Neutral Citation Number: [2024] EWCA Crim 1580

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT BASILDON
HHJ GRAHAM T20227056
CASE NO 202303491/B2

Royal Courts of Justice
Strand
London
WC2A 2LL
Thursday 5 December 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE GARNHAM

RECORDER OF LIVERPOOL
HIS HONOUR JUDGE MENARY KC
(Sitting as a Judge of the CACD)

REX
V
TRENTON BEST

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MR J AKIN-OLUGBADE appeared on behalf of the Applicant.

J U D G M E N T

MR JUSTICE GARNHAM:

1. On 8 September 2023, in the Crown Court at Basildon before HHJ Graham, the applicant (who was then aged 18) was convicted of one count of wounding with intent (count 2). He was acquitted on count 1, attempted murder. On 29 February 2024, before the same court, the applicant (who was then 19) was sentenced to 6 years' detention in a young offender institution. He now renews his application for leave to appeal against conviction following a refusal by the single judge.

2. The facts can be summarised shortly. At about 3.50 pm on 16 February 2021, a young man called Anthony Manton was chased into a car park by a group of men. Once there, he was stabbed eight times by some of them. The applicant was part of the group that chased the victim but he did not go into the car park and he did not attack the victim. The prosecution case was that the defendant and others were together before the incident in a shop and had then come across Mr Manton outside the shop. He ran away from them and was pursued by the entire group. The applicant, who was several steps behind the others when the chase began, had started to run a few seconds after they did. He ran in the same direction as the other men. When the group reached the car park the applicant separated from the others, running behind a garage on the edge of the car park and not entering the car park at all. However, he did not leave the scene or go home. He remained behind that garage and only left when the others did.

3. The prosecution suggested that the applicant may have waited behind the garage to cut off any potential escape route for the victim. They also suggested that, from his advantage point, he may have been able to see the first slash made with the knife used in

the attack.

4. The prosecution case was that regardless of who inflicted the injuries on the victim, all the defendants were acting together and shared the intent to kill him. They were all involved in chasing the victim to the car park and, although the applicant did not attack the victim, he was nearby, encouraging others in the attack and lending them his support to do so. It was alleged that he was therefore guilty of assisting or encouraging the principal offenders.

5. The defence case was that the applicant was not part of any joint enterprise to kill the victim. The applicant did not give or call evidence but it was submitted on his behalf that he was simply present with the co-defendants and had been to the shops with them. When they started running he followed some 15 seconds behind them. It was said the applicant did not join the principal offenders in the car park, rather he was on a path behind the hedge and there was a brick garage between him and the car park. He would not therefore, it was said, have been seen by those in the car park area and would not himself have seen the attack or the injuries inflicted on the victim. He was therefore not part of the attack.

6. The defence argued the evidence of the applicant being with one co-defendant later in the evening was consistent with the applicant going round to see a friend and did not show that they had been part of any joint enterprise.

7. The issues for the jury were whether they were sure (i) the applicant deliberately

provided assistance or encouragement to the co-accused who had stabbed the victim and (ii) whether both the applicant and those who had stabbed the victim had the requisite intent, which for count 2 was intention to cause serious harm.

8. At the close of the prosecution case, counsel for the defence submitted that the judge should withdraw the case of attempted murder in relation to the applicant. It was argued that there was insufficient evidence for the jury, properly directed, to convict on that account, that he was not sufficiently proximate to the attack and there was no evidence he did anything to encourage or assist the stabbing of the victim. It was submitted that the applicant turned off from the group pursuing the victim and took a different route. That application was opposed.

9. In giving his ruling, the judge observed that the applicant was associated with the other people involved before this incident started. Once the other men started running in pursuit of Mr Manton, the applicant started running almost immediately and, although behind them, he remained part of the pursuing group. He said that the applicant then turned off from the pursuing group but remained just around the corner from the car park where the stabbing took place. He was later joined there by the others. He said there was no sign of him disassociating himself from what happened. The men left the scene together and there was evidence of his continued association with the others later that evening. He ruled that this was a point for the jury to decide and therefore rejected the submission.

10. Before us today, it was argued by Mr Akin-Olugbade first, that the submission of no case

should have been acceded to, as there was no evidence that the applicant's actions, irrespective of any intent, assisted in the grievous bodily harm of the victim. The applicant was with the principal offenders immediately before the incident and followed them towards the car park but there is no indication that the principal offenders knew that the applicant was following them. When they started to run towards the victim, there was no indication that they knew that the applicant would follow. Due to his position, it was said that the applicant could not have seen that any of the others were carrying a weapon.

11. In writing, it was argued that because his co-accused and the victim moved behind a pick-up truck the applicant would not have seen the slash made by the co-defendant at the victim. The applicant did not see the principal offenders in the car park, rather he was on the path behind the hedge and there was a brick garage between him and the car park. He would not therefore have been seen by those in the car park area and would not have seen the attack or the injuries suffered by the victim.

12. Second, Mr Akin-Olugbade argues that the judge's direction on assisting or encouraging failed to address the issue of the principal offender's knowledge of the assistance or encouragement in the applicant's specific circumstances. In summing-up on the law, the judge should have specified that contributing to the force in numbers required that those assisted were aware of the contribution because, if they were ignorant of it, they could not logically have been assisted or encouraged.

13. In our judgment, the judge was plainly correct in concluding that there was a case for the applicant to answer. The applicant was with the other men before the incident. When

they started chasing the victim he followed. He kept pace with them. Whether the three co-defendants became aware that the applicant had joined the chase was a matter for the jury to determine. There was certainly evidence available on which they could reach that conclusion. The applicant was in a position to see the first flash of the knife. Whether or not he did was a matter for the jury. When the rest of the group headed into the car park the applicant peeled off and went down a path adjustment to the car park. His position was at least consistent with his blocking a potential escape route from the car park and it is to be noted that that was the route subsequently taken by the group when they left the car park.

14. Although he never entered the car park and never participated directly in the attack, the applicant was positioned nearby and could have seen and heard the events and been seen. Again, these were matters for the jury. Certainly, the applicant did nothing to assist the victim after the attack and it was agreed that the applicant left the area in the company of his co-accused, was in phone contact with one of them and was in the physical presence of another approximately 4 hours after the attack.

15. In those circumstances, in our judgment, there was ample evidence that, by his presence and actions, the applicant was encouraging the others in the attack and lending his support to it.

16. As to ground 2, the judge provided a clear direction on assistance or encouragement both of which are perfectly ordinary English words that required no further explanation. Once assistance or encouragement is proven, as it could properly be said it was proved

inferentially on the facts of this case, there is no requirement to prove that it had a positive effect on the principal's conduct. In respect of encouragement, it was not necessary for the learned judge to point out to the jury that a person needs to be aware of the encouragement because the word itself conveys precisely that meaning.

17. For those reasons, this application is refused.