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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 1561



No. 202100808 B5

Royal Courts of Justice

Tuesday, 12 October 2021

Before:

LORD JUSTICE EDIS  
MR JUSTICE TURNER

HER HONOUR JUDGE KARU RECORDER OF SOUTHWARK

REGINA  
V  
LUKASZ GRAMAN

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**J U D G M E N T**

MR JUSTICE TURNER:

- 1 On 22 March 2018 in the Crown Court at Guildford, the appellant, then aged 27, was convicted in his absence of causing grievous bodily harm with intent contrary to s.18 of the Offences Against the Person Act 1861. He was sentenced to eight years' imprisonment and one year imprisonment to be served concurrently on the second count relating to an offence of theft to which he had previously pleaded guilty.
- 2 The facts are these. The complainant, one David Truscott-Smith, was suspected to have stolen items from the appellant's house. On 25 July 2016 he was lured to The Mount, an area of grassland on the outskirts of Guildford, by Anna Graman, the appellant's sister, and her friend Annie Parker. The appellant was waiting for him and took the opportunity to beat him up, throwing him to the ground and punching him and repeatedly hitting him to the face. He then took his phone, which action underlays the subject matter for the count of theft.
- 3 Following his arrest, the appellant admitted in interview that he had caused the injuries. They comprised a fractured right eye socket, laceration to the right eye requiring stitches, two black eyes and extensive swelling to the cheeks, eyes and forehead.
- 4 The appellant's case was that although he had assaulted the complainant he had not intended to cause him really serious bodily harm and he should be convicted in the alternative of committing grievous bodily harm contrary to s.20 of the 1861 Act. He pleaded guilty to the lesser offence on 7 April 2017 and to the theft, but these pleas were not acceptable to the prosecution and a trial was listed for 11 December 2017.
- 5 On 29 September 2017, during a mention at Guildford Crown Court, the appellant's legal representatives confirmed that they had had no recent contact with him. A police enquiry revealed that he had left the United Kingdom on 21 August 2017 and a warrant not back for bail was issued. He had gone back to Poland and on 26 February 2018 a European Arrest Warrant was issued in respect of the s.18 offence and the theft offence. The trial of the s.18 offence duly proceeded in the appellant's absence.
- 6 On 16 May 2019, the European Arrest Warrant having been executed, the appellant appeared before the Crown Court at Guildford for the execution of the bench warrant. He admitted that he had breached his bail having failed to attend court on 22 March 2018 and was sentenced to two months' imprisonment to run consecutively to the substantive period of imprisonment of eight years which had already been passed following the trial in his absence.
- 7 Under s.13 of the Administration of Justice Act 1960 a right of appeal against a finding or order in contempt proceedings, which includes failure to surrender to bail, falls outside the Criminal Appeal Act 1968, because it does not relate to trial on the indictment. Accordingly, an appeal lies in right and leave is not required. The appellant's application for leave to appeal his s.18 convictions has been referred to the full court by the Registrar, together with his application for an extension of time of 1,064 days and a representation order.
- 8 Before turning to the issues relating to the substantive offences, it is necessary to make brief reference to the Bail Act offence. The appellant's extradition engaged the principle of speciality pursuant to s.146 of the Extradition Act 2003. The European Arrest Warrant makes reference to the arrest warrant for failing to attend, but this was inadequate to bring the Bail Act offence within the parameters of s.146(3)(b) of the 2003 Act. Accordingly, by the application of principles laid down in *R v Seddon* [2009] 1 WLR 2342, the court had no

jurisdiction to proceed against the appellant for this offence. The prosecution realistically concede that this is the case and so we quash the appellant's conviction in respect of the Bail Act offence.

- 9 The appellant goes on to contend that the European Arrest Warrant grants him the right to have his conviction reviewed because he was tried in his absence. This ground, however, is founded upon a misunderstanding of the true position in law. The format of the European Arrest Warrant issued in this case was governed by the Framework Decision on the European Arrest Warrant 2002/504/JHA, as amended by the Council Framework Decision 2009/299/JHA. The 2009 Framework Decision inserted Article 4a into the Framework Decision on the European Arrest Warrant. Article 4a removes the discretion of the requesting state to refuse extradition in cases involving a conviction in absence where a relevant box on the European Arrest Warrant had been ticked. These boxes include (a) cases where the request for persons entitled is a matter of domestic law to a retrial. That is Article 4a(1)(c) to (d), and (b) cases were:

"being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial." [Art.4a(b)]

- 10 In so far as Art.4a is concerned with retrial rights, it does not create a right to a retrial as a matter of European Union law, but rather defines the circumstances in which a requesting authority is required to execute a European Arrest Warrant in a conviction in absence case by reference to retrial rights which arise as a matter of domestic law. This was recognised in Recital 14 of the pre-ambit to the 2009 Framework Decision which states:

"This Framework Decision is limited to refining the definition of grounds for non-recognition in instruments implementing the principle of mutual recognition. Therefore, provisions such as those relating to the right to a retrial have a scope which is limited to the definition of these grounds for non-recognition. They are not designed to harmonise national legislation."

- 11 In this case, the European Arrest Warrant was issued on 26 February 2018 and transmitted to the National Crime Agency on 12 March 2018, which was prior to the appellant's trial. The arrest warrant left box D "Conviction in Absence" blank and in box E stated that:

"On 11 December 2017, the original trial date, Graman did not attend. The case was adjourned until 22 March 2018 for trial. It is hoped that Graman can be extradited so that can take place or an acceptable plea can be entered."

- 12 After the applicant was convicted an Interpol Diffusion was issued to Poland in March 2019, which stated that the applicant was wanted to serve a sentence of eight years' imprisonment for grievous bodily harm. The Diffusion specified that the applicant had been convicted in his absence. In summary, the European Arrest Warrant could not have referred to the applicant's conviction as it was issued prior to his trial. The European Arrest Warrant referred to the date of the appellant's trial which took place one year prior to the extradition and the Diffusion confirmed that a sentence had been imposed. It follows that the executing judicial authority was provided with accurate information as to the status of the proceedings to which the warrant related. If the executing judicial authority had had any concerns as to the status of the proceedings, given that it was on notice as to the date of the trial, it could have requested further information pursuant to Art.15 of the Framework Decision on the warrant. No such information was requested.

- 13 In any event, there would have been no proper basis to refuse to execute the warrant in the circumstances where, as here, the applicant was represented at his trial. In *Cretu v Local Court of Suceava, Romania* [2016] 1 WLR 3344 the Divisional Court held that the effect of the Art.4 Framework Decision on the European Arrest Warrant was that an accused who had instructed a lawyer to represent him at trial is not for the purposes of the trial in absence: provisions of the Extradition Act 2003 in absence. For the purposes of trial in absence, provisions of the Extradition Act 2003 absent for his trial, it follows that the applicant's right to a re-trial if governed solely by domestic law and it is unarguable that he is entitled to retrial by reason of the European Arrest Warrant. The appellant has not sought to argue that the decision of the court to proceed in his absence was wrong by the application of the law of England and Wales and, in the event, we are satisfied that such contention would have failed in the circumstances of this appeal.
- 14 In the absence of any substantive merit, no purpose would be served by extending the time limit within which the appellant may seek an extension of time, save for the quashing of conviction with respect to the Bail Act offence. Therefore, this appeal is dismissed.
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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.