

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1431



CASE NO 202000590/B5

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 22 October 2020

LORD JUSTICE MALES
MR JUSTICE SPENCER
HIS HONOUR JUDGE AUBREY QC
(Sitting as a Judge of the CACD)

REGINA
V
GARY HALKYARD

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)

Non-Counsel Application

J U D G M E N T

1. MR JUSTICE SPENCER: This is a renewed application for a lengthy extension of time in which to apply for leave to appeal against conviction, following refusal by the single judge.
2. As long ago as 9 August 2018 at Inner London Crown Court the applicant, now 61 years of age, was convicted of an offence of assault by beating, contrary to section 39 Criminal Justice Act 1988 (count 2). He was acquitted of racially aggravated assault (count 1) to which count 2 was a lesser alternative. Mr Recorder Kogan imposed a community sentence comprising an unpaid work requirement for 100 hours and a rehabilitation activity requirement. The applicant was ordered to pay compensation in the sum of £500 and £200 prosecution costs and the statutory surcharge.
3. The sentence was completed long ago. It was not until 10 February 2020 that the applicant lodged his notice of appeal against conviction, acting in person. The extension required is 528 days. The reason he gives for the delay is that he has been trying to gather fresh evidence and trying to get legal advice and assistance. We are far from persuaded that there is any good reason for the very long delay, but we have nevertheless considered the merits of the application for leave to appeal.
4. The incident giving rise to the offences alleged in the indictment occurred at around 1.20am on the morning of 30 October 2016 in Gallia Road, North London. The complainant, Mr Shah Haque, was a minicab driver. He is of Asian heritage and his first language is Bengali. Mr Haque had stopped his car in Gallia Road to pick up a fare. As he was waiting there the applicant pulled up next to him in his Range Rover. The prosecution case was that the applicant got out of his vehicle, swore at Mr Haque in racist terms, and then attempted to take hold of his clothing through the open driver's door window and tried to pull him out of the car. Mr Haque responded by getting out of his vehicle. Words were exchanged. The prosecution case was that the applicant kicked and punched at Mr Haque several times causing minor injuries. The applicant then got into his Range Rover and drove off.
5. A woman living nearby, Danielle Hodson, had heard the disturbance from her third floor bedroom and saw something of the incident in the street, including the applicant kicking or swinging his leg at the complainant. She shouted to them to stop fighting. At Mr Haque's request she called the police. By then the applicant had driven off. She went down to see Mr Haque. He was shaking and scared. She had taken a photograph on her phone which showed the location of the vehicles during the incident but nothing more definite.
6. The police attended the scene soon afterwards. PC Jennifer Wilkes spoke to Mr Haque and noted a small cut and bruise on his left shin. He told her he had other injuries. She advised him to see a doctor. A photograph had been taken of the registration plate of the Range Rover so the police were able to trace the applicant.
7. The applicant attended the police station voluntarily on 3 November and was interviewed under caution with his solicitor present. He gave a full account of the incident. He said his girlfriend had been in the passenger seat of his Range Rover. He had come upon the mini cab blocking the road and had pulled up next to him and asked if he was going to move. The mini cab had moved forward a little but not enough to leave the Range Rover room to pass. The applicant got out and took a photograph of the rear of the mini cab

because it looked to the applicant as though it was not a legitimate cab. The complainant got out of the mini cab and became agitated. The applicant said he was going to report the complainant because he was not a "legal" taxi driver. That made the complainant even more agitated and angry. The complainant pulled at the buttons on the applicant's shirt and when the applicant pushed him away the complainant tried to kick the applicant who put his leg up to protect himself. In the end he did not want to continue the argument because he had his girlfriend in the front seat, whom he had been dating for only three weeks. He said he was going to report the complainant in the morning, got back into the Range Rover and drove off. He said there were two young ladies standing on the corner of the street whom he thought he recognised from the estate, standing there watching. He refuted the allegation that he had dragged the complainant out of the car and attacked him. When asked to describe the complainant he said he was in his mid-forties and white. He denied using any racist language towards the complainant.

8. The applicant declined to tell the police the name of his passenger. In the documents the applicant has submitted for our consideration we note that there was a request by the officer in the case on 28 November 2016 for him to provide the details of his female passenger. The applicant responded by saying that he had forwarded the request to the solicitors who would be contacting the police direct. This was at a stage before the police had sent the file to the CPS for a charging decision to be made. The solicitors did not provide her name. The officer in the case sent a further email on 30 November 2016 saying that unless the information was provided within a week she would submit the file for consideration without that evidence.
9. At trial the applicant's case in answer to the allegation of assault was self-defence. He accepted raising his leg but said that was only to ward off the complainant's attempted kicks. In doing so the bottom of his shoe must have come into contact with the complainant's shin, hence the small bruise and cut which the police officer saw on Mr Haque's shin.
10. We note that in the course of the trial the woman who had seen the incident from her window upstairs, Ms Hodson, said that she had not seen two girls in the area when the incident was taking place. In his own evidence the applicant said that as he was involved with the complainant and backing away from him, he saw two ladies appear from the cul-de-sac on the corner. He assumed they must have been the complainant's fares and he actually warned them not to get into the mini cab because the driver was "not legal". One of the complaints in his grounds of appeal is that no effort was made by his solicitors, or by the police, to trace these two potential witnesses despite the fact that, as Uber passengers, records would have been available. He has tried himself to obtain information without success since the trial.
11. No other witnesses were called for the defence. The judge summed-up the case fully and fairly. There can be no complaint about his legal directions or his helpful review of the evidence.
12. The grounds of appeal may be summarised as follows. First, it is suggested that the man who appeared at trial claiming to be the complainant was not in fact the man with whom the applicant had the altercation and was not the man who had appeared at an earlier hearing. He was an imposter. The applicant says that he told his counsel this but his counsel ignored him and carried on without raising any objections.
13. The applicant has made a Freedom of Information request to the Passport Office seeking

a photograph of Mr Haque and other personal details that would be held. We have seen the letter in reply, dated 27 September 2018. Although the applicant portrays the reply as saying that the Passport Office cannot establish that Mr Haque is still alive, in fact this is not a true representation. What the letter says is that if Mr Haque were no longer alive there would be no breach of data protection in disclosing the fact of a death certificate. However, the Freedom of Information Team at the Passport Office could neither confirm nor deny whether they held the information requested.

14. The applicant has gone to considerable lengths himself to trace the complainant and research details about him, and has produced various documents in support of his appeal.. He says he is sure that the man who appeared at court purporting to be Mr Haque was not the man he was in dispute with on the night of the incident. We pause to observe that the applicant's own ability to identify that person must be very much open to question, bearing in mind that the account he gave the police in interview, and persisted with in his evidence at the trial, was that the man concerned was white, not Asian. The prosecution case was that this was a deliberate lie on the part of the applicant in order to support his denial of any racist abuse. The applicant strongly refuted that suggestion. As the single judge said in refusing leave, there was no suggestion at court that the person giving evidence was not Mr Haque who had been involved in the altercation and it would be incredible that a completely different person appeared at trial claiming to be Mr Haque. There is no reason why someone should do such a thing.
15. The applicant also relies in this ground of appeal on the fact that the complainant had been able to give a good account of the incident in English, and to sign the declaration on his lengthy witness statement recorded by the police officer, whereas at the trial he required an interpreter. These issues were raised at the trial. The applicant seeks to produce fresh evidence in relation to this question of misidentification or impersonation. He has, for example written to the Metropolitan Police Commissioner requesting an investigation.
16. The applicant complains in his grounds of appeal that his trial solicitors and counsel failed to conduct his defence adequately. Following waiver of privilege, both counsel and solicitor provided their observations on his grounds of appeal. The applicant in turn has responded to their observations. We have considered all that material carefully.
17. For example, he complains that his solicitors failed to take a statement from the passenger in his car whose name was Florence Stiff. We have already mentioned the attempts by the police to obtain this information. It is clear from material the applicant has provided to us, in the form of text messages and emails, that he remained on good terms with this lady until the early part of 2017. On 8 May 2017 solicitors wrote to Ms Stiff reciting that they had made many attempts to contact her by phone, text and email, none of which had received any response. The letter requested that she make herself available to be interviewed by the defence solicitors, failing which a witness summons might have to be issued. We have seen the letter in reply from solicitors instructed on her behalf, dated 15 May 2017, making it clear that she had not witnessed the actual incident but only the period beforehand and the aftermath. The letter said that her recollection of events would in any event be unhelpful to the applicant's defence and might assist the prosecution. Trial counsel says that given the content of this letter it was decided not to call her as a defence witness, and that was with the applicant's agreement.
18. The applicant now complains that his solicitors failed to take a witness statement from

her promptly. She had married and left the country in the meantime, hence her lack of enthusiasm to cooperate. The applicant has lodged a Form W seeking leaving to call her as a witness for the appeal.

19. He has also lodged Forms W seeking leave to recall the prosecution witness Ms Hodson, who viewed the incident from her third floor room, and Amanda Blundell whom he describes as his 'assistant' in connection with the appeal. He asserts that subsequent to the trial his assistant spoke to Danielle Hodson who confirmed that the applicant was only flailing his leg in self-defence and gave a different account from that in her witness statement. It is clear from the summing-up that Danielle Hodson was cross-examined in some detail. She gave a broadly neutral account of the incident and was cautious in her evidence. She said that when the applicant was kicking, swinging his leg quite slowly, it looked as though his motor skills were not 100%. She thought he was drunk. He was swinging and kicking at the other man. She felt, although she was not 100% sure, that he made contact against the man's hand or thigh, lower down his body.
20. We have considered carefully all the matters set out in the voluminous documentation provided by the applicant in support of his appeal. We are quite satisfied that the material discloses no arguable ground of appeal. If the applicant was so convinced that the man giving evidence as the complainant at the trial was an imposter, he should have said so in evidence, whatever his counsel advised. As we have already observed, however, the suggestion flies in the face of his own evidence that the man he was engaged with in the altercation was white, not Asian. The quality of the other purported evidence relied upon to show the man was an imposter comes nowhere near the threshold of providing any arguable ground of appeal.
21. As to the complaints in relation to the failure to call witnesses, these were all matters which could have been dealt with before the trial. In particular the applicant has only himself to blame for not telling the police at the time who his passenger was, although it very much looks as though her evidence would have harmed rather than helped his defence. As to Ms Hodson, it is a matter of some concern that an unqualified investigator has approached a prosecution witness after the trial to quiz her about her evidence. There is nothing to cast doubt on the witness's account given to the jury, which in any event was not entirely unfavourable to the applicant.
22. We need not go into the matters of dispute between the applicant and his trial lawyers. Suffice it to say that the applicant is clearly a strong-willed man, not inexperienced in the ways of the courts and quite capable of giving instructions and making decisions for himself. We can see no basis upon which it can sensibly be argued that the conduct of his counsel and solicitors rendered his trial unfair or his conviction unsafe.
23. The threshold for this Court to receive fresh evidence is a high one. None of the purported fresh evidence which the applicant seeks to rely upon even remotely satisfies the requirements of section 23 of the Criminal Appeal Act 1968. There is nothing in any of the fresh evidence which could afford a basis for allowing the appeal, and for the most part there was no good reason why the evidence should not have been put forward at trial.
24. For all these reasons we refuse the renewed application for an extension of time, and we refuse the renewed application for leave

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

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

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk