No. 2000/03465/Z1
2000/03522/Z1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2A 2LL

Thursday 30 November 2000

B e f o r e:

LORD JUSTICE LATHAM

MR JUSTICE WRIGHT

and

THE RECORDER OF CARDIFF
(His Honour Judge Roderick Evans QC)
(Acting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

LINDA HEGGART

WILLIAM PATRICK HEGGART

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(Official Shorthand Writers to the Court)

MR K MONTEITH appeared on behalf of THE APPELLANT LINDA HEGGART
MR J E SAMUEL appeared on behalf of THE APPELLANT WILLIAM HEGGART

MISS F J McIVOR appeared on behalf of THE CROWN

J U D G M E N T

(As Approved by the Court)

Thursday 30 November 2000

1. LORD JUSTICE LATHAM: On 25 May 2000, in the Crown Court at Inner London, before His Honour Judge Prendergast, both these appellants were convicted of affray by a majority of ten to two. On 26 June, they were each sentenced to twelve months' imprisonment and ordered to pay compensation. They each appeal against their conviction by leave of the single judge. They were both people of good character. Their sentences, unhappily (for reasons to which we will return), have now been effectively served.

2. The underlying facts were that in the early hours of 28 October 1999, the appellants were driving along a street on which there were cars parked on either side. The complainants were driving in the opposite direction. It was apparent that the cars could not pass unless one was prepared to give way and leave room for the other to pass. Unhappily, for reasons which it is not necessary for us to go into in this judgment, both cars came to a halt in a way which meant that neither could pass the other. The result was an altercation.

3. In the complainants' car was Dr Oraedu and his wife, Oby Oraedu, and a lady named Gravesend. Their account of the matter was that both appellants at one stage approached their car. There followed a serious incident of violence involving damage to the car, including damage to the door and broken windows, and also physical assaults both on Dr Oraedu and his wife which resulted, in particular in relation to the wife, in injuries including a fracture to a middle finger of her left hand. According to the victims, the assault was accompanied by racial abuse of a vicious nature, indicating that this was a racist attack. The incident came to an end when the police arrived, having been summoned by a number of 999 telephone calls. They arrived at the scene whilst the situation was still tense because a young boy named Andrew Fairlie (the female appellant's son) had turned up with a baseball bat. Fortunately, he did not use it in any way. Although he was also charged with affray, he was ultimately acquitted.

4. The appellants' account was that they were in the car with Sandy Bridgenall, a friend of the female appellant who had been out celebrating her birthday that evening. The male appellant had gone to collect her from the party and was returning home at the time of the incident. Their account was that the violence came entirely from Dr Oraedu and his wife; that they themselves did nothing other than defend themselves; that the damage to the car and the door occurred when Dr Oraedu had opened it violently against the male appellant; and that somehow the male appellant, who had his hands at some stage on the window of the door, caused it to break accidentally.

5. The issue before the jury was, therefore, which of the two versions of the undoubtedly violent events of that night was to be believed. No independent evidence (other from those who were in the vehicles and from Andrew Fairlie) was called. It was in those circumstances that the jury convicted the appellants, clearly having decided that they preferred the complainants' account.

6. Before the trial commenced, the defence were aware that there had been the 999 calls to which we have referred. They were aware of the general nature of those calls, having been given print-outs in relation to each of them. However, the print-outs had been provided with the telephone numbers of potential witnesses blacked out. On the morning of the trial, defence counsel asked if it would be possible to have the full print-outs which identified the telephone numbers, from which it might be possible both to identify and to trace the persons who had made the calls.

7. Woman Constable Pearson, the officer in the case, said that she was willing to give those numbers, but she needed to take instructions. Later, she indicated that it was not police policy to disclose those telephone numbers. Accordingly, the defence sought the judge's ruling that those numbers should be disclosed. He declined to give such a ruling. It was in those circumstances that the question of whether those who had made the 999 calls could provide assistance to the court could not be pursued by the defence.

8. The appeal before us today is based on the single ground that the judge was wrong to refuse to require the prosecution to disclose those numbers, and that indeed the prosecution were under a duty to disclose them. Miss McIvor, on behalf of the prosecution, has told us that it is the police "custom" not to disclose those numbers. She was not prepared to say that it was a policy, and we have certainly seen no document (reasoned or otherwise) which identifies the justification for not disclosing such telephone numbers. Clearly, in our view, telephone numbers from which 999 calls are made do not attract confidentiality in these circumstances. There is no suggestion in any documentation that we have seen or are aware of from which the public could derive any conclusion that a 999 call would be treated in confidence (although there might be circumstances in which it would be appropriate for that to be the case). That is not the case in relation to 999 calls which relate to criminal offences in general. Nor is there, it seems to us, anything to suggest that the nature of any of those 999 calls could attract confidentiality individually.

9. It follows that if those numbers were capable of undermining the prosecution case, or supporting the defence case, then that material should have been disclosed. The identity of those who might have witnessed the incident is, in our judgment, without doubt material which falls into that category. It follows that the prosecution were under an obligation to disclose those telephone

numbers in this case.

10. It has been said on behalf of the prosecution that, despite the fact that we have concluded that there has been a breach of that obligation of disclosure, nonetheless we should be satisfied from the inquiries that have been made by the police that nothing useful could have emerged from any investigation by the defence based upon those numbers because either the numbers themselves do not enable a caller to be identified, or in the case of a taxi driver who remained at the scene when the police arrived, he was not prepared to provide any assistance.

11. That misunderstands the purpose of the provision of such information. The mere fact that the prosecution may not be able either to identify who the callers were or to persuade a witness who is identified to make a statement does not mean, first, that the defence may not be able to achieve those objectives. Secondly, it would not preclude the obtaining of a witness summons to require the attendance of a reluctant witness. It is abundantly clear that that is precisely the sort of material to which the defence is entitled in order to make proper investigation of the circumstances surrounding the offence with which an offender is charged.

12. We have no hesitation in saying that, if and insofar as what has been put before us by Miss McIvor as a "custom" is a general custom, then it is misconceived. Subject to argument in individual cases as to the existence of particular facts which could give rise to confidentiality, it cannot be justified as a matter of general law. For those reasons we consider that these convictions of the two appellants are unsafe and the appeal must be allowed. It is a matter of great regret for this court that whatever the truth of this matter the appellants have served their sentences.

13. Are there any applications, Miss McIvor?

14. MISS McIVOR: My Lord, no.
