

Neutral Citation Number: [2016] EWCA Crim 1699

No: 20163867 C3 & 20163869 C3

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

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Wednesday 26 October 2016

**B e f o r e:**

**LADY JUSTICE RAFFERTY DBE**  
**MR JUSTICE SPENCER**

**THE RECORDER OF PRESTON**  
**HIS HONOUR JUDGE MARK BROWN**  
(Sitting as a Judge of the CACD)

**R E G I N A**

**V**

**EMMANUEL ORYEM**

Computer-Aided Transcript of the Stenograph Notes of  
WordWave International Limited trading as DTI  
165 Fleet Street London EC4A 2DY  
Tel No: 020 7404 1400 Fax No: 020 7404 1424  
(Official Shorthand Writers to the Court)

**Mr J Oliver** appeared on behalf of the **Appellant**

**Mr L Ingham** appeared on behalf of the **Crown**

**J U D G M E N T**  
(Approved)  
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1. LADY JUSTICE RAFFERTY: On 21st July 2016 in the Crown Court sitting at Isleworth Emmanuel Oryem, 33, pleaded guilty to a four count indictment and on 29th July was sentenced thus: For fraud, contrary to section 1 of the Fraud Act 2006 20 months' imprisonment; for two offences of possession of articles for use in fraud, contrary to section 6 of the same act, on count 2 15 months, on count 4 12 months; and for possession of false identity documents with intent, contrary to section 25(1)(a) of the Identity Cards Act 2006 12 months' imprisonment. All the terms were concurrent. The total was 20 months.
2. The offence pleaded in count 3 was drafted as contrary to section 25 of the Identity Cards Act 2006, a statute repealed on 21st January 2011 by section 1 of the Identity Documents Act 2010. It was re-enacted in a new and slightly amended form as section 4 of the Identity Documents Act 2010. As pleaded the dates were between 25th and 28th February 2016. Consequently, the offence should have been pleaded as contrary to section 4 of the 2010 Act. With his customary vigilance, the Registrar drew the attention of the court to the relevant powers available and the uncontroversial route to resolution lies in the terms of section 3A of the Criminal Appeal Act 1968. That permits this court rather than to dismiss an appeal to substitute for a plea of guilty a plea of guilty to the offence which is appropriate - here, section 4 of the Identity Documents Act 2010. We are satisfied that the section 3A criteria are met and at the conclusion of this judgment shall make a formal substitution. Technically this matter is an application. We give leave.
3. On Friday 26th February 2016 in a telephone call to a watch shop in the Westfield shopping centre a male enquired whether it sold the Hublot Classic Fusion 2016 watch and was told it did. He was allowed to pay over the telephone and he arranged to collect the watch the same day. The information he supplied was the name Emrah Simsek and an address in EN8. He supplied the number of a bank card later found in his possession. He was invited to bring with him for collection a form of identification. Later that day with another man who did not go into the shop but stayed outside using a telephone he arrived.
4. In the shop, the supervisor did not feel that his voice resembled that to which she had listened over the telephone. The appellant offered her a Lloyds bank card and, as identification, a card in the name Simsek issued to a French national which held a photograph of the appellant. She noticed the back of the bank card was so damaged that any three digit security code was not visible.
5. A machine which allowed a check of whether it were genuine showed an error. The appellant was asked for an alternative proof of identification and said he had none but would come back the next day and provide it. The assistant manager set up the possible attendance of the police.
6. Next day, the appellant returned. He offered a Nationwide bank card in the name Simsek. The police were called and he was arrested. Asked whether he were the person whose name was on the French identity card and the bank cards, he said: "I'll be

honest with you I'm only doing this for a friend. He gave me these cards and asked me to pick up the watch." When asked to say where his friend was, he said: "He is outside by the champagne bar." He described his friend whom the police effortlessly found him and arrested.

7. Interviewed that day the appellant admitted the offences, explained that he had gone to Westfield so as to commit fraud and that the bank cards and the French identity document were fakes.
8. He had three convictions comprising six offences from 2004 to 2012, some for driving, and had more than once been in breach of court orders. He had no convictions for fraud.
9. A pre-sentence report explained the appellant's view that he had become involved with the wrong people and, coerced by others, with reluctance went along to commit the offences. The author thought him remorseful more because of the predicament in which he found himself than for the crimes he had committed. The appellant said he was the carer for his adult disabled brother. He posed a low risk of serious harm to others, but a medium risk of a further offence. He knew he faced a loss of liberty, but was concerned about the effect upon his brother. Lest the court were inclined to suspend the term of imprisonment suggestions were made.
10. The judge said the Hublot was valued at £5,400. This was well planned and, with reference to the work of the Sentencing Council, harm greater and culpability higher, the starting point was 18 months, the range 26 weeks to three years. The appellant was awaiting determination of whether, a Ugandan national, he would be permitted to remain in the United Kingdom. His previous convictions did not suggest significant criminality but this type of offence regularly came before the court and aggravating it was the possession of the French identity document which could be used in so many ways. Custody was inevitable. The judge had thought about totality.
11. In Grounds of Appeal the complaint is that the judge fell into error when describing culpability as higher, when it was medium. He erred in failing to adjust the starting point to reflect the value of the fraud and in treating the French identity document as a passport and as an aggravating feature the use to which it could have been put. The sentence did not acknowledge that the appellant did not use the French document to circumvent immigration control. He should have received a full reduction to reflect his admissions of guilt in interview and his guilty pleas at the earliest opportunity. The custodial term should have been suspended.
12. The Crown from the outset conceded that the appellant should have attracted full credit for his plea. It accepts that the appellant co-operated with police at the scene, with the effect that another man was arrested and later charged with fraud. It acknowledges that the appellant's admissions were echoed in interview. It would appear on that he did not attract full credit for plea because of a simple misunderstanding about events in the court below.

13. In our judgment the path trodden by the judge through the work of the Sentencing Council was sure-footed and is unassailable. There was plainly significant planning and quite a degree of persistence and that fixed the culpability as the judge identified it. It is true that the loss intended might have been towards the bottom of a range and it is true that there was no loss as such. More importantly than any of this, in our view, is the candour with which the appellant behaved when apprehended by police and the information he gave which led directly to the apprehension and charging of the man outside. Not only therefore is he, as the Crown concedes, entitled to full credit for a guilty plea indicated at the earliest opportunity and then entered but also to a modestly increased acknowledgement of his candour and its immediate effects.
14. We substitute on count 3 as pleaded a conviction contrary to section 4. We now re-sentence. We allow the appeal against sentence, so that for fraud 20 months is reduced to 15 months. All other terms were in any event concurrent and none exceeded 15 months. The justice of the case can be met if leave all other dispositions unaffected. The total therefore is 15 months' imprisonment. To that limited extent this appeal succeeds.