



Neutral Citation Number: [2012] EWCA Crim 1186

Case No: 2011/05781D5 AND 2012/00886D5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SOUTHWARK (Majeed)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT (Westfield)
MR JUSTICE COOKE (Majeed); HH JUDGE MORRIS QC (Westfield)
T220117139 (Majeed) T20110052 (Westfield)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/05/2012

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
MR JUSTICE OPENSHAW
and
MR JUSTICE IRWIN

Between :

Majeed	<u>Appellant</u>
- v -	
R	<u>Respondent</u>
Westfield	<u>Appellant</u>
- v -	
R	<u>Respondent</u>

M G Milliken-Smith QC for the **Appellants**
A Jafferjee QC and S Whitehouse (instructed by **The Crown**) for the **Respondent Majeed**
N M Peters QC and D Durose (instructed by **The Crown**) for the **Respondent Westfield**

Hearing date: 24th May 2012

Approved Judgment

The Lord Chief Justice of England and Wales:

1. These otherwise unconnected appeals against conviction arise in the same notorious context, “spot fixing” in cricket matches. For cricket betting is not new: it has, however, become multi-faceted. Nowadays it is possible to place bets not only on the final outcome of a match, but on particular passages of play, such as how many runs will be scored or wickets taken in an over, or indeed on individual events during the course of an over or passage of play. Cricket is widely televised, not only in the country where the match is being played, but throughout the cricket playing world, and indeed further afield. The prizes for successful gambling can be very great, and the scope for corruption is therefore considerable. For the health, indeed the survival of the game as a truly competitive sport, it must be eradicated.
2. Following rulings by the trial judges on issues of law relating to the ambit of the offences alleged against them, both appellants pleaded guilty, in the case of Majeed in the Crown Court at Southwark on 16th September 2011 before Cooke J, and Westfield at the Central Criminal Court in February 2011 before Saunders J, The appellants contend that these rulings were wrong. If they were wrong the appeals against conviction must be allowed and a retrial would be ordered.
3. Majeed was charged on two counts. Count 1 alleged conspiracy to give corrupt payments, contrary to s.1(1) of the Criminal Law Act 1977. The particulars alleged that between 15th and 29th August 2010 Majeed conspired with Salman Butt, Mohammed Asif and Mohammed Amir, employees of the Pakistan Cricket Board and persons unknown, corruptly to give Butt, Asif and Amir money as an inducement or reward for doing acts in relation to the affairs of their employer, the Pakistan Cricket Board, namely to identify in advance occasions during the Test Match series between Pakistan and England, when they would play in a specific, previously agreed, manner. The charge, in effect, invoked s.1(1) of the Prevention of Corruption Act 1906. Count 2 alleged conspiracy to cheat, contrary to s.1(1) of the 1977 Act, when the same four conspirators, with other persons unknown, between the same date conspired to do an act or acts to enable another or other persons to cheat at gambling by identifying in advance occasions during the Test Match series between Pakistan and England when they would play in a specific manner. It was agreed on all sides that count 2 involved a conspiracy to cheat at gambling contrary to s.42 of the Gambling Act 2005.
4. Butt and Asif were convicted and Amir pleaded guilty to conspiracy corruptly to accepting financial inducements or rewards for these activities. The sums were considerable. They have not appealed against conviction.
5. Mervyn Westfield was also charged on two counts. Count 1 alleged that he accepted or obtained corrupt payments contrary to s.1(1) of the Prevention of Corruption Act 1906 when, as an employee of Essex Cricket Club, between 1st January and 16th October 2009 he corruptly accepted or obtained or agreed to accept or obtain money, for agreeing, whilst playing for Essex Cricket Club in a Nat. West Pro 40 cricket match to bowl in a manner calculated and intended to allow the scoring of runs. In count 2 it was alleged that he assisted another to cheat at gambling, contrary to s.42 of the Gambling Act 2005, when, between 4th and 9th September 2009, he bowled in a manner calculated and intended to allow the scoring of runs for the purpose of assisting another person to cheat at gambling. He pleaded guilty to count 1, and the prosecution did not proceed with count 2.

6. Section 1 of the Prevention of Corruption Act 1906 (the 1906 Act) provides:

“If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having ... done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business or ... he shall be guilty ... ”

7. By section 1(2) the expression “agent” includes any person employed by or acting for another; and the expression “principal” includes an employer.

8. Section 42 of the Gambling Act 2005 (the 2005 Act) provides:

“(1) a person commits an offence if he

(a) cheats at gambling, or

(b) does anything for the purpose of enabling or assisting another person to cheat at gambling”.

9. The facts of both cases are notorious, and we need provide only a very brief summary of them.

Majeed

10. Majeed is a resident of the United Kingdom, the agent for a number of players representing Pakistan, who arrived in England in the summer of 2010 as part of the Pakistan Cricket Board’s tour of England. Salman Butt was the captain of the team. Mohammed Asif and Mohammed Amir were fast bowlers. Each of them had signed a contract with the Pakistan Cricket Board to provide full time services to their country as professional cricketers. Their respective employments were governed by these contracts.

11. The central contract signed by each of the three cricketers included the following terms:

“Whereas

1. The Board is vested with the exclusive authority to control, regulate and manage the game of cricket and related affairs in Pakistan;
2. the Cricketer is a professional cricketer who has offered his services to the Board;
3. ...

2.2.5 The Cricketer acknowledges that he is an ambassador of Pakistan therefore his behaviour both in and off the field shall be exemplary and he shall refrain from acting in the manner which may damage the reputation of the Team or Pakistan or the Board. When on tour, the Cricketer shall immediately report to the Manager any incident involving him or any incident of which he becomes aware or has witnessed involving a team member or any other person accompanying the team or otherwise that may cause harm or have a detrimental impact to the reputation of the team, or Pakistan or the Board or cricket in general or is violative whether of Pakistan or of the country of Tour or transition. In case any such incident happens when the cricketer is not on Tour, the same shall be informed to the Director Cricket operations.

2.2.8 The Cricketer shall at all times behave in a manner which promotes harmony within the Team ...

2.2.16 The Cricketer shall at all times play the game with the true spirit and in accordance with the rules and regulations of the game of cricket. In case, the Cricketer is appointed as captain of the Team he shall be responsible at all times for ensuring that the Team adheres to such rules and regulations.

7.1 The Cricketer acknowledges that the ICC Code of Conduct rules regarding betting, match fixing and corruption, are designed to protect the integrity of the game. The Cricketer undertakes that he shall always fully comply with the said Code of Conduct and other amendments or rules formulated in this regard from time to time.

7.2 The Cricketer shall be under obligation to report immediately to the Manager, the Captain and to an authorized representative of the Board about any person approaching him or to any other Team member of which he becomes aware, offering the fixing of a Match or result or a Match or any performance in a Match.”

12. Where paragraph 7.1 of the contract recited the obligation of the cricketer to adhere to the ICC Code of Conduct Article 2.1.2 proscribes:

“Seeking, accepting, offering or agreeing to accept any bribe or other reward to fix or to contrive in any way or otherwise to influence improperly the result, progress, conduct or any other aspect of any International Match or ICC event”.

13. When offered their contracts the cricketers were also required to sign and return a copy of the Code of Conduct Policy along with the contract. Each of them did. Four particular features of the Code of Conduct were:

“Para. 3:

Any act or conduct of a Player which brings Pakistan's and PCB's image into disrepute shall make the player liable to disciplinary action.

Para. 13:

The Player acknowledges that the ICC Code of Conduct contains rules regarding betting, match fixing and corruption, designed to protect the integrity of the game. The said rules are in the knowledge of the Player and fully explained to him. The Player undertakes that he shall always fully comply with the said Code of Conduct and other amendments or rules formulated in this regard from time to time.

Para. 15:

The Players must meet the requirements of their work at all times with due care, vigilance, enthusiasm, diligence and honesty. The Board requires them to meet the highest ethical standards to establish and maintain our reputation.

Para. 18:

The Players must abide by any rules and regulations, guidelines and instructions PCB may issue from time to time and ensure that they meet the Board's standards of performance and conduct."

14. It is self evident that each of the three Pakistan cricketers was prohibited not merely by reason of some unspecific concept of what is or is not, or what was and was not cricket, but as a matter of contractual obligation as employees of the Pakistan Cricket Board, from accepting any form of bribe to influence or seek to influence not only the result of any Test Match, but the progress or conduct of any aspect of the match.
15. During the course of the tour, an undercover investigative journalist with the News of the World, calling himself Mazher Mamood met with Majeed on a number of occasions during August 2010 as part of a "sting" operation. It was agreed that the appellant would arrange with Butt, Amir and Asif for the bowlers to bowl "no balls" at specified times during the course of a test match between England and Pakistan which was played at Lords Cricket Ground between 26th and 29th August 2010 in return for payment. In short, specific pre-arranged events occurred during the match, not in the course of honest endeavour on behalf of Pakistan, but as part of a deliberate "fix", a word which we use colloquially to connote corruption and dishonesty. These activities constituted unequivocal breaches of their contracts of employment.

Westfield

16. Unlike Majeed, Westfield was himself a cricketer, contracted to Essex County Cricket Club for which he had played, primarily as a bowler, for four years. His contract of

employment was in standard form for a professional county player. By it he undertook to abide by all the “Rules, Regulations, Directives and Resolutions of the ECB, the Laws of Cricket and any CC regulations in force ...”. By paragraph 5(a) he agreed:

“(i) play in all cricket matches in which he is selected or directed to play for any side representative of the Employer to the best of his ability and obey the lawful and reasonable directions of the captain of the side”;

and by paragraph 6:

“to (a) use his best endeavours to maintain his form so as to be available for regular selection for matches and to perform his duties to the best of his ability under the Agreement”.

17. The spot fixing in his case arose on 5th September 2009, when he was offered and accepted £6,000 in return for agreeing deliberately to concede more than 12 runs off the first over he bowled in the match Nat. West Pro 40 match Essex would play at Durham. Again this conduct represented a clear breach of his contract of employment.

Count 1 – The 1906 Act – Majeed and Westfield

18. The contention for the appellants is that the Crown’s case on count 1 was defective in law because an essential element of the offence based on the 1906 Act could not be proved. The actions of the cricketers on the field were not “aimed at” the Pakistan Cricket Board or the Essex County Cricket Club (which for convenience we shall describe as “the Boards”.) The offence could not be complete without some action or inaction (intended or actual) by the Boards, consequent on an agreement by their employees to accept the bribes. The Boards did nothing, and nothing was expected of them. The bribes were not intended to and did not influence them in any way. In support of this submission Mr Milliken-Smith focussed our attention on the decision of the Privy Council in *Commissioner of the Independent Commission against Corruption v Ch’ng Poh* [1997] 1 WLR 1175. He suggested that like the dishonest solicitor, “A”, in *Ch’ng Poh*, the way in which Butt, Amir and Asif performed during the Test Match, and Whitfield performed in the County Match, was personal to them. Like the firm in which “A” was a partner, the Boards did not and were not expected to do anything at all by way of response or as a reaction to the giving and the acceptance of the bribes.
19. We must therefore examine *Ch’ng Poh*. He was a dishonest criminal. He wished to appeal against conviction. His solicitor, “A”, was a partner in a firm of solicitors. To improve the prospects of a successful appeal by Ch’ng Poh, bribes were offered through “A” by Ch’ng Poh to two individuals. A warrant based on an alleged breach of s.9 of the Prevention of Bribery Ordinance in Hong Kong (effectively in identical terms to the 1906 Act) authorised officers of the I-C-A-C to search the premises of the firm where “A” was a partner. This warrant was based on the assertion that “A” had offered bribes to others on behalf of Ch’ng Poh, not that he had received a hidden or any other benefit from Ch’ng Poh which might have any effect on the services rendered to Ch’ng Poh by the firm. He was, in the language of the Court of Appeal of

Hong Kong, doing “his client’s dirty work” by engaging in a conspiracy to pervert the course of justice by offering bribes designed to improve his client’s prospects. The decision to grant the warrant was quashed by the High Court Judge and his decision was upheld in the Court of Appeal in Hong Kong. It was further upheld in the Privy Council. This was because the bribes offered by “A” were not offered in relation to the affairs of his firm, but exclusively to the affairs of his client. Therefore the warrant, in effect taking effect against the firm, was not supportable.

20. The judgment of the Privy Council in *Ch’ng Poh* was given by Lord Lloyd of Berwick. Explaining the decision he said:

“... for the section to apply, the person offering the bribe must have intended the act or forbearance of the agent to influence or affect the principal’s affairs. Accordingly section 9 would apply if Ch’ng Poh had bribed Mr. A. to secure him a benefit at X Co’s expense, for example, to arrange a reduction in X Co’s ordinary professional fees; or if X Co were induced to act in a way in which they would not otherwise have acted. Thus it is an essential ingredient of the offence under section 9 that the action or forbearance of the agent should be aimed at the principal. If it is sufficient for the purposes of the person offering the bribe that the agent should act on his own without involving his principal then, what ever other offence may have been committed, it was not a corrupt transaction *with* an agent ...”.

21. This is the passage in the judgment from which Mr Milliken-Smith derived his “aimed at” argument. The problem for him is that it was addressing the stark reality that “A’s” firm was remote from the bribes paid by Ch’ng Poh, and wholly unaffected by them. They were not paid to “A” for any purposes associated, directly or indirectly, with the business or affairs of his firm. In fact they were not paid to “A” at all. He simply organised their onward transmission to the intended recipients. It is however clear from the judgment that the transaction would have fallen within the ambit of the legislation if the bribes had been accepted by “A” with the intention or for the purpose of influencing or affecting the affairs of the firm. This is why Lord Lloyd went on to acknowledge that if the bribe had been offered to “A” by Ch’ng Poh in a way which would have led the firm to file an affidavit which both “A” and Ch’ng Poh knew to be false, the warrant, as issued, might have been appropriate. This would have been because, although Lord Lloyd did not need to spell it out, the bribe would then have involved the firm, albeit wholly innocently on the part of the firm, in the corrupt activity.
22. We cannot find anything in the judgment in *Ch’ng Poh* which lends support to Mr Milliken-Smith’s argument, and if it did, the submission would be wholly inconsistent with the clear statutory language.
23. Returning to these appeals, plainly the way in which Butt, Amir and Asif, and Westfield performed was personal to them and clean contrary to and far removed from the wishes of the Boards which employed them. Nevertheless, looking at the realities of the situation there could on the evidence have been nothing closer to the heart of the affairs or business of a cricket Board than the performance the players

selected by them to represent their and his country, or their and his county. In relation to the Pakistan Cricket Board, that is why, among other provisions of the central contract signed by each cricketer, he was obliged to refrain from doing anything which might damage the reputation of the team for which he was playing, or the country he represented, or the Board which employed him. He was obliged immediately to report to the manager of the team any incident which might damage the reputation of the team, or the country or the Board, and agreed that to seek or accept any bribe or other reward to fix or contrive to influence the result, progress and conduct of an international match was prohibited. There could not be any clearer indication of the simple proposition that the Pakistan Cricket Board regarded the conduct of the players on the field as integral to its affairs and business, and indeed that their play was integral to them. Precisely the same considerations apply to Westfield and Essex County Cricket Club. That was the entire point of the agreement that he should play on behalf of the county to the best of his ability.

24. In this case the Boards were not involved in the activities of their players. Indeed they were unaware of them. If they had been aware of them, they would have done their best to prevent them. That is because the activities were immensely damaging to their affairs. In short, the Boards were victims of these corrupt activities. There could, in the language of the section be no clearer indication that the actions of the conspirators in count 1, including Majeed, and Westfield on his own in count 1 of the indictment affecting him, arose in relation to the respective Boards' affairs or business.
25. Mr Milliken-Smith advanced subsidiary arguments arising from the language of the Law Reform Commission paper: Reforming Bribery, which suggested that the legislation with which we are concerned was "riddled with uncertainty and in need of rationalisation", and the recommendations, subsequently incorporated into the Bribery Act 2010, which came into force after the activities described in this judgment. They do not assist him. The actions of these cricketers fell fairly and squarely within the ambit of the 1906 Act, and the conspiracy count involving Majeed, and the count against Westfield were clearly established.

Count 2 – The 2005 Act – Majeed only

26. Mr Milliken-Smith's submission on this count can be simply explained. Gambling in England and Wales is now regulated by the Gambling Act 2005 which identifies offences which may be committed if its provisions are contravened. It is an offence to cheat at gambling. The offence is defined in s.42. It was agreed at trial and accepted for the purposes of these appeals that any gambling which might occur or might have occurred as a result of the spot fixing which occurred in these cases would have taken or took place abroad, outside the jurisdiction. The offence contrary to s.42 is directed to cheating at gambling which would otherwise be lawful and occurred within the jurisdiction. The gambling which took place here was unlawful and took place abroad. Accordingly there was no jurisdiction to try the appellants for this offence.
27. This is a remarkable submission. The offence contrary to s.42 is committed at the moment when "anything" is done "for the purpose of enabling or assisting" anyone else to cheat at gambling. It has nothing to do with the proper regulation of gambling: it simply creates an offence of cheating. In these cases the offence was complete before any bet was placed. The "fix" was organised in England, the matches which

were the target of the “fixing” took place here, and the rewards for participating were also paid here. In short the criminal conduct prohibited by s.42 occurred within the jurisdiction.

28. Interesting questions of territoriality might arise if it were ever to be the case that an individual or individuals who were living abroad and placed their bets abroad on the basis of the cheating which was organised and took place here were ever to be prosecuted in this jurisdiction. We need not address them. We are not dealing with the criminals abroad who took advantage of the cheating organised in this jurisdiction. We are dealing with the criminals who participated in it here. The respective offences of conspiracy against Majeed and cheating against Westfield were properly prosecuted.

Conclusion

29. The rulings by Cooke J and Saunders J were right and these appeals against convictions are dismissed.