidson's involvement in the deficient Lawrence investigation, and who knew that the source of the "new line of enquiry" concerning Mr Davidson was a self-confessed fellow corrupt officer, should have recognised the potential for Mr Davidson to have confided in that officer as to his true motivation in the Lawrence case. It is a source of some

concern to us that nobody in the MPS who was aware of the detail of what Neil Putnam was saying about Mr Davidson appears to have thought to ask him about Mr Davidson's motives in the Lawrence case.

The absence of contemporaneous records showing exactly what level of information from Neil Putnam's debriefing regarding John Davidson was passed up the chain of command makes it difficult to identify where any personal criticism is merited….

The alleged confession by John Davidson to Neil Putnam that he had a corrupt relationship with Clifford Norris when he worked on the Stephen Lawrence murder investigation

After the Stephen Lawrence Inquiry had reported, and after he had been released from prison in 2000, Neil Putnam alleged that in the summer of 1994, John Davidson had admitted to him that he had a corrupt connection with Clifford Norris at the time that he worked on the Stephen Lawrence investigation.

Mr Putnam also alleged that he had told his debriefers about this in July 1998. They responded by saying that it "would blow the MPS wide apart" but that they would speak to senior officers about it. He had assumed someone would come and see him about it, and thought that what he had said had been noted. However, no one did come to see him.

In our report we have set out in detail the substantial arguments that we believe exist on either side as to the credibility of Mr Putnam's allegation. We have also explained the reasons why we have found them to be sufficiently balanced to leave us unable to resolve the issue with the powers we have.

Findings

We believe that there are substantial arguments on either side of the issue of whether John Davidson admitted to Neil Putnam that he was in a corrupt relationship with Clifford Norris at the time that he worked on the Stephen Lawrence murder investigation.

This is, for us, an unresolved issue….

Independent corroboration of Neil Putnam's allegation does not currently exist, so far as we are aware. However, there do remain some outstanding lines of enquiry identified in the 1999-2000 intelligence reports which could be investigated, which, were they to amount to evidence capable of providing independent support, may change that assessment…."

The CCRC

21. Putnam's post-trial allegations have persuaded the CCRC that there is a real possibility this court will not uphold the Appellants' convictions, substantial doubts being raised as to his credibility and reliability, though it acknowledged that those were in issue and the subject of substantial attack at the trial and at the appeal.

22. Nevertheless the CCRC considered it a real possibility we could be persuaded Putnam's post-trial allegations add substantially to the information previously available and are very different in nature from matters known at the trial and the appeal. Those latter are said to have gone to offences in which he had admitted involvement, his lies so as to protect himself and other officers, admitted perjury to bolster weak cases and his failure to admit involvement in theft of bonds, such failure at a time when he claimed to be telling the unvarnished truth.

23. We reminded ourselves that in 2001 another constitution of this court noted:

> "At trial Putnam admitted having originally lied about [the drugs theft at Clapham] when he first mentioned it to the police, trying to minimise what had happened. However he said that he had now told the unvarnished truth. He also admitted having given perjured evidence in other matters in the past (though nothing to do with police corruption): "noble cause" lying as he called it, on six or seven occasions…….Even if he had admitted corrupt involvement in the seizure of the bonds (which we consider most unlikely) it would have added nothing significant to his discredit"

24. By contrast, the CCRC considers his post-trial allegations go to a high profile murder enquiry and have the potential to destabilise the MPS. It considers that he has made these allegations repeatedly in great circumstantial detail over five years, in formal interviews with the IPCC and under oath in the 2011 voir dire.

25. His allegations about Davidson and Clifford Norris post-date his avowed conversion to Christianity. The CCRC, noting that, and that the Crown in the Clark and Drury 2010 appeal and 2011 retrial distanced itself from his allegations and from him, suggested that it would not necessarily be inconsistent for the Crown to concede that his evidence could not be relied upon for the future whilst maintaining that that of the past was capable of belief. That said, it concedes that the only evidence he could be expected in future to give would go to the same subject matter as that he had already given.

The Appellants' developed arguments.

26. The Appellants submit that a major issue at their 2000 trial, and at the earlier trial of Clark and Drury, was whether the evidence of Putnam, in 1998 detained in legally uncertain conditions without being charged with offences to which he confessed, most of his interviews not recorded, should have been admitted.

27. Their convictions they claim are unsafe because one of the following three statements is correct:

> "1. Putnam invented this allegation post-2000 (the Appellants do not concede that this is correct) and is a clever, calculated, detailed and persuasive liar, no longer regarded by the Crown as a truthful witness. He has lied determinedly from 2006. The Crown's view set out by Mr Ellison QC [rejecting him as a witness of truth in futuro] is fatal to the safety of these convictions.
>
> 2. Putnam made the allegation truthfully in 1998 but the police suppressed it, critical as it was to the defence at the 2000 trial;
>
> 3. Putnam made the allegation untruthfully in 1998 but the police suppressed it, critical as it was to the defence at the 2000 trial."

28. The argument is that had the Putnam allegations against Davidson been known (a) the trial judge would or might well have excluded the evidence of Putnam under s78 (1) Police and Criminal Evidence Act 1984 or as an abuse of the process of the court; (b) the jury would or might well have acquitted the Appellants or (c) the Court of Appeal in 2001 would or might well have allowed their appeals.

29. Mr Alun Jones QC for the Appellants relied on what he described as a deliberate decision by the police not to record all that Putnam and for that matter Fleckley said when debriefed. In 2001 this court concluded in the appeals of Clark and Drury and of the Appellants that Police and Criminal Evidence Act ("PACE") Codes had been breached but that the effect was not fatal.

30. Mr Jones posed the rhetorical question: What if during the Appellants' trial counsel had asked Putnam about Davidson and Putnam had said "He told me of the Lawrence corruption"? That, he argued, would have meant the end of the trial since the police would certainly have said Putnam was lying about it. There would then have been no prospect of a jury convicting.

31. Putnam has said that he divulged all the 1998 information only after DCS Yates and his team told him he could get 18 years if he failed to plead guilty and that he must

disclose all he knew. Mr Jones characterised this as the Yates bluff-calling or the Yates threats.

32. Whatever the appropriate epithet, we note that the issue was before the jury which at the Appellants' trial heard DCS Yates say he had to "cleanse" Putnam. Mr Jones argued that the jury would have been impressed to hear that Putnam, under these pressures, told officers something which, had it not been suppressed, would "blow the MPS apart". There was he suggested a deliberate and cynical decision not to record the debrief and interviews.

33. That decision is said to go to the third of Mr Jones's propositions, that Putnam was untruthful but the police suppressed what he told them. Putnam he argued was sure to have been under considerable stress and fearful of being ejected from the system he could have expected would protect him. The importance of this aspect was said to be that it may suggest other allegations including those against the Appellants were untruthful but made as a consequence of the Yates threats.

34. Mr Ellison QC was invited by the CCRC to comment on Putnam as a witness of truth. He wrote:

> "It had been recognised by the Crown at the trial of Clark and Drury and the jury had been directed, that Putnam and Fleckney were each deeply flawed witnesses whose evidence the jury could not act on unless it were corroborated from a wholly independent source. It was the Crown's case that each was independent of the other - "the sterile corridor"- and on a number of counts it was evidence from the other that was relied on as the independent corroborative source. As we prepared for the hearing of the CCRC Reference of Clark and Drury's convictions to the Court of Appeal, Putnam's position as a potential Crown witness had to be reviewed. My recollection is that at some stage I was informed he would not agree to give evidence again having become disillusioned with the way he had been treated over the years. I accordingly sought clarification of his attitude which tended to confirm that……At the hearing of the Reference it followed that where Putnam had been the independent evidence corroborating Fleckney we did not seek a retrial. The retrial ordered concerned counts where there was independent corroboration of Fleckney's evidence from other sources. In taking this approach we did not make any concession that his evidence as to the Appellants' offending at trial had been false."

35. Mr Jones submitted that since Mr Ellison QC could not determine whether Putnam or CIB3 were truthful the three propositions for which he argued are supported. He urged us to hear Putnam and decide for ourselves whether he were or remains

confused. If we concluded that he was or is, this appeal would fall away. If we found him devious and capable of detailed falsehoods then we should be obliged to conclude that the jury in 2000 would have been likely to have acquitted the appellants.

36. Were we to allow this appeal, the Crown would not seek a retrial since, we were told, Putnam has fallen out with the police. Mr Jones sounded the warning note that there is no evidence that Putnam is an unwilling witness.

37. The police have throughout maintained that they recorded and disclosed all Putnam said in 1998. Mr Jones submitted that insufficient had been disclosed to him to permit him fully to advance argument on what passed between parties. We invited him to identify what it was which he complained was not disclosed and, assuming he were correct, the consequences. He told us it is impossible to say since there are no tapes. No-one, he suggested, can have confidence in the regime of disclosure, and he reminded us that Clark and Drury were successful on that basis, substantial non-disclosure going to Fleckney's credibility.

38. The Crown's position is that at the Appellants' trial it was entitled to regard Putnam as a witness of truth. He had made self-incriminating statements, and had pleaded guilty to and been punished for a number of offences, of some of which without him the police would have been unaware.

39. The issue in the Appellants' trial was narrow. The evidence relating to what Putnam did or did not say in 1998 is confusing and unclear: he did say Davidson was corrupt and it was known at the time that Davidson had been involved in the Stephen Lawrence investigation. Nothing supports Putnam's claim that he told police in 1998 that Davidson had acted corruptly in the Lawrence investigation. Even at its highest, his allegation of a corrupt link between Davidson and Clifford Norris is unspecific and vague.

40. The jury, asked to consider this, would have seen it as a collateral matter impossible of resolution and a distraction from the narrow issue, which, it should be remembered, was whether the Crown could prove that the Appellants stole two one kilogram packets of drugs at the home of James Jones. Nothing which has arisen since the Appellants were convicted bears on their guilt. This Court cannot resolve the factual issue of whether Putnam did tell the police of a corrupt link between Davidson and Clifford Norris. Whether Putnam can now be regarded as a witness of truth would only arise were the Crown to seek to call him at any re-trial of the Appellants. Since he is no longer willing to co-operate there can be no retrial.

41. The Crown relied upon what it described as the thorough work of the IPCC which accepted that Putnam was not being truthful but argued that adding this knowledge to what the jury in any event knew of him and of the facts does not compromise the safety of these convictions.

Discussion and conclusion.

42. Mr Ellison QC told the court at the appeal prosecuted by the Appellants and during the argument advanced by Clark and Drury on abuse of process that Putnam was not to be regarded as a witness of truth. We are not persuaded that those comments can be translated into a concession that Clarke, Drury, and the Appellants are not guilty. They are no more than a distillation of the Crown's conclusion that in the circumstances it was undesirable to call Putnam. He was known to be at loggerheads with the police over, inter alia, his pension, and it is best described as a pragmatic decision expressed in abbreviated terms.

43. Attention to the unfolding events of July 1998 pays dividends. Putnam was being debriefed. The McPherson Enquiry was in train. On 16th July Davidson was recalled to it to enlarge upon earlier answers about his registering of an informant since it had become clear that there was no evidence to suggest that he had done so. Consequently, even as Putnam was disclosing what he knew, Davidson's status, his escutcheons already blemished, was in the public domain.

44. On 29th July Putnam said Davidson's account to Macpherson was correct. Consequently, at a point when Davidson's position was already under review Putnam was providing information about and plainly had his mind upon Davidson and, far from impugning him, supported his account.

45. All those to whom Putnam claimed to have explained the Davidson corruption have denied that he did so. The suggested auditors include CIB3, whose task was after all to root out corruption and whom Putnam in July 1998 thought "straight". His account to interviewing officers must have been passed upward to senior officers. If Putnam's present stance is based on truth, then his 1998 account of Davidson's corrupt activities means those senior officers must have reached a joint conclusion to remain silent as to it.

46. Arguably yet more damaging and more probative is the evidence of Graham McLagan. Putnam claimed to have told him in 2000 of Davidson's corrupt behaviour. The transcript of McLagan's interview records him asking Putnam "Why did you not tell me about it?"

47. Were one to track a course through what Putnam would if called now say and put at its side the position in 1998, the diptyches are: Putnam did tell police in 1998 that Davidson was corrupt: Davidson was corrupt. Putnam told his story when he thought Davidson's name was in the news: in July 1998 Davidson's name was in the news.

48. What Putnam had to say about what each corrupt end of the bargain, Davidson and Clifford Norris, had done for the other varied. It is unnecessary to set out the detail. Quite what Putnam asserts Davidson did for Clifford Norris has never been clear. This is the more interesting set against Putnam's remarkable memory. A review of his

evidence and of his dialogue with McLagan reveals a man who, once the "On" switch has been pressed, can begin construct and conclude an account of detail and of consistency. The Davidson/Clifford Norris link on the other hand at the very least lacks that clarity and precision and could be described as confused. If his account to date provides the foundation for any evidence he could give to this court, one might expect it would be similarly vague.

49. Additionally, since Putnam would say his evidence in 2000 at the Appellants' trial was the truth and nothing in the interim suggests he has resiled from that, revisiting the facts upon which the Crown relied pays dividends once again.

50. It was common ground that the drugs were stolen. The question was, by whom? By Putnam with another, or by Kingston with the connivance of O'Connell so that Reynolds could sell them on with Putnam playing his part for a cut, or by Putnam acting alone?

51. We wonder why, if the last, he volunteered the information to the police at all. By definition without him they would not have known of it. Kingston O'Connell and Reynolds were never going to tell them. They told the jury that had they known what Putnam was doing – stealing the drugs - they would have reported him.

52. A moment's reflection reveals that were they telling the truth Putnam took an extraordinary risk by stealing under their noses. He could not have known, were he acting alone, that the Appellants would later say they had not counted the packs. Had they said they had counted six he would have been hopelessly exposed.

53. The net effect of the evidence upon which the Crown could rely – a surveillance log, a record of seizure at the scene, the intelligence triggering the operation - tended to confirm the evidence of Putnam and of Jones that in the kitchen the drugs were on the floor in different bags. The case for the Appellants was the drugs were and remained in a black holdall.

54. We considered the likely position were a notional jury to hear Putnam cross-examined upon what he had or had not said, in 1998 or at any point, about Davidson and the extent of the latter's Macpherson enquiry misconduct. It would doubtless have been grist to the defence mill but what would be its practical impact? If Putnam claimed to have spoken of it, would the Crown have sought to rebut its own witness on a collateral issue? Would the approach of the court have mirrored that taken by another constitution of this court in 2001 when the issue of non-disclosure as to the bonds allegedly stolen by Putnam arose? In its view that matter would not have affected the safety of the conviction. We are confident that the trial of the Appellants a like approach would prevail.

55. We are also confident that the route to a conclusion upon this appeal is simple and simply expressed. Putnam was from start to finish advanced as thoroughly corrupt and

dishonest, and as admitting six offences of perjury. His Panorama stance would be seen as the seventh, and nothing more.

56. He was at the time of the Appellants' trial known to be devious, a skilled liar, out to advance his own position where he thought he could, and capable of prodigious feats of recall. The addition to that opprobrium of one allegation against Davidson, once explored, would not in the scheme of things have been of the significance necessary to cast doubt upon the safety of their convictions.

57. This appeal is dismissed.