APPEAL COURT, HIGH COURT OF JUSTICIARY

[2025] HCJAC 30
HCA/2024/520/XC

Lord Justice General
Lord Doherty
Lord Clark

OPINION OF THE COURT

delivered by LORD CLARK

in

NOTE OF APPEAL AGAINST CONVICTION

by

SHAMSHAD ADAMS

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Culross; Dewar Spence Solicitors
Respondent: Harvey, AD; the Crown Agent

17 July 2025

Introduction

[1] On 30 September 2024, after a trial at Forfar Sheriff Court, the jury unanimously found the appellant guilty of forming a fraudulent scheme to obtain sole ownership of a property. The appellant appeals against conviction on two grounds. First, that the Crown failed in its duty of disclosure to the appellant, and the sheriff erred in his refusal of the subsequent motion to desert the trial as a result of that non-disclosure. Second, the sheriff

misdirected the jury on the necessary components of the offence that required to be proved by the Crown.

[2] The charge against the appellant stated:

> "on 19th July 2019 at Kirkcaldy Justice of the Peace Court, 23 Brycedale Road, Kirkcaldy, Fife or elsewhere in Scotland to the Prosecutor unknown, you SHAMSAD ADAMS did form a fraudulent scheme to obtain the sole ownership of the property at 2115 Heather Hill Loop, The Villages, Florida, USA, then jointly owned by you and Gordon Laing, care of Police Scotland, and in pursuance of said scheme you did whilst in the course of your employment as a clerk with the Scottish Courts and Tribunal Service, forge signatures on a deed to transfer sole ownership of said property to you and stamp said deed without lawful authority with the official stamp of the Justice of the Peace Court for the Sheriffdom of Tayside, Central and Fife which purported to authenticate said deed as being genuine and did submit said deed to Sumpter (sic) County Court, Florida, USA purporting to be genuine and you did induce the said Sumpter (sic) County Court to accept said deed as genuine and to transfer ownership of the said property at 2115 Heather Hill Loop, The Villages, Florida, USA from joint ownership into your sole ownership, the truth being as you well knew that the deed you submitted had been forged by you and you therefore did obtain sole ownership of said property by fraud."

The trial

[3] The key elements of the evidence and what occurred at the trial can, for present purposes, be briefly summarised as follows.

[4] The appellant and Mr Laing were in a relationship. On 30 May 2017 the Florida property was purchased. Title was taken jointly in the names of the appellant and Mr Laing. The appellant maintained that the purchase was funded entirely by her, and that the reason title was taken jointly was to enable Mr Laing to use resort facilities which proprietors were entitled to use. The relationship between the appellant and Mr Laing broke down in June/July 2019. On 5 July 2019 there was a text exchange between the appellant and Mr Laing regarding the property. The appellant and Mr Laing met to discuss the property. The relationship ended on 12 July 2019 upon Mr Laing's return from Spain with his new partner, Ms Fiona Stoddard. On 12 July 2019 the appellant exchanged further texts with

Mr Laing, which included these comments: "In April I will send you an email in regards to sale of Florida. Even if it sells for half the price, I am selling it, I want no memories of you"; "sorry about what I'm about to do to you"; and "but I want to see you suffer." In her evidence, the appellant said that she thought the reference to "April" was because the property had tenants in it until March.

[5] The appellant and Mr Laing had a mutual friend, named R. On 14 July 2019 Fiona Stoddard received an email from an email address which contained R's name. The email read: "Hello. You don't know me, I am disappointed you hurt my friend, I have been consoling her since this ordeal."

[6] An email was sent on 18 July 2019 from a legal assistant employed at a law firm in the USA, named McLin & Burnsed, to the R email address. The appellant was copied in. The email confirmed that McLin & Burnsed had been instructed to prepare a new deed and to transfer Mr Laing's interest in 2115 Heather Hill Loop to the appellant. The result of the transfer of interest by the deed would be the sole ownership of the property by the appellant. The email attached a blank Quit Claim Deed, which is a legal document used to transfer ownership of property from one person to another. A Quit Claim Deed is commonly used in non-sale situations where title is transferred to or from a spouse or family member.

[7] On 22 July 2019, the completed Quit Claim Deed was returned to McLin & Burnsed, from the R email address. A further email from the same address was sent to McLin & Burnsed confirming that the original deed was sent by registered delivery via Royal Mail on 23 July 2019 to the firm. The Quit Claim Deed had a signature on it, purporting to be that of Gordon Laing, and bore the stamp of the Justice of the Peace Court in Kirkcaldy dated 19 July 2019. The document also purported to have been notarised by a person with the

surname "Henderson". In 2019, there were two Notaries Public with the surname "Henderson". Mr David Henderson and Mr Donald Henderson were contacted and they both advised that they did not sign the Quit Claim Deed.

[8] On 14 August 2019 Sumter County Court, Florida, granted a Quit Claim Deed transferring the title of the property solely to the appellant. In September 2019, Mr Laing's solicitor contacted the appellant's solicitor to finalise matters following the end of the relationship. During this exchange, Mr Laing's solicitor discovered the Quit Claim Deed. Mr Laing advised that the signature on the Quit Claim Deed was not his and he had not signed the document. Mr Laing reported the matter to the police. The appellant was interviewed by the police on 28 October 2019.

[9] In the course of the trial, the Crown received what is referred to as the "warranty deed" for the sale of the property on 25 or 26 September 2024. This was a document which bore the appellant's signature, made on 23 October 2019. The document appeared to show the transfer of the property to a person named Micky L Halburnt. The document had been annotated with the words "sold for 265,000 dollars on 23/10/19." This was handed to the procurator fiscal depute shortly prior to cross-examination of the appellant by a police officer, who had been given it by Mr Laing, whose evidence had previously been completed. The appellant gave evidence at the trial on 27 September 2024. Her position, both in evidence-in-chief and in cross-examination, was that she did not know of her status as the sole owner of the property until the police interview.

[10] The transcript of the appellant's evidence records that in cross-examination it was put to her that, contrary to what she had said, the first time that she was aware that the property had been transferred to her could not have been at the police interview on 28 October 2019, because her solicitor knew it was in her sole name in September 2019. For

that reason, it was put to her that "you are lying to us today, aren't you?" She denied lying. She accepted that she had sold the property for $265,000, but thought that had occurred in November 2019.

[11] During cross-examination no objection was made by the defence to the reference to the sale date of 23 October 2019 and the proceeds of sale. The court adjourned for lunch while the appellant was still in cross-examination. After lunch, the defence made a motion to desert the trial arguing that the point raised was prejudicial to the appellant. The defence solicitor contended that the cross-examination had already undermined the appellant's credibility. The timing of the evidence meant that the appellant had not made her position clear in examination-in-chief. She was not given an opportunity in advance of the trial to consider her position or to take legal advice on the significance of the warranty deed.

[12] The sheriff considered that any prejudice could be redressed by re-examination of the appellant. The Crown accepted that there was a duty of disclosure which had inadvertently been breached. However, the Crown's submission was that the facts were within the knowledge of the appellant and that any prejudice could be cured by re-examination. The sheriff refused the motion to desert, on the basis that the legal test had not been met. He afforded the appellant the benefit of a short consultation with her solicitor (even though she was in the course of giving evidence) to discuss the document. In re-examination the appellant's evidence was that even at the time of the interview she was not aware of the Quit Claim Deed. She had understood that Mr Laing had agreed to transfer title to her, and that her American agents would see that all that was required in that regard was done to enable the property to be sold.

[13] In his speech to the jury, the procurator fiscal depute submitted that the offence on the indictment could have been committed either by the appellant forging the signatures

and sending the documents to the law firm in the USA, or by a third party sending the documents on her behalf. The jury was invited to infer that the appellant was the person who sent the email on 22 July 2019, mentioned in paragraph [7] above, or was involved in sending that email. In the defence speech, it was submitted to the jury that if the appellant's friend forged the signature of Mr Laing and sent the document that was not the crime in the charge. No direction to the jury was given by the sheriff on this matter.

Submissions for the appellant

[14] The sift judge allowed leave to appeal on grounds 4, 5 and 6 in the appellant's Note of Appeal. It is convenient to deal with grounds 4 and 5 together, since there are several points which overlap on these issues.

Ground 4: Crown non-disclosure; Ground 5: Refusal of motion to desert the trial

[15] There was a miscarriage of justice because of the failure to disclose by the Crown during the trial. Reference was made to *McDonald* v *HM Advocate* [2008] UKPC 46, 2010 SC (PC) 1. The importance of the disclosure obligations incumbent upon the Crown to ensure Article 6 of the European Convention on Human Rights compatibility in any criminal trial was highlighted by the Supreme Court in *Fraser* v *HM Advocate* [2011] UKSC 24, 2011 SC (UKSC) 113. A failure to disclose information to which the disclosure tests applied was incompatible with the right to a fair trial. By not disclosing, the Crown failed in their obligation of fairness and their duty under section 121 of the Criminal and Licensing (Scotland) Act 2010.

[16] On the motion to desert made at the trial, when the sheriff asked the Crown for submissions, he indicated that he did not plan to accede to the motion, despite not having

heard any submissions from the Crown on the issue. The sheriff had predetermined the issue without applying proper thought to the concerns from the defence on the duty owed by the Crown and the prejudice caused to the defence in the duty having been breached.

[17] The information was important, as was the time at which the issue arose, which was while the appellant was being cross-examined. The opportunity to deal with it in examination-in-chief of the appellant was lost. In a jury trial, the impression that there had been a disguising of an issue in that it was only discussed in cross-examination was important, particularly in a trial that centred around credibility and reliability on an allegation with dishonesty at its core.

[18] The breach of duty was not able to be cured by simply disclosing the document, as the appellant's credibility had already been undermined. The sheriff considered that the Crown had complied with its duty, albeit late, by making the disclosure during the trial. The suggestion that any prejudice could have been redressed by re-examination was flawed. The document had not been explored by the appellant with her solicitor in advance of her evidence. The appellant had the right to such consultation and a right to know of the information in the document. In not acceding to the motion to desert the trial, the sheriff further breached the appellant's minimum rights in terms of Article 6, and in particular Article 6(3)(a), (b), and (c). It was clear from the discussions as to the unfortunate procedural history of the case that this had a bearing on the error made by the sheriff in refusing the motion to desert the trial.

[19] The sheriff ought to have accepted that the behaviour of the Crown in failing to disclose crucial information was oppressive. That resulted in a miscarriage of justice because of the different way the case may have been approached by the defence. The prejudice to the appellant was significant. The lack of a basis for the information had the

potential to invite speculation by the jury that would be, in part, prejudicial to the appellant given the lack of use of the information in evidence-in-chief. The approach by the Crown was a significant breach of the right to fair trial. Given the failure to disclose, and thereafter what actually happened at the trial, it could not be said that was fair. That was especially so where the decision by the sheriff was tainted by the procedural issues preceding the breach during defence evidence.

[20] The issues of credibility and reliability were central to the decision for the jury on the proof of the Crown case, the position of the appellant and the nature of the charge. There was a real possibility that the jury would have arrived at a different decision had the information been both properly disclosed and considered from a defence perspective. The sheriff ought therefore to have allowed the motion to desert. In not doing so, a miscarriage of justice resulted.

Ground 6: Misdirection by omission

[21] There was an erroneous reference to a third party in the Crown speech to the jury, which was not corrected by the sheriff in his directions to the jury. This formed a material misdirection, which resulted in a miscarriage of justice. The Crown in their closing address to the jury stated that the offence on the indictment could have been committed either by the appellant forging the signature of Mr Laing and sending the documents to the USA, or by a third party doing those things on her behalf. It was incumbent upon the sheriff to ensure that the jury understood that any involvement of a third party required to be on the instruction of the appellant. The erroneous reference by the Crown to a third party was not resolved adequately in the charge, and in those circumstances it was likely that the jury would have the impression that the Crown was correct in the assertions made about the

third party. It was therefore open to the jury, without correction on the issue, to consider that the Crown approach was a route to conviction. It was not. The sheriff did not explain that to the jury.

Submissions for the Crown

Ground 4: Crown non-disclosure; Ground 5: Refusal of motion to desert the trial

[22] It was not the case that any disclosure during the trial will automatically require desertion (*Clarkson* v *HM Advocate* [2024] HCJAC 13, 2024 JC 345). Secondly, desertion was a remedy of last resort (*HM Advocate* v *RV* [2016 HCJAC 103 [12], 2017 SCCR 7, at para 12). The manner in which the document came to be disclosed was regrettable and plainly it should have been disclosed as soon as it was received. However, as the procurator fiscal depute was at pains to point out to the sheriff, the document had been handed to him by the police officer in court, who advised him it had come from Mr Laing. He considered it briefly and, because the sheriff was about to come on the bench, put it to one side. The next time he looked at it was when the appellant's agent asked from where he, the prosecutor fiscal depute, had got information on the sale. When the matter arose in cross-examination, the procurator fiscal depute had not set out deliberately to cross-examine on the basis of the document, but had only done so from memory of having seen a reference to the figure of $265,000. It was, as the sheriff accepted, an inadvertent breach of the procurator fiscal depute's disclosure obligations.

[23] The sheriff took prompt and effective steps to remedy what had happened. The adjournment and consultation led, again properly, to the trial proceeding. It was not apparent that the jury would have perceived anything untoward in the appellant being asked questions in re-examination rather than examination-in-chief on what was only one

point in the case and a narrow one at that. It was not the case that the sheriff was influenced in the course he took by his frustrations at the procedural history of the case. As the sheriff recorded in his report, the fact of the sale was essentially neutral. Any prejudice was not therefore significant and was quickly remedied by the sheriff.

[24] There was no miscarriage of justice for the purposes of ground 4 and, for ground 5, no error in deciding not to desert the trial. The problem was remedied not by the drastic action of desertion but instead by the adjournment given to the defence and the procedural steps the sheriff took. Moreover, there was no oppression in what had happened.

Ground 6: Misdirection by omission

[25] The evidence was that the blank deed was sent to the R email address on 18 July 2019 and that later the signed deed was sent to the American solicitors from the same email address. The appellant's email address was copied into these emails. Each side addressed this in their speeches. The Crown was not seeking to suggest R was criminally responsible. Rather, the position was that the jury could reasonably infer either that the appellant sent the email or that she prevailed on R to do it on her behalf. In evaluating whether there had been a misdirection, the charge was not to be scrutinised as if the jury did not hear the evidence and the speeches. It was to be looked at in context (*EM* v *HM Advocate* [2024] HCJAC 9 [11], 2024 SCCR 149, at para 11). The court was to view the summing-up as a whole and against the background of the whole evidence in the case, as well as the arguments at trial (*MacDougall and Smith* v *HM Advocate* [2021] HCJAC 32 [18]). The jury was able to consider the alleged conduct of the appellant as a whole and determine whether that established that she committed the fraud in the manner alleged by the Crown. There was no need for the sheriff to comment on what had been said. He properly directed the jury on the elements of

fraud and what the Crown needed to prove in this case. No specific direction on the email was necessary.

Analysis and decision

Ground 4: Crown non-disclosure; Ground 5: Refusal of motion to desert the trial

[26] It is clear that the Crown failed in its duty to disclose to the defence the information about the sale of the property and the price received, before raising the matter in cross-examination, and this breach was accepted on behalf of the Crown. The fundamental question is whether the breach caused a miscarriage of justice. In *McInnes* v *HM Advocate* 2010 SC (UKSC) 28 (at para 20) the Supreme Court stated:

> "…A trial is not to be taken to have been unfair just because of the non-disclosure. The significance and consequences of the non-disclosure must be assessed. The question at the stage of an appeal is whether, given that there was a failure to disclose and having regard to what actually happened at the trial, the trial was nevertheless fair and, as Lady Cosgrove said in *Kelly v HM Advocate* (para 35), as a consequence there was no miscarriage of justice (see the Criminal Procedure (Scotland) Act 1995, sec 106(3)). The test that should be applied is whether, taking all the circumstances of the trial into account, there is a real possibility that the jury would have arrived at a different verdict."

[27] In relation to desertion, non-disclosure need not require a trial to be deserted. As explained by the Lord Justice General (Carloway) in *HM Advocate* v *RV* 2017 SCCR 7 (at para 12), an indictment:

> "should be deserted at the instance of the court only when it has become abundantly clear that the circumstances warrant such drastic action. It may be merited where, for example, irreparable unfairness is perceived to have occurred already or where there is a material risk that the proceedings will inevitably become unfair (*HM Advocate v Fleming*, LJC (Gill) at para.33; *Fraser v HM Advocate*, LJC (Carloway) at para.51). That can only arise if the problem cannot be cured by an adjournment, an adequate direction to the jury (*HM Advocate v Sinclair*, LJC (Ross) at p.123) or by introducing some other reasonable procedural or evidential step. Desertion is in this sense an act of last resort, to be taken only where the actual or perceived unfairness is so material that no step short of abandoning the trial can address it".

[28] On the matter of oppression raised by the appellant, the question is whether, having regard to the principles of substantial justice and of a fair trial, to require an appellant to face trial would be oppressive (*Stuurman v HM Advocate* 1980 JC 111, at 122). In considering whether oppression has been established, this depends on the particular facts and circumstances, including the Crown's conduct, the seriousness of the charge and the public interest in ensuring that crime is prosecuted (*HM Advocate v MacLennan* [2024] HCJAC 26 [19], 2024 SCCR 277, para 19, following *Fisher* v *HM Advocate* [2022] HCJAC 43, 2023 JC 21 and *Potts* v *Gibson* [2017] HCJAC 8, 2017 JC 194).

[29] Applying the test in *McInnes* v *HM Advocate* as to whether there was a miscarriage of justice, the question is whether, taking all the circumstances of the trial into account, there is a real possibility that the jury would have arrived at a different verdict. In the submissions put before the court, the key theme for the appellant was that the non-disclosure affected her credibility and reliability. It is therefore necessary to consider the other evidence. The Crown relied on a substantial body of circumstantial evidence regarding the signing and stamping of the Quit Claim Deed by the appellant. As noted earlier, the appellant had sent a message to Mr Laing in July 2019 which included the following: "…I will send you an email regards to the sale of Florida. Even if it sells for half the price, I'm selling it, I want no memories of you". There was evidence from court staff that the appellant was in the Justice of the Peace Court in Kirkcaldy Sheriff Court when the document was stamped. One staff member was suspicious when she saw the Quit Claim Deed dated 19 July 2019 and was "100% sure" it was not signed legitimately. It is agreed that the appellant was working there on that day. The jury could infer that the solicitors in the USA were instructed by the appellant and drafted the document. The witness Gordon Laing gave evidence that he had

not signed the deed. Two forensic scientists gave evidence that it was likely that another individual, rather than Mr Laing, was responsible for the handwriting.

[30] The procurator fiscal depute submitted in his speech to the jury that the appellant was not credible and reliable during her evidence. Nine separate grounds for her not being credible and reliable were identified. In relation to her evidence that she did not know about the property being in her sole name until the police interview on 28 October 2019, reference was made to Mr Laing's solicitor having been told in September by the appellant's solicitor that it was in her sole name.

[31] The central element of this case is whether the appellant made a false pretence in preparing the Quit Claim Deed. The date when she knew the property was sold and the amount of the sale proceeds were not of any material significance in that regard. To the extent that the undisclosed points raised in cross-examination may have affected her credibility, the jury could readily have reached the same view by the separate evidence that her solicitor told Mr Laing's solicitor in September that the property was in her sole name. As noted above, it was put to her in cross-examination, in relation to her only knowing that it was in her sole name at the police interview on 28 October 2019, that "your solicitor knows that it is in your sole name in September 2019, and you are lying to us today, aren't you?" A number of other pieces of evidence said to affect her credibility and reliability were relied upon by the Crown. There is also at least the likelihood that the appellant would have been aware of the timing of the sale of the property and the price paid for it, which could have been disclosed by her to her agent. Overall, the impact of the non-disclosure on the issues at trial was of marginal significance. The appellant explained her position in re-examination. The jury had her account. It was a matter for them what they made of it in view of all of the evidence which they heard.

[32] In light of the full body of the evidence, we do not accept that there is a real possibility that the jury would have arrived at a different verdict and hence there was no miscarriage of justice arising from the non-disclosure itself. Their verdict was (unsurprisingly) unanimous. To reach a different decision would have involved the jury not accepting the many other convincing strands put forward in the Crown speech.

[33] On the matter of desertion, following the principles set out in *HM Advocate* v *RV* we conclude that the sheriff took the appropriate course in refusing the motion to desert and allowing consultation with the appellant before re-examination. There was no irreparable unfairness perceived to have occurred already or a material risk that the proceedings would inevitably become unfair. If the defence took the view that, having consulted, further investigations were required, a motion for a further adjournment or a renewed motion to desert could have been made. That did not happen. The central element of the charge, making the false pretence, is again of importance and the point raised in cross-examination arising from the undisclosed matter was simply an additional line suggesting that she was not telling the truth. Whether she simply held on to the property or sold it was neither here nor there in relation to the false pretence. There was no actual or perceived unfairness which was so material that no step short of abandoning the trial could address it. The approach taken was not oppressive.

[34] We do not accept the appellant's contentions that the sheriff had predetermined the issue of desertion or that his decision was tainted by the procedural issues in the case. He did not express his provisional view on the desertion motion until after he had heard the appellant's solicitor's submissions. This was certainly a case with a lengthy and indeed unimpressive history. The appellant first appeared on petition on 21 August 2020. Several delays and postponements occurred and the case did not finally call for trial until

23 September 2024. The case could and should have been dealt with more efficiently by all those concerned. However, it is clear from the sheriff's report that he dealt with the matter of desertion on an objective and balanced basis, having due and proper regard to the evidence and the arguments put before him.

Ground 6: Misdirection by omission

[35] As noted above, in the Crown speech the jury was told that it could reasonably infer that the appellant got her friend to send the email with the forged document, or she sent the email herself. This issue was picked up in the defence speech. However, in that speech it was put to the jury that the charge does not say that the forging of the signature was done through the hands of a third party, or while acting with another. In the written submissions for the appellant before this court it was again said that the Crown case was that the offence on the indictment could have been committed either by the signature of the appellant and sending the documents to the USA or "by a third party doing those things on her behalf". These comments are a misinterpretation of the point made in the Crown speech, which did not suggest that someone other than the appellant signed the deed.

[36] In his charge to the jury, the sheriff explained the requirements for the crime of fraud, including that it involves the appellant making a false pretence to another person expressly or impliedly and acting with a dishonest intention, the appellant knowing the pretence was false at the time she made it. He explained that for the Crown to prove the charge:

> "you would need to be satisfied: firstly, that the appellant made a false pretence to Sumpter (sic) County Court; secondly, that there was a definite practical result; and thirdly, that the false pretence caused the result."

[37] Accordingly, while the sheriff did not direct the jury specifically on the issue of the involvement of the third-party email address that was raised in the speeches, he did

however indicate to the jury that the Crown required to prove that the appellant made the false pretence to Sumter County Court. When evaluating whether there has been a misdirection, the charge to the jury is not to be scrutinised as if the jury did not hear the evidence and the speeches and it must be looked at in context (*EM* v *HM Advocate* [2024] HCJAC 9 [11], 2024 SCCR 149, at para 11). In terms of the jury manual, the sheriff gave the standard directions. The sheriff could have been clearer in his direction regarding the point in the Crown's speech that there was a reasonable inference that the appellant got her friend to send this email. However, his directions to the jury were adequate. There was no miscarriage of justice.

[38] The appeal is refused.