

Neutral Citation Number: [2016] EWCA Crim 533

No: 201504026 A3

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Tuesday, 15 March 2016

**B e f o r e:**

**LORD JUSTICE HAMBLÉN**

**MR JUSTICE JEREMY BAKER**

**HIS HONOUR JUDGE KRAMER QC**  
**(SITTING AS A JUDGE OF THE COURT OF APPEAL CRIMINAL DIVISION)**

**R E G I N A**

v

**LUCIEN TIMOTHY MUNN\_**

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**Mr D Burrows (Solicitor Advocate)** appeared on behalf of the **Appellant**

**Mr D Forster and Mr D Milne** appeared on behalf of the **Crown**

**J U D G M E N T**  
(Approved)

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LORD JUSTICE HAMBLLEN:

Introduction

1. On 3 June 2015, half way through a six-week trial at Lewes Crown Court before His Honour Judge Tain, the applicant, Lucien Timothy Munn, changed his plea to guilty to 12 counts of fraud-related offences concerning the fraudulent sale of secondhand cars over a period of nearly two years.
2. The applicant was sentenced to a total of 3 years' imprisonment having been given a 25-per-cent discount for his late plea and personal mitigation. His co-accused, Linda Attrel, was convicted after trial on nine counts for which she received a total sentence of 21 months. Another co-accused was acquitted on the single count with which he was charged.
3. The single judge referred the application for permission to the full court, noting as follows:

"The only ground of appeal advanced is disparity with your co-accused. Having heard all the evidence at the trial, the judge was well placed to determine your respective roles and levels of culpability and the threshold to cross in advancing this ground is a high one. This is said, however, to have been a joint enterprise in which both you and the co-accused were alleged to have been equally culpable and in which there was no evidence to support the judge's finding that you alone came up with the business model for the fraud. Given the contents of the prosecution opening note, I shall refer your application for leave to the full court to determine with the assistance of the prosecution in relation to the evidence."
4. As requested by the single judge, we have been assisted by grounds of opposition from the prosecution.

The outline facts

5. The applicant had an accident repair shop called Abbey Accident Autos in Crawley. He and Attrel sold secondhand motor cars which had previously been written off. This was

concealed from the customers. Had the customers been aware of the true situation, they would have been less likely to purchase the cars or to pay the price which they did.

6. The written-off cars were purchased from online car salvage dealers who specialised in vehicles which had been written off by insurance companies. Repairs were carried out by the applicant.
7. The applicant and Attrel misled customers to whom they sold cars as to the history and provenance of the vehicles, either by deliberately misleading them or by not mentioning the car's background. In order to help conceal the provenance of the vehicles and to inflate their value, the applicant and Attrel forged service histories which purported to show that the vehicles had been regularly serviced. Generic service books were stamped and dates and mileage figures were written in to add credibility.

#### The judge's sentence and sentencing remarks

8. The judge noted that the applicant had no previous convictions. Attrel had one previous conviction, which he said was technically a matter of significance but did not have a particular impact on her sentence.
9. The judge observed that it was a serious case from start to finish and involved a large amount of money and a lot of victims. The judge rejected the proposition that all the purchasers of these relatively inexpensive vehicles faced no safety issues. He found that some of the cars had real safety issues. He also found that it was obvious that there was a degree of a cavalier approach to the safety interests of the end users of the vehicles, an aggravating feature of the case.
10. The judge stated that the cars were bought at extremely inexpensive prices, with the minimum, speediest work done to them consistent with getting them onto the road, so

that it would be inexpensive to repair and cheap to insure. He also stated that the cars went to essentially vulnerable people: predominantly parents buying for their kids, first-time car buyers and the like. He said that what was particularly offensive was that it was those sorts of people who were effectively singled out for the fraudulent process.

11. The judge found it to be a serious case of its type, involving higher culpability. It involved a good deal of planning and it lasted a long time. There were a large number of victims and the motivation was clearly to make gain.
12. The judge considered that it fell into category 3 of the guidelines, with a sentencing range of 1 1/2 years to 4 years with a starting point on an assumed fraud of £50,000 of 3 years. He noted that the sums involved in this case were not far off double the £50,000 level on which the starting point is based.
13. In relation to the applicant, the judge said that his overall sentence ordinarily would have been 4 years' imprisonment but that this was reduced by 25 per cent for his mitigation as set out in various documents, including predominantly the pre-sentence report, and for credit for his late plea.
14. In relation to Attrel, the judge found that she had a secondary role but nevertheless a very significant role. She was concerned in six primary counts as opposed to the applicant's nine primary counts. Although she was seriously involved and fully participated, and was a knowledgeable person who deliberately engaged in defrauding customers, this was, the judge found, in pursuit of a business model that initially came from the brain of the applicant. So in her case, albeit no credit was due, the overall sentence was shorter, being 21 months.
15. The individual sentences passed were as follows.
  - Count 1, participating in fraudulent business contrary to section 9 of the Fraud Act

2006, concerned the sale of the motor vehicles as genuine seconds when they had been subject to insurance write-off. For that the applicant received 2 years' imprisonment concurrent to count 2 and Attrel received 12 months concurrent to count 2.

- Count 2, fraud contrary to section 1 of the Fraud Act 2006, concerned multiple instances of fraud by false representation, representing that motor vehicles being offered by them for sale came with a full service history. For that the applicant received 3 years and Attrel 21 months.
- Count 4, forgery contrary to section 1 of the Forgery and Counterfeiting Act 1981, concerned the forgery of vehicle service histories with the intention that they would be used to induce their customers to accept them as genuine and so purchase vehicles on the basis they had been serviced where, when and at the mileage indicated. For that the applicant received 2 years' imprisonment concurrent to count 2 and Attrel 12 months concurrent to count 2.
- Count 5, possessing an article for use in fraud contrary to section 6(1) of the Fraud Act 2006, concerned the use of false stamps to sell vehicles to customers on the basis they had a full service history when the service history was not genuine but had been forged by (inter alia) the use of the stamps. For that the applicant received 2 years' imprisonment concurrent to count 2 and Attrel 12 months concurrent to count 2.
- Counts 6, 7 and 8, engaging in a commercial practice which is a misleading omission contrary to regulation 10 of the Consumer Protection from Unfair Trading Regulations, concerned multiple incidents of operating as motor traders selling cars to the public by stating "sold as seen" on customer invoices, omitting material information from consumers, and making an overall presentation which deceived or

was likely to deceive the average consumer. On those counts there was no separate penalty.

- Count 9, fraud contrary to section 1 of the Fraud Act 2006, related to the applicant only. This concerned six different customers and vehicles. On that count the applicant received 3 years' imprisonment concurrent to count 2.
- Counts 10, 11 and 13, fraud contrary to section 1 of the Fraud Act 2006, related to the applicant only. Each of those counts involved a different customer and vehicle. For that he received 2 years' imprisonment concurrent inter se and to count 2.
- Count 12, fraud contrary to section 1 of the Fraud Act 2006, involved a specific customer and vehicle. On that count the applicant received 2 years' imprisonment concurrent to count 2 and Attrel received no separate sentence.
- Count 14, which involved Attrel alone, fraud contrary to section 1 of the Fraud Act 2006, for which she received 21 months concurrent to count 2.

### The disparity issue

16. We have been referred to various authorities addressing when disparity will be sufficiently unjust to lead to a reduction in sentence, namely R v Fawcett [1983] 5 Cr App R (S) 158; R v Coleman and Petch [2007] EWCA Crim 2318; R v Tate (2006) 150 SJ 1192; and R v Bailey [2011] EWCA Crim 1585. As stated by Gross LJ in Bailey, the most recent of the cases cited to us, at paragraph 15:

"A complaint of disparity depends on there being no good reason for the difference in sentences passed on two defendants or where the same sentence is passed, there being no good reason for a failure to differentiate between the two defendants (see Archbold paragraph 5-106). The disparity complained of must be serious but there is no single bright line test which indicates whether a complaint of disparity can properly be made. It is perhaps undesirable to

search for one in that, as ever in this area, the facts of the individual case will be of first importance (see in this regard R v Coleman and Petch [2007] EWCA Crim 2318 at [7] to [10].) Often what is suggested to be a case of disparity is readily and properly explicable. Often too, sentencing not being a precise arithmetical exercise, this court will take a robust view. That one co-accused has been fortunate in receiving a lighter sentence than he deserved will not necessarily result in a reduction in an otherwise proper sentence passed on another co-accused. Ultimately a good question to ask (see Petch supra) may well be: has any injustice been done?"

17. On behalf of the applicant three principal submissions are made.
18. First, it is submitted first that, as appears from the prosecution opening, the case was brought as a joint enterprise. No suggestion was made that the applicant played any greater role than Attrel and there was no suggestion she was placed under any pressure. A number of the companies used to sell the vehicles were set up by her and in her name. In essence, the applicant would buy the vehicles from salvage sales and repair them whilst Attrel would advertise them and do the paperwork for the sales. Both were involved in the selling process. Various purchasers said they dealt with the applicant whilst others dealt with either the co-accused alone or both.
19. Secondly, it is submitted that there was no evidence to support the judge's finding that the business model came from the applicant.
20. Thirdly, it is stressed that the applicant had no relevant previous convictions, whilst the co-accused was in breach of a conditional discharge for benefit fraud.
21. In summary, the applicant submits that on the prosecution case both played an equal role in the fraudulent sale of vehicles and the disparity of the sentence between the two co-defendants was so great as to be improper.
22. The judge's sentence of 3 years was based on a sentence of 4 years after a trial. As the prosecution submits, a total sentence of 4 years after a trial cannot be regarded as being excessive. It is not in dispute that under the guidelines this was a category 3 case which

involves a starting point of 3 years based on £50,000 and a recommended sentencing range of 1 1/2 to 4 years. As the judge found, this was a case involving higher culpability. Of the guideline higher culpability factors, the offending involved sophistication and planning, fraudulent activity conducted over a sustained period of time, a large number of victims and it was motivated by financial gain. The guideline aggravating features included community impact, failure to respond to warnings, multiple frauds, a number of false declarations and a health and safety risk. In addition, the amounts involved were nearly twice that reflected by the recommended starting point.

23. Although the judge made no express finding to this effect, he could justifiably have found that this was a case of high impact, having regard in particular to the fact that there was a serious detrimental effect on the victims, most of whom had suffered significant financial loss, some being left with cars which were not roadworthy which they were unable to sell. Further, the trial judge found that the purchasers were mainly vulnerable. In addition, the judge's discount of 25 per cent is very generous given the lateness of the applicant's plea.
24. As to disparity, in our judgment there were ample grounds for the judge drawing a distinction between the applicant and Attrel.
25. First, their roles were different. In particular, it was the applicant who found, acquired and prepared the vehicles for sale. Attrel was not involved directly in repair work on the vehicles. Her role was to find and purchase the necessary parts, but she was not involved in any mechanical or body work, which was the applicant's sole province. He had long experience in the motor trade, whereas Attrel had none. He had run a car body repair shop for many years. He said in interview that he had acted as an authorised repairer on behalf of several large insurance companies, and therefore must have known

about insurance repair write-off practices for some time.

26. Attrel gave evidence and said that she merely helped with selling, arranging vehicle identity checks, advertising and doing the paperwork. She helped the applicant when he started selling scrapped/repared vehicles as an adjunct to his body repair business to which she also helped with office work from time to time. Both the applicant and Attrel were involved in dealing with customers face-to-face or on the phone. Other than this, Attrel was essentially an administrator. The applicant seemed to accept their distinct roles in his interview under caution and Attrel gave evidence during trial to the above effect.
27. Secondly, the judge was entitled to find the business model came from applicant, bearing in mind Attrel's lack of experience in the motor trade and her essentially administrative role when contrasted with the applicant's hands-on knowledge and experience of cars and car write-off practices. Further, in the applicant's pre-sentence report it is to be noted that the applicant spoke of his financial difficulties as being behind his decision making and dishonest behaviour. It is recorded that, "He viewed his decision making and dishonest behaviour to be driven by the need to obtain funds to pay money that he owed," and that "Mr Munn was adamant in interview that it was his decision making and actions that led to his offending." The applicant is also recorded as referring to Attrel as being the "company secretary".
28. Thirdly, the distinction in roles gives rise to greater culpability in the applicant because the judge found that there were real safety issues with the cars and a cavalier approach to the safety interests of the end users of the vehicles. It was the applicant who was solely responsible for the repair side of the business and therefore he was the more culpable of the two in this respect. Attrel did not have the experience or involvement to know what

repair work was required, whereas the applicant did and was therefore solely responsible for defects in this regard.

29. Fourthly, the applicant faced more counts than Attrel.
30. Fifthly, there was personal information provided by members of Attrel's family which, whilst not of sufficient weight to justify a suspended sentence because of the seriousness of the offences, did have the effect of reducing Attrel's sentence, the judge recognising that the sentences imposed on Attrel could perhaps have been longer.
31. In all the circumstances of the case, we accordingly do not consider there is any unjustified disparity or, if there is, that it is sufficient to give rise to injustice.

#### Conclusion

32. For the reasons outlined above, the application for permission must be refused.