

Neutral Citation Number: [2012] EWCA Crim 1867

No: 2011/7166/D3

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2(A 2LL

Wednesday, 11 July 2012

**B e f o r e:**

**LORD JUSTICE AIKENS**

**MR JUSTICE SWEENEY**

**HIS HONOUR JUDGE BEVAN QC**

(Sitting as a Judge of the CACD)

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**R E G I N A**

v

**L.Z.**

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**Mr R Thomas** appeared on behalf of the **Appellant**

**Mr b Douglas-Jones** appeared on behalf of the **Crown**

**J U D G M E N T**  
(As Approved by the Court)

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1. LORD JUSTICE AIKENS: On 22nd June 2007 in the Crown Court at Northampton, Mrs LZ, who is a Moldovan national now aged 57, pleaded guilty to the possession of an improperly obtained identity document, viz a Latvian passport, with the intention of using the passport to establish registrable facts about herself in the UK. She was sentenced to 12 months' imprisonment by His Honour Judge Bray. It now transpires that Mrs LZ was the victim of people trafficking to the UK. That fact is, we understand, now accepted by the UK authorities, in particular the UK Borders Agency and the Crown Prosecution Service following, in particular, proceedings before the Asylum and Immigration Tribunal in 2009.
2. There are now before the court applications for leave to appeal against the 2007 conviction out of time (four years and seven months) and for leave to appeal and for leave to adduce fresh evidence, the latter being pursuant to section 23 of the Criminal Appeal Act 1968 as amended. The applications for leave to appeal out of time and for leave to appeal are not opposed by the Crown. We grant that leave. The application to adduce fresh evidence is largely unopposed. To the extent that this application to adduce fresh evidence is unopposed, we grant leave. It seems to us, for reasons which will give in the course of this judgment, that it is undoubtedly in the interests of justice that this evidence be received and adduced on this appeal.
3. The Crown invites the Court in fact to allow the appeal and to quash the conviction despite the fact that the conviction was based on an unequivocal plea of guilty. Having read the written submissions and all the relevant papers, and counsel for the Crown and the appellant having answered a number of questions put to them by the Court, we agree to that cause. We will now give reasons for allowing the appeal.

#### The facts

4. The facts which were in 2007 believed to give rise to the charge against the appellant were thought to be as follows.
  - (1) On 16th October 2006, Mrs LZ, using the name "Svetlana Ignatjeva" registered for work in the United Kingdom with an organisation called "Meridian Business Support" ("Meridian"), a recruitment agency. Anyone seeking work through Meridian is required to provide the organisation with identification bearing a photograph and proof of a right to work in the United Kingdom.
  - (2) Mrs LZ provided a passport to Meridian in the above name. It purported to show that she was a Latvian, and therefore a national of a member state of the European Economic Area ("EEA"), born on 6th September 1958. She gave Meridian permission for staff to check her immigration status in the UK.
  - (3) Mrs LZ was provided with work at a sandwich factory of "Uniq Prepared Foods" in Northampton.
  - (4) The passport was copied and the copy retained.
  - (5) Nationals of member states of the EEA (except Cyprus and Malta) who wish to work for more than one month for an employer in the UK

need to register with the Workers' Registration Scheme ("WRS") within one month of starting work. In order to register they must submit an application form together with photograph bearing identification.

- (6) Meridian requires workers to make the application under the WRS for permission to work within one month of starting a work placement which it has organised. In the event that such an application is not made, Meridian will decline to provide work.
  - (7) Mrs LZ submitted the necessary application form, together with her passport, to the WRS department in Sheffield. That department received her application on 19th February 2007. Staff at the department suspected that the passport was a forgery. It was.
  - (8) On 5th June 2007 Mrs LZ and three others, all of whom were claiming to be nationals of EEA states, were arrested by the UK Border Agency.
  - (9) Mrs LZ was interviewed under caution. She asserted that the passport was genuine and that she was the Latvian national referred to therein.
  - (10) She said that she lived at an address with five other women. They had worked at the factory since the second week of February 2007. The job had been found by an acquaintance of Mrs LZ. She described applying for work through Meridian. She said that the women were driven to work by the same lady called something like "Vera" each day and returned to their address after their shifts.
  - (11) In terms of her transit into the UK, Mrs LZ said that she had flown into Stansted Airport. She could not remember the airline with which she travelled. She paid about 130 to 140 Latvian lats for the fare in cash.
  - (12) She said that she had a husband in Latvia and a daughter who was at university in Riga.
5. In fact the position was very different. The basic facts are set out in the witness statement of Mrs LZ dated 31st May 2008. This is one of the pieces of fresh evidence sought to be adduced on this appeal and the Crown does not oppose its admission, nor the admission of further undated supplementary witness statement also by Mrs LZ.
  6. It is clear from this material and we accept that the true position is as follows: Mrs LZ and her husband suffered persecution in Moldova for reasons that we need not go into in detail. The result was that she and her family were subjected to blackmail and violence. Mrs Z wished to come to the UK to seek asylum. She was in the hands of an agent called Vladimir Ignarjev. Although he said that he would provide Mrs Z with a genuine passport and visa, in fact he provided her with the forged Latvian passport using the name of Svetlana Ignatjeva. The price for transport to the UK was €4,000.
  7. Mrs LZ came to the UK via Turkey where she was held for some time with eight other women who were also awaiting transportation out of Turkey. She suffered ill-treatment there. At Stansted Airport Mrs LZ (via the agent) used the forged Latvian passport to get through passport control and customs. She was by then suffering ill health as a result of her previous ill-treatment.

8. The agent took her to a caravan site in Northampton where she had to live with one other woman who had also been transported with her and the agent from Turkey. The agent said that Mrs Z had to work to pay off the €4,000 fee. The agent beat her. She was forced to work 18 hours a day for seven days a week and had to pay to the agent all her earnings, save for £25 per week. From that sum she had to pay the rent for the caravan, leaving her with £50 per month to live on. Even when the €4,000 was paid, the agent demanded a further €2,000.
9. In February 2007 the agent started to bring men to the caravan and Mrs LZ and another woman in the caravan were driven to a house where they were raped and otherwise sexually abused by the men who had also video-recorded the proceedings.
10. At one stage Mrs LZ attempted to hang herself in her desperation. Her witness statement says that she eventually wrote to the Home Office twice, once with the forged passport and once to tell the Home Office what had happened to her. The Home Office acknowledged the first, but there is no record of the second on the Home Office file.
11. As noted, when Mrs LZ was interviewed following her arrest, she maintained her false story concerning the Latvian passport. She did so because the agent had threatened her, saying that if she had said anything he would kill her.
12. At the police station she was seen by two doctors. The record indicates that no account was given by Mrs LZ at the time, although the form records that "she appears to have genuine claustrophobia (PTSD)".
13. When Mrs LZ appeared at the Magistrates' Court she was represented by a solicitor. Mrs LZ says in her witness statement that she gave her correct name and gave an account of her forced labour and showed her bruises to the solicitor. She did not give an account of her sexual abuse.
14. The case was sent to the Northampton Crown Court where Mrs LZ was represented by the same solicitor and by counsel. The case was adjourned for a pre-sentence report. In that document there is some explanation of the background in Moldova, although there are also some factual errors in it and the PSR does not reveal the full story. Mrs LZ says that she is sure that she explained to the writer of the PSR, who apparently spoke reasonable Russian, why she was forced to act as she did.
15. At the sentencing hearing on 10th August 2007, Mrs LZ again gave instructions to her solicitor explaining how she had been forced to work for the agent but she says that this did not change anything. Those statements are not recorded in either the solicitor's note or the brief sentencing remarks of the judge.

#### The Immigration Proceedings

16. The Home Office notified Mrs LZ that it intended to deport her. Luckily for Mrs LZ she had the benefit of the assistance of a tireless immigration representative, Miss Al Wilman of Refugee and Migrant Justice. She was able to help Mrs LZ. The full picture of Mrs Z's forced labour and prostitution emerged gradually. In her asylum interview of 11th December 2007, Mrs LZ gave a fuller account of her experiences in

Moldova, including damage to her gallbladder as a result of violence inflicted on her by her blackmailer. She gave details of the sexual abuse suffered by her at the hands of the agent.

17. Mrs LZ was examined by an expert in "problems of wound healing", called Dr Frank Arnold. His report dated 20th May 2008 is also one of the pieces of fresh evidence sought to be adduced and the Crown do not oppose its admission. It is clearly in the interests of justice for us to receive it. Dr Arnold concluded that the wounds of Mrs LZ that he observed were consistent with Mrs LZ's story of having been involved in a road accident (in Moldova) and suffering violent abuse, including anal rape.
18. Mrs LZ was interviewed twice by Dr Agnew Davies, a psychological expert with experience in the impact of violence, particularly sexual violence or domestic violence, on the health of women. Dr Davies prepared a report dated 24th May 2008. Again, the administration of that fresh evidence is not opposed by the Crown and it ought clearly, in the interests of justice, to be received on this appeal. The report is lengthy. It concludes that Mrs LZ is suffering from severe and chronic post traumatic stress disorder and that she has suffered multiple assaults from more than one set of perpetrators over an extended period. The report also explains why Mrs Z would have difficulties in giving full disclosure of her traumatic experiences. We accept those findings.
19. There are two other reports (which are adduced as fresh evidence) which came to the collusion that Mrs LZ was the victim of both forced labour and forced prostitution. However, it is not necessary to go into the details of those reports.
20. The AIT gave its determination and reasons on 14th April 2009. It allowed Mrs LZ's appeal against the deportation order of the Secretary of State on human rights grounds, but it dismissed her appeal against the refusal of the Secretary of State to grant her asylum status.
21. The Secretary of State challenged the deportation decision and Mrs LZ challenged the asylum decision. On reconsideration the AIT found that there had been a material error of law and allowed Mrs LZ's appeal on asylum grounds as well as on human rights grounds and also on immigration grounds. The AIT found Mrs LZ to be a credible witness.

#### The legal position

22. It is common ground that Mrs LZ tendered an unequivocal guilty plea at the Crown Court. However, this court is entitled, if it is in the interests of justice to do so, to receive fresh evidence pursuant to section 23 of the Criminal Appeal Act 1968 on the issue of whether the conviction, even though based on an unequivocal guilty plea, is safe. That is the basis upon which we have been prepared to receive the two witness statements of Mrs Z and the two experts' reports to which we have referred.
23. The United Kingdom is under obligations set out in the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (CETS No.197). The UK ratified

the Convention on 17th December 2008 and is now fully bound by its terms. Even before then the UK was in any event bound by the 2005 Convention to a certain extent by virtue of the terms of article 18 of the Vienna Convention on Treaties, to which the United Kingdom is a party.

24. The relevant terms of the Convention are set out and discussed in the decision of this court in R v LM and others [2010] EWCA Crim. 2327, in the judgment given by the Vice President, Hughes LJ. For present purposes the key provision of the Convention is article 26 which states the following under the heading "Non-Punishment Provisions":

"Each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities to the extent that they have been compelled to do so."

25. In LM, Hughes LJ explained how the UK has set up mechanisms fulfilling its obligations under the 2005 Convention. Of particular relevance in this case is the fact that specific rules have been made for the guidance of prosecutors in considering whether charges should be brought against those who are or may have been the victims of trafficking as described in the Convention. In this case, as we have said, there is agreement all round that Mrs LZ has indeed been the victim of trafficking.
26. The terms of the special guidance to prosecutors are set out at paragraph 9 of Hughes LJ's judgment in LM. They are as follows:

"Victims of human trafficking may commit offences whilst they are being coerced by another. When reviewing such a case it may come to the notice of the prosecutor that the suspect is a 'credible' trafficked victim. For these purposes 'credible' means that the investigating officers have reason to believe that the person has been trafficked. In these circumstances prosecutors must consider whether the public interest is best served in continuing the prosecution in respect of the offence. Where there is evidence that a suspect is a credible trafficked victim, prosecutors should consider the public interest in proceeding. Where there is clear evidence that the defendant has a credible defence of duress, the case should be discontinued on evidential grounds."

27. The position of the Crown on this appeal can be summarised as follows:

- (1) It accepts that Mrs LZ was trafficked into the UK.
- (2) Had the facts that are now known about Mrs LZ been known to the CPS at the time that it was considering whether or not to prosecute Mrs LZ for the false passport offence, it would have come to the conclusion that it was not in the public interest to prosecute her. The reason for that is that it would have concluded that she was acting under compulsion in circumstances such that it was not in the public

- interest to prosecute her for that offence.
- (3) The fresh evidence of the two witness statements and the expert reports (to which we have referred) demonstrate this compulsion.
  - (4) The fresh evidence establishes also that Mrs LZ would also have had a common law defence of duress to the offence charged.
  - (5) Accordingly, the conviction cannot be regarded as safe and must be quashed.
28. Our attention has been drawn to the judgment of the Lord Chief Justice in the recent decision in this court of R v N and R v LE [2012] EWCA Crim. 189. They concerned two appeals where the appellants placed reliance on the 2005 Convention and the obligations imposed pursuant to Article 26 on the United Kingdom. The factual situations in those cases and the attitude of the Crown were different to the facts revealed in the present case and the position of the Crown in this case. We are conscious of the need for caution, which is emphasised in the judgment of the Lord Chief Justice in these cases. Just because an appellant has been the victim of trafficking it does not necessarily follow that a subsequent conviction for an offence committed in England and Wales is necessarily unsafe, especially if it is the result of an unequivocal guilty plea. However, the principles stated by the Vice President in LM were not put in doubt in any way in R v N and R v LE.
29. We have also been referred to another decision in this court: R v O [2011] EWCA Crim. 2226. That case was decided in September of 2011. The factual situation in that case was similar to the present. O had pleaded guilty to a single count of possession of an identity document relating to someone else with an improper intention, contrary to section 4 of the Identity Documents Act 2010. Subsequently, the UK Borders Agency decided that O had been trafficked and was also under 18. The CPS accepted that conclusion. The true facts were that she had been exploited as a child in Nigeria and she had then been brought to the UK and forced into prostitution. The CPS accepted that if what subsequently became known to them about O's age and history of abuse and being trafficked had been known at the time of making a decision to prosecute for the identity document offence, it would not have instituted or maintained that prosecution. That would have been on the basis that O was acting under compulsion in circumstances which would have dictated that it was not in the public interest to prosecute her.
30. In that case this court received fresh evidence about O's history and her being trafficked. It accepted the prosecution's position and it concluded that that was a proper basis on which to allow the appeal despite the unequivocal guilty plea.
31. As we read the Lord Chief Justice's judgment in R v N and R v LE, no doubt whatever is thrown upon the principle or procedure adopted by this court in R v O [2011] EWCA Crim. 2226. We note that Mr Douglas-Jones appeared for the Crown in both those cases and we are sure, and he has assured us, that if there had been any doubt about either the principle or procedure adopted by this court in R v O that would have been clearly brought to the attention of the Lord Chief Justice in R v N and R v LE.
32. As it is, we have concluded that we should accede to the submissions of the appellant, supported by the Crown, allow this appeal and quash the conviction and the sentence.

33. MR THOMAS: My Lord, there is one thing and that relates to reporting. It was listed today as R v LZ. Because of the background and the content I wonder whether the court could order that it simply be anonymised.
34. LORD JUSTICE AIKENS: Yes, I think that must be right. That has been the practice in other cases.
35. MR DOUGLAS-JONES: Yes, certainly I would endorse that as appropriate on the basis of the factual background here.
36. LORD JUSTICE AIKENS: Yes. It is not a restriction on reporting in any other sense, simply that it should be anonymised?
37. MR DOUGLAS-JONES: Yes.
38. MR THOMAS: Yes.
39. LORD JUSTICE AIKENS: We agree with that.