Neutral Citation Number: [2023] EWCA Crim 1363

Case No: 202300059 B3 & 202300733 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT INNER LONDON
HIS HONOUR JUDGE PETERS KC
T20210739

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 29 November 2023

Before :

THE LADY CARR OF WALTON-ON-THE-HILL
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
MR JUSTICE GOOSE
and
MR JUSTICE FOXTON

- -

Between :

CLIMATE WISEMAN	**Appellant/ Applicant**
- and –	
REX	**Respondent**

- -
- -

Saba Naqshbandi (instructed by **BCL Solicitors LLP**) for the **Appellant on appeal against conviction**
Charles Burton (instructed by **Mordi & Co**) for the **Applicant on renewed application for leave to appeal against sentence**
Richard Heller (instructed by **London Borough of Southwark**) for the **Respondent**

Hearing date : 15 November 2023

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Approved Judgment

This judgment was handed down at 10.30am on Wednesday 29 November 2023 in Court 4, and circulated to the parties or their representatives by e-mail and by release to the National Archives.

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

Introduction

1. In 2020 the coronavirus pandemic spread around the world. On 23 March 2020 the first "stay at home" order was pronounced in England. At that time there were no products or medicines licensed to treat coronavirus. The appellant, Climate Wiseman, now 48 years old, was prosecuted for fraud following investigation by London Borough of Southwark Trading Standards ("Trading Standards") into the marketing and sale of an oil mixture which the appellant claimed could cure those infected with coronavirus or protect against such infection.

2. The appellant was convicted on 8 December 2022 following trial in the Inner London Crown Court before HHJ Peters KC ("the Judge") and a jury of fraud contrary to s. 1 of the Fraud Act 2006 (Count 1). On 6 February 2023 the Judge imposed a custodial sentence of 12 months, suspended for 24 months with a requirement of 130 hours of unpaid work. A costs order was made in the sum of £60,072.50 ("the costs order"), alongside a victim surcharge order of £149.

3. He now appeals against conviction. His appeal raises three grounds: first, that the Judge directed the jury inadequately on the essential questions of knowledge and dishonesty; secondly, that an error in defence counsel's closing speech should have led the Judge to discharge the jury; thirdly (in the alternative), that the Judge's attempt to correct the error was inadequate. He also renews his application for leave to appeal against the costs order.

The facts in summary

4. On 24 March 2020, Trading Standards received a complaint that the Kingdom Church in Camberwell ("the Kingdom Church") was selling an oil mixture said to protect against or cure coronavirus. The going price per bottle at the outset was £91 (later reduced over time). The appellant was the *de facto* head of the Kingdom Church.

5. The appellant is known by, or has previously been known by, a number of names and/or titles: Bishop Climate Wiseman, Dr Climate Wiseman, The Right Rev Dr Climate Wiseman, Prophet Climate Wiseman, Climate Irungu, Bishop Climate Irungu. Using the name Prophet Climate Wiseman, he described the oil mixture on his website (bishopclimateblog.com) as containing cedar wood, hyssop and prayer, and stated that it had "sat upon the altar for 7 days".

6. The oil was generally referred to as "plague protection oil" or "divine cleansing oil". Through its use, together with a scarlet yarn, it was said that the special ingredients "act like an invisible barrier" and that "coronavirus and any other deadly thing will pass over" the user. The appellant referenced various passages from the Bible in support of his claims. Also posted online were an instructional video and testimonials from people who claimed to have been cured of coronavirus after using the oil mixture.

7. On 31 March 2020 Trading Standards wrote to the appellant at Bishop Climate Ministries, asking him to remove all mention of "plague/coronavirus prevention" from his literature and websites and to cease making claims about curing coronavirus. Bishop Climate Ministries was a private limited company of which the appellant was the sole

director. Various correspondence followed, but it was not until the following year, 24 March 2021, that there was a change in the marketing literature. The oil mixture was now referred to as a "Spiritual divine cleansing protection kit".

The prosecution and defence case

8. The prosecution case was that promotion and sale of the oil mixture was little more than exploitative commercial opportunism disguised as an article of faith. The appellant's description of the oil mixture as a protection or cure against coronavirus was a dishonest representation intended to make financial gain. The appellant's faith was a mechanism for his own self-enrichment. His testimonials were "little more than sales pitches". Lesser alternative offences of engaging in unfair commercial practice contrary to Regulations 9 and 12 of the Consumer Protection from Unfair Trading Regulations 2008 were also before the jury (Counts 2 and 3).

9. The defence case was that the appellant had promoted and sold the oil mixture in good faith. It was aimed at people who believed in God, and when the oil mixture was combined with prayer it would work to protect against and cure coronavirus. The appellant was a Pentecostal Christian who believed in the power of prayer, holy oils and miracles. He believed in the truth of claims made by him in respect of the oil mixture, that belief being genuine, based on religious conviction and supported by testimonies. His representations were true and/or he did not know that they were or might be false.

10. The appellant gave evidence in line with the above. He stated that he was a Pentecostal Christian and a consecrated, and gazetted Bishop. He said that he was a prophet of God and that he had performed a number of miracles, including curing the blind and helping someone paralysed to walk. In relation to the oil mixture he said that he received a commandment from God. Relying on biblical scriptures, he had put together the "plague protection oil" that would cure, treat or prevent coronavirus. He said that he never claimed that the oil mixture had a scientific or medical effect; rather he said that it was all to do with faith. He stated that, if you had faith and belief, the oil mixture can help prevent or cure coronavirus; for an atheist, it was no use at all. He accepted that vaccination against the coronavirus was the scientifically approved method to protect against the virus, and confirmed that he had received his vaccine injection. He stated that people from his congregation would answer telephone calls from members of the public on a number of topics, including in relation to the oil mixture. He said he did not instruct them directly on what to say on that matter. He denied that he personally profited from the sale of the oil mixture and stated that all the money went back into church funds.

11. The defence called evidence from nine witnesses who were members of the Kingdom Church, some of whom worked in health and care services. Each gave evidence that they had taken the oil mixture and believed that it had helped to protect them against or cure them of coronavirus.

Defence closing speech

12. Towards the start of his closing speech, defence counsel stated:

> "This church, members of the jury, that's been in existence for years, you know since 2009 or thereabouts, if not earlier, been in existence for years during which not a single- on not one single occasion has Trading Standards or any other prosecuting body shown the remotest interest or concern about its functions. The only concern you know about that's ever been expressed in relation to this church during its very long life is as a result of perfectly legitimate complaints, perfectly legitimate complaints, being made about the sale of the divine cleansing oil in the height of the anxiety and fear which Covid gave rise to. Suddenly, despite the fact that that church has been selling and advertising on its websites various forms of not dissimilar oils, all of which you may think ultimately bible-based, faith-based, haven't once attracted the interest of Trading Standards".

13. The statement that there had never been any previous concern about or interest in the Kingdom Church on the part of Trading Standards was factually incorrect. As was apparent from the schedule of unused material provided to the defence in March 2022, there had been a Trading Standards investigation into the Kingdom Church and the appellant in 2016 ("the 2016 Investigation"). At that time Trading Standards had made enquires in relation to the advertisement for sale of oils to cure cancer and other serious illnesses. No prosecution was ultimately brought, after the products were withdrawn from sale.

Correcting the error

14. There was discussion between counsel and the Judge about what was accepted to be an inadvertent error by defence counsel. The Judge then commenced his summing up as follows:

> "I am going to start by correcting a couple of matters which inadvertently and in error Mr Burton, on behalf of the defendant, made during his closing speech and there are these. During his initial address to you he made an error in telling you that there had never been an investigation by trading standards into the defendant, the Church and/or in relation to oils. The fact is the Church and the defendant were investigated by Trading Standards in London Borough of Southwark in 2016 in relation to the sale of oils to cure cancer. But that investigation did not lead to any prosecution as the product was withdrawn from sale".

15. Later in his summing-up, and after further discussion with counsel, the Judge directed the jury as follows:

> "I told you before we adjourned for lunch that there was this investigation into the church and the defendant in 2016 for an oil which he withdrew from sale and which there are some omissions for this. There [was…] this investigation and it was withdrawn, the oil that was said to treat cancer was withdrawn from sale. There were no proceedings brought in relation to it. That is only put in evidence to cure the error which was made in

> relation to what he told you because there had not been such an investigation. It has no other evidential purpose in the case other than to cure the error which was made by counsel. You should not treat it otherwise".

Legal directions to the jury

16. The Judge's legal directions were given orally and partly in writing. On Count 1 his written directions included reference to the indictment, followed by s. 2 of the Fraud Act 2006 which was quoted in full. The Judge then gave the following direction:

> "To convict the defendant of Count 1 you must be sure whilst trading as Bishop Climate Ministries-
>
> 1. He acted dishonestly, (see below) in that he made false representations in person, and/ or online in instructional videos, and/ or through testimonial videos or otherwise concerning the ability of an oil mixture marketed as Devine Cleansing Oil, or part of the Devine Plague Protection Kit or similar to treat, prevent, protect or cure coronavirus/Covid-19.
>
> 2. He did so to gain for himself or another or cause loss to another or expose that other to a risk of loss.
>
> 3. He knew that the representations were or might be untrue or misleading.
>
> Dishonesty
>
> You must consider all the circumstances in which the activity occurred including what the defendant knew or believed to be the factual situation. Have that in mind when you ask yourself whether in light of the knowledge and understanding the defendant had (or may have had), you are sure that his actions were dishonest by the standards of ordinary decent people. It is by those standards that the issue of dishonesty must be decided, not the standards set by the defendant. There are no different standards of honesty or dishonesty which apply to any particular profession or group in society."

17. In his oral directions on the law, the Judge stated that Count 1 would involve "knowledge and dishonesty". Later, having handed out his written directions, he read out the particulars of the indictment on Count 1. He then read out s. 2 of the Fraud Act 2006 in full. He then read out the written questions set out above. At the end of those questions, he stated that that "crystallise[d] the three issues" for the jury on Count 1. He repeated again that the third issue was that the appellant "knew that the representations were or might be untrue or misleading". He continued:

> "That is all subject to the test of dishonesty which is then set out below."

He then read out his written direction on dishonesty.

Grounds of appeal against conviction

18. Ms Naqshbandi, who did not appear below, advances three grounds of appeal in support of the overarching contention that the appellant's conviction is unsafe.

19. First, she submits that the Judge erred in failing to direct the jury adequately, with undue emphasis on the question of dishonesty, and inadequate focus on the question of knowledge. Further, the Judge should have explained, both when considering the question of knowledge and in assessing whether the conduct was dishonest by the standards of ordinary decent people, that the jury was to have regard to the appellant's religious beliefs. Instead, he neglected a central part of the appellant's defence. Specifically, it is argued that:

    i) The Judge did not separate out the elements of the offence in his written directions, conflating the test for dishonesty with the test for requisite knowledge. This was compounded by the giving of a full direction on dishonesty as "the centrepiece" of his directions;

    ii) The Judge erroneously instructed the jury not to consider the appellant's religious beliefs at all;

    iii) The Judge focussed on consideration of whether faith was necessary for the product to work which led to a real danger that the jury failed sufficiently to address his religious beliefs for other purposes;

    iv) There should have been a short reminder of the relevant evidence against each question or issue.

20. Secondly, it is submitted that defence counsel's inadvertent error in his closing speech to the jury renders the conviction unsafe. The 2016 Investigation could have been the subject of an application to adduce bad character, but it was not. Given that a central issue in the case related to the appellant's knowledge and honesty, the strong similarity between the nature of the allegations in the trial and the 2016 Investigation, and the very late point at which the issue arose at trial (with no opportunity for the appellant to explain the events of 2016), this was highly prejudicial material given to the jury just before they were to retire to deliberate. There were no means by which this "overwhelmingly prejudicial information" could have been cured before the jury. It was necessary to discharge the jury in the circumstances.

21. Reliance is placed on *R v Docherty* [1999] 1 Cr App R 274 (at 278G-279B); *R v Lawson* [2005] EWCA Crim 84 (at [64] and [65]); *R v Tufail* [2006] EWCA Crim 2879 (at [173]). It is said that an analysis of these authorities permits of only one conclusion, namely that the jury should have been discharged. This is a case where the question of discharge was not considered at all by anyone, including the Judge. The appellant himself was not responsible for the false impression given. This was highly prejudicial information; it would undoubtedly have been considered "bad character" evidence within the meaning of s. 98 of the Criminal Justice Act 2003 and it went to the central question of dishonesty. There was a high risk that the jury would consider the information as evidence of propensity to commit the offence in question. The case against the appellant was not overwhelmingly strong. The timing was critical: the "good character" assertion came very early on in the defence closing submissions and formed

the backbone of what followed, and came at a very late stage in the trial. Given all this, no direction could have cured the significant prejudice to the defence from placing the corrective information before the jury.

22. Thirdly, and in any event, it is submitted that there was a misdirection by the Judge in relation to the 2016 Investigation when seeking to correct defence counsel's error. The Judge incorrectly referred to the information about the 2016 Investigation as "evidence", wrongly elevating the status of what was only information. Further, the jury was not directed that they could not use the information as evidence of propensity on the appellant's part to commit the offences in question.

23. Mr Heller for the respondent rejects the suggestion that the conviction is unsafe. The jury was sufficiently well-directed to understand the necessary steps to determine whether the appellant was guilty on Count 1. Amongst other things, the respondent does not accept that the jury was directed to ignore the appellant's religious beliefs. As for the second ground, whilst defence counsel should not have said what he did, it is said that no real prejudice was caused to the appellant by the correction of defence counsel's erroneous statement. Finally, the respondent does not accept the Judge made any error in directing the jury in relation to the information concerning the 2016 investigation.

Discussion and analysis

24. S. 1 of the Fraud Act 2006 provides that a person is guilty of fraud if he is in breach of, amongst others, s. 2 (fraud by false representation). S. 2 provides materially:

> "(1) A person is in breach of this section if he-
>
> (a) dishonestly makes a false representation, and
>
> (b) intends, by making the representation-
>
> (i) to make a gain for himself or another, or
>
> (ii) to cause loss to another or to expose another to a risk of loss.
>
> (2) A representation is false if-
>
> (a) it is untrue or misleading, and
>
> (b) the person making it knows that it is, or might be, untrue or misleading…"

25. The essential elements of the offence can thus be stated simply: the *actus reus* is the making of a false representation, that is to say a representation that is false or misleading; the *mens rea* is i) knowledge that the representation is or might be untrue or misleading; ii) dishonesty; iii) intention to make a personal gain or gain for another or to cause a loss to another or expose another to a risk of loss (see *R v Varley* [2019] EWCA Crim 1074 at [108]).

26. The two-stage test for dishonesty is now well-established: first, the subjective test: what was the defendant's actual state of knowledge or belief as to the facts?; secondly, the

objective test: was the defendant's conduct dishonest by the standards of ordinary decent people? There is no requirement that the defendant must appreciate that what they have done is, by those standards, dishonest. (See *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2017] UKSC 67; [2018] AC 391 at [74] and *R v Barton and another* [2020] EWCA Crim 575; [2021] QB 685 at [105] and [107].)

Ground 1

27. As set out above, the central submission is that the Judge wrongly conflated the issues for the jury to decide on knowledge and dishonesty. Further, the relevance of the appellant's religious beliefs was insufficiently identified for the jury. Whereas the question of dishonesty was addressed in some detail, the issues on knowledge were not adequately laid out for the jury.

28. We have no hesitation in rejecting this submission.

29. It is accepted that the Judge correctly identified the elements of the offence under ss. 1 and 2 of the Fraud Act 2006. Amongst other things, he read out the indictment, including the particulars which referred in terms separately to i) dishonesty and ii) knowledge of falsity (or being misleading). His written directions set out the entirety of s. 2 of the Fraud Act 2006 in terms. They then identified the three elements, following the structure of s. 2, as follows:

    i) Dishonesty in making false representations;

    ii) Motive of gain/loss to another;

    iii) Knowledge that the representations were or might be untrue or misleading.

30. Knowledge was thus clearly identified as a discrete and essential element of the offence of which the jury was directed it had to be sure. These written directions were also read out to the jury.

31. Whilst Ms Naqshbandi submitted that it would have been better to pose the questions for the jury in a different order (falsity; knowledge; dishonesty), she fairly accepted that the written route to verdict, as provided and read out to the jury, was legally accurate.

32. In these circumstances, the focus of the complaint rests on the oral "rider" inserted by the Judge after reading out the three questions, namely that "[t]hat is all subject to the test of dishonesty which is then set out below". It is suggested that this wrongly indicated that the issue of dishonesty had to be considered for each of the three elements identified by the Judge, that this was wrong and that it might have confused the jury. However, this "rider" cannot bear the weight suggested. The Judge was identifying (correctly) that the offence in question was one of *dishonestly* making false representation. Sensibly read, the word "all" did not direct the jury to consider dishonesty when answering each of the questions in the route to verdict; as the written and oral directions made clear, the jury had to consider the question of knowledge as a discrete requirement. That direction remained undisturbed.

33. Nor do we do consider that there was any material inadequacy in the Judge's directions so far as the appellant's religious beliefs were concerned. The Judge and counsel were correct to say that the trial was not a trial of religion, or of the appellant's religious

beliefs. But those beliefs were clearly relevant to the appellant's knowledge and dishonesty, as was made clear to the jury, including by the Judge.

34. It was obvious at all times that the defence was, amongst other things, that the appellant believed in the truth of the statements that he was making because of his religious beliefs. This was a central part of his evidence and of the closing speech made on his behalf. By way of example only, defence counsel in his closing speech:

    i) Referred to the fact that "some people believe in God and miracles";

    ii) Stated that the appellant's faith made it unlikely that he would have used his faith as a cynical sales pitch;

    iii) Invited the jury to have regard to the appellant's faith in deciding whether the prosecution had proved that the appellant knew that the statements were or might be untrue. The submission was that the jury should ask itself whether the appellant held "a genuine misguidedness based on a genuine religious belief";

    iv) Asked them whether the respondent had "disproved the genuine religious belief that [the appellant] told you he had, and certainly did have in respect of this cure; his genuine belief in the power of miracles, however misguided you may think it is? If they haven't, is that not a sound basis for his belief, which is what count one is all about, that what he was saying was true? Because that's what you have to consider: did he know it was untrue or did he believe it was true? He believed it was true…".

35. The Judge's summing up began shortly after the defence closing speech. He rightly reminded the jury not to leave their knowledge "of religion" behind. He accurately stated that this was not a trial about religion. He went on to say that it was not a trial that put the appellant's faith on trial. This was not a direction to the jury to ignore the appellant's religious beliefs; as the Judge then stated:

> "This is a trial about a product that was being offered to the public in 2020 as something which, you will be investigating whether faith has anything to do with it, it is a matter for you, whether with or without faith this cure prevents, treat[s] coronavirus…."

    He also later summarised the religious content of the various promotional videos, as well as the appellant's evidence of faith and belief that miracles do happen, and that the oil mixture worked.

36. It is right that the Judge did not repeat in terms the alleged link between the appellant's faith and the issue of whether he believed that his representations statements were true but so much was obvious from the overall context of his summing-up and in any event explicit from the defence closing speech which had just gone before. Equally, the complaint that the Judge failed to summarise the relevant evidence against each ingredient of the offence is a complaint of style and not substance.

37. In short, there is nothing in Ground 1.

Grounds 2 and 3

38. Grounds 2 and 3 fall naturally to be addressed together.

39. It is argued that, as a result of defence counsel's error, a fair trial was no longer possible: it was not fair to exclude the corrective evidence (which would have meant that the jury remained misled) or to adduce it (since it was too late for appellant to have a fair opportunity to address it). It is said that there was no option but to discharge the jury. Further, it is submitted that, when directing the jury, the Judge inappropriately elevated the status of the corrective information to evidence, and failed to give a (reverse) propensity direction, which is said to have been necessary.

40. Where prejudicial material has been *wrongly* admitted, the relevant principles (as identified in the authorities referred to in [21] above) can be drawn together as follows:

    i) It is not in every case where material prejudicial to the defence is wrongly admitted in evidence that the jury is to be discharged. Every case will depend on its own facts;

    ii) Relevant considerations may include:

        a) The important issues in the case;

        b) The nature and impact of the material on that issue or issues;

        c) The manner and circumstances of its admission and whether, and to what extent, the material is potentially unfairly prejudicial to a defendant. In making this assessment, the court should take into account the view that a fair-minded and informed observer would conclude as to the real possibility of prejudice;

        d) The extent and manner in which it is remediable by judicial direction or otherwise, so as to permit the trial to proceed;

    iii) Ultimately, whether or not the jury should be discharged is for the discretion of the trial judge on the particular facts. The Court of Appeal will not lightly interfere with the exercise of that discretion;

    iv) In a case where prejudicial material has been wrongly admitted, the question for the appellate court is to ask whether, given the error made and any steps taken to mitigate it, it is satisfied that the conviction is safe.

41. On the facts here, of course, the corrective information was not wrongly admitted in the sense of being introduced by oversight or without permission. On the contrary, it was admitted deliberately in order to correct the false impression created by defence counsel. The question is whether its introduction in all the circumstances renders the conviction unsafe.

42. There could be legitimate debate as to whether the corrective material was "bad character" evidence for the purpose of s. 98 of the Criminal Justice Act 2003. The material was to the effect that there had been a Trading Standards investigation into the appellant and the Kingdom Church in 2016 in relation to the sale of oils to cure cancer.

The product was withdrawn from sale, as a result of which the investigation did not lead to any prosecution. We nevertheless assume for present purposes - in the appellant's favour - that the corrective material was bad character evidence. On that basis, the prosecution would have been entitled to adduce it under s. 101(1)(f) of the Criminal Justice Act 2003 (subject to s. 78 of the Police and Criminal Evidence Act 1984). Rightly, no defence objection to its introduction was taken.

43. The task for the Judge was to decide how to deal with the unfortunate situation which had arisen. It is common ground that the trial could not proceed without the corrective information being introduced; the only alternative would have been discharge of the jury.

44. On the facts and circumstances engaged here, the Judge was fully entitled to take the view that, with appropriate introduction and direction, the trial could proceed fairly.

45. The question of prejudice had to be assessed in context. We do not accept that it was "highly prejudicial" to the defence as suggested for the appellant. Amongst other things, it did not represent a new direction of travel for the appellant, whose case was always that he was someone whose religious beliefs, including his belief in miracles, of which he had seen "many", meant that he believed that his oil mixtures could prevent or cure illness and disease. He gave evidence he had been acquiring oils since 2005. He had produced a video of a service that he had performed nine years earlier to suggest that he had enabled a paralysed woman to walk again. Nor, on even the most pessimistic approach of a fair-minded and informed observer, were there any firm conclusions to be drawn from the corrective information. The information provided was minimal and no prosecution, let alone conviction, for any previous offending was put before them.

46. The terms used by the Judge to introduce the corrective information were both measured and fair, and his direction gave the new material strictly proscribed relevance. Thus he told the jury:

    i) (Twice) that the error was inadvertent and made by defence counsel (and so not by the appellant himself);

    ii) That the only reason that they were being given the information about the 2016 Investigation was to cure the error. It had no other (evidential) purpose in the case, and was not to be treated otherwise.

47. We reject the suggestion that the Judge made any material error in relation to the status of the information. Whether the corrective material was presented to the jury as an admitted fact/evidence or "information" from the Judge was immaterial, not least since the jury was directed in terms not to use the material for any purpose beyond curing the factual error made by defence counsel. On either basis, what mattered was that the jury was given the true facts.

48. Further, the conviction cannot be said to be unsafe because of the absence of a (reverse) propensity direction. The jury was told in the clearest of terms not to use the information relating to the 2016 Investigation for any purpose beyond correcting the false impression given by defence counsel. This was sufficient in the particular circumstances of the case. To have given a specific direction on propensity would have risked raising the profile of the 2016 Investigation as an issue before the jury. It was

defence counsel himself who said, quite understandably, that the correct approach was one of "least said, the better". The parties and the Judge were best placed to assess what was necessary and fair to the appellant. Fairness to the appellant was an issue which was uppermost in the Judge's mind, as is apparent from his exchanges with counsel.

49. Our conclusion that discharge of the jury was unnecessary is reinforced by the fact that neither prosecution or defence counsel, or the Judge, considered at the time that discharge of the jury was required. It is by no means necessarily correct to conclude that no one considered jury discharge. A judge always knows that jury discharge is an option; the option could have been discounted (even if only implicitly) on the facts and in the circumstances. The collective reaction to the situation at the time – for everyone involved - was that discharge was not something that needed to be debated.

50. In short, we are not persuaded that the conviction was unsafe because of the introduction of the information relating to the 2016 Investigation, or the manner in which the Judge directed the jury on it.

51. In these circumstances, we must proceed to consider the renewed application for leave to appeal against sentence.

Renewed application for leave to appeal against sentence

52. Leave is sought to appeal against the costs order of £60,072.50. Mr Burton for the applicant submits that the order was:

    i) Made without holding a proper means enquiry. The Judge should have agreed to hear oral evidence from the applicant. Rather than looking in detail at the material produced, the Judge wrongly took a purely impressionistic approach;

    ii) Manifestly excessive in light of the applicant's financial circumstances.

53. In oral submission Mr Burton accepted that a costs order could in principle properly be made. The objection is as to the amount in question.

Procedural chronology

54. The relevant chronology is as follows. Following conviction on 8 December 2022 the Judge made an order pursuant to s.35 of the Sentencing Act 2020 requiring the applicant to produce the following material by 6 January 2023:

    i) Copies of the last six months' bank statements for any personal bank account held by him and for any company account of which he was a nominated director;

    ii) Last three years' personal income tax returns;

    iii) Addresses of all property owned.

    The next hearing was fixed for 13 January 2023.

55. The applicant served a bundle of material comprising statements for 20 bank accounts held either in his name, or in the name of various businesses. On 12 January 2023 the respondent served a response, taking issue with the financial picture painted by the

applicant, which it was said was at odds (amongst other things) with the evidence at trial, and submitted that the applicant should be treated as having the means to pay the full amount sought as prosecution costs. It pointed to various alleged non-disclosures on the part of the applicant and inconsistencies with his tax returns.

56. On 13 January 2023 the initial indication for the applicant was that he could meet a costs order. However, that position was withdrawn during the hearing. The Judge indicated that his provisional view was that the applicant was able to satisfy an order for costs; the suggestion that "every penny" received by the applicant went back into the Kingdom Church was not accepted. The Judge directed the applicant to file submission as to why he could not pay the prosecution costs by 26 January 2023, and to explain the accounts and the non-declaration of income to HMRC. The matter was adjourned to 1 February 2023.

57. On 30 January 2023 the applicant served further material, asserting that he could only pay up to £11,250 in satisfaction of a costs order. The hearing on 1 February 2023 did not proceed due to the unavailability of defence counsel, but it did proceed on 6 February 2023. By then (on 3 February 2023) the respondent had served a note in response to the further material. It was submitted that the applicant should be treated as able to pay its costs now placed at £60,050. The applicant's explanations as to his financial circumstances did not "stand up to scrutiny"; his financial affairs were complex and apparently deliberately opaque so as to avoid the payment of income tax. An analysis of the bank accounts was produced, showing large amounts of money being transferred to him, from him and between his accounts, alongside an analysis carried out by an Accredited Financial Investigator.

58. On 6 February 2023 the Judge declined to proceed to a Newton hearing for the applicant to give evidence. He pointed to the procedural timeline, including the prior adjournment. He rejected the applicant's submission that the applicant was unable to pay a sum greater then £11,250. He was satisfied that the applicant had the means to pay costs of £60,072.50 and within a reasonable time. He was ordered to do so by 28 April 2023.

Discussion and analysis

59. A defendant who wishes to avoid the making of a financial order against them on the ground that their means do not permit them to pay it must make full disclosure to the court of those means; and when the financial position of a defendant is not immediately clear, it is incumbent on the defendant to place details before the court (see for example *R v Melanie Shurn* [2015] EWCA Crim 1680 at [9]; *R v Hillard (Wayne Colin)* [2022] EWCA Crim 301 at [58]).

60. It is not arguable that there was any procedural unfairness or that the costs order was manifestly excessive.

61. As the Single Judge noted, it is clear from the adjournments granted and the Judge's sentencing remarks that the applicant was afforded ample opportunity to provide the financial information required to enable him to make a determination of his means. If he had fuller explanations to give, he had several opportunities to give them. These were not confiscation proceedings requiring precise findings as to the applicant's financial position. Rather, as the Judge reminded himself, the question for him was

whether he was satisfied that the applicant had the means to pay the costs either immediately or within a reasonable period of time. It was not incumbent on the Judge to allow the applicant to give oral evidence, let alone grant yet another adjournment for further representations from the applicant.

62. The Judge made it clear that he had considered the documentation before him. Having heard the applicant give evidence at trial (at which the appellant's financial position had been explored in evidence) and having considered that material, he was fully entitled to conclude that the applicant had the means and ability to meet the full amount in costs within a reasonable time. Amongst other things, the applicant had stated in his evidence to the jury that he had no money; the material now available showed that clearly not to be the case. His tax returns declared an annual income of £4,800, said to be based on monthly receipts of £400, yet there was no evidence in the accounts of any such receipts. Further, and by way of example only,:

    i) The applicant had accepted in cross-examination that he had extensive business interests and was, or had been, named as a director of 24 limited companies registered at Companies House. He had an online "Mega Store" through which he sold various oils, books and other items;

    ii) There was evidence of significant monies being transferred directly by congregation members to his personal bank account, and by other methods including Western Union Money Gram, PayPal, Airtel Money and Mpesa;

    iii) There were multiple non-disclosures of various business interests, and a boast by the applicant (in the course of a church service held during the trial itself) of the purchase of a Ferrari;

    iv) Very significant sums of money moved between his accounts (or accounts controlled by him).

Conclusion

63. For these reasons, the appeal against conviction is dismissed, and the renewed application for leave to appeal against sentence is refused.