NCN: [2022] EWCA Crim 1252

IN THE COURT OF APPEAL

CRIMINAL DIVISION

No. 202200249 B4

Royal Courts of Justice

Thursday, 14 July 2022

Before:

LADY JUSTICE WHIPPLE
MR JUSTICE GOSS
SIR NIGEL DAVIS

REGINA
V
CALLUM ANDREWS

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MR. A. KING appeared on behalf of the Applicant.

MR P. DENNIS appeared on behalf of the Crown.

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

LADY JUSTICE WHIPPLE:

1 On 22 December 2021, following a trial before his Honour Judge Bishop (then the Recorder of Luton), the appellant was convicted of conspiracy to cause grievous bodily harm with intent and two counts of wounding with intent. These were Counts 1, 3 and 5 on the indictment. He was acquitted of the remaining counts on the indictment. On 24 March 2022 he was sentenced by the trial judge to an extended determinate sentence of 25 years, comprising a custodial term of 20 years with a five-year extension period, pursuant to section 279 of the Sentencing Act 2020, the same sentence to run concurrently on each count. He was also sentenced for drug offences which had been committed for sentence from Bedfordshire Magistrates' Court, for which he received a total term of 40 months' imprisonment, to run concurrently with the extended determinate sentence.

2 There were two separate incidents. The first incident took place in Luton on 24 August 2020, when a man called Eamon Plater was stabbed using a Rambo knife. It was the prosecution's case that those responsible were the appellant and two other men, one of whom was also on trial as a co-accused, the other of whom was unknown. This gave rise to Count 3, which was wounding with intent, and was the culmination of an agreement between the defendants, which was Count 1, a conspiracy to cause grievous bodily harm with intent. The second incident took place on 6 October 2020 at a property in Dover, Kent in which the appellant stabbed a man called Imara Gillings. This was Count 5 of wounding with intent.

3 The appellant appeals against his conviction on all counts with the leave of the single judge. The appeal raises a single issue of whether the trial judge was correct to exclude certain bad character evidence in relation to the victim in Count 5, Mr Gillings. It is said that the error on this count infects the safety of conviction on the other counts too.

4 It is necessary to set out the facts in relation to Count 5 in a little more detail. On 5 October 2020 the appellant travelled to Dover. He arrived at Dover station at around

10.45 p.m. He made his way to a Saint Alban’s guest house (which we will refer to as "the guest house"), which he had booked using a false name and address. He left shortly afterwards and travelled to a property at 90 Balfour Road, Dover (which we shall term "the property"). Two drug users, Malcolm Stanton and Jayne Atkin, had been living at the property for about five weeks. The appellant remained there for around an hour and a half that evening before he returned to the guest house. At around 3.00 a.m. the next morning, 6 October 2020, Imara Gillings, who was another drug dealer who had been staying at the property, arrived at the property and went upstairs to sleep. This property was essentially a "cuckooed" house, meaning that it had been taken over for use as a base for a county lines drug dealing operation. The appellant left the guest house where he was staying at around 9.00 a.m. that morning and he took a taxi to the property. He arrived at the property just after 9.15 a.m. and directed Stanton to run drugs for him. Stanton left the property. Atkin, who was also present at the property, went upstairs to tell Gillings that the appellant was at the address and that he, Gillings, should leave. As Gillings was descending the stairs, Atkin said he was spotted by the appellant who said, "Oh, you've made an appearance then." The two men were not strangers to one another because they had been involved in an incident in Balfour Road shortly beforehand when Gillings had chased the appellant.

5 Atkin said the appellant pulled out a Rambo-style knife from his waistband, ran over to Gillings and stabbed him three times to the chest and back. Atkin said that Gillings had nothing in his hands, he was not carrying a knife.

6 Gillings managed to leave the property. He disposed of a rucksack and some drugs over a church yard wall. After doing so, he collapsed in the street. He was given first-aid by members of the public, police and paramedics. When he was asked who was responsible, he said he did not know. He was transferred by helicopter to hospital where he underwent several operations. He remained in an induced coma for five days.

7 In evidence Dr Rouse, who was the prosecution's expert pathologist, confirmed that Gillings

had two serious stab wounds. He described the wounds to Gillings' hands as "classic defensive injuries". The full list of injuries was that he had a stab wound over the left clavicle, which was five centimetres in length, two wounds to the left axilla, both five centimetres in surface length, anterior shoulder and inferior left axilla. These were communicating wounds, namely through and through wounds, with a tear to the deltoid muscle. He had a wound to the left lumbar area, described as three centimetres in surface length and superficial, and he had multiple, bilateral wounds to both hands, including a deep cut to the palmar crease of the right hand, cutting all flexor tendons, a cut to the front right wrist, and a wound to the left index and middle finger.

8 The appellant left the property and returned to the guesthouse, getting there at around 9.49 a.m. He was wearing a jacket with a fur hood and black trousers. At 10.52 a.m. he left the guest house. He was now wearing blue jeans and the jacket no longer had the fur hood. At 11.03 a.m. on 6 October a taxi was booked with Richard's Dover Taxis from the Malvern Hotel in Dover to Ashford. The person calling to make the booking used a phone number 3714 and said they were booking on behalf of their brother who had run out of credit. That number 3714 belonged to an associate of the appellant's whom the prosecution said the appellant had contacted. That person said the brother's name was Jay. The appellant was known to Stanton and Atkin as Jay. The taxi company called him back. The person who answered confirmed that they were at the Malvern Hotel. The taxi went to pick them up but no-one was there. Another taxi was booked on the same date at about 11.00 a.m. with County Cars to pick up from Malvern Road, Dover, near the chemist, also in the name of Jay. The pick-up location was then changed to outside the Malvern Public House on Clarendon Road. The customer, said by the prosecution to be the appellant, was dropped off outside Kent House in Ashford, paying cash. The prosecution said that the appellant caught a train and was collected at Ebbsfleet Station by two men who drove him back to Enfield.

9 On 12 October 2020 the appellant was arrested in the car park of a Travelodge in Waltham Cross. His clothes were seized and forensically examined. Blood spots were found on his trainers that were a DNA match for Imara Gillings. It was not possible to determine the mechanism by which the blood was deposited. The appellant's coat was the same one he could be seen wearing in CCTV from 6 October 2020. It too was checked for blood inside and also in the pockets but none was found. There were no tears or cuts on the coat.

10 The appellant answered no comment to all questions put to him in interview. He submitted a defence case statement to the court dealing with Count 5. Paragraph 5 of that statement asserted that:

> "b. [Gillings] was in possession of a knife and used this in the attack. [The appellant] was injured by the knife used by [Gillings].
> c. Initially [the appellant] was grappling with [Gillings] but was unable to stop [Gillings] and so used a knife he had in his possession to make [Gillings] cease the attack."

Thus, on the appellant's case, there were two knives, one in Gillings' hand which Gillings was using, and one used by the appellant in self-defence.

11 It was the prosecution's case that the appellant was the aggressor and that he was not acting in lawful self-defence. The prosecution said there was only one knife, the Rambo knife which was in the possession of and used by the appellant to inflict the injuries.

12 At trial, the appellant made an application pursuant to section 100(1)(a) and (b) of the Criminal Justice Act 2003 to adduce the bad character of Gillings. The application was originally in wider form but this appeal concerns only the admissibility of the following convictions:

a. Aggravated burglary on 21 January 2017. Gillings (then aged 15 years) and another had forced their way into the home of a 15-year-old boy. Gillings was in possession of machete with which he threatened the victim. He searched the house and stole a PlayStation 4. The victim's father came home.

Gillings threatened him with the weapon and stole property from his pockets. Gillings struck the boy with the butt of the weapon.

b. Possession of a knife on 24 May 2017. Gillings was said to be one of a group of males hanging around an abandoned vehicle. Police found a discarded kitchen knife which had his DNA on it.

c. Third, possession of a knife on 10 June 2017. Gillings was riding his bike and was stopped by police and searched. He had a large black-handled kitchen knife at his thigh.

13 The appellant argued that these convictions demonstrated that Gillings was a man of violence, and that he was willing to use violence, in particular to use knives, to further his business objectives to "crush other competitors". By the time the judge came to rule on the application part way through the prosecution case, it seems that the appellant was principally relying on section 100(1)(b), namely that these convictions had substantial probative value in relation to an issue in the case, which was whether the appellant acted in self-defence. To a lesser extent the defence relied on section 100(1)(a) to say that this was important explanatory evidence.

14 The prosecution opposed the application. The prosecution argued that the convictions did not have substantial probative value because Gillings had not been convicted of stabbing anyone and there was no history of violence between the appellant and Gillings such as to make these convictions arguably relevant.

15 The judge rejected the defence application. He reminded himself of the legislation, specifically referring to section 100(1) and (3). In his ruling given on 22 November he concluded:

"… Well, the first convictions are in respect of a possession of a knife, two

> of those, when he was 15, possession only; then an aggravated burglary, when he was 15, when he broke into another boy's flat and stole an item and he had with him a machete and he attacked the father when challenged; attacked him not with the blade but with the – the butt of the handle, and the first question then is whether any of those previous convictions satisfy the test in [section 100(1)(b)].
>
> Well, I'm quite satisfied that they do not. I've got to be satisfied that those convictions would have substantial probative value and also that they are of substantial importance in the context of the case as a whole, going to the issue of whether Amara Gillings was the aggressor and Callum Andrews was acting in self-defence, so I'm satisfied possession of a knife is what it says, possession – possession of the knife - and an aggravated burglary is very different – quite different to the facts of the case that I'm dealing with in this trial, and in subsection 3 of section 100, I must have regard to the nature and the number of the events to which the evidence relates and I think the nature of the aggravated burglary is such that it does not establish the necessary link that is required under section 100(1)(b)."

16 The appellant, represented by Mr King, submits that the judge erred in his refusal to admit the previous convictions. In oral submissions before us today Mr King has focused, in particular, on the conviction for aggravated burglary. In addition, given that Gillings did not give evidence, he submits that the jury would have been assisted by knowledge of these previous convictions when they came to assess the truth or otherwise of the prosecution case.

17 The prosecution resist this appeal. Mr Dennis, who appeared for the prosecution at trial and represents the Crown on this appeal, argues that the judge correctly applied the statutory provisions. But in any event, the prosecution submit that that by the time the judge came

to sum up the case, Jayne Atkin, who was present when these events occurred and who did give evidence at trial, had accepted in her evidence that she had earlier seen Gillings in possession of a knife, and that statement had not been challenged by the prosecution. So, say the prosecution, in light of that evidence, the two convictions for possession of a knife, at least, ceased to have any relevance. Only the conviction for aggravated burglary even arguably remained live. In relation to that, the prosecution submit the judge was correct to conclude that offence had taken place too long before this incident, nearly four years earlier, at a time when Gillings was only 15 years old, and anyway was on very different facts because Gillings had not threatened to stab anyone with a knife in the course of that incident. In the alternative, the prosecution submit that the convictions are safe, bearing in mind the remaining evidence on each count against the appellant.

18 We are grateful to all counsel and their legal teams for their focussed submissions on this appeal.

19 The legislative provisions are familiar, section 100(1) and 100(3) CJA 2003. In determining this application the judge was at pains to examine the nature and number of the three previous convictions when those events occurred and to determine the extent of any similarity or dissimilarity. We can see some force in the appellant's criticisms of the judge's exclusion of the three previous convictions at the time the ruling was given. But we do not reach any final conclusion on whether the judge was right to exclude those convictions, preferring instead to move to what we consider to be the central point in this appeal, which is whether the conviction was safe. We do this in large part because the judge's ruling was given at the mid-point of the prosecution case, before Miss Atkin had given evidence, and matters moved on in light of her evidence. It is important to consider the case as it stood at the end of the evidence and in the way in which it was summed up to the jury.

20 By the time the evidence closed, the jury had heard evidence from Miss Atkin that she had seen Gillings with a little silver knife that he folded and put in his bag. This had occurred either late evening of 5 October 2020 or in the early hours of 6 October 2020, when Gillings had come back to the property. Her evidence on this point was not challenged. It was a point of which the defence made a great deal in closing submissions. We note that Miss Atkin was talking about a little silver knife, which is of course markedly different from the Rambo knife that she described as having been in the appellant's possession and as having been the instrument with which the serious injuries were inflicted on Gillings. In light of Atkin's evidence on this point, the two previous convictions for possession of a knife ceased to have any arguable relevance, because Gillings was known to have been in possession of a knife at around the time of these events. It is only the aggravated burglary which gives rise to any live issue.

21 We turn to consider the strength of the evidence of the prosecution case overall against the appellant. The prosecution's case was anchored by the evidence of Atkin, who was an independent eye-witness. She had seen the appellant be the aggressor. She had seen only one knife being used in the altercation and that was the Rambo knife which she had seen the appellant take out of the waistband of his trousers. She denied in terms that there was any second knife seen or that Gillings held a knife as he descended the stairs: this was put to her in terms in cross-examination and her response was clear. There was other evidence beyond Atkin's evidence to support the conviction of the appellant on Count 5. The injuries to Gillings were described as classic defence injuries by Dr Rouse. They were consistent with him trying to grab the Rambo knife carried by the appellant, and Dr Rouse's evidence supported Atkins' evidence that it was the appellant who was the aggressor. The appellant's behaviour following the incident further supported the prosecution case. He left the scene. He went back to the guest house that he had booked and changed his clothes. He kept his cut left hand in his pocket following the incident. He called his friends who booked him a taxi in the false name of Jay. He lied to the taxi driver who picked him up. The

appellant stopped using his own mobile number when he arrived at Ebbsfleet Station, and there he was picked up by his friends. He failed to answer questions in interview and he declined to give evidence. At no stage did he give any explanation as to what had happened during this incident, despite asserting that he was acting in lawful self-defence at the time. In addition, there was evidence that he had used a Rambo-style knife against Plater, in the other counts which evidence was properly admissible when it came to count 5.

22 In light of these several strands of evidence against the appellant, we conclude that the prosecution case against the appellant on count 5 was very strong. We do not reach any conclusion on whether the aggravated burglary conviction, with or without the possession convictions, should have been admitted. But if these convictions had been admitted, we agree with Mr Dennis' submission that they would have formed, in the end, only small fragments in the case that went to the jury. The prosecution case would have remained very strong.

23 We are satisfied that the conviction on Count 5 is safe and that the convictions on the other counts are also safe. This appeal is dismissed.

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