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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 23rd October 2018

B e f o r e:

LORD JUSTICE GROSS

MR JUSTICE SPENCER

and

HIS HONOUR JUDGE KATZ QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

DEAN WILKINSON

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

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Mr N Lewin appeared on behalf of the Appellant

Mr J Beal appeared on behalf of the Crown

J U D G M E N T
(Approved)

Tuesday 23rd October 2018

LORD JUSTICE GROSS:

1. On 4th December 2017, following a trial in the Crown Court at Plymouth before His Honour Judge Darlow and a jury, the appellant, who is now aged 48, was convicted of two offences: Threatening Another with a Bladed or Pointed Article (count 1), and Unlawful Wounding, contrary to section 20 of the Offences against the Person Act 1861 (count 3). On 5th December 2017 he was sentenced by His Honour Judge Darlow to fifteen months' imprisonment on count 1 and to a consecutive term of 42 months' imprisonment on count 3. The total sentence was thus 57 months' imprisonment. He was acquitted of an alternative count of Wounding with Intent, contrary to section 18 of the 1861 Act.

2. The appellant appeals against both conviction and sentence by limited leave of the single judge.

3. The grounds of appeal, developed attractively by Mr Lewin today, were these: as to conviction, that the judge misdirected the jury through stating that they should ignore the bad character evidence of the complainant, a Mr Ashton; as to sentence, that the overall sentence was simply manifestly excessive.

4. The facts may be shortly summarised. On 2nd November 2016, at about 7pm, the victims, Mr Ashton (count 3) and Mr Brunt (count 1) were walking to Brunt's home when they were involved in an incident with the appellant. During the incident a knife was held to Brunt's throat and Ashton sustained two stab wounds, one to his back and another to his arm. He was subsequently treated in hospital for an injury to his spleen and a collection of blood in his lung, which had been caused by one of the wounds. He required surgery. He had his spleen removed

and a hole in his diaphragm repaired. He was in hospital for twelve days.

5. The prosecution case was that the appellant had deliberately targeted Ashton, believing him to be a sex offender who had sexually abused a young man, "JM", the son of one of the appellant's friends, "HJ". This allegation had been made by HJ and in the period preceding the stabbing there had been further allegations and animosity between Ashton, HJ and JM. It is perhaps worthwhile to note that, prior to the incident, as we understand it, Ashton and the appellant had never met. It was the prosecution case that, prior to the stabbing, the appellant had indeed said: "Which one of you is Adam?"

6. The prosecution relied on a variety of evidence: the evidence of Ashton; the evidence of Brunt; evidence that on 4th November (two days after the incident) the appellant was behaving erratically and telling others that this was to be his last weekend with his son before handing himself in to the police; he referred to having "stabbed a paedophile"; the appellant's no comment interviews; the appellant's bad character (24 previous convictions, including offences of violence); the fact that a "hi vis" jacket had been worn by the attacker and by the man in the public house on 4th November; the fact that the appellant's claim to have returned such a jacket to his employer had been denied by the employer; the positive identification of him by Ashton; and Brunt's indication that a man he had "a strong feeling about" at a VIPER parade might have been the attacker but had shaved his head and face.

7. The defence case was that Ashton was well known locally as a paedophile who had preyed on JM frequently, trying to see and make contact with him. On the night of the incident, JM had asked the appellant to go to his mother's shop as she was having some difficulties. On arrival, the appellant found Ashton and Brunt arguing with and threatening HJ. He ejected them from the shop. The CCTV images captured the incident thereafter when a number of others came on

to the scene and attacked Brunt and Ashton. The appellant had been present but was not responsible for the attack. He accepted that he had punched Ashton in the stomach, but he denied that he had stabbed him.

8. The issue for the jury was whether the appellant was the person responsible for inflicting the stab wounds.

9. As already mentioned, the appellant has a large number of previous convictions (24) spanning the period 1991 to 2014. These included offences of dishonesty and violence. He had previously served short sentences of imprisonment.

10. Passing sentence, the judge said that the appellant had been found guilty by the jury. It was implicit in the verdict that he had carried a knife into a pre-arranged conflict between himself and the two men involved. The knife had been used first on Blunt in extremely dangerous circumstances. The appellant had then carried out a sustained assault on Ashton which had clearly caused greater harm. Culpability was high. There had been a clear homophobic motivation as the appellant had believed that Ashton was a homosexual paedophile. Ashton had been left with injuries that would affect him for the rest of his life. The CCTV footage showed that it had been a group attack. Totality was borne in mind, as was the fact that the appellant's life had been a difficult one. The judge then passed the sentence to which we have already referred.

Appeal against Conviction

11. The question of Ashton's bad character arose in the following circumstances. At the conclusion of Ashton's evidence, the defence made an application to adduce evidence of his previous convictions under section 100 of the Criminal Justice Act 2003. The basis of the

application was that the convictions had substantial probative value in relation to a matter in issue in the proceedings and was of substantial importance in the context of the case as a whole (section 100(1)(b)), namely that Ashton had impugned the character of HJ and JM, who were both due to give evidence for the defence. The Crown opposed the application, but the judge admitted the evidence of the previous convictions on the basis that the jury were entitled to hear evidence in order to balance the impression that they may have formed about Ashton. However, in the event, the defence did not call JM or HJ, so that the basis of the application to adduce Ashton's previous convictions fell away.

12. The judge gave the jury written directions. Mr Lewin opposed these, but the judge was not persuaded. The judge's direction with regard to Ashton's bad character read as follows:

> "Similarly, Mr Ashton's previous convictions were put before you. His comprised sexual assaults in 1989 and 1991 and various offences of dishonesty.
>
> His were put before you because of the attack he made on the character of a number of people who had been signalled up as defence witnesses, particularly [JM] and [HJ]. As it turned out, neither witness was called before you. I remind you not to speculate as to why that was or what each may or may not have said if called.
>
> In the event, Ashton's convictions are neither here nor there; you are not being asked to assess the credibility of witnesses that were not called. The issue in this case is whether Brunt and then Ashton has correctly or incorrectly identified [the appellant] who used the knife on them. The defence say only that he is mistaken, not maliciously motivated, to wrongly implicate [the appellant]."

13. In his summing-up the judge dealt with the matter in similar terms. He said this (at page 11 of the transcript):

> "But what about what you have heard about Mr Ashton and other individuals, and I will tell you now …, looking up from the

> script, when I tell you about the evidence in this case I am really not going to go into a lot of things that were said by Mr Ashton about [JM], about [HJ], or things that were put to him about his convictions. … Mr Ashton's previous convictions were put before you … so his record comprise sexual assaults in 1989, 1991 and various offences of dishonesty. … Ashton's convictions are put before you because of the [attack] he made on the character of a number of people who had been signalled up as defence witnesses, [JM] and [HJ], and he had said things about them in his evidence. And so, his own previous convictions went in. As it turned out, neither witness was called before you, but I remind you not to speculate as to why that was or what each may or may not have said if they had been called to give evidence. But given that they were not called, Ashton's convictions are neither really here nor there. You are not being asked to assess the credibility of witnesses, [JM] and HJ], that were not called. The issue in this case is whether Brunt and then Ashton has correctly or incorrectly identified [the appellant] who used the knife on … them.
>
> The defence only say that Brunt and Ashton are wrong. They do not say they are maliciously accusing [the appellant] of doing this. They do not accuse either of being maliciously motivated to wrongly implicate [the appellant]. So, the fact that Mr Ashton may be a man with a thoroughly disreputable record does not really help you in deciding whether he was or was not mistaken on that night as to who put that knife … in him."

14. There were two further brief references to Ashton's convictions, one at page 17 of the summing-up and the other at page 25, but neither significantly advances the debate today.

15. Mr Lewin's submission was essentially that the judge directed the jury to ignore an important area of evidence, which then gave them some difficulty generally. It was to be noted that they had rejected the Crown case of a section 18 offence. Once the bad character evidence had been admitted, for whatever reason, it could be used more generally –subject to a proper direction from the judge. The credibility of the Crown witnesses was under attack and the convictions, especially those for dishonesty, bore on that matter. Accordingly, the judge had excluded an integral part of the defence case.

16. Mr Lewin advanced his submissions with brevity and the short summary we have given covers the essence of the matter. The case would not have improved had it been put at greater length.

17. For the Crown, Mr Beal today said that the judge had grasped the essence of the matter in the summing-up. Ashton and the appellant did not know each other before the incident. There was no real question, notwithstanding Mr Lewin's protestations, as to any malicious false identification of the appellant. The judge's direction had been accurate and correct, and, in fact, Ashton's previous convictions had no relevance – certainly no significant relevance – to the question of identification and the question of whether it was indeed the appellant who had stabbed Ashton.

18. As it seems to us, the issue before the jury was whether the identification of the appellant by Ashton was mistaken, not whether Ashton was malicious. That appears from the passage in the summing-up at page 11, to which reference has already been made, and indeed it was foreshadowed earlier in the summing-up at page 6C-E, when the judge raised familiar questions about the accuracy of the identification evidence.

19. We are unable to accept the importance of this evidence as to Ashton's convictions to the central thrust of the appellant's case. For our part, if anything, the judge was generous to the defence to agree to admit the evidence in the first place, before it was certain that the two proposed witnesses would give evidence. When it transpired that they would not give evidence, it was incumbent on the judge to deal with the evidence now admitted. In our judgment, in all the circumstances, he explained the position properly and carefully to the jury without any unfairness to the appellant. Moreover, and again generously, the judge did not entirely rule out Ashton's convictions, having regard to the wording he used in the passage at page 11. On any

view, the jury was well aware of them, if they thought that those convictions had a residual relevance to the issues they needed to decide.

20. For all these reasons, we are not persuaded that the judge's treatment of Ashton's previous convictions disclosed any misdirection. If we are wrong about that, on no view did any such misdirection render the convictions unsafe. Accordingly, we dismiss the appeal against conviction.

Appeal against Sentence

21. The ground developed by Mr Lewin today is that although it could not be said that the individual sentences were manifestly excessive, cumulatively they were. This was a single, relatively brief incident. Although there was aggravation, the total sentence was simply too long. The individual sentences were harsh, but of themselves could have survived scrutiny. But that could not be said when the total sentence was considered as a whole. Either the sentences should have been ordered to run concurrently, or some far more significant reduction should have been made for totality.

22. On behalf of the Crown, Mr Beal argues that the sentence could not properly be challenged. Ashton had suffered a life-altering injury. The appellant had taken a knife to the incident. He had played a leading role within a group. He had a bad record and there had to be some marking of the separate offence charged in count 1 which involved a knife being held very dangerously to Brunt's throat.

23. We have considered the rival submissions carefully. In the event, we agree with the Crown. In our judgment, although this was a single incident, there were separate, serious offences committed against separate victims. Put shortly, there was no error of principle in the judge

ordering the sentences to run consecutively. There was no contravention of any guideline. Indeed, the relevant guideline in this area gives flexibility, provided that regard is had to the justice of the overall sentence. Here, provided that the judge had proper regard to totality, no error of principle could be discerned. Mr Lewin rightly focused his attack on the length of the sentence passed, rather than on any suggested error of principle.

24. In our judgment, the judge sufficiently allowed for totality. The offence charged in count 1 was serious. It could have had dreadful consequences. It is perhaps a matter of good fortune that it did not. There were, on any view, a number of aggravating features: the appellant took the knife to the conflict; there was the question of homophobia, to which the judge referred. The judge might have, but did not, refer to the question of vigilantism. There was the appellant's bad record and there was the risk to which Brunt had been exposed, quite apart from the serious injuries inflicted on Ashton.

25. Accordingly, we dismiss the appeal against sentence. The sentence was neither wrong in principle, nor manifestly excessive.

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165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk