

Neutral Citation Number: [2018] EWCA 473 (Crim)

No: 201601101/C3 , 201605127/C3 & 201605125/C3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 27 February 2018

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE STUART- SMITH

MRS JUSTICE CARR DBE

R E G I N A

v

JOHN FOWLER

CHRYSI MINADAKI

KEVIN HANLEY

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Mr A Barraclough appeared on behalf of **Fowler**
Mr I Jobling appeared on behalf of **Minadaki** and **Hanley**
Mr R Jory QC appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

1. LADY JUSTICE RAFFERTY: On 17th January 2014 in the Central Criminal Court, John Edward Fowler, now 61, Kevin Steven Hanley, now 55 and Chrysi Minadaki, now 48, pleaded guilty to and on 1st August 2014 were convicted of, and on 30th September 2014 were sentenced in respect of, a number of offences. Fowler: count 1, conspiracy to supply cocaine, contrary to section 1(1) of the Criminal Law Act 1977, 16 years' imprisonment; count 2, conspiracy to supply amphetamine, four years six months; count 3, conspiracy to supply cannabis, one year four months; count 4, money laundering, contrary to section 327 of the Proceeds of Crime Act 2002, four years' imprisonment, all terms concurrent. Hanley: count 1, 17 years four months; count 2, five years nine months; count 3, three years four months; count 4, four years six months, all terms concurrent. Minadaki: count 1, 17 years' imprisonment; count 2, four years nine months' imprisonment; count 4, four years' imprisonment, the terms concurrent.
2. Fowler's application for an extension of some one year six months in which to seek leave to challenge his conviction has been referred to the court by the single judge. Hanley's and Minadaki's applications for an extension of, respectively, two years eight months and two years two months, in like circumstances, has been referred by the Registrar.
3. The case for the Crown was that a conspiracy to supply cocaine (count 1), amphetamine (count 2) and cannabis (count 3) featured Hanley as the prime mover and architect; Fowler and Minadaki as his lieutenants. The conspiracy involved many people, both in the United Kingdom and abroad. The Crown suggested Hanley and Fowler used, as cover, fruit and vegetable trading so as to import drugs from mainland Europe and they set up companies to cover their trade. Minadaki did likewise. Fowler's London home stored drugs and cash from the supply thereof. It was then a hub for further supply.
4. On 24th November 2012 a search of Fowler's home revealed a very large amount of drugs including high purity cocaine, amphetamine and cannabis, £2.5 million in cash (in Sterling and Scottish notes) and two sophisticated money counting machines. That was the first and the primary source of evidence upon which the Crown relied. The other areas upon which it placed reliance were: observation evidence that Fowler lived at his Fulham address alone but others attended during the indictment period of the conspiracy; Hanley and Rowland had a joint previous conviction in 2006 for conspiracy to supply cocaine and for money laundering; observation evidence, phone traffic and cell site material demonstrated the arrival from Europe of lorries and meetings and contacts between individuals concerned in the supply from Fowler's address; flight manifests proved frequent travel by Fowler with Hanley to Europe; supply of drugs from the applicant's home was established by observations of Darren Barker often in the streets surrounding Fowler's home; travel documents found at

Minadaki's home; cell site material; retail purchases by Hanley and Minadaki travelling to Brighton to meet Barker. The Crown relied with some confidence on Hanley having pleaded guilty to counts 1, 2, 3 and 4. We add for completeness that Barker, one of many co- conspirators, pleaded guilty to count 2.

5. Oliver, a close friend of Hanley, often seen with Fowler, spent a good deal of time at Hanley's West London home where conversations were recorded dealing with the arrival of lorries from mainland Europe and who would be present for unloading and linked arrangements. The conversations included reference to drugs. Oliver's car held cocaine likely to have come from the same source as some of that found in Fowler's home. Evidence of meetings implied supply of drugs during the conspiracy to non- defendants whose drug- related history was by agreement in evidence. The meetings were in England. Supply to co- defendant Edward, a Glasgow resident, and co- defendant Harrison, who lived in Liverpool, were relied upon. Itineraries proved that Edward, Harrison and Minadaki were all in Amsterdam in October 2012. The product of probe material from Edwards' home in Edinburgh showed him involved in drug dealing with Hanley and set out detail of proposed meetings with Hanley in England. Finally, the Crown relied on Edward and Harrison having pleaded guilty to count 1.
6. The defence for Fowler was that he had no knowledge of any drugs conspiracy, or of the drugs or of the cash found at his home. He had been duped by Hanley. Minadaki's case was that she had no knowledge of the drugs conspiracy and played no part in importing or organising their distribution. Any contact between her and the co- accused Barker was innocent. She had no knowledge of anything incriminating in Fowler's house. At trial there was no dispute as to counts 1, 2 and 3. Issues for the jury were whether Fowler and Minadaki knew, whether they joined in the conspiracy and whether they knowingly played a part in support of it.
7. Grounds of appeal perfected by Mr Anthony Barraclough, who did not appear below are that the conviction on count 1 of conspiracy to supply cocaine is unsafe and a nullity absent the prior consent of Her Majesty's Attorney General in accordance with section 1A and 4(5) of the Criminal Law Act 1977 in relation to conspiracy to commit an offence or offences outside England and Wales since the main intention and offending was to supply cocaine to and in Scotland. Secondly, the convictions on counts 2, 3 and 4 are consequentially unsafe as a consequence of the prejudicial effects of the inclusion on the indictment of count 1.
8. The Scottish co- accused was Edward. In November 2012 observations of Hanley and Minadaki as they travelled to Liverpool revealed that a surveillance team from the Scottish Drug Enforcement Agency was also investigating suspected activities in relation to heroin by Scottish nationals, including Edward. This precipitated the decision by the English investigators to execute search warrants and make arrests. They later became aware of probe material gathered by their Scottish colleagues, recordings from Edwards' Edinburgh home. It was transcribed and served.

9. In October 2012, Edward was talking about someone seeing Kevin (Hanley) about drugs "down the road" - uncontroversially a reference to England. Discussion turned to finding a meeting place and Fulham Road seemed relevant. There was talk about Kevin and two tons of drugs and a scheduled meeting in Wembley.
10. Days later, a meeting in Wembley was between Hanley and two men the judge described as "from the Scottish end". One was the co- accused Harrison who lived in Liverpool. The other was Gordon.
11. Still in October, Edward was recorded speaking of Hanley as a "top drugs man" and of large sums changing hands. Edward was upset because a man from their end had been stopped by police and Edwards seemed relieved that nothing had come of it. Edwards said that the "coke" was ready. He spoke of seeing Kevin and leaving it for a few days for extra protection. Later the same month, he seemed to repeat letters and numbers from a code. He made many references to drugs and to Kevin and to Kevin talking to Harrison about a meeting to take place.
12. In November Edward and Harrison talked about what Kevin would offer them at a meeting on Monday in Liverpool or Manchester. In Liverpool, days later, there was a meeting between Harrison, Edward, Hanley and Minadaki. In the late days of November, by which time the drugs had been found at Fowler's address, the Scottish probe material suggested Edward was expecting to hear from Hanley. He did not, and seemed unable to make contact with anyone. He appeared to intuit that something was wrong and spoke of getting rid of phones.
13. Fowler told the jury of how in 2011 he met and went into business with Hanley. He explained his trips abroad and trips by Hanley, paid for on Fowler's credit card, which the latter thought genuinely linked to their business. Were Hanley using their company as a front for drugs, Fowler avowed himself completely unaware of it. He knew nothing of Edward or of Harrison. He sought to explain the movements of lorries and deliveries and their relationship to his fruit and vegetable business. He said he was shocked to discover Hanley had left drugs and cash in his, Fowler's, house.
14. Minadaki told the jury she was Greek. She met Hanley in 2011 when he told her he was in the fruit business. They became attracted to each other. She thought his business genuine and nothing gave her the slightest idea that he was a professional criminal. He introduced her to Fowler and she agreed to go into business with them importing fruit from Greece. She told the jury of reasons for her trips and for moving to London, to be with Hanley. She disavowed knowing anything about Edward or Harrison and about knowing of the drugs or the money found in Fowler's home.
15. The Grounds of Appeal have included helpful reference to a number of authorities, none of which need concern us as will become plain.
16. Grounds of Opposition composed by Mr Jory QC at dates variously between 2016 and 2017 point out that the Crown's case was of a conspiracy to supply drugs in England and Wales. Inevitably cocaine is imported. Here the source was likely to be

Venezuela. Supply as pleaded here occurred in England. There was no surveillance in Scotland. No meetings were observed in Scotland. Any substantive offence which the Crown might have elected to indict would have involved supply of a controlled drug to another in England, as evidenced by meetings in England. The implication from the evidence that some drugs might eventually have been destined for the Scottish market does not affect the supply being between defendants in England. No facts or details of supply within Scotland were within the opening or elsewhere in the Crown's case, as none were known or sought. This, says the Crown, was never a cross-border conspiracy. The Attorney's consent was not required since section 1A of the Criminal Law Act 1977 was never engaged. Any of the cases relied upon by the applicants can be distinguished on their facts. The only material gathered from Scotland was the probe from Edwards' Edinburgh property which confirmed him as involved in drug dealings with Hanley and details of proposed meetings with Hanley in England. The Crown contends for a safe inference that once initial agreement to supply led to transactions, there would have been further movement and distribution beyond these conspiracies, just as asserted in the Crown's opening.

17. The judge in summing-up reviewed the evidence and referred to meetings in England with Edward, who lived in Scotland but carried out transactions south of the border. The Crown chose not to pursue conspiracy to import and there is no doubt that the series of conspiracies involved agreements and evidence to supply within England. In particular the evidence supported the centrality of supply from Fowler's home in London. Cash and drugs were exchanged in England. All evidence of supply and the agreement to supply derived from events and observations in England. Had the Crown pleaded an agreement to supply to Scotland, that would not have been supported by the evidence. At its highest it perhaps would have been an invited inference deriving from the meetings with Edward. That said, the meetings were in England.
18. Consequently, the Crown's resting position is that this case was properly presented as pursuant to section 1(1) of the Criminal Law Act 1977, not section 1A. Nothing in the way the case was set out indicated that the pursuit of the conspiracies would have involved a particular identifiable act or other event outside England. Whether it did was not a critical element in establishing the conspiracies. The intention, on the evidence, was to supply drugs in England. Consent from the Attorney was not required.
19. We agree. That drugs might make their way out of the jurisdiction into Scotland over time, as this malign commerce developed, was not pleaded as part of the conspiracies. Nor could it have been. The Crown nailed its colours to the mast as we have set out. The activities it contended it could prove, assisted in the case of Hanley by his full plea to the indictment, were centred in England. The one authority which might to a limited extent have helped had we been in any doubt, and we are not, is Reid and Rouse [2017] EWCA Crim 1898 where the President of the Queen's Bench Decision considering potential involvement with Scotland used the phrase "predominantly or substantively" to catch the extent of connection. On any view of the facts this case

comes nowhere near either of those adverbs. We note also that admissions before the jury signed *per pro* all these applicants include, under the heading "meetings", 20 instances featuring Hanley, all in England.

20. These applications are misconceived. This is not an applicant losing the *spes* of an acquittal. We remain grateful to Mr Barraclough and to Mr Jobling but for the reasons we have given these applications are refused.

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