IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 1249

Case No: 2022/01057/B3

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 18th October 2023

B e f o r e:

LADY JUSTICE MACUR DBE

MRS JUSTICE STACEY DBE

MRS JUSTICE ELLENBOGEN DBE

R E X

- v -

AMOS WILSHER

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
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Mr J Dein KC appeared on behalf of the Applicant

J U D G M E N T

Wednesday 18th October 2023

LADY JUSTICE MACUR:

1. On 21st February 2022, the applicant, Amos Wilsher, was convicted of conspiracy to rob, contrary to section 1(1) of the Criminal Law Act 1977 (count 1), two offences of murder, contrary to common law (counts 2 and 4), and wounding with intent, contrary to section 18 of the Offences against the Person Act 1861.

2. On 25th March 2022, the applicant was sentenced to imprisonment for life, with 38 years specified as the minimum term under section 322 of the Sentencing Act 2020.

3. His co-accused was his younger brother, Jason Wilsher. He was convicted of conspiracy to rob (count 1), one offence of murder (count 2), and wounding with intent (count 3). He was sentenced to imprisonment for life, with a specified minimum term of 25 years.

4. The applicant now renews his application for leave to appeal against conviction, following refusal by the single judge. He is represented by Mr Dein KC, who was not trial counsel.

5. The facts of the case are set out in some detail in the case summary prepared by the Court of Appeal Office, which has been served upon the applicant and his advisers and to which no amendment has been requested. It will therefore suffice to refer only briefly to the contextual details of this renewed application.

The Background

6. In November 2017 and in early 2020 there were several attacks on houses in the Midlands area, committed during the early evening in which elderly victims, living alone, were targeted. Excessive and gratuitous violence was used and valuable property was stolen. Two

of the victims died. The violence used against them was said to be a major contributing cause of their deaths.

7. On 21st November 2017, two men (said to be the applicant and his co-accused) broke into the home of 87-year-old Mr Gumbley. His daughter was to find him lying on the floor in the living room, covered in blood. The police were called.

8. Whilst in hospital, Mr Gumbley gave a video recorded account of what he could remember of the incident. He died on 12th December 2017.

9. Forensic examination of the scene revealed the co-accused's DNA on the handle of a drawer that had been pulled out during the robbery.

10. A Mazda RX 8 motor car was seen in the area at the relevant time.

11. On 25th November 2017, three men (said to include the applicant and his co-accused) forced their way into the home of 82-year-old Mr Taylor. Fortunately, he survived his injuries. A Mazda RX 8 motor car was seen in the area at the relevant time.

12. The Mazda RX 8 was purchased from the Harrow area of London on 20th November 2017. Two sets of false registration plates were subsequently attached to the vehicle, which was found abandoned and burned out in the evening of 25th November 2017 near where the applicant lived.

13. On 27th February 2020, a sole male (said to be the applicant) forced his way into the home of 88-year-old Mrs Kaye. The victim managed to crawl to her phone to call the police. She gave the police an initial account, and later provided an account from her hospital bed.

14. As a result of the complications caused by injuries sustained during the robbery upon pre-existing medical conditions, her age and frailty, Mrs Kaye died in hospital on 17th March 2020.

15. The applicant's DNA was found on the surface of the security light that had been tampered with and on a soap tin that the attacker had left on her bed. CCTV cameras from several neighbouring addresses captured a grey Honda Civic motor car with an identifiable registration mark in the area at the relevant time.

16. The prosecution case against the applicant relied variously and cumulatively upon: cell site and tracking evidence of the co-accused's mobile telephone and the applicant's electronic tag respectively to establish the associated movements of the applicant and the co-accused in the relevant geographical and temporal vicinity of the offences; the purchase of the Mazda; the applicant's association with the Honda Civic; the presence of his DNA at the scene of the final offence; the victims' evidence relating to the attacks; the presence of items associated with the final attack found in the Honda Civic motor car bearing the applicant's DNA and his acknowledgement of association with the owners of the vehicle; the applicant's possession of a large amount of cash the day after the attack upon Mrs Kaye; and adverse inferences from the applicant's lies and/or silence in interview.

17. The prosecution also applied to admit evidence of bad character and propensity by reason of previous convictions, and sought the judge give the jury on the basis of cross-admissibility between the extant counts on the indoctment because of the striking similarity of the pattern of the attacks which went to (a) propensity and (b) an inference that the applicant was involved in all of the offences.

18. The trial judge admitted the evidence of a 2020 conviction, in relation to an offence for an aggravated burglary committed in June 2018. The judge was satisfied that the evidence in the case demonstrated important similarities to the two November 2017 attacks. He did not accept the defence submission that this was a case of the prosecution seeking to bolster a weak case.

19. The applicant subsequently submitted that there was no case to answer in relation to the conspiracy, the murder of Mr Gumbley, and the grievous bodily harm caused to Mr Taylor for want of cogent evidence connecting him to the scene, and that the evidence in relation to the violence caused and the causation of the death of Mrs Kaye could not entitle a jury properly directed to convict him of murder, as opposed to manslaughter, assuming that the jury were sure that he had been involved in the offence.

20. The judge rejected the application for reasons to be found in two comprehensive written rulings. In short, the judge outlined the cogent circumstantial evidence against the applicant which, if accepted, could lead to the conclusion that he was involved in the attacks and why the evidence relating to Mrs Kaye's maltreatment and the circumstances of her frailty would entitle the jury to conclude that the assailant intended serious bodily harm to befall her.

21. The applicant then gave evidence. He denied any involvement in the purchase of the Mazda; denied knowing who used the relevant mobile phone attributed to his co-accused and tracked by cell site evidence in the vicinity of the offences; denied that the co-accused was living at the same address as himself; denied that he had attacked Mrs Kaye; and denied that he had been the user of a phone associated by cell site evidence to that offence. He accepted visiting the registered owners of the Honda Civic motor car but denied driving the vehicle after the attack. He provided an account for why his DNA could have been found on objects that the jury may be persuaded were associated with the attack.

22. The applicant was convicted, as we have indicated.

23. His trial counsel drafted four grounds of appeal which were, and are, adopted by Mr Dein KC, namely:

> Ground 1
>
> The judge was wrong in finding that there was a case to answer on counts 1 to 3; that the correlation between the times at which the applicant's electronic tag disconnected and reconnected to the monitoring system and the connections to the cell of the phone attributed to the co-accused was not "striking". The judge was said to have applied the most favourable inference for the timings as contended for by the prosecution, which amounted to heaping inference upon inference. This evidence had formed the backbone of the case against the applicant. Further, to associate the applicant with the purchase of the Mazda motor car based on the recovery of a ripped up V5 document, using the same name as another document to which registration was attributed to the applicant's home address failed to accommodate timing, the acts of other family members and location of recovery from a dustbin outside the premises.
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> Ground 2
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> The judge was wrong in finding that a properly directed jury could infer from Mrs Kaye's age, size, and condition that she was fragile and that any manhandling, coupled with the attacker's appreciation of her physical frailty, implicitly demonstrated an intention to cause really serious injury.
>
> Grounds 3 and 4

The judge was wrong to admit the evidence of the applicant's bad character in relation to the 2020 conviction and in relation to the direction on cross-admissibility of evidence in count 4 in relation to counts 1 to 3, and vice versa.

24. The single judge granted an extension of time in which to bring the application but refused it as unarguable. He found that in relation to ground 1, the applicant had mischaracterised the evidence relating to the cell site evidence regarding the co-accused's phone on 20th November 2017, which supported that the phone was on the move and that it was not still at 2 Vicar Lane at 11.30 pm, which led the trial judge to consider that the electronic tag disconnected "within a few minutes of the time at which the phone attributed to the co-accused left the same cell site area". In any event, there was strong evidence that the applicant and his co-accused were both living at 2 Vicar Lane at the relevant time and were leaving and returning there at similar times, and that the applicant was correctly identified as one of the men involved in the attacks which formed basis of counts 2 and 3, and conspired with another to commit those attacks.

25. The evidence which associated the applicant with the purchase of the Mazda used in the attacks was particularly strong, with the name "John Smif". This same name was used for the purchase of another vehicle, where the address given was 22 Vicar Lane and where the registration form was found at 2 Vicar Lane, the applicant's address.

26. As to ground 2, the trial judge was not only entitled, but right, to conclude that the jury was entitled to regard the force used upon Mrs Kaye by the assailant as such that it would be reasonably foreseeable that really serious harm would occur and therefore was intended.

27. Ground 3 was dependent to a large extent upon the argument in relation to ground 1. The trial judge had taken a measured and proportionate approach to the Crown's bad

character application and his decision to admit evidence of the previous conviction was reasonable.

28. Ground 4 fell away in view of the single judge's decision in relation to grounds 1 to 3.

29. Mr Dein KC has amplified the submissions orally. His principal submissions relate to grounds 1 to 3. He realistically concedes that there are arguments "both ways" in relation to the connection and disconnection and timing of the mobile telephone attributed to the co-accused and the electronic tag that the applicant wore. However, the tag and telephone evidence was not a sufficient platform from which to assume that the applicant had been involved in counts 1, 2 and 3 on the indictment (the conspiracy to rob, the murder of Mr Gumbley and the grievous bodily harm caused to Mr Taylor).

30. The V5 relating to the purchaser, John Smif, had been a document that had been found a considerable time after the offences. It was found outside the premises and in a location that was open to other than members of the Wilsher family.

31. As regards count 4, the brutal treatment of Mrs Kaye was not such that could lead a jury properly directed to return a verdict of murder, as opposed to manslaughter.

32. Mr Dein submits that the 2018 offence obviously referred to a drugs related incident; only one of the occupants of premises was elderly. It was dissimilar to the incidents in 2017 and 2020. In these circumstances, if there was sufficient to bring the matter within section 101, the judge should have used his discretion to exclude the evidence pursuant to section 78 of the Police and Criminal Evidence Act 1984.

33. As regards the cross-admissibility of counts 1 to 3 against 4, and vice versa, Mr Dein

adopted the written submissions placed before the single judge and addressed to the trial judge.

Discussion

34. Paying all due credit to Mr Dein's eloquence and focus on the points that have been made in writing, we conclude that the proposed grounds of appeal are simply unarguable.

Ground 1

35. As the trial judge indicated, there is good evidence that the mobile phone in question was in regular use by the co-accused during the relevant periods. The cell site evidence showed that the cell site used most regularly by the phone was the one at a location 1250 metres from 2 Vicar Lane, to which the applicant was very firmly attached by reason that he was monitored by electronic tag. The telephone used the cell site 1600 times over its period of activity. 2 Vicar Lane was an address known to be associated with the Wilsher family. It was at least a "highly plausible inference" that the co-accused was living or staying at that address during the period in question. The applicant was required to be there from 9 pm to 7 am each day because he was being monitored by an electronic tag, and this was part of his monitoring process.

36. The co-accused was implicated in the 2017 offences by cogent evidence, including the DNA evidence and telephone evidence linking him to the purchase of the Mazda car, which itself was linked to both November 2017 attacks by CCTV evidence. There was sufficient evidence of association between the applicant and the co-accused to leave the matter to the jury.

37. On the three key dates relating to the 2017 offences there were "striking correlations" (as Mr Dein described them) between the times at which the electronic tag disconnected from

and reconnected to the monitoring system at 2 Vicar Lane and the times at which the co-accused's phone connected to the network. On the morning of 20th November 2017, the applicant's tag disconnected from the system within a few minutes of the time at which the phone attributed to the co-accused left the same cell site area. As the Respondent's Notice makes clear, the written grounds fail to refer to the cell site evidence that suggests that the co-accused's phone had not been static in the periods of time selected.

38. The applicant's tag reconnected to the system in the early evening of the same day shortly after his co-accused re-entered the cell site area containing 2 Vicar Lane. This was consistent with the prosecution case that the co-accused and the applicant travelled back in separate vehicles via slightly different routes, as was clear from ANPR evidence.

39. On 21st November 2017, the applicant's tag disconnected from the monitoring system four minutes after the last connection by the phone attributed to the co-accused to the cell closest to 2 Vicar Lane, which had been inactive for the period during which the robbery had occurred. The applicant had also been absent from the address during this period. That evening the applicant's tag reconnected to the system only one minutes before the first reconnection by the phone attributed to the co-accused to the cell site closest to 2 Vicar Lane.

40. On 25th November 2017, the electronic tag disconnected from the system correlating with the period when the co-accused's phone made no network connections during which time the robbery of Mr Taylor occurred. We do not regard this evidence to be highly circumstantial in the sense that it pejoratively suggests that it was not sufficient for the jury to draw conclusions, let alone by connection with the other matters to which we have referred.

41. The name John Smif, which was used to buy the Mazda, was also used on 8th December 2017 when purchasing another vehicle. The registration form was later found in the search at

2 Vicar Lane. The alleged coincidence is remarkable and again provides strong circumstantial evidence, together with the vendor's eyewitness account to connect the applicant to the Mazda.

42. We agree with the trial judge that "taken cumulatively [these factors] amount to a remarkable series of coincidences which had substantial probative value".

Ground 2

43. We simply do not see any valid argument that the judge was in error to leave the count of murder to the jury. The victim was visibly old and frail. Her account of the attack is such and the injuries inflicted demonstrated the brutality of the attack. It would have been obvious to any bystander that such violence could inflict grievous bodily harm. That it was an attack that was persisted in is capable of illustrating intent. The judge was not in error to leave this matter to the jury.

44. There was no error in law in the trial judge's approach to the prosecution's application to admit bad character evidence of the highly similar 2020 Basildon conviction, even though some dissimilarity has been identified by Mr Dein. The judge’s exercise of discretion to permit the prosecution to rely upon the bad character and to dismiss the section 78 discretion was reasonable. Nor was he wrong, in our view, to direct the jury upon the strikingly similar evidence of the attacks upon all three elderly victims as an indication of the availability of cross-admissibility.

45. There is no merit in the renewed application. Accordingly, it is refused.

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

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