

POST OFFICE LTD – CASE REVIEW

R. v. KIM ELIZABETH WYLIE

Newcastle Crown Court

Offence

1. Kim Elizabeth WYLIE faces two charges of theft, the first alleging that between the 7th January 2004 and the 28th July 2010 she stole £33,142.96; the second alleging that between 10th September 2010 she stole £5,434.93; both offences relating to the from the Winlaton sub-Post Office, Bladon on Tyne.

Case history

2. The defendant appeared before the Newcastle Magistrates Court on 12th June 2012. She indicated that she would contest the allegations and the Magistrates deemed the case unsuitable for summary trial. The case was adjourned for the preparation of committal papers and the committal hearing took place on 7th August 2012.
3. The matter next came before the court for a Pleas and Case Management Hearing at Nottingham Crown Court on the 19th September 2011, when the defendant entered not guilty pleas to all charges. The matter was listed for trial to commence on the 17th December 2012.
4. By reason of repeated and detailed defence requests for disclosure of details of the Second Sight timetable the defence sought and were granted a delay in the trial date. The trial was re-listed for the 4th March 2013.
5. On the 27th December the defence made an application to the Court for disclosure of Horizon data. Rather surprisingly outside counsel gave an undertaking to the

court that we would serve the raw data on the defence. Unsurprisingly we have since received correspondence to the effect that defence solicitors cannot read the data!!

6. Later again and due to the judge wishing to see the Second Sight report when published, outside counsel agreed to a further delay in the trial, now listed to commence on the 7th October 2013.
7. Consequently the case is next to return to court on the 7th October 2013.

Prosecution case

8. Kim Elizabeth WYLIE was sub-postmaster of the Winlaton Post Office from the 8th February 2003 to the date she was suspended, the 10th September 2010.
9. At the end of June 2010 Ms Wylie received a letter from POL informing her that the office would be migrating to Horizon On Line (HOL). On the 9th July 2010, a date prior to migration, Ms. Wylie reported a £33,142.96 shortage in trading period 4. She could not explain how the shortage had occurred.
10. On the appointed date of migration the HOL Advisor, Brian Cordery attended to confirm the cash on hand figure with the previous evening's balance. He reported that, whilst he was physically counting the cash Ms. Wylie reintroduced cash he had already counted.
11. On 10th September 2010 an audit was carried out at the Winlaton sub-post office. That audit revealed a further deficit in the sum of £5434.93 Of that figure, £2,630.00 represented the discrepancy in the ATM stock unit. Ms. Wylie was asked if she could explain this shortage: she responded that she "*....must have declared the wrong figures.*"

12. Ms. Wylie was interviewed about these matters, the interviews being conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice. The defendant said:

10th September shortage - £5434.93

- She had not done anything incorrectly; she had always followed the proper accounting processes and come up with end of day balances.
- She could give no explanation for the shortage of the 10th September. She thought that shortage could be in the £1 coins because she had received a lot of these. As she had to go out the evening of the shortage she decided to declare what she thought was there and, because she thought she knew where the problem was, she would come in early the next morning to double check it. That was on the 9th September, the day before the audit.
- And because the auditors had arrived at 8.15am on the morning of the 10th September she hadn't had time to double check.
- As for the ATM stock unit shortage, she was short of notes in the office and had taken notes from the ATM to use across the counter until an expected cash-delivery arrived.

TP4 shortage - £33,142.96

- Similarly, she was unable to explain the £33,000 shortage. She had found the shortage at the very start of July.
- She had at no point reintroduced cash during the HOL migration process.
- The losses were "*something to do with the Horizon system...*"
- Her own research over the internet, through Justice for Sub-postmasters has shown that there are major problems with Horizon. She had also contacted her MP.
- Prior to TP4 she had "maxed-out" her credit cards. She had £15,000 on one card; her partner occasionally helps out with money to support the business; her parents had given her £4,000 in two £2,000 instalments and she purchased stock from the wholesalers for the shop using another credit card and a business charge-card.
- She is still making a profit but "...*it was an awful lot of work for very little money.*"
- She was making a profit of about £100 per month. All in all her income was approximately £3,300 per year as against outgoings of approximately £4,877.

- She had never paid any of her bills or money in to her bank account through the Post Office without putting the cash in.
- She checks her staff's daily dockets and had never had reason to speak to them.

13. During the course of her interview Ms. Wylie was asked to provide details of all of her bank accounts and to permit investigators access thereto. Subsequent inquiries revealed that she did not identify ALL of her accounts to the interviewing officer.

14. A perusal of the NSBC logs going back as far as 2011 and dealing with calls from the Winlaton Post Office reveals that calls relating to Horizon defects only appear *after* receipt of the Horizon migration letter. Thereafter such calls become increasingly common

Defence case

15. As set out in her interview: she had taken no money from POL; she could not explain the shortages; she had not covered any shortages up having reported the £33,000 loss when discovered and would have looked for the £5,300 on the morning of the audit. Accordingly the fault must lie with Horizon.

16. In a Defence Statement dated the 20th August 2012 the defendant said:

- She had never been dishonest;
- She had always properly declared shortages;
- There are faults with the Horizon system;
- She had experience problems with Horizon, including: a phantom log (a copy of which she attached to her Defence Statement) and missing user information;
- The system is not “robust” as always described by POL;
- Horizon can be remotely accessed and the figures changed;
- The missing money is “....down to Horizon....and there is in fact no missing money from the Post office...”

- Post Office do not want to accept that there are problems with Horizon due to the cost of the system.

17. On the 28th January 2013 the defence commissioned an expert, a Mr. TURNER, to consider and report on the Horizon issues raised by the defendant. A copy of Mr. Turner's report did not reach us until the 14th February 2013. In essence Mr. Turner's report consisted of a lengthy request for the disclosure of a long list of material relating to the operation and reliability of Horizon, together with material specific to the Winlaton sub-Post Office. That request has yet to be responded to.

18. In addition the defence has made repeated disclosure requests and we are awaiting the listing of a further application before the court.

Prosecution response to defence

19. On the 27th November 2012 Gareth JENKINS provided an expert witness statement in response to the Defence Statement. That statement dealt with the matters raised by the defence in a single paragraph, the relevant parts of which I set out here:

“I have been asked to provide a statement in the case of Kim Wylie.....I am not aware of the specific allegations regarding missing user information or phantom logs, and so cannot comment on those. However, I would say that Horizon has been designed such that it **does not** break down easily and is not affected by a singly application failure. Also, Horizon.....**does** hold up well under exceptional circumstances and is not wholly affected by a bug in one aspect of it.in those cases where there is a failure....amounts are normally insignificant compared to amounts identified in shortfalls of cash as found during an audit of a branch.”(*GJ emphasis*)

20. Thereafter Dr. Jennings' statement reverted to his usual format, dealing with what he described as “...further background information” on the Horizon system. The

statement dealt with the operations capability and function of Horizon; operating architecture; and the checks and balances built into and conducted by the system. He concluded that it was his belief that Horizon "...will accurately record all data that is submitted to it and correctly account for it."

Discussion

21. In other cases under review it has been said that, in those matters which have not yet reached the trial stage, the purpose of the review was not to determine the merits or otherwise of the defence case, particularly in the absence of a Defence Statement. In this case the situation is different, because the only primary evidence against the defendant is Horizon-derived. To this extent the Second Sight Interim report and the Helen Rose report are disclosable to the defence.

22. That primary evidence in support of the prosecution case here is evidence of two shortages: one reported by the defendant herself and the other revealed by audit. The prosecution case therefore relies almost entirely on the reliability and accuracy of the Horizon system. I say "almost entirely" because there is some other evidence to support the prosecution case, albeit somewhat less cogent than the fact of the shortages themselves. That additional evidence is:

- Ms. Wylie's reintroduction of cash into the migration count;
- The coincidence of Ms. Wylie's report to the helpline *after* she had received the migration notice *before* the migration date;
- Similarly, the suggestion by her that she was aware of the second shortage on or just before the 9th September 2012 and had intended to trace it the following day, and would have done so but for the unexpected attendance of the auditors on the 10th September 2012.

- Her apparent failure to identify ALL of her bank accounts when asked to do so in interview;
- The remarkable appearance of calls to NSBD only *after* receipt of the Horizon migration notice.

23. On the basis of this evidence I have concluded that there is still a case to answer for the defendant. That however is not enough, for we are also required to consider what the defence case may be, and how it is likely to affect the prospects of conviction. The finding that there is a realistic prospect of conviction is based on an objective assessment of the evidence, including the impact of any defence and any other information upon which Ms. Wylie might rely. In this respect we should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

24. Here the defence has already questioned the reliability, accuracy or integrity of the Horizon data, in interview, correspondence, Defence Statement, expert report and several court applications for disclosure. Upon receipt of this further disclosure, it is inevitable that the defence expert will ask for more time to consider his final report. Given the conclusions in the Second Sight Interim report and the Helen Rose report it is equally inevitable that Mr. Turner will suggest that the Horizon data relating to the shortages at Winlaton is at best unreliable. He may even suggest that we cannot rule out the possibility that the figures are the result of corrupted data or a bug in Horizon. In answer to this we would point to those matters set out in paragraph 21 above as evidence at least of the proposition that Ms. Wylie has sought to cover-up unexplained losses.

25. The real difficulty we have however is the absence of any reliable Horizon expert witness who is able to tell the jury that the Horizon data *in this case* is in fact reliable. And that is the weakness in our case, and we cannot overcome that weakness within the existing timescale, for the court would be most unlikely to move the trial date third time and into 2014.

Conclusion

26. Upon a close and detailed consideration of all of the factors, for and against, in this case, I find myself driven towards the conclusion that the likelihood of conviction is substantially diminished by the material contained within the Second Sight Interim report and the Helen Rose report and the inescapable fact that we are bound to disclose that material in this case.
27. That is not to suggest that the defendant is plainly innocent; that would be a decision for a jury only. However, many guilty people escape conviction because the prosecution is unable to properly rebut what may in fact be an unmeritorious defence. And based upon my extensive prosecution and defence experience, I have formed the view, however unsatisfactory that may be, that in this case we are now unlikely to secure a conviction.
28. The decision to continue or terminate this prosecution lies with POL: the considered opinion of prosecuting solicitors lies with terminating the prosecution. We arrive at this view primarily because of the decreasing likelihood of conviction, coupled with the increasing risk further Horizon issues appearing in the public arena.

Simon Clarke
Barrister
Cartwright King Solicitors

23rd July 2013