



Neutral Citation Number: [2026] EWCA Crim 127

Case No: 202302194 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT IN BIRMINGHAM
HIS HONOUR JUDGE ROCHFORD
T20207419

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 February 2026

Before:

LORD JUSTICE JEREMY BAKER
MR JUSTICE MORRIS
and
HER HONOUR JUDGE ANGELA RAFFERTY KC

Between:

DANYAL AZIZ
- and -
REX

Appellant

Respondent

Mr Stephen Kamlish KC and Ms Abigail Bache (instructed by Charter Solicitors) for the Appellant

Mr James Bide-Thomas and Mr Sebastian Walker (instructed by Crown Prosecution Service) for the Respondent

Hearing date: 9 December 2025

Approved Judgment

This judgment was handed down remotely at 12.00 midday on Friday 20 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE JEREMY BAKER:

1. On 1 June 2023, in the Crown Court at Birmingham, Danyal Aziz (“the appellant”) was convicted of the following offences:
 - Count 1 – conspiracy to supply a class A drug (heroin)
 - Count 2 – conspiracy to supply a class A drug (cocaine)
 - Count 3 – possessing a firearm with intent to endanger life
 - Count 4 – possessing a prohibited firearm
 - Count 5 – possessing a firearm with intent to endanger life
 - Count 6 – possessing a prohibited firearm
 - Count 7 – possessing ammunition without a certificate
 - Count 8 – possessing ammunition without a certificate
 - Count 9 – concealing criminal property
2. On 13 October 2023, the appellant was sentenced to a total of 33 years’ imprisonment.
3. There were four co-accused, Michael Earp, Nicole Rhone, Noah Deen and Riswan Malik.
4. Michael Earp was convicted of counts 1, 2, 4 and 5. He pleaded guilty during the trial to counts 6 and 7. He was acquitted of counts 3 and 9.
5. Nicole Rhone was convicted of counts 2 and 8.
6. Noah Deen, aka Rohan Baig, was acquitted of counts 1 and 2. The jury were unable to agree on count 9 and a not guilty verdict was recorded following the prosecution offering no evidence against him.
7. Riswan Malik became ill during the trial, his case was severed and the jury was discharged from reaching a verdict in his case.
8. Michael Earp’s renewed application for leave to appeal against conviction was refused by this court, ([2025] EWCA Crim 546).
9. The appellant’s renewed application for leave to appeal against conviction and sentence was dealt with by this court, (Macur LJ, Lavender and Bourne JJ), ([2025] EWCA Crim 605), which refused leave to appeal against sentence, but granted limited leave to appeal against conviction on two grounds, namely that:
 - i. HHJ Rochford’s decision on 17 April 2023 to refuse to adjourn the trial was unfair because it left the appellant without expert evidence in support of his defence, making a fair trial impossible.
 - ii. The prosecution should not have been allowed to devote part of its closing speech to the case against the appellant, as a litigant in person, or to do so in the terms that they did.
10. At the hearing of the appeal before us, the appellant was represented by Stephen Kamlish KC (who did not appear below) and Abigail Bache who was trial counsel for

part of the trial. The respondent was represented by trial counsel, James Bide-Thomas and Sebastian Walker. We are grateful to all of them for their submissions.

The offences

11. The prosecution's case against the appellant and his co-accused was that in the first half of 2020, they were variously involved in the supply of multi-kilo quantities of heroin and cocaine, and were in possession of firearms and ammunition which they would have used in order to protect their business from others.
12. In order to facilitate their business, the appellant and his co-accused used the Encrochat system of communication, which formed the basis of the investigation into their activities by the National Crime Agency ("NCA") and an important part of the prosecution's evidential case. However, during the course of the investigation, the NCA also gained other evidence in the form of telephone evidence, showing who, when and where such communications were made, surveillance evidence, including Closed Circuit Television footage and Automatic Number Plate Recognition imagery, searches of premises associated with the accused and forensic evidence linking them to some of the drugs, firearms and ammunition which had been seized.
13. In January 2020, a series of Whatsapp messages were exchanged between Rohan Baig and Neelam Hussain, in the course of which Rohan Baig arranged to sublet an apartment from Neelam Hussain at 26, Sapphire House, Tenby Street North, Birmingham. The prosecution case was that these were one of the premises which were to be used in order to store items connected to the conspiracies, in particular the storage of Class A drugs.
14. In the course of those messages, on 21 January 2020, Neelam Hussain asked Rohan Baig, "*Did you tell Danny yh*". It was the prosecution case that this was a reference to the appellant, who was known to Neelam Hussain, and whose phone number ending 4310, was saved twice on her phone under the name "*Danny*" and "*Danny rent*".
15. In so far as the Encrochat evidence was concerned, the attribution of a particular call handle to an accused was provided both by the content of some of the Encrochat communications themselves, but also other supporting evidence.
16. In the case of the appellant, it was alleged that he used the call handle "*Lushmace*", whilst Michael Earp used "*KneeTown*", Rohan Baig used "*SpicyHorse*" and Riswan Malik used "*MiniPunch*".
17. The evidence of the attribution of *Lushmace* to the appellant included:
 - i. On 30 March 2020, *Lushmace* sent a message to another call handle, "*WittyPlane*", stating, "*My Mrs little sister has passed away*"; the appellant's partner was Natasha Rowe, whose half-sister died on 20 March 2020.
 - ii. On 1 April 2020, *Lushmace* sent a message to another call handle, "*YummyHyena*", stating, "*Yh I got stuck in Morocco. End up getting on emergency flight back to uk*"; travel documentation showed that the appellant travelled to Marrakesh on 10 March 2020 and returned to London Stanstead Airport on 19 March 2020.

- iii. On 26 April 2020, *Lushmace* was using the same cell site as a telephone number associated with the appellant, namely the number ending 4310; the evidence of association between this number and the appellant included a handset which had used the Sim card with this number being seized by the NCA from the appellant's home on 26 June 2020, and when its contents were downloaded a number of incoming messages were addressed to "Danny" or "Dan". Moreover, a frequently contacted number on the phone was that of the appellant's father.
 - iv. On 3 May 2020, *Lushmace* sent a message to another call handle, "EncroMidlands", providing his telephone number as ending 4310.
 - v. On 20 May 2020, *Lushmace* sent a message to another call handle, "ViralEagle", instructing him to Google his name as being "Danyal Aziz".
 - vi. On 6 June 2020, *Lushmace* sent a message to *KneeTown* stating, "My bday today"; the appellant's date of birth being 6 June 1994.
 - vii. On 11 June 2020, *Lushmace* sent a message to another call handle, "TrueCreek", containing images of a newspaper article from 2016, stating "This article is about me"; the article was from the Birmingham News which stated that the appellant had been charged with firearms offences.
18. There was similar evidence as to the attribution of the other call handles to the remaining accused.
 19. The Encrochat messages were set out in a schedule of agreed facts, and included a series of messages between *Lushmace* and other call handles, including those attributed to the co-accused, over a 3-month period between March – June 2020. Although the prosecution did not suggest that every message which had been exchanged between them had been obtained, the content of some of the messages exchanged provided clear evidence that the user of the *Lushmace* call handle was involved at a directional level in the large scale supply of Class A drugs and had access to prohibited weapons and ammunition, which he would be prepared to use in order to protect his business interests from others.
 20. On 26 June 2020, NCA officers executed a search warrant at the appellant's home at 123, Pelham Road, Birmingham. They seized over £30,000.00 and 250 Euros from the premises, together with a number of mobile phones, including a Nokia phone which had previously been used with the Sim card for the number ending 4310. The officers also found a Faraday bag which blocks electromagnetic fields, and has the effect of preventing a phone placed in the bag from connecting to its network.
 21. The appellant, who was present during the search, was arrested and in the course of a subsequent interview by the officers, he declined to answer any questions.
 22. On the same day, 26 June 2020, a search warrant was executed at 26, Sapphire Heights, Tenby Street North, Birmingham. Various items were seized including, over £38,000.00 in cash, a total of 274g of heroin contained in 1561 wraps, and a further 4.8g of heroin contained in 58 wraps. A swab sample taken from the intercom button in the hallway of the property was subjected to DNA testing which indicated the presence of DNA from at least three contributors, one of which could have been the appellant, as all of his DNA components were contained within the sample.

23. On 6 July 2020, the police seized a motor vehicle, registration number DK09 XDX, which was found to contain a specially constructed hidden storage void behind the vehicle's radio unit, together with other items including an ID card in the name of Michael Earp and a bag containing 25 grams of cocaine. Both the storage void and the bag of cocaine were tested for DNA, and whilst the void had traces of DNA from Michael Earp, the bag of cocaine bore traces of DNA from three individuals, such that it was 26,000,000 more likely that the DNA originated from the appellant and two unknown individuals, as opposed to from three unknown, unrelated individuals.
24. The appellant was further interviewed by the police on 17 March 2021, and declined to answer any questions. However, he provided a written statement to the effect that he denied involvement in any the offences. He went on to state that, *"I do not accept possession of an Encrochat phone and further do not accept that I have used such a device for illegal purposes or unlawful conduct. I am unable to comment on any material obtained by the police in this investigation, firstly because I believe the material is unreliable and secondly the material is yet to be tested with regards to its admissibility in the UK judicial courts"*.

Court proceedings

25. Meanwhile, on 24 July 2020, the appellant had appeared in the Crown Court at Birmingham for the pre-trial preparation hearing, when his trial was fixed for 30 November 2020.
26. On 28 September 2020, the appellant served a Defence Case Statement, in which the nature of his defence was described in the following terms, *"The Defendant does not accept the telephone interception carried out as Operation Venetic is lawful within the provisions of RIPA 2016 and that the evidence is therefore inadmissible"*. The legal issues were said to be, *"The admissibility of the Encrochat evidence is an issue already well known to the crown and is being litigated in other courts"*. Moreover, secondary disclosure was requested in relation to *"(a) Raw telephone data for the 'Lushmace' Encrochat messages so that the veracity of the crown's schedules can be checked by a defence expert (b) Raw cell site data for both the 'Lushmace' handset and the number ending '4310' so that the veracity of the crown's schedules can be checked by a defence expert"*.
27. As this court was due to hear an appeal from a preparatory hearing in other criminal proceedings concerning the admissibility of Encrochat material, the trial date of 30 November 2020 was vacated, and the trial was relisted to take place on 10 May 2021.
28. The appeal in those other proceedings was determined by this court in a decision handed down on 5 February 2021 (*R v A* [2021] EWCA Crim 128), which held that as the Encrochat material was being stored in, rather than being transmitted by, the telecommunications system when it was intercepted, its admissibility in criminal proceedings was not excluded by the Investigatory Powers Act 2016.
29. However, on 13 April 2021, the appellant made a further application to break the trial fixture on the basis that this court had yet to hear another appeal concerning the admissibility of Encrochat material. The appellant had also been charged with new firearms offences and it was suggested that there may be a need to instruct a DNA expert.

30. The application was granted and a new trial date was fixed for 25 July 2022.
31. Meanwhile, on 19 October 2021, the appellant's solicitors had instructed Duncan Campbell, an expert on electronics, computers and telecommunications, concerning the Encrochat material.
32. On 15 February 2022, the prosecution served a number of redacted data packages relating to Operation Venetic, in the light of which a written application was made on behalf of the appellant dated 31 March 2022 seeking further disclosure under section 8 of the Criminal Procedure and Investigations Act 1996 ("CPIA 1996").
33. The application disputed the admissibility of the Encrochat material and, in the alternative, put the prosecution "*to strict proof in attributing the relevant messages to him*". It was asserted that the defence expert would be unable to provide an opinion on these matters until a full download or data package for the *Lushmace* handle was disclosed.
34. Thereafter, a series of expert reports relating to the Encrochat material were provided on behalf of the prosecution and the defence, namely; report from the prosecution expert Luke Shrimpton dated 10 June 2022; a report from Duncan Campbell dated 30 June 2022; and, further reports from Luke Shrimpton dated 15 July 2022 and 18 July 2022.
35. On 20 July 2022, HHJ Rochford refused an application to break the trial fixture, and directed that the prosecution and defence experts meet and prepare a joint expert report.
36. On 25 July 2022, a joint note was prepared by the two experts which noted that each expert had devised their own programmes, "*tools*", for analysing the Encrochat material, and that they had provided these to each other with a view to determining whether they obtained "*identical test results, or results that are sufficiently close as to raise no evidential issues between us*". However, this would not be able to be carried out until the defence expert had access to "*version 3*" of the data packages, which had been used by the prosecution expert.
37. On 27 July 2022, the case was listed before HHJ Rochford, who agreed to break the trial fixture and relist the trial for 24 April 2023. He also directed that a joint experts report should be provided by 15 August 2022.
38. On 10 August 2022, a hearing took place before HHJ Bond at which the judge made directions relating to the appellant's application for disclosure of the Encrochat packages relating to third party handles.
39. A further written application was provided by the appellant, pursuant to section 8 CPIA 1996, dated 25 September 2022, which acknowledged receipt of three Encrochat data packages (concerning the material relating to the *Lushmace* handle and those attributed to the co-accused, including the *KneeTown* handle attributed to Michael Earp) and requested a further ten packages, in order that "*counterpart analysis*" could take place between the data shown on the *Lushmace* phone and those attributed to third parties.
40. On 8 November 2022, HHJ Rochford ordered disclosure of the further ten Encrochat packages, albeit subject to certain conditions including that the defence analytical

programme should be applied to these packages by the NCA, albeit in the presence of the defence expert.

41. It would appear that, initially at least, Duncan Campbell was not prepared to comply with the conditions and it was requested that the matter be returned to court.
42. On 14 December 2022, directions were provided by HHJ Rochford, including an order that the experts provide their views, preferably in a joint report, as to the appropriateness of the conditions.
43. On 12 February 2023, a joint expert report was provided which compared the efficacy of the two analytical programmes when they were applied to Encrochat material provided in the present case, and two other cases upon which the experts had previously worked. Although there were differences in the approach which the two programmes took and the extent of the data which was analysed, they concluded that, *“We believe that the use of both forensic tools work as described, produce correct results, and will assist the Courts in assessing the reliability, accuracy, completeness, and consistency of Operation Venetic data”*.
44. On 17 April 2023, a further hearing took place before HHJ Rochford at which the application on behalf of the appellant was for the trial date of 24 April 2023 to be vacated, to enable the defence expert to provide a further report as to the reliability of the Encrochat material. Although a number of logistical issues in relation to the preparation of the report were ventilated by Ms Bache, she expressed her optimism that these could be overcome. However, she maintained that without the preparation of the further report, she was not in a position to *“present his defence”*.
45. HHJ Rochford asked *“whether the reason for thinking the messages might be unreliable is largely that they don’t tally with Mr Aziz’s instructions?”*. In response, Ms Bache said that it was *“partly that”*. She stated that whereas the defence already had a report from their expert relating to the three data packages which had been disclosed prior to June 2022, which showed that there were some messages contained on the material from the *Lushmace* phone which did not appear on the other phones, *“indicating that some of these messages, in fact, are unreliable”*, the expert had not yet carried out the analysis of the material on the other ten data packages from the third party phones.
46. The judge queried the necessity of analysing the other data packages, when the principle of unreliability could be established by relying upon the material gained from the original data packages. Ms Bache conceded that *“where it comes to unreliability one might expect to be able to extrapolate something, if there’s a problem with one there could well be a problem with others”*. However, she went on to say that, *“As I understand it, his position is that he can’t comment in any meaningful sense without looking at the rest of these data packages.”*
47. On behalf of the prosecution, it was pointed out that the defence expert had been instructed as far back as 19 October 2021. Moreover, that not only had the defence expert provided a report concerning the material from three data packages in June 2022, but the court had ordered the disclosure of the other ten data packages in November 2022. It was pointed out that the trial had already been adjourned on a number of occasions and that the interests of the co-accused were of relevance.

48. In the course of his ruling, HHJ Rochford noted that, although the admissibility of Encrochat material was established, in the present case it was submitted that without the provision of a further defence expert report, the appellant's case could not be presented. He stated that, "*Essentially, and putting it at its simplest, in a simplification that is not disputed by Ms Bache, what Mr Campbell seeks to demonstrate, or to explore, is that messages in a sending handset are not replicated in a receiving handset, or vice versa, and, therefore, there is a possibility, or a presumption, that there is some technical difficulty and the prosecution's case that these messages were sent and received, can, therefore, be shown to be flawed. I understand that in the three of the thirteen packages that he has examined, he has been able to find some support for that. He has not explained, to my satisfaction, why it is that he needs to investigate a further ten packages if the basic underlying principle can be established from the three*". The judge went on to state that this was one of the factors he took into account and that the other was the delay which had already taken place and the need for trials to proceed.
49. In these circumstances, the judge refused the application to adjourn the trial.
50. The trial commenced on 24 April 2023, in the course of which a large number of agreed facts were read to the jury. In relation to the jury bundle, which included a schedule of the messages obtained from the Encrochat material, it was stated that, "*The contents of the jury bundle and associated documents are agreed subject to any challenge as to the reliability of the messages and their attribution to the correct 'handle' (code name)*".
51. On 5 May 2023, Ms Bache renewed her application for the trial to be adjourned, and for the jury to be discharged, on the basis that in the absence of the defence expert, whose relationship with her instructing solicitors had broken down, she was not in a position to cross-examine the prosecution expert. Ms Bache acknowledged that HHJ Rochford had "*not unreasonably*" considered that because the defence expert had already provided a report in relation to three of the data packages, he would be in a position to extrapolate from the conclusions he had reached in relation to those packages, as to the evidence relating to the remaining material. However, she stated that she had not been able to discuss this matter in conference with the defence expert.
52. The application was opposed by the prosecution. It was pointed out that the defence already had an expert report in relation to the three data packages, and that the conclusions as to the reliability of the material from those could be used to provide evidence as to the reliability of the remaining material. In any event, it was conceded that not all of the messages attributed to a particular handle had been able to be retrieved, and that as for the messages that were attributed to a particular handle, their accuracy could be ascertained from other prosecution evidence.
53. In the event, the judge declined the application and the trial proceeded.
54. The prosecution expert, Luke Shrimpton, was due to commence his evidence before the jury on 9 May 2023. However, before being able to do so, the judge was informed that the appellant had dispensed with the services of his solicitors and counsel. Indeed, later that morning the judge was informed that the same action had been taken by his co-accused, Michael Earp and Rohan Baig. The judge warned all three accused that he was unlikely to transfer legal aid at this stage and the trial was adjourned.

55. On the following day, both of the co-accused reinstated their legal teams, but the appellant maintained his decision.
56. On 11 May 2023, the prosecution called Luke Shrimpton to give evidence. He was cross-examined by counsel on behalf of Michael Earp on the basis of the reports which had been provided by the witness and the defence expert, Duncan Campbell. There was no cross-examination by the appellant.
57. After the close of the prosecution's evidential case, both Nicole Rhone and Rohan Baig gave evidence, the appellant did not do so.
58. On 18 May 2023, the judge provided his legal directions to the jury, following which the prosecution made their closing address to the jury, which concluded on the following day.
59. In the second half of his summing up, when the judge came to summarise the evidence which the jury had heard, he pointed out that although the appellant had not cross-examined Luke Shrimpton, those instructed by Michael Earp had done so. The judge indicated that the results of that cross-examination applied equally to the case of Michael Earp and the appellant. He pointed out that the prosecution expert had conceded that because of the manner in which the Encrochat material had been obtained, a significant amount of messages had not been retrieved, which he agreed could be between 60 – 80%. Moreover, this also hindered his ability to ascertain the reliability of the data. However, he pointed out that in relation to the attribution of messages to a particular handle, common sense indicated that these could be checked against the remaining evidence in the case.

Submissions

60. On behalf of the appellant, Mr Kamlish submits that HHJ Rochford's decision to refuse to adjourn the trial on 17 April 2023 was unfair, in that it deprived the appellant of the opportunity of obtaining expert evidence in support of his defence, and rendered the subsequent convictions unsafe.
61. It is pointed out that in the initial report dated 30 June 2022, Mr Campbell had stated that his experience in other Encrochat cases was that because of failures in the data retrieval system, messages were frequently lost or missing. Moreover, that following such failures messages were added from an unknown source or method. In these circumstances, a comparison was required to be made between the data from other handles and the data from the *Lushmace* handle, as one would expect to find that they correlated. It was pointed out that although data from only a limited number of handles had been disclosed to date, the comparison which had already been made with the *KneeTown* handle had shown 97% did not correlate with each other.
62. It is submitted that HHJ Rochford's initial decision to order the disclosure of the other data packages on 8 November 2022 reflected his view that this was necessary to ensure that the appellant received a fair trial.
63. Moreover, that by the time the application was made to adjourn the trial on 17 April 2023, there were a number of logistical issues which had arisen, including the defence expert's response to the conditions under which his programme was to be applied to the

data and the availability of funding for his work, which had delayed the provision of his further opinion and none of which were the fault of the appellant.

64. It is averred that by the time the trial took place, the relationship between the appellant's solicitors and the defence expert had broken down to the extent that although the expert indicated that he would fulfil his duty of attending to give evidence at trial, he would not take part in a pre-hearing conference. It is submitted that in those circumstances the defence could not have called him to give evidence, as "*the defence would have no way of knowing what his evidence would be*".
65. In relation to the second ground of appeal, it is pointed out that the appellant was unrepresented, following his decision to dispense with the services of his legal team on 9 May 2023.
66. In these circumstances, it is submitted that it was wrong for the prosecution to have made a closing speech to the jury which referred to the case against the appellant, or at least one which it is submitted was as detailed as the one made on behalf of the prosecution in this case, which included references to messages between the *Lushmace* handle and third parties, and referred to evidence which it is submitted went beyond establishing a conspiracy between the co-accused and the appellant, and instead focused on the guilt of the appellant.
67. It is pointed out that the prosecution had not sought the leave of the judge to make such a speech, which was required under CPR 25.9(2)(j). Moreover, although such a speech may be made where only one of two accused are legally represented, the speech should be focused upon the case against the legally represented accused (see: *Tahir & Simpkins* [1997] Crim L R 837).
68. In these circumstances, the fact that the prosecution made such a closing speech in this case, either on its own account or combined with the lack of defence expert evidence, renders the appellant's convictions unsafe.
69. On behalf of the respondent, Mr Bide-Thomas points out that the defence had instructed their expert as long ago as 19 October 2021 and that he remained available to give evidence at trial. It is pointed out that the prosecution had always conceded that, because of the manner in which the Encrochat material had been obtained, the schedule of messages sent and received by any one handle was incomplete. Therefore the only issue which remained was whether the messages had been properly attributed to a particular handle.
70. It is pointed out that the defence expert had only talked about the "*possibility*" of misattribution taking place and that, from his experience in other cases in which he had examined material from a large number of different handles, he had found only one example, and which the prosecution expert had explained was due to human error in that those processing the data had incorrectly assigned the messages to the wrong handle.
71. It is accepted that by the time of the trial whilst the defence expert had examined three of the data packages, he had not examined the other ten data packages. However, it is submitted that the appellant could have relied upon the defence expert's view as to the reliability of the messages he had examined. Likewise, the appellant could have cross-

examined the prosecution expert on this basis, which was something which those instructed on behalf of Michael Earp did, such that the appellant had the benefit of the results of that cross-examination.

72. Moreover, it is pointed out that the other ten data packages have been available to be examined as from 10 November 2022, and that there is no satisfactory explanation as to why they have not been examined by the defence expert. It is submitted that the appellant's main ground rests on the assumption that the defence expert would have uncovered significant evidence of unreliability in the Encrochat material. It is submitted that this is mere speculation on the part of the appellant, and that in view of the fact that the appeal has been privately funded, there has been no explanation as to why, since the trial, the appellant has not instructed the defence expert to provide his opinion on this material which, if it had been of assistance to him, could have formed the basis of an application for the court to admit the material as fresh evidence in the appeal.
73. In any event, it is pointed out that the defence expert conceded in his report that one way of testing the reliability of the Encrochat material is to compare it with the other evidence in the case. It is submitted that there is a wealth of such evidence to support a significant number of the messages obtained from the *Lushmace* handle. Moreover, it is submitted that the other evidence implicating the appellant's guilt of the offences is overwhelming.
74. In relation to the second ground of appeal, it is conceded that the judge's leave ought to have been sought in relation to those aspects of the prosecution closing speech which referred to the appellant. However, it is pointed out that the appellant had the benefit of legal representation for the majority of the trial, and that the timing of the appellant's decision to dispense with the services of his legal team, on the eve had all the hallmarks of an accused who was seeking to disrupt the trial.
75. It is pointed out that this was a joint trial and that the prosecution was entitled to make a closing speech, which it is submitted would inevitably have mentioned the appellant, as he was alleged to have had the leading role in the conspiracy. Although it is accepted that less could have been said about the appellant, it was inevitable that he would have featured heavily in the prosecution's case against the co-accused.
76. In these circumstances, it is submitted that there is no merit in either of the two grounds of appeal sufficient to undermine the safety of the appellant's convictions.

Discussion

77. The admissibility of evidence relating to Encrochat material in criminal trials has been considered in a number of cases in this court, and is now well established (*R v A* [2021] EWCA Crim 128; *R v Atkinson* [2021] EWCA Crim 1447). However, at the commencement of the criminal proceedings in this case, those and other cases had yet to be determined, and we can well understand why its admissibility was put in issue on behalf of the appellant and others, and that the initial trial date of 30 November 2020 was adjourned.
78. It is not entirely clear to us why it was not until 19 October 2021 that the defence expert, Duncan Campbell, was instructed. However, nothing turns on this as the trial did not commence until 24 April 2023, which provided sufficient time for him to provide his

opinion in relation to the Encrochat material. In this regard it is of note that initially the request for disclosure of the data packages was limited to that relating to the *Lushmace* handle, and it was only later on in the summer of 2022 that the issue of further disclosure was ventilated, which resulted in the order for disclosure made by HHJ Rochford on 8 November 2022.

79. The hiatus which then ensued appears to have been largely caused by Duncan Campbell's objections to the conditions under which his programme could be applied to the data packages. We have considered this matter for ourselves and, although we are far from satisfied that these objections were justified, we accept that the delay does not appear to be attributable to the appellant.
80. It is against this background, that we turn then to the issue which lies at the heart of this appeal, which is whether HHJ Rochford's decision to refuse to adjourn the trial on 17 April 2023, rendered the appellant's trial unfair and has undermined the safety of the convictions.
81. As the premise upon which the appellant's argument is based is that the effect of HHJ Rochford's refusal to adjourn the trial resulted in the appellant having no expert evidence in support of his defence, it is, first of all, necessary to consider not only the nature of the appellant's defence but whether the decision resulted in the appellant having no expert evidence in support of that defence.
82. As to the nature of his defence, it is of relevance that beyond a bare denial of involvement in the offences, his Defence Statement was limited to a challenge to the lawfulness and consequently admissibility of the Encrochat material. Thereafter, no detail was provided of what aspects of the prosecution's evidence were disputed, either in relation to the Encrochat material or indeed the other evidence available to the prosecution, including that relating to CCTV and ANPR imagery, the results of seizures from various premises and the results of DNA examinations.
83. Indeed the nearest which those instructed by the appellant came to suggesting that the appellant did not accept that he had been responsible for the various messages attributed to *Lushmace*, was when, in answer to HHJ Rochford's enquiry as to "*whether the reason for thinking the messages might be unreliable is largely that they don't tally with Mr Aziz's instructions?*", Ms Bache replied, "*partly that*". Albeit neither then, nor since, has the appellant provided any particulars as to which, if any of the messages he denies sending or receiving.
84. When the matter came to trial, although the first volume of agreed facts made the appellant's acceptance of the schedule of Encrochat messages "*subject to any challenge to the reliability of the messages and their attribution to the correct 'handle' (code name)*", the third volume of agreed facts, which comprised the majority of the prosecution's other evidence concerning the events taking place over the indictment period, was accepted by the appellant, who chose not to give evidence about them.
85. Although we accept that any accused is entitled to sit back and put the prosecution to proof of its evidential case at trial, the fact that an accused does so, including the appellant in this case, is of relevance when it comes to consider the extent to which the expert evidence may have been of assistance to his defence.

86. In this regard, by the time that HHJ Rochford came to consider the application to adjourn the trial on 17 April 2023, it is of note that the appellant already had the benefit of a number of reports from Duncan Campbell, including his initial report dated 30 June 2022, and a joint note dated 25 July 2022.
87. We have considered the contents of the initial report, and note that one of the handles in respect of which the data package had already been provided, besides *Lushmace*, was *KneeTown*, which had the largest number of messages attributed to it. It is evident that not only was Duncan Campbell able to say that from his experience in other cases he considered that there was a problem with “*reliability*” in relation to Encrochat material, as over 50% of messages sent or received could not be verified by finding counterparts in the relevant package, but in this particular case, “*For the handles Lushmace and KneeTown, more than 97% of counterpart messages are missing*”.
88. Mr Campbell pointed out that in another case he found a set of misattributed messages, albeit he noted that Luke Shrimpton had suggested that this was due to the device having been used by one handle and then a different handle. Moreover, he accepted that one of the ways in which the accuracy and reliability of messages could be ascertained, is from external evidence, such as the results of searches of premises, ANPR imagery and the like.
89. However, we also note that the report also contained, at Annexe 3, a copy of a joint report from Duncan Campbell and Luke Shrimpton in a previous case, dated 23 February 2020, and that under the heading “*Counterpart Messaging Analysis*”, although it was agreed that this was an appropriate test for reliability, the report went on to observe that whilst messages which are matched are more reliable than unmatched messages, “*the lack of a counterpart message does not make the message unreliable*”.
90. In the light of this conclusion, and given the strength of the evidence of attribution of the *Lushmace* handle to the appellant, not only do we have considerable doubt as to the value to the appellant’s defence of the evidence from Duncan Campbell in general, as it does not appear to significantly undermine the reliability of the attribution of the messages to a particular handle, including *Lushmace*, but we consider that in view of the results which a comparison between the *Lushmace* material with the *KneeTown* material produced, it unlikely that the value of this evidence was going to be significantly improved by similar testing on the other handles.
91. Indeed, in the absence of further evidence from Duncan Campbell, or another suitably qualified expert, to the effect that a comparison with the other handles has significantly strengthened the opinion in his initial report, we consider that to suggest otherwise is a matter of speculation. Moreover, it seems to us that there is no sufficient reason why, if it was considered to be worthwhile, Mr Campbell or another suitably qualified expert has not been instructed to provide such further evidence for the purposes of an appeal. In this regard we note that the appellant appears to have funds to bring this appeal, and as the respondent confirmed in the course of the hearing, the other data packages remain available.
92. It is in this context that it is necessary to consider HHJ Rochford’s decision to refuse to adjourn the trial on 17 April 2023, by which time the two experts had provided a joint report, dated 12 February 2023, which as we have set out above concluded that both of the analytical programmes, one of which was of course that run by Luke Shrimpton,

produced “*correct results*” for the purpose of assisting an assessment to be made as to “*reliability, accuracy, completeness, and consistency of Operation Venetic data*”.

93. In our judgment, given our assessment of the value of Duncan Campbell’s evidence in general, and the fact that the appellant already received such benefit as there was from the views which Mr Campbell had expressed in his initial report, we consider that the judge was justified in refusing the application to adjourn, on the basis that the “*underlying principle*” could be established from the work which Mr Campbell had undertaken up until then.
94. The fact that a decision was made not to call Mr Campbell to give evidence on behalf of the appellant at trial, was a matter for the appellant and his legal team. We do not accept that any reluctance by him to attend a conference justified such a decision. His evidence was contained in his written reports, and he had indicated that he would attend to give evidence. Indeed, we note that this is not a case in which the appellant seeks to criticise those representing him at trial, as otherwise we anticipate that Ms Bache would not be in a position to continue to represent him for the purposes of this appeal.
95. Furthermore, it was open to the appellant to cross-examine Luke Shrimpton at trial and we have received no explanation as to why this did not take place. Indeed, we note that counsel on behalf of Michael Earp did so on the basis of the contents of Mr Campbell’s reports, and that the judge directed the jury to take this evidence into account when considering the appellant’s case.
96. In these circumstances, we do not consider that HHJ Rochford’s decision not to adjourn the trial on 17 April 2023 rendered the appellant’s subsequent trial unfair, or indeed undermines the safety of the convictions. In reality, there was clear evidence as to the attribution of the *Lushmace* handle to the appellant, together with evidence from other sources to support the reliability of some of the Encrochat messages and to establish the appellant’s involvement in these offences.
97. We turn then to consider the second ground, and the effect on the safety of the convictions, of the prosecution, without seeking leave, having made a closing address to the jury which included references to the case against the appellant.
98. As this was a multi-handed trial in which all accused with the exception of the appellant were legally represented, the prosecution were entitled to make a closing address to the jury. However, in view of the fact that by then the appellant was unrepresented, clearly the matter of the contents of that address, and in particular the extent to which reference could be made to the appellant’s position, ought to have been raised by the prosecution with the judge.
99. We, like the court granting leave on this ground, are not in a position to know the outcome of any ruling which the judge would have provided in relation to this issue. However, we consider that in the context of this case, the judge would have been entitled to have taken into account that not only had the appellant been represented for much of the trial, but as the judge himself had observed, the appellant’s decision to dispense with the services of his counsel had the hallmarks of someone seeking to manipulate the proceedings; a matter which in our judgment is supported by the fact that the appellant has continued to instruct trial counsel in this appeal.

100. Moreover, and of particular importance in this case, were the difficulties faced by the prosecution in explaining the significance of various aspects of the evidence without reference to the appellant, who was alleged to have taken the leading role in these offences.
101. In these circumstances, we consider that regardless of the fact that, by the time the prosecution came to make their closing address to the jury the appellant had dispensed with the services of his legal representatives, it was appropriate for the prosecution's closing address to have included references to the appellant, and therefore the real issue before us is the extent to which they did so and the effect of this on the safety of the appellant's convictions.
102. We have read the transcript of the closing address and in particular those passages which were highlighted on behalf of the appellant in which it is submitted that the prosecution overly focused on the involvement of the appellant, rather than elucidating the evidence against the co-accused.
103. We consider, as the respondent accepts, that there are passages in the closing address where less could have been said about the appellant. However, given the central role which, on the basis of the prosecution evidence, the appellant had in these offences, we are satisfied that the nature and extent of those references were not such as to give unfair prominence to the appellant's alleged involvement in these offences, as opposed to providing necessary context to the involvement of his co-accused.

Conclusion

104. In these circumstances, we do not consider that this second ground of appeal, either on its own, or taken together with the matters raised in the first ground of appeal, causes us to doubt the safety of the convictions in this case and therefore the appeal is dismissed.