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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202101036/B1

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 3 December 2021

LORD JUSTICE DINGEMANS
MRS JUSTICE McGowan DBE
RECORDER OF BRISTOL
(HIS HONOUR JUDGE BLAIR QC)
(Sitting as a Judge of the CACD)

REGINA

v

PRAVIN DABYCHARUN

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MS T PANAGIOTOPOULOU appeared on behalf of the Appellant.

MR G UNWIN appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This appeal against conviction raises issues relating first to the admission of underlying facts of the appellant's previous conviction for dangerous driving, it being common ground that the fact of his disqualification should be admitted, and secondly, to directions given to the jury about the appellant's interviews and lies.
2. On 16 March 2021, in the Crown Court at Snaresbrook following a trial before Mr Recorder Holland QC and a jury, the appellant, Mr Dabycharun, was convicted of wounding with intent. There was an alternative count of wounding contrary to section 20 of the Offences Against the Person Act and put on the indictment but it was always there as an alternative count when the indictment was originally drafted.
3. On an earlier occasion Mr Dabycharun had pleaded guilty to driving whilst disqualified and using a vehicle without insurance. He was sentenced to 7 years' imprisonment on count 1, less time spent in custody on remand and 3 months' imprisonment in relation to the driving whilst disqualified to be served concurrently. As he had committed an offence during the 18-month operational period of a suspended sentence, his suspended sentence was activated for a reduced term but that also was ordered to be served concurrently.

Factual background and cases at trial

4. So far as the relevant factual background is concerned, on 29 July the victim, a Mr David Aidoo, was working as a mechanic at a garage in Walthamstow. The appellant Mr Dabycharun was living at an address in Chingford. The two men had known each other at school and they had continued to be friends but they had fallen out about a year before the incident (so in July 2019), over an alleged debt of £200, alleged to be owed by Mr Dabycharun to Mr Aidoo. We are obviously not in a position to comment on the realities of that.
5. Mr Dabycharun had telephoned the garage to book in his car for an MOT on the morning of 29 July 2020 and he arrived with his car at about 3.30 in the afternoon. Mr Aidoo was told that Mr Dabycharun was at the garage and he went out to see him. The prosecution case was that the two men saw each other. Mr Aidoo had greeted Mr Dabycharun, who then reversed his car and drove into the road and the car had then struck Mr Aidoo, causing him to roll over the bonnet onto the windscreen and hit the ground. We have seen the CCTV footage of the incident, which shows Mr Aidoo walking down the road on the back street in which the garage is situated, and Mr Dabycharun driving into him and flipping him over. Mr Aidoo suffered injuries to his hand, head and back and he was bleeding but responsive when police arrived. He alleged that Mr Dabycharun had driven the car that struck him.
6. The car was later found abandoned a few streets away with windscreen damage. Mr Dabycharun telephoned the police claiming that the garage had told him that his car had been stolen. He said he had left it parked outside the garage at 11.00 am. Later he said that his friend, David, a mechanic who worked at the garage, had collected the car from him early in the morning.
7. Mr Dabycharun was arrested at home at about 5.00 pm, so an hour-and-a-half after the incident had taken place. The keys to the car were found at his address.
8. In his police interview Mr Dabycharun largely answered, "no comment". After the CCTV had been played Mr Dabycharun, in a prepared statement, said that he was not the

driver of the car that had struck Mr Aidoo. This is relevant to the second ground of appeal, namely the direction on lies and failure to mention facts in interview.

9. It was common ground that Mr Dabycharun had been disqualified from driving on 4 February 2020 for a period of 12 months and that appeared to relate to an incident which had occurred on 28 October 2018 and in respect of which Mr Dabycharun had pleaded guilty in January 2020. Those dates are relevant because of issues raised by the defence during the trial.
10. At the trial Mr Aidoo said he did not know that Mr Dabycharun was coming round to the garage but when he was told he was there he was pleased to see him and they gave each other a thumbs up. They had made eye contact and he had walked into the road to speak to him. Mr Aidoo said that Mr Dabycharun had accelerated towards him and run him over.
11. Mr Aidoo said he had had no contact with Mr Dabycharun for about a year before the incident (so that would take us back to July 2019) but he said in cross-examination that he knew about the disqualification, which had happened a long time after he said they had been in touch. Mr Dabycharun said that they had remained in contact and that Mr Aidoo had threatened him during that period of time through third parties and there had been telephone contact in relation to the alleged debt.
12. It was for this reason that Mr Aidoo was cross-examined about how he knew of Mr Dabycharun's disqualification. That was because the disqualification was on 4 February 2020 (which was after July 2019) which was a time when it was common ground that the relationship had broken down between them.
13. Mr Aidoo said that he had known that Mr Dabycharun had been disqualified because he had previously fixed his car for him and Mr Aidoo said of Mr Dabycharun:

"... he was caught drink driving and hit someone and he was found driving on the wrong side of the M25 and ... he was waiting for court."

14. In cross-examination he denied that Mr Dabycharun could have thought that he was out to get him and he said that they thought they had squashed the problem over the debt with the thumbs up and he said he was, for what it was worth, owed money by Mr Dabycharun. The prosecution case therefore was that this was a deliberate attack: Mr Dabycharun knew the man he hit with his car and it had been a deliberate plan to attend the garage and drive at him. The prosecution case was also that Mr Dabycharun had intended to cause really serious bodily harm in the circumstances because if you drive a car at anyone you are likely to cause really serious bodily harm but the section 20 had been left as an alternative count.
15. The defence case was that Mr Dabycharun had a good reason for going to the garage, he had used it in the past and having been introduced to the garage by Mr Aidoo his former friend. His car was due for a MOT that day and, knowing that he was disqualified, he had attempted to arrange for someone else to take it and he had not managed to do that or arrange a remote test. He had not expected to see Mr Aidoo there because he had cut all ties with him because he thought that Mr Aidoo was untrustworthy. He denied that he owed money to Mr Aidoo. He said that Mr Aidoo was issuing threats against him through various third parties and he was scared of Mr Aidoo and what Mr Aidoo would do to him. He said he saw Mr Aidoo walking towards him as he was manoeuvring the car into the garage. He felt that Mr Aidoo was behaving in a threatening way and he was

afraid that he would be attacked. He therefore reversed from the garage and attempted to leave and he had not seen Mr Aidoo in the road and only became aware of him in the road when it was too late. His car had hit Mr Aidoo but it was an accident and he then panicked and left the area and all of his actions after that were out of sheer panic because he was disqualified.

16. Mr Dabycharun gave evidence in accordance with his case and said that Mr Aidoo's behaviour towards him had scared him. The issues left for the jury were whether the jury were sure that Mr Dabycharun had deliberately driven at Mr Aidoo and, if so, whether he intended to cause him really serious bodily harm.
17. About a week before trial -- so very late -- the prosecution applied to admit Mr Dabycharun's bad character. This bad character was both the fact of Mr Dabycharun's previous conviction for dangerous driving and the underlying facts of it. The prosecution relied on several gateways: first, that it had been adduced by the defence; secondly, that it was important explanatory evidence; thirdly, that it was relevant to an important matter in issue, namely Mr Dabycharun's state of mind and propensity to drive, which was said to be relevant to the alternative count of wounding; and fourthly, that there was going to be an attack on Mr Dabycharun's character.

Judge's Ruling

18. Submissions were made before the judge and the judge ruled that the evidence was admissible under gateways section 101(c) and (d). He said that it would have been admissible also under gateway section 101(1)(g) but he did not admit it through that and he said that it was not admissible under gateway section 101(1)(b).
19. The judge also addressed the issue of prejudice and he said the evidence was of a single incident of dangerous driving, it was relatively recent and the underlying facts were relevant to the issues. It was not unjust to permit the evidence to be adduced nor would it render the proceedings unfair. A substantial part of the relevant facts were already in evidence from cross-examination and the admission made sure that the facts were accurately presented. It was therefore in the interests of justice for the evidence to be adduced.

The summing up

20. So far as directions are concerned, the judge gave written directions both on the previous convictions and on the failure to mention matters in interview and on lies. The judge in his directions told the jury that:

"You have been told that the defendant has a conviction for dangerous driving. That fact, and the circumstances of it, are set out in the agreed facts..."

21. The judge said this:

"The relevance of this evidence is for you to assess in the following contexts; firstly the fact that the defendant was disqualified from driving is relied upon by both sides in different ways. The prosecution argue that the defendant must have a pressing reason to drive around eight miles to the garage where [the complainant] worked, knowing that he was disqualified from driving and therefore at a risk of arrest..."

The defence argue that having driven there for an MOT, his disqualification from driving was the reason he panicked after running [the complainant] over and drove from the scene without stopping and then lied about not being the driver."

We pause there to note that that was consistent with the earlier admission before the judge's ruling of the fact of disqualification being before the jury. The judge said:

"Secondly, given the disqualification took place after the time from which [the complainant] had said in evidence he had no further contact with the defendant;

... he was therefore asked in cross-examination how he could have known about [it]. This was because it was the defence case that [the complainant] had indeed remained in contact and threatened the defendant ... [the complainant's evidence] was that he was told about the incident... by the defendant at the time he was waiting to go to court and before the actual sentence was passed... the facts of the conviction are relevant for you to assess [whether] that evidence given by [the complainant], that he was told at the time when he was still in contact with the defendant ... rather than demonstrating... he was in contact at the time he denied."

That, we pause to note, engages the issue of an important matter in the proceedings. Finally the judge said:

"The prosecution argues the facts of the conviction are relevant to your assessment of the defendant's appreciation of risk from driving his car and his willingness to take such risk. They argue if you are not sure of count one, but [are considering] count two and therefore whether the defendant has acted maliciously... [and] his previous action in driving the car, unable to see clearly because of the damaged bonnet, driving the wrong way on a roundabout and an M25 slipway, supports their case that he is willing to risk injury to others from his driving if he judges the need arises. This third argument, if you accept it, can only be relevant to count two ... and cannot provide any support to the prosecution case on count one..."

22. We should just pause again to say that in the agreed facts following the judge's ruling, further information had been given to the effect that the appellant had driven with a damaged bonnet at the time which had hindered his vision.

23. The judge also directed the jury:

"As I directed you at the time, the defendant's misconduct in the past cannot by itself prove that he is guilty of either offence on the indictment. It would be wrong and obviously unfair to jump to the conclusion that a person is guilty from the fact he has been convicted in the past..."

24. The judge then gave directions in paragraphs 24 to 28 of his written directions on section 34 of the Criminal Justice and Public Order Act 1994 in conventional terms, and we will return to paragraph 28, and then a lies direction in paragraphs 29 to 32 again in conventional terms. Paragraph 28 is relied on:

"In considering the above, you will want to bear in mind his explanation for not putting this forward, namely that he was scared to admit being the driver because he was disqualified, and that by the time of the interview he was being questioned for attempted murder."

Grounds of appeal

25. As we have already indicated, there are two main issues. The first relates to the admission of the facts of the previous conviction for dangerous driving and the directions on it and the second relates to the directions on the failure to mention matters in interview and the failure to give a lies direction. We are grateful to both Ms Panagiotopoulou and Mr Unwin for their very helpful written and oral submissions.

Previous convictions

26. So far as is relevant, section 101 of the Criminal Justice Act provides:

"(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—

...

(c) it is important explanatory evidence

(d) it is relevant to an important matter in issue between the defendant and the prosecution."

So far as important explanatory evidence is concerned, section 102 provides that:

"... evidence is important explanatory evidence if—

(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and

(b) its value for understanding the case as a whole is substantial."

27. Section 103 provides further definition about what is relevant to an important matter in issue in the case.
28. In this case it is important to note that it was common ground that the fact that Mr Dabycharun was disqualified from driving should be known to the jury. This is because it was part of Mr Dabycharun's case to explain why he had lied in his police interview by saying he was not the driver and it was part of Mr Dabycharun's case that Mr Aidoo's knowledge of his conviction showed that there had been continuing contact over the year, after their falling out, as alleged by Mr Dabycharun and as denied by Mr Aidoo. Further Mr Aidoo had, when cross-examined, given some description of what he understood Mr Dabycharun to have done to cause him to be disqualified.
29. In these circumstances, in our judgment, the conviction and its underlying facts had become important explanatory evidence for the purposes of section 101(1)(c) and 102(a) and (b) of the Criminal Justice Act 2003. This is because the jury had been given evidence of the disqualification and were always likely to speculate about the reason for that disqualification, particularly given the answer that Mr Aidoo had given was cross examined, which was that Mr Dabycharun had driven the wrong way round the M25 while drink-driving and had hit someone. It was, in our judgment, important for the jury, for understanding the case as a whole, to know exactly what had occurred and to be given a fair and accurate description of what had occurred so that they could assess Mr Aidoo's answer in the light of that.

30. In circumstances where the jury knew about the disqualification and had had a description, albeit brief and partly inaccurate about the driving, we cannot see any reason to have excluded this evidence under section 78 of the Police and Criminal Evidence Act.
31. The judge also, however, admitted the conviction as probative of a propensity to show a willingness to take a risk of causing injury to other road users by the manner of his driving. In our judgment, it is difficult to see how the previous dangerous driving was relevant to the issue of whether Mr Dabycharun had deliberately driven at Mr Aidoo as part of some continuing feud between them. The most that can be said in relation to the admission of this point as the conviction in this respect is that the judge's directions made it clear that this was relevant only to the alternative count of simple wounding. He did that in the direction that we have already read out at paragraph 21(c) of the written directions when he said: "This is relevant to your assessment of... appreciation of risk" in relation to count 2 which was the alternative count.
32. As Mr Dabycharun was convicted on count 1, it is plain that this admission of the evidence through the gateway cannot affect the safety of the conviction on count 1, subject to the point that was made in oral submissions by Ms Panagiotopoulou this morning about paragraph 22 of the written directions. Paragraph 22 of those directions stated:

"As I directed you at the time, the defendant's misconduct in the past cannot by itself prove that he is guilty of either offence on the indictment."

33. What was submitted was that the jury might have reverse engineered that proper comment to take that it could be used in relation to count 1. In our judgment, that is not a possible or fair reading of the judge's direction which was otherwise unimpeachable in that respect.
34. We should also say that we cannot see that failing to exclude the evidence of the facts of the conviction and the circumstances which gave rise to it was unfairly prejudicial in this case or rendered the conviction unsafe. We have considered the case as a whole. There is CCTV footage which shows that Mr Dabycharun drove directly at the victim, who is several paces ahead of the car in the driver's line of sight and that he posed no physical threat. It further shows Mr Dabycharun accelerating into him and continuing to accelerate after Mr Aidoo is thrown up and over the windscreen and comes off the front offside part of the car. There is the fact that Mr Dabycharun lied when he was arrested saying he was not the driver of the car, and the fact that the jury knew of the disqualification and, according to Mr Aidoo's evidence, that the appellant had driven the wrong way round the M25 even before the details of the conviction were admitted. In these circumstances, we are sure that notwithstanding the directions on propensity relating to count 2 this conviction is safe.

Section 34 and lies direction

35. We then turn to section 34 and the lies direction. It is right that the judge did give, as we have already indicated, a full section 34 direction and a lies direction. It is also right to record that, as indicated in R v Rana [2007] EWCA Crim 2261, at paragraph 11, best practice suggests that where issues relating to both lies and a failure to mention matters in interview are combined, a tailored direction which overlaps both the lies direction and the section 34 direction is likely to be of more assistance to the jury. In our judgment, however, there is nothing that has rendered this conviction unsafe by giving both the

directions. The directions were, in our judgment, in conventional terms. Complaint was made in relation to paragraph 28 of the written directions which read:

"In considering the above, you will want to bear in mind his explanation for not putting this forward, namely that he was scared to admit being the driver because he was disqualified, and that by the time of the interview he was being questioned for attempted murder."

36. It was suggested that this undermined the directions. We cannot see that this undermines the section 34 directions which had preceded it, nor the lies direction which followed after that direction.

Conclusion

37. In our judgment there is nothing that has caused us to consider this conviction unsafe. Therefore notwithstanding the excellence of the arguments on behalf of the appellant, we will dismiss the appeal.

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

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