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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Case No: 2024/00172/B3
[2024] EWCA Crim 312

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 25th January 2024

B e f o r e :

VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE PICKEN

MRS JUSTICE FARBEY DBE

R E X

- v -

KATHLEEN CRANE

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Miss F Page appeared on behalf of the Applicant

Mr S Baker KC appeared on behalf of the Crown

J U D G M E N T
(Approved)

Thursday 25th January 2024

LORD JUSTICE HOLROYDE:

1. In 2010 this applicant, Mrs Kathleen Crane, was prosecuted by her employers, the Post Office ("POL"), for an alleged offence of fraud by representation, contrary to section 1 of the Fraud Act 2006. It was alleged that her actions had resulted in a loss to POL of £18,721.52. She pleaded guilty to that offence, and on 30th July 2010 in the Crown Court at Lewes she was sentenced to a community order, with a requirement of 200 hours' unpaid work. A compensation order in the sum of £18,721.52 was made against her, although in fact that full amount had already been paid to POL, even before the prosecution was commenced. She was also ordered to pay the prosecution costs of £1,550.

2. Mrs Crane now applies for a long extension of time in which to apply for leave to appeal against her conviction. Her applications have been referred to the full court by the Registrar.

3. The applicant's case has been swiftly processed by the Criminal Appeal Office (the "CAO"), which is experienced in dealing with applications of this nature. The respondent has helpfully made clear that the applications and appeal are not opposed. It is, nonetheless, a matter for this court alone to consider the applications and to decide in accordance with the Criminal Appeal Act 1968 whether the conviction is unsafe. We have been able to do so at today's hearing just 14 days after the Notice of Appeal was received in the CAO.

4. We can summarise the facts briefly. Mrs Crane's husband was the sub-postmaster at the Old Town sub-Post Office in Eastbourne ("the Post Office"). POL's Horizon accounting system ("Horizon") was in use at the Post Office. Mr Crane unfortunately suffered health problems which restricted his ability to work, and for several years the applicant ran the Post Office on his behalf.

5. In January 2010, POL conducted an audit of the accounts of the Post Office. That audit showed an apparent shortfall of £18,721.52. The existence of that shortfall was treated by POL investigators as an incontrovertible fact. Mr and Mrs Crane were both suspended and were required to close the Post Office immediately.

6. Criminal proceedings followed in relation to Mrs Crane. It appears that her husband was not made the subject of a criminal investigation, but was not formally notified that no such investigation would be made against him. Mrs Crane was interviewed under caution the following month, February 2010. She accepted that she had been aware of a discrepancy in the accounts and that she had declared a false figure for the cash in hand in order to achieve the balance, which was essential if the account was to be rolled over to the next accounting period and the operation of the Post Office continued. She emphasised, however, that she was no thief. She pointed out that for 25 years before assisting her husband with the Post Office she had worked in a job which required her to handle cash daily. She said that she did not know how the alleged shortfall had arisen, but that she had been aware for many months that there was something wrong somewhere.

7. The prosecution was commenced in March 2010. The applicant was charged with one offence of fraud by false representation between 28th September and 19th January 2010. She initially pleaded not guilty, but entered her guilty plea on her first appearance in the Crown Court, having previously indicated her intention to do so. She was sentenced on the same day.

8. No leap of the imagination is needed to understand the anxiety and fear which Mrs Crane, her husband (since sadly deceased) and their two daughters must have experienced in the period between the arrival of the auditors and the day of her guilty plea in the Crown Court. Although the sentence imposed upon her did not involve loss of liberty, it involved her performing 200

hours of unpaid work in the local community which she and her husband had served at the Post Office. As has been well said in the submissions on her behalf today, that brought with it its own humiliations.

9. As is well known, this court has heard a series of cases in which former sub-postmasters, sub-postmistresses and other Post Office employees (collectively referred to for convenience as "SPMs") have challenged their criminal convictions on the basis of the unreliability of data produced by Horizon. The series began with *R v Josephine Hamilton and Others* [2021] EWCA Crim 577. Subsequent cases in the series included *R v Margaret White and Others* [2022] EWCA Crim 435. The judgments in all of those cases are publicly available. It is sufficient for present purposes for us to summarise their effect very briefly.

10. In each of those earlier cases this court has had to consider whether the prosecution of the applicant or appellant concerned was an abuse of the process, and whether the conviction is unsafe. The principles on which the court has acted and the reasons why a guilty plea did not necessarily bar an appeal against conviction were explained in *Hamilton*. The court there used the shorthand term "Horizon case" to identify a case in which the reliability of Horizon data was essential to the prosecution and there was no independent evidence of an actual loss from the account of the post office concerned, as opposed to a Horizon-generated shortage.

11. The court referred to and adopted findings made by Fraser J (as he then was) in civil proceedings brought in the High Court by SPMs against POL. Those findings established two key features which were in existence throughout the period of many years with which the High Court was concerned: first, that there had been serious problems with Horizon which gave rise to a material risk that an apparent shortfall in the accounts of a branch Post Office did not in fact reflect missing cash or stock, but was caused by one of the known bugs, errors or defects in Horizon; secondly, that POL, despite knowing of the serious problems, had failed to consider

or to make appropriate disclosure of those problems to the employees who were being prosecuted. POL had, on the contrary, asserted that Horizon was robust and reliable, and had effectively steamrolled over any SPM who sought to challenge its accuracy.

12. In the same year as the prosecution of this applicant, POL produced a report asserting the robust reliability of Horizon and, amongst other things, prosecuted a trial against Mrs Misra which, as has been submitted to us, appears to have been intended to discourage others.

13. This court found, in the series of cases to which we have referred, that in cases where Horizon data was essential to the prosecution, there was no basis for the criminal proceedings if the Horizon data was not reliable. POL's failures of investigation and disclosure prevented the accused SPMs from challenging – or at any rate from challenging effectively – the reliability of the data. In short, the court observed, POL as prosecutor brought serious criminal charges against the SPMs on the basis of Horizon data, and by failing to discharge its duties of disclosure it prevented them from having a fair trial on the issue of whether that data was reliable. This court further found that by representing Horizon as reliable and refusing to countenance any suggestion to the contrary, POL effectively sought to reverse the burden of proof. It treated what was no more than a shortfall shown by an unreliable accounting system as an incontrovertible loss, and proceeded as if it were for the accused to prove that no such loss had occurred.

14. Denied any disclosure of material capable of undermining the prosecution case, defendants were inevitably unable to discharge that improper burden. As each prosecution proceeded to its successful conclusion, the asserted reliability of Horizon was, on the face of it, reinforced. Defendants were prosecuted, convicted and sentenced on the basis that the Horizon data must be correct, and cash must therefore be missing, when in fact there could be no confidence as to that foundation.

15. The court concluded that in Horizon cases the prosecutions were an abuse of the process of the court, both because it was not possible for the trial process to be fair and because it was an affront to the conscience of the court for the defendant concerned to face prosecution.

16. Returning to this applicant's case, we have been assisted by the written and oral submissions of Miss Page for the applicant and Mr Baker KC for the respondent. We are grateful to them and to all the legal representatives on both sides. We are particularly grateful for the admirably focused oral submissions which we have heard this morning.

17. On behalf of the applicant, Miss Page assists us with her carefully worded summary of the misery heaped on Mrs Crane and her family. She points out the fear which has prevented Mrs Crane from involving herself in any form of challenge to her conviction until very recently. Miss Page draw attention, as an example of the continuing consequences of a conviction such as this, to the fact that Mrs Crane, now employed in a care home, has had to disclose her conviction annually as part of normal vetting processes, no doubt feeling further anxiety each time as to whether in some way that conviction would come back to impede her present employment.

18. On behalf of the respondent, Mr Baker KC again confirms that the appeal is not opposed. He draws to our attention that this appeal is the first appeal to come before the court as a result of a new proactive process undertaken by the present legal representatives of POL. The respondent's review of conviction cases identified this applicant's position as a possible Horizon case. That was a proactive review commissioned by POL's present solicitors, involving a team of independent counsel reviewing the files in cases of SPMs convicted during the relevant period who had not thus far brought any appeal against conviction. Where that review indicated on the face of it that it was a Horizon case, POL has been proactive in writing

to the former SPM concerned, drawing attention to the findings of the review and, where appropriate, indicating that if an appeal were to be brought, it would not be opposed. Obviously, there will be cases where the initial review cannot immediately enable a conclusion to be drawn as to whether that stance should be adopted by POL. But as Mr Baker rightly reminds us, in such cases the former SPM concerned can of course still pursue an application for leave to appeal against conviction, which can then be considered in detail on its merits. But this case is a first example of what Mr Baker understandably suggests may be many cases in which POL has taken the initiative in identifying a Horizon case and informing the SPM concerned that the appeal would not be opposed. It is that process which has enabled the matter to come before the court so quickly, for the court to deal with this as quickly as it has done, and for the court to feel confident that it will be able to process very expeditiously any further appeals which may arise from this process.

19. In Mrs Crane's case, the letter informing her of the findings of the initial review and the fact that an appeal would not be opposed was sent in the summer of 2023. Thereafter, the applicant and her representatives proceeded efficiently to prepare and commence the appeal.

20. It is accepted by the respondent that this is a Horizon case, as we have defined that shorthand term. Although Mrs Crane admitted making false declarations, her account in interview was that she had concerns that something was wrong with the shortfall shown by Horizon and that she had only falsified the accounts in order to roll over into the next accounting period. She made it clear in interview that she had been experiencing shortfalls for which she could find no explanation since at least 2008, and she explicitly asked the investigators to look into the reliability of Horizon's indications of those shortfalls. There is nothing to indicate that any such investigation of Horizon's reliability in this case was carried out. The alleged shortfall was based solely on Horizon data, and there was no independent of Horizon to show that there was a genuine loss.

21. In those circumstances the respondent accepts that POL was under a duty of investigation and disclosure in relation to the reliability of Horizon, but had not discharged that duty. Mrs Crane's appeal is therefore not opposed.

22. Having considered the evidence and the material before us, we are satisfied that the respondent's concessions are rightly and properly made. This is indeed a Horizon case, in which the reliability of Horizon data was essential to the prosecution and there was no independent evidence of the alleged or any actual loss.

23. The applicant in interview explained why she had acted as she did and asked for the reliability of Horizon to be investigated. She and her husband paid the full sum said to be missing. She was, nonetheless, prosecuted. No relevant investigation was carried out and no disclosure was made of the known concerns about Horizon. She pleaded guilty because she and those representing her had been kept in ignorance of material evidence which went directly to the issue of her alleged guilt.

24. We have no doubt that her prosecution was an abuse of the process on both of the grounds we have mentioned. Nor do we have any doubt that, notwithstanding her guilty plea, her conviction is unsafe

25. We therefore grant Mrs Crane the extension of time which she seeks. We grant leave to appeal. We allow her appeal and we quash her conviction.

26. **MISS PAGE:** My Lord, may I apply for a defendant's costs order?

27. **LORD JUSTICE HOLROYDE:** The usual course is for you to submit a note of the

expenses which can properly be claimed which, as you will know (but not everyone will know), I am afraid is only very limited. But what can properly be claimed, if you provide the Registrar with a note, it will be attended to.

28. **MISS PAGE:** I am very grateful.

29. **LORD JUSTICE HOLROYDE:** And in the highly unlikely event that any problem arises, written submissions can be made to the court.

30. **MISS PAGE:** I am very grateful.

31. **LORD JUSTICE HOLROYDE:** We do not anticipate for a moment that that will be necessary.

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

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