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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/03985/B2

NCN [2022] EWCA Crim 270

Royal Courts of Justice

The Strand

London

WC2A 2LL

Thursday 17th February 2022

LORD JUSTICE HOLROYDE

MR JUSTICE HOLGATE

MR JUSTICE SWEETING

R E G I N A

- v -

THOMAS BRIAN WILLIAMS (DECEASED)

Computer Aided Transcript of Epiq Europe Ltd,

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr P Marquis appeared on behalf of the Appellant

Mr J Price QC appeared on behalf of the Crown

J U D G M E N T

(Approved)

Thursday 17th February 2022

LORD JUSTICE HOLROYDE:

1. As long ago as February 1974 the late Mr Thomas Brian Williams was convicted of offences of affray and unlawful assembly, and was sentenced to a total of six months' imprisonment. No application was made for leave to appeal against conviction or sentence.

2. Mr Williams died in 2013. His case has now been referred to this court by the Criminal Cases Review Commission. Mr Williams' daughter-in-law, Samantha Williams, has been approved, pursuant to [section 44A](#) of the [Criminal Appeal Act 1968](#), to pursue the appeal on his behalf.

3. For reasons which will shortly become apparent, we can summarise the facts and issues briefly. In 1972 the principal unions representing building workers called a national strike. They sought, amongst other things, to increase the minimum wage and to abolish the Lump Labour Scheme ("the lump") under which workers were employed as daily labour without employment rights. A feature of the strike was that unionised workers were transported to particular building sites to seek support from those working on the lump. Such mobile groups were known as "flying pickets".

4. Mr Williams was one of the flying pickets who attended sites in Shropshire on 6th September 1972. No arrests were made that day. The strike ended on 14th September 1972. Some months later, however, a number of those involved in the picketing on 6th September were arrested and charged.

5. In all, 24 defendants were tried during 1973 and 1974 in a series of three trials in the Crown Court at Shrewsbury. Mr Williams was one of the defendants in the second of those trials. Given the passage of time, and the dearth of surviving material, there has been some doubt as to whether he pleaded guilty or stood trial. It now seems reasonably clear that he was convicted by a jury.

6. In very broad terms, the prosecution case was that flying pickets had threatened and assaulted workers who did not wish to join the strike, and had damaged building plant. The prosecution relied on the evidence of building workers who described the events in question and the persons responsible for particular acts. It appears that in at least some cases witnesses identified offenders by reference to persons shown in press photographs of the events.

7. The case for individual defendants involved a denial of personal participation in any unlawful activity.

8. Many years later, in November 2013, a note was found in the National Archive which recorded a conference on 17th September 1973 (before the first of the three trials), which had been attended by leading counsel for the prosecution, prosecuting solicitors and police officers. The note included the following:

"... It was mentioned that not all original handwritten statements were still in existence, some having been destroyed after a fresh statement had been obtained. In most cases the first statement was taken before photographs were available for witnesses and before the officers taking the statements knew what we were trying to prove."

9. During the first of the three trials, prosecuting counsel had placed on record that all statements had been disclosed to the defence, including statements which the prosecution had no obligation to disclose under the law and practice at the time. It is, however, common ground between the parties that neither the note of conference, nor the fact that original statements had been destroyed, had been disclosed to defence representatives before, during or after the trial.

10. As is obvious, the fact that original statements have been destroyed and replaced by later statements made after the witnesses had been shown photographs would have been highly significant to the defence case. It would no doubt have affected the terms in which prosecution witnesses were cross-examined and it may have led to defence witnesses being called.

11. In early 2021, a constitution of this court heard and allowed appeals against conviction by 14 of the flying pickets whose cases had been referred by the Criminal Cases Review Commission: see *R v Warren and Others* [2021] EWCA Crim 413 ("Warren"). Some of the appellants in the Warren appeal were men who had been defendants jointly charged in the second trial with Mr Williams. In giving the judgment of the court, Fulford LJ noted that the prosecution case had essentially been based on the testimony of eyewitnesses who had been asked to look at photographs of potential suspects days, and perhaps weeks or months, after the incidents had occurred. Having analysed the surviving material, and referred to the need in historic cases for the court to apply the common law as it is understood at present, Fulford LJ at [87] said this:

"If the destruction of the handwritten statements had been revealed to the appellants at the time of the trial, this issue could have been comprehensively investigated with the witnesses when they gave evidence, and the judge would have been able to give appropriate directions. We have no doubt that if that had happened, the trial process would have ensured fairness to the accused. Self-evidently, that is not what occurred. Instead, we are confronted with a situation in which an unknown number of the first written accounts by eyewitnesses have been destroyed in a case in which the allegations essentially turned on the accuracy and credibility of their testimony. As we have already described, we consider it correct to infer that the descriptions by the witnesses would in many instances have changed and developed as they were shown the photographs and as the police gained greater understanding of what those responsible for the investigation sought to prove. Those changes and developments could have been critical for the assessment by the jury of whether they were sure that the individual appellants were guilty of the charges they faced. The jury either needed to have this evidence rehearsed in front of them to the extent necessary, if the statements were still in existence, or they needed to be given clear and precise directions as to how to approach the destruction of the statements if that had occurred. Neither of those things happened, and in consequence we consider the verdicts in all three trials are unsafe. ..."

Fulford LJ went on to note the substantial development of the common law over the last half century in relation to the prosecution's obligations of retention and disclosure of witness statements, and concluded that:

"By the standards of today, what occurred was unfair to the extent that the verdicts cannot be upheld."

12. The present reference has been made by the Commission in the light of the judgment in Warren. We are grateful to the Commission for the care with which it has considered and presented the case. It concluded that Mr Williams did not have a fair trial and that his conviction is unsafe, even if (as was initially thought) he had pleaded guilty. The Commission observed, correctly, that the law did not permit an application directly to this court by Mrs Williams on behalf of her late father-in-law, because she was approved to act on his behalf more than a year after his death: see [section 44A\(4\) of the 1968 Act](#). A reference by the Commission was, therefore, the only route by which an appeal could now be brought. In those circumstances the Commission was satisfied that there were exceptional circumstances which justified a reference, notwithstanding that no appeal has previously been brought. We respectfully agree with that analysis.

13. The Commission has accordingly referred the case to this court on the ground that, as found in Warren, the non-disclosure of the contents of the 17th September 1973 note and the prior non-disclosure and destruction of the statements referred to therein rendered Mr Williams' trial unfair and his conviction unsafe.

14. We have been assisted by written and brief oral submissions by Mr Marquis on behalf of the appellant and Mr Price QC on behalf of the respondent, to both of whom we are grateful. Mr Price has indicated that, in the light of the decision in Warren, there is no basis on which to oppose the appeal. That is, in our view, an entirely proper approach for the respondent to take.

15. We are satisfied that the decision in Warren, with which we respectfully agree, is determinative of this appeal. By modern standards, the appellant could not and did not have a fair trial because of the non-disclosure to which we have referred. His convictions are accordingly unsafe.

16. For those reasons, we allow this appeal and quash the convictions.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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