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IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202200594/B3

NCN: [2022] EWCA Crim 1585

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 4 November 2022

Before:

LADY JUSTICE WHIPPLE DBE

MRS JUSTICE MAY DBE

HIS HONOUR JUDGE FLEWITT KC

(Sitting as a Judge of the CACD)

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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)

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MISS V RAMSDEN appeared on behalf of the Applicant

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

LADY JUSTICE WHIPPLE:

1. On 14 January 2022 at Luton Crown Court before Mr Recorder Fields the applicant was convicted of one count of robbery, contrary to section 8 of the Theft Act 1968, and one count of possession of a bladed article, contrary to section 139 of the Criminal Justice Act 1988. On 8 March 2022 he was sentenced to 12 years' imprisonment for count 1 with no separate penalty imposed for count 2. In separate proceedings Ishmail Omar pleaded guilty to seven counts of fraudulent use of stolen bank cards.
2. The applicant renews his application for an extension of time of 11 days to apply for leave to appeal against conviction following a refusal on the papers by the single judge.
3. We deal first with the application for extension of time. The reasons for extension of 11 days are set out in the grounds of appeal. The delay was not in any way attributable to the applicant. In the circumstances noting the relatively short period of time that is requested we are willing to extend time for this application.

The facts

4. The facts in brief are these. On 30 March 2020 the complainant returned to her home in Bedford. As she closed her front door she saw that a man had followed her. He asked for a glass of water and when she refused he produced a knife and pushed her into her home. He grabbed her purse and mobile phone and pushed her to the floor before fleeing the scene. Around two hours later at 14.04 Ishmail Omar used the complainant's bank cards to purchase alcohol from shops close to the complainant's address. At 16.53

he used them again to purchase more alcohol. He was subsequently arrested and told officers that the applicant had given him the complainant's bank cards. It was following this information that the applicant was arrested.

5. The prosecution case was that the applicant had robbed the complainant of her purse and mobile phone. The prosecution evidence included the following. First, evidence from the complainant who described the robbery and the person who had robbed her. Second, evidence from Ishmail Omar. He stated that the applicant stayed at his house on 29 March 2020, that he had gone out on 30 March 2020 and returned distressed. Omar said that the applicant had given him a bank card and asked him to purchase alcohol and cigarettes using that card. Later the applicant offered him a mobile phone which he (Omar) had refused. Third, DNA from the complainant's sweater. The complainant's clothes were analysed and three profiles were recovered. The major profile matched the complainant and one minor profile matched the applicant. The second minor profile belonged to an unidentified person. The prosecution's expert stated that the DNA could have been transferred innocently but the chance of transfer diminished with each transference.
6. The defence case at trial was that the applicant had not robbed the complainant, that it was Omar who may have been responsible. The applicant gave evidence at trial in his own defence. He stated that he had been released from prison on 27 March 2020 and met Omar in the street. Omar had invited him to stay at his flat. He, the applicant, denied robbing the complainant or giving Omar her bank cards or offering him a phone. During his time in Omar's house he said that Omar had developed a habit of taking his

clothes and this may have resulted in the transference of his DNA onto the complainant's sweater. In particular he said Omar took his hat. The applicant denied Omar's suggestion that he had borrowed Omar's hat.

7. In short, the issue for the jury was whether it was the applicant who had robbed the complainant.

### The ruling

8. In evidence Omar gave inconsistent evidence. In particular he stated, first of all, that the applicant had stayed at his house on 29 March 2020 but in his police interview he stated that the applicant had arrived on 27 March. Second, that the applicant gave him one bank card only and that he went to the shop on only one occasion but CCTV evidence and the record of transactions showed that he had gone to the shop twice and used more than one card. Third, he said he did not know that the cards were stolen but he had previously pleaded guilty to fraudulent use of those credit cards. These were all contradictions in Omar's evidence.
9. At the conclusion of the prosecution case counsel made a submission of no case to answer, submitting that taking the evidence at its highest a properly directed jury could not safely convict. The judge ruled that there was a case to answer and let the case proceed to the jury. The judge accepted that Omar's evidence was contradictory and inconsistent. However the judge noted that Omar had consistently stated that the applicant gave him the complainant's bank cards. Moreover, the applicant's DNA was recovered from the complainant's sweater. Whilst it was possible the DNA had been

transferred, the judge held that it was open to the jury to conclude that the DNA was present because it was the applicant who had committed the offence against the complainant.

### Grounds of appeal

10. By perfected grounds dated 5 April 2022 drafted by Miss Ramsden, trial counsel for the applicant, the applicant challenges the judge's ruling in relation to there being a case to answer. We are grateful for the assistance Miss Ramsden has given us today. She has not proceeded with the second ground but has focused her attention only on the first ground of appeal which is this: the judge erred in refusing the applicant's submission of no case to answer. She argues that the DNA alone was insufficient to raise a case to answer, the only direct evidence came from Omar and in short her point is that his evidence was so wanting and so inconsistent in its quality that it crossed the line such that no properly directed jury could properly convict on the basis of it. She submits that this case should have been withdrawn from the jury by the trial judge.

11. That ground of appeal was rejected by the single judge who refused leave to appeal and there is no need for us to repeat what is already known to the applicant as the reasons the single judge gave.

### Conclusion

12. We have considered Miss Ramsden's submissions carefully. We reject her submission that this case could not safely be left to the jury. It was for the jury to decide whether Mr Omar was telling the truth when he said that the applicant had given him the cards to

use. There were difficulties associated with Mr Omar's evidence but it is not unusual for juries to have to deal with evidence which is of mixed quality or witnesses who may have contradicted themselves or lie about some things. Given the other evidence which implicated the applicant, namely the DNA evidence and the evidence of the complainant herself which at least to an extent supported Mr Omar's account, these contradictions were for the jury to consider. It was open to the jury to accept Mr Omar's evidence on the crucial point that he had received the credit cards that belonged to the complainant from the applicant. Putting that together with other evidence it was open to the jury to accept the Crown's case and to convict the applicant.

13. In all of the circumstances therefore with thanks for the submissions we have received, we refuse this renewed application for leave to appeal.

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

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

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk