

Neutral Citation Number: [2004] EWCA Crim 1329
IN THE COURT OF APPEAL
CRIMINAL DIVISION

No: 200305600/B1

Royal Courts of Justice
Strand
London, WC2

Tuesday, 11th May 2004

B E F O R E:

LORD JUSTICE BUXTON

MRS JUSTICE RAFFERTY

MR JUSTICE RODERICK EVANS

R E G I N A

-v-

LISA MARGARET BRENNAN

Computer Aided Transcript of the Stenograph Notes of
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(Official Shorthand Writers to the Court)

MR A SIMMS appeared on behalf of the APPELLANT
MISS Z WILLIAMS appeared on behalf of the CROWN

J U D G M E N T
(As approved by the Court)

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1. LORD JUSTICE BUXTON: Mrs Lisa Margaret Brennan was convicted at the Crown Court in Liverpool in September 2003 on 27 counts of theft. There was on the indictment a total of 32 counts, in respect of five of which she was acquitted. The short circumstances of the case (which, if we may say so, was conducted with very commendable clarity and economy by all concerned) were that the appellant worked as a counter clerk in the post office. She was an employee who was very well regarded and there was no question of her having been incompetent, much less dishonest, at any previous stage of her work. Her duties included the paying out of sums of cash against vouchers for allowances such as pensions, child benefit and matters of that sort.
2. Various discrepancies arose at the Huyton branch where she worked. Those discrepancies took the form of amounts being paid out, or at least being absent from the account, greater than the amounts shown on the vouchers against which the payment had allegedly been made. A significant number of discrepancies were identified by investigators, amounting to a total just short of £3,500. After further investigation Mrs Brennan was dismissed and the matter was referred to the police.
3. When she was interviewed about the missing money, she said that such discrepancies as existed, about which in themselves there was no dispute, had been genuine errors and that she had not stolen the money. The issue for the jury, therefore, was indeed whether this was a case of mistake, or whether it was a case of deliberate miswriting of the records.
4. Of the 32 counts on the indictment a significant number included more than one of the incidents of discrepancy. The way the matter was charged was that each count alleged theft in a particular sum, but the sum was in some cases attributable to a single incorrect voucher, in others to a number of incorrect vouchers. That point is of some importance when we come to the issue in the case.
5. As we have said, Mrs Brennan was acquitted in respect of five of the counts, but convicted in respect of 27. Those verdicts were returned after, first, the judge had directed the jury that they must consider each count separately; and, secondly, after they had sent him a note in the following terms:

"Do we have to give a verdict for each separate count, or just verdict for all 32 counts?"

The judge answered that they had indeed to return a separate verdict on each count.

6. Mr Simms, who conducted the case on behalf of Mrs Brennan at the trial, says, and we accept, that the overall burden of the trial was whether Mrs Brennan was honest or dishonest and, despite those directions, that was a general issue that the jury had to consider. We do not doubt that that was indeed the background and essence of the case, but the fact remained that the jury had to consider each count separately.
7. It is now argued that because they acquitted on five counts, but convicted on a further 27 counts, they must have misunderstood their role, or acted in some irrational fashion, because there was no significant difference between the five counts upon which the acquittals were achieved and the 27 counts upon which the convictions were achieved. That latter is the essential issue in any discrepancy appeal, because to quote the formulation used as long ago as the case of R v Durrante 56 Cr App R 708:

"The court will interfere if it is satisfied that no reasonable jury, who had applied

their minds properly to the facts in the case, could have arrived at the conclusion which was reached."

The corollary of that being that if a reasonable jury applying its mind could have reached the conclusion, then there is no complaint on the ground of discrepancy.

8. Miss Williams for the prosecution has helpfully indicated what is in our view a cogent ground on which the jury may well have acted in reaching the conclusions that they did, in different terms in respect of various counts. Two of the counts upon which acquittals were recorded were count 6 and count 26. Those are both cases in which, if one scrutinises the figures, the correct figure is a transposition of the figure that ought to have been inserted. In count 6 the correct figure was £147.45, whereas the figure put into the record was £174.45. In count 26 the correct figure was £26.30, wrongly inserted by the appellant as £62.30. If one looks at the list of all the other alleged errors they do not take that form of the transposition of two figures. They almost all involve either the alteration of a single figure, or the addition of a figure at the beginning of the sum. For instance, taking examples entirely at random, £35.05 in count 5 was changed to £135.05, in count 2 £36.20 was changed to £86.20; and that latter method, if we can call it that, is characteristic of all of the other discrepancies, save for those in counts 6 and 26.
9. So far as counts 14, 15 and 16 are concerned, the discrepancy was very small. In count 14 it was £10, a difference between £127 and £137. In count 16 it was £20, a difference between £233 and £253. In respect of count 15 the total discrepancy was £110, not a small amount of the type that we have just referred to. But it is important to note that that total sum under that count in the indictment, count 15, of £110 was made up of two instances of discrepancy of the sort that we have referred to at the beginning of this judgment. One of them was a discrepancy of £100, in the form that we have referred to, £148 being changed to £248, but the other element that made up that count was, again, a sum of only £10, £56 raised to £66.
10. Miss Williams says that it may well be the case that the jury was not prepared to conclude that a sum that small had been entered dishonestly: if for no other reason than difficulty in seeing why a person should go to dishonest lengths for a sum of £10. They might have thought, or thought it possible, that those were genuine clerical errors, as Miss Brennan says all the entries were.
11. Count 15 is, perhaps, of some added significance in that connection, because it may well be the case that the jury sophisticatedly distinguished between the sum of £100 and the sum of £10, and considered that since an element in the count represented what might be an error because of its small value, they should not convict on that count in the indictment as a whole. We accept that it would have been open to the jury, if they had that thought, to go back to the judge and ask whether under count 15 they could convict on a smaller total sum than the total indictment showed: which the judge would have told them they could do if the total sum on the indictment was made up of two separable items. However, they did not do that, nor can one criticise them for not going to those lengths.
12. We are, therefore, satisfied, applying the classical law on this subject, that there is a reasonable ground upon which a rational jury, understanding the case, could properly have reached the conclusions that they did with regard to these various counts in the indictment.
13. For those reasons, therefore, the complaint of inconsistency cannot stand and there is no other ground upon which this appeal can be pursued. The appeal is, therefore, dismissed.
14. MISS WILLIAMS: My Lord, can I raise at this point, I am asked to consider before the Court whether the issue of costs is appropriate here. Clearly your Lordships are aware that this has been a private prosecution, as it were, by the --

15. LORD JUSTICE BUXTON: The Post Office.
16. MISS WILLIAMS: -- the Royal Mail, yes, and, therefore, that the costs of this appeal and costs at the lower court, the Crown Court, have not been awarded for the prosecution on that occasion, I wonder if the court would consider costs of £2,640 --
17. LORD JUSTICE BUXTON: Has she got any money?
18. MISS WILLIAMS: No. That was adjudicated upon at the lower court, unless circumstances have changed. Could I ask your Lordships perhaps to consider, given that this is to be deemed as a private prosecution, and that means not by the Crown Prosecution Service, that it could be possible to award costs out of central funds for a private prosecution in this matter? There is a relevant provision which I can point your Lordships to.
19. LORD JUSTICE BUXTON: Well, you will have to point that to me, I am afraid.
20. MISS WILLIAMS: I am looking at the current edition of Archbold, paragraph 6-23, page 854. There is also guidance at paragraph 6-105 in a Practice Direction, Part 3 of that Practice Direction.
21. LORD JUSTICE BUXTON: 6-105?
22. MISS WILLIAMS: Yes, 6-105, and the actual provision from the Prosecution of Offences Act is 6-103.

(Pause)
23. LORD JUSTICE BUXTON: Yes. Yes, you say we have power to do it and you say it is a case where you ought to have your costs from central funds.
24. MISS WILLIAMS: Yes, section 17 of the Prosecution of Offences Act 1985 provides a power to award costs.
25. LORD JUSTICE BUXTON: Yes. (Pause). We will award the prosecutor his costs out of central funds, costs to be taxed in the ordinary way.
26. MISS WILLIAMS: Yes, of course.
27. LORD JUSTICE BUXTON: Whether you will succeed in holding the figure you have just mentioned is another matter, but that is not our business.
28. MISS WILLIAMS: Very well. I am very grateful.