

A No. 6518/C/82

IN THE COURT OF APPEAL

CRIMINAL DIVISION

B

Royal Courts of Justice,

Friday, 2nd December, 1983.

Before:

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LORD JUSTICE EVELEIGH

LORD JUSTICE ROBERT GOFF

and

MR. JUSTICE HOLLINGS

D

R E G I N A

v.

KEVIN BROWN

E

(Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd.,
36-38 Whitefriars Street, London EC4Y 8BJ. Telephone Number:
01-583 7635. Shorthand Writers to the Court.)

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MR. J. MORTIMER Q.C. and MR. D. BROATCH appeared as Counsel on
behalf of the Appellant.

MR. V. TEMPLE appeared as Counsel on behalf of the Crown.

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J U D G M E N T

(As approved by Judge)

(Delivered in the absence of Lord Justice Robert Goff and Mr.
Justice Hollings)

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1.

A LORD JUSTICE EVELEIGH: On 6th December, 1982 at the Central
Criminal Court the appellant was convicted on four counts
charging him with fraudulently inducing the investment of
B money and one count of attempting to do so contrary to
s. 13 (1) (a) of the Prevention of Fraud (Investment) Act
1958. He now appeals against conviction.

C The prosecution case against the appellant was that he
fraudulently induced four persons to enter into agreements
for acquiring shares in a company and fraudulently attempted
to induce another to do so, by making statements all of which
he knew to be misleading. Each count contained particulars
of a number of different statements relied on by the
D prosecution as constituting the inducement. Count 6 provides
a typical example, viz.:

"STATEMENT OF OFFENCE

E FRAUDULENTLY INDUCING INVESTMENT OF MONEY contrary to
Section 13 (1) (a) of the Prevention of Fraud (Investment)
Act 1958.

PARTICULARS OF OFFENCE

F KEVIN BROWN on the 11th day of August 1980 fraudulently
induced Peter Robert Cheesman to enter into an agreement
for acquiring 50 shares at a total purchase price of
£20,000 in Manteo Personnel Services Limited by stating
that:

G (1) The Company was then manned by a full complement of
experienced staff, was rapidly expanding and was
then in a position to show further growth in line
with projections prepared by the said Peter Robert
H Cheesman.

A

"(2) The assets of the Company included a Data Word Processor, a mini computer and a Building Society investment of £12,065.

B

(3) There had been no material change in the position or prospects of the Company since the 28th February 1980 which had not been disclosed to the said Peter Robert Cheesman during the course of negotiations.

C

(4) The Company was absolutely entitled to all the assets described in the Balance Sheet relating to the Company's affairs as at the 28th February 1980 and that they were the Company's unencumbered property.

D

(5) He the said Kevin Brown was not aware of any fact or circumstance relating to the business or affairs of the Company which might if disclosed be reasonably expected to affect the decision of the said Peter Robert Cheesman to acquire the said 50 shares

E

all of which statements he the said Kevin Brown then knew to be misleading false or deceptive."

F

The jury had asked the judge two questions. He dealt with these in summing up. He said:

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"There were two questions. The first one was: 'If the jury find the defendant guilty of only one part of the count, is he guilty on the whole count?' I have answered that already by saying that if you are satisfied that, with the necessary state of mind, the

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A "defendant made the statements or representaions whjch
are alleged in the indictment in relation to each count,
it is sufficient if you find that he made one or some or
B all of them but you do not have to find that he made them
all. The second question was: 'If the individual members
of the jury find him gujilty of different parts of the
count, is he guilty on the whole count, and is the
C verdict of guilty unanimous?' Members of the jury, the
answer to that is this: what you have to be satisfied of
in relation to each of the counts is that the defendant
dishonestly made the statements and by making them induced
D the victim concerned to act in the way set out in the
count."

He then gave an example, taking count 6, and continued:

E "It does not matter that some of you are satisfied that one
of the various statements is made out, and others of you
are satisfied not about that statement being made out
but that another is made out. It is sufficient if you
are all agreed that there was a dishonest inducement.
So if you find some of you are satisfied that
F representation A was made out, some of you are not
satisfied about that but are satisfied that representation
B was made out, then it does not matter, provided that
you are all satisfied that there was the dishonest
G inducement made and that it operated upon the mind of
the person to whom it was made and caused him to act in
the way that he did."

H It is said that in answering the second question the
learned judge misdirected the jury. It is said that the

A direction made it possible for the jury to convict without there being unanimity upon any particular statement relied upon as constituting the inducement. For the prosecution it was contended that the direction was in accordance with the decision in Reg. v. Osita Godfrey Agbim (no. 5782/B2/77, 18th October, 1978). However, that case is not an authority for the proposition that the jury need not be agreed as to an essential element of the offence, but only that they need not be agreed as to the parts of the evidence which lead them to the conclusion that the ingredients of the offence have been made out.

Counsel for the appellant was correct in his submission that it is a fundamental principle that in arriving at their verdict the jury must be agreed that every single ingredient necessary to constitute the offence has been established. The false statement is an essential ingredient.

In Reg. v. Agbim the appellant was convicted on six counts charging him with dishonestly procuring the execution of a valuable security by deception contrary to s. 20 (2) of the Theft Act 1968. The first count provides an example:

"STATEMENT OF OFFENCE:

PROCURING THE EXECUTION OF A VALUABLE SECURITY BY DECEPTION, contrary to Section 20 (2) of the Theft Act 1968.

PARTICULARS OF OFFENCE:

OSITA GODFREY AGBIM on the 24th day of April 1975 dishonestly and with a view to gain for himself procured

A "the execution of a valuable security namely a cheque
number 043956 drawn on Lloyds Bank Limited by Brent
and Harrow Area Health Authority for £1383.20p by
B deception namely that a statement of Gross Pay received
by Ancillary Staff employed by the said Osita Godfrey
Agbim and attached to a claim for payment in respect
of Ancillary Staff employed by the said Osita Godfrey
C Agbim made to the National Health Service Family
Practitioner Services and dated the 5th day of April
1975 was a true and correct statement."

Although it might have been more clearly pleaded and we
would have expected to find an allegation that the accused
D knew the statement to be untrue, it is clear that the count
contains an allegation of only one false statement, namely,
that the sum of £1,383.20p was due to the accused in respect
of gross pay received by ancillary staff. The accused was
E entitled to repayment of sums advanced by him to the staff
as gross pay. In order to support the figure claimed, the
accused had submitted a list showing alleged payments to
various named people. The prosecution case was that he had
F in some cases exaggerated the amounts and in others had
included the names of persons who had not been employed by
him, and in some cases had falsely stated the number of
hours that employees had worked. Evidence was called to
G substantiate those matters.

In delivering the judgment of the Court, Lawton LJ said:
H "When a jury retire to consider their verdict they must
decide whether on the evidence put before them the
charge or charges in the indictment have been made out.

A "Each juror has put upon him by his oath the
responsibility of giving a 'true verdict according to
B the evidence'. He can accept or reject what evidence
he likes. He does not have to take the same view about
the details of the evidence as every other juror. One
C juror may accept one piece of evidence; another may
reject it. What they all have to be agreed about, if the
verdict is unanimous, is that the prosecution have proved
the charge or charges. The jury in this case said they
D were sure. We can see no reason for quashing any of the
verdicts. The judge was not at fault in omitting to
direct the jury that in respect of each count they all
had to be agreed about at least one of the pieces of
evidence relied upon by the prosecution to prove that
the claim forms were not correct."

E The false statement was that £1,383.20p had been paid
when it had not. The other false statements were the means
by which the accused had sought to convince the National
F Health authorities of the truth of that statement. They were
themselves statements, but not the statement relied upon as
an ingredient in the offence. They were matters which on
investigation would help to prove the falsity of the figure
of £1,383.20p, and also go to prove knowledge and the
G dishonesty of the accused.

H Different members of the jury may arrive at their
conclusions by different routes. Far from invalidating their
final conclusion, different approaches which lead to the same
result may often be seen as strengthening the verdict. They

A may be able to say that, whichever way one looks at it, the
case is proved. A juror may reach his conclusion by relying
B upon certain parts of the evidence and, having reached that
conclusion, find it unnecessary to proceed to see whether he
accepts other parts of the evidence.

In Reg. v. Agbim the third count did contain two
allegations. It read:

C "STATEMENT OF OFFENCE

PROCURING THE EXECUTION OF A VALUABLE SECURITY BY
DECEPTION, contrary to Section 20 (2) of the Theft Act
1968.

D "PARTICULARS OF OFFENCE

E OSITA GODFREY AGBIM on the 6th day of November 1975
dishonestly and with a view to gain for himself procured
the execution of a valuable security namely a cheque
number 066421 drawn on Lloyds Bank Limited by Brent
and Harrow Area Health Authority for £608.80p by
deception namely that a Statement of Gross Pay received
by Ancillary Staff employed by the said Osita Godfrey
F Agbim made to the National Health Service Family
Practitioner Services and dated the 15th day of October
1975 was a true and correct statement and that the said
Osita Godfrey Agbim was entitled to make relief claims
G for the quarter ended September, 1975 in respect of
Mary Okoye, Ada Ngozi, Francesce Uchenne and Patricia
Okake."

H However, the jury were not told, as the jury were in the
present case, that they could arrive at their verdict even
though they differed as to the statement in the particulars
on which they relied as having been the inducement. The

A judge directed the jury that they did not have to be satisfied that both statements were proved, but in no way indicated that the jury could differ as to the statement if they relied upon only one.

B In a case such as that with which we are now dealing, the following principles apply: 1. Each ingredient of the offence must be proved to the satisfaction of each and every member of the jury (subject to the majority direction).
C 2. However, where a number of matters are specified in the charge as together constituting one ingredient in the offence, and any one of them is capable of doing so, then it is enough to establish the ingredient that any one of them is proved; but (because of the first principle above) any such matter must be proved to the satisfaction of the whole jury. The jury should be directed accordingly, and it should be made clear to them as well that they should all be satisfied that the statement upon which they are agreed was an inducement as alleged.

D
E Counsel for the Crown referred the Court to R. v. Linnell, (1969) 53 Cr. App. R. 585. There the appellant was charged with fraudulently inducing investment of money contrary to s. 13 (1) (a) of the Prevention of Fraud (Investments) Act 1958. A number of different representations was contained in the count. Objection was taken to it on the basis of alleged duplicity. In dismissing the appeal Waller J. said, at p. 588:

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H "It is to be noted that those varieties of representations are all joined by the words 'and' -- 'by promising ...

A "and by stating' and 'by promising and by stating',
and in the view of this Court the offence which was
committed was the offence of inducing another person,
B namely, the man Girvin, to enter into an agreement, and
the means by which he was induced to do that were all
part of the method of inducing Girvin to enter into the
agreement. Mr. Black has cited to the Court two cases,
C Grunwald (1963) 1 Q.B. 935, in which he frankly confesses
that this point could have been taken but was not, and
Bastin v. Davies (1950) 2 K.B. 579, which was a decision
on the Food and Drugs Act 1938, where the court drew a
D distinction between the words being used disjunctively
and the words being used conjunctively. In this case it
is sufficient to say that, as the words were used
E conjunctively and as the offence in the view of this
Court is the offence of inducing, that ground of
objection to this count of the indictment is not
sustained; it was a perfectly proper setting out of the
offence and method of arriving at the inducement."

F In our judgment, no support is to be found here for the
prosecution's case. The Court of Appeal was not saying that
the jury could convict if they differed as to an essential
ingredient in the offence but simply that the count was not
bad for duplicity.

G This appeal is therefore allowed and the conviction
quashed.
