

Regina v C.T.

and facilitation of illegal entry) relating to migrant smuggling.

Facts

By December 2002, the appellant was involved in the smuggling of migrants from Romania to the United Kingdom. He procured a fraudulent British passport and a certificate of British naturalization for a female (M.H.), whose illegal entry into the United Kingdom he facilitated. He perceived two settlements of £3500 from M.H. She travelled to Romania with the afore-said documents. The falsified nature thereof was then discovered. The appellant had deceptively presented himself to M.H. as (i) a qualified solicitor, (ii) working for the Home Office, (iii) authorised to facilitate applications for certificates of British nationality and passports, (iv) entitled to supply such documents and (v) acting in good faith. The offending in relation to M.H. occurred between January and November 2003. The appellant further obtained £5000 from three other Romanian nationals by making representations similar to those made to M.H. The three migrants had entered the UK irregularly in 1998. They meanwhile discovered that an acquaintance had been arrested for being in possession of false documents procured by the appellant. When the appellant informed them that the identity documents were ready, they met the appellant but did not take with them the agreed additional £5000. The appellant consequently declined to deliver the documents.

The appellant and his wife were convicted of various offences (including obtaining property by deception, forgery

Elements of success

- Systemic and teleological interpretation
- Corroborating evidence
- Holistic prosecutorial approach

Challenges

- Application of law *ratione temporis*

Background

The appellant went to the United Kingdom in August 1993. After marriage to a British national, he was granted indefinite leave to remain in the country. That marriage was dissolved. In June 2002 he married his co-defendant. In September 2002 the appellant obtained from a bureau in London, by payment of £440, what was purported to be a degree of Bachelor of Laws with Honours in Criminal Law, granted by Trinity College, Delaware, USA. ^[1]_[5EP]

The appellant was involved in the smuggling of, at least, 16 migrants.

Key issues

- ❖ Evidence ('bad character' evidence and testimony related to conduct other than that under trial)

Investigation

Authorities relied on documentary and testimonial evidence as well as the outcome of searches and seizures.

The appellant denied being the person sought by authorities. To contest these allegations, the Prosecution adduced new evidence, at subsequent stages of proceedings. Specifically, C.M., a British national then living in Romania, declared to have been involved in assisting Romanians to enter the United Kingdom illegally. At the end of November 2002, eight out of a group of 11 irregular migrants were caught at Dover (England, United Kingdom). A telephone call was placed to a lawyer with the same name as the appellant, who subsequently met C.M. and gave him a document advertising a 24-hour hotline, which had on it the appellant's telephone number as well as a business card with the appellant's name. CM declared that the person who met him admitted to be involved in assisting the illegal entry of migrants into the United Kingdom, including through the provision of fraudulent passports. The description given by C.M. of the person he met did not coincide with the appellant.

Upon his arrest, the appellant was found in possession of business cards with the inscription of his name, and "*LLb(Hons), solicitor, of Tiko Solicitors, 24 Hr. Criminal Emergency Services*". These solicitors were, however, inexistent. Furthermore, during the search of the appellant's residence, authorities found photographs and personal details of migrants in whose illegal entry in the United Kingdom the appellant was involved.

Reasoning

On appeal, the Defence argued *inter alia* that the evidence adduced by the Prosecution, at later stages of the proceedings, relating to persons other than objects of the specific conduct analysed *in casu* should be held inadmissible.

Evidence relating to other migrants beyond the objects of the specific conduct complained of was entirely relevant in proving that the appellant – rather than another person posing as him – had committed the offences. The admissibility of so-called 'bad character' evidence depends on whether it "*has to do*" with the offence at stake. There must be some nexus in time between the offence with which the defendant is charged and the evidence of misconduct the Prosecution seeks to adduce. *In casu*, the evidence had not "*to do*" with the facts of the offence. The question remained whether it was admissible through one of the gateways in Section 101(1) Criminal Justice Act 2003. The answer shall be in the affirmative given that the evidence related to other irregular migrants (who the appellant had assisted in illegally entering the United Kingdom) was important to settle a crucial divergence between the appellant and the Prosecution, i.e. whether it was the appellant who had committed the offences. The admissibility of this 'additional evidence' did not undermine the fairness of proceedings. To reach a conclusion on this point it is necessary to balance the (i) undesirability of the jury having too many other matters to consider, and (ii) the powerful evidence on individuals criminal responsibility re the different counts.

Verdict/Decision

Appeal dismissed except in relation to the conviction on one count of facilitation of illegal entry. This was due to an amendment in the wording of the provision criminalizing migrant smuggling and the fact that – in respect to the migrant smuggling count at stake – the Prosecution did not frame the accusation in line with the new drafting (elements) of the relevant legal provision.

Opinion

The case provides insight on the admissibility of ‘bad character’ evidence and testimony related to episodes other than the specific conduct under trial. This subject appears all the more relevant in the context of migrant smuggling whereas perpetrators are more often than not involved in more than a single smuggling venture.