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IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202301591/B3
[2024] EWCA Crim 249



Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 16 February 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE FARBEY

MR JUSTICE LINDEN

REX

V

OLUKUNLE AJANI AFOLABI

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MR J SCOBIE KC appeared on behalf of the Applicant.

J U D G M E N T

MRS JUSTICE FARBEY:

1. On 17 April 2023, in the Crown Court at Snaresbrook before HHJ Dean, the applicant (then aged 34) was convicted of wounding with intent to cause grievous bodily harm, contrary to section 18 of the Offences Against the Person Act 1861. On 22 August 2023, the judge imposed a sentence of 3 years and 6 months' imprisonment, less 60 days to take account of time spent on bail under a qualifying curfew. On his behalf, Mr Scobie KC (who did not appear at trial) renews the application for leave to appeal against conviction following refusal by the single judge.
2. We turn to the facts. On 9 January 2022, the victim, Ishmail Gahre, went to the address of his former partner, Lucy Njogore. It was agreed that he was making a nuisance of himself, and from about 4.30 am he had been pressing her buzzer, repeatedly calling her and throwing stones at her property while also being abusive. The applicant had been staying with Ms Njogore at the material time.
3. At about 8.00 am Ms Njogore went outside and spoke to the victim. Neighbours described a commotion or very unpleasant argument between her and the victim, which was also watched by the applicant from an upstairs window. The prosecution case was that, after watching what was going on outside, the applicant armed himself with a kitchen knife and then went outside to confront the victim. A fight ensued in which the applicant deliberately and repeatedly stabbed the victim with the knife, intending to cause him really serious harm.
4. To prove the case the prosecution relied on a number of different strands of evidence. First, there was CCTV evidence of the offence. We shall return to the content of the CCTV later. Secondly, it was an agreed fact, given in writing to the jury in the usual way, that the victim sustained four wounds requiring stitching or, in one case, glueing in hospital. The prosecution relied on these wounds to invite the inference that the applicant had stabbed the victim repeatedly and could only have intended to cause serious harm in doing so. Thirdly, there was eyewitness evidence from two neighbours who had seen the knife and the fight between the applicant and the victim but not the actual stabbing. There was similar evidence from a couple walking their dog, who provided assistance to the injured victim and called the emergency services. Fourthly, there was evidence from a police officer, supported by his body worn camera footage, that he found a large knife in Ms Njogore's kitchen on the draining board area which he said was wet. All the other plates and cutlery, he said, were dry. The prosecution invited the inference that the knife had been deliberately taken outside by the applicant to confront the victim before being repeatedly used in the assault and then returned to the kitchen and cleaned.
5. The prosecution also relied on the applicant's failure to answer questions in interview and on inconsistencies between his Defence Statement and his evidence at trial in order to undermine his credibility. Neither the victim nor Ms Njogore gave evidence.
6. In his Defence Statement, the applicant said that the victim came towards him armed with a knife. The applicant had tried to disarm him and, in doing so, the two men fell to the ground and a fight ensued. While the two men were on the ground, the victim was still in possession

of the knife. The applicant denied being responsible for stabbing the victim or causing his injuries. He did not take a knife to the scene.

7. In his evidence to the jury, the applicant said that the two men were fighting. He managed to disarm the victim, who lost control of the knife. At one point, he jumped over the victim and picked up the knife which was at the time on some grass. He struck the victim with his belt a couple of times but that was in self-defence, or by accident. Any injury to the victim was probably caused when they were rolling on the ground as the victim had the knife close to his body. He said that the CCTV footage captured him striking the victim with his belt, and not with the knife.
8. In her written directions to the jury, the judge fairly summarised the applicant's case in the following terms:

“The defence case is that OA went outside. IG had a knife. IG was the aggressor and at no point did he stab IG with the knife. He did strike IG with his belt at one point but in self defence. He does not know how IG was wounded- it may have been as they rolled on the ground.”

9. During the course of the trial, the applicant's trial counsel had applied to the judge to put before the jury evidence that the victim had stabbed the applicant three times to the chest in May 2022, four months after the events which the jury had to consider. Counsel submitted to the judge that the evidence was admissible as non-defendant bad character evidence under section 100(1)(b) of the Criminal Justice Act 2003. It was evidence of substantial probative value in relation to a matter in issue in the proceedings and was of substantial importance in the context of the case as a whole.
10. The prosecution resisted the application on the grounds that, after the applicant had failed to give evidence, the trial of the allegation that the victim had stabbed the applicant could not proceed. The allegation remained unproved and would, if admitted, give rise to unnecessary satellite litigation. The allegation had no relevance and could carry no weight in relation to anything in the applicant's case before the jury.
11. The judge ruled that the evidence that the complainant was in possession of two knives in May 2022 would be admitted but that the allegation of the stabbing did not fulfil the statutory criteria for the admission of non-defendant bad character evidence and, as an unproved allegation, would give rise to satellite litigation.
12. Mr Scobie renews on a single ground, namely that the judge erred in refusing to admit non-defendant bad character evidence in relation to the allegation that the victim stabbed the applicant three times to the chest four months after the altercation in this case. Adopting trial counsel's perfected grounds of appeal, he submits that the fact of the victim being arrested and charged for stabbing the applicant, just four months after the incident which the jury were trying, was of substantial probative value in relation to a matter in issue in the proceedings and of substantial importance in the context of the case as a whole. The matters in issue are described in the grounds of appeal as being: first, the victim's propensity for

violence, in particular, knife-related violence; secondly, the issue of who brought the knife to the scene on 9 January 2022; thirdly, the issue of who started the violence on 9 January 2022; and fourthly, whether or not the applicant had been acting in self-defence. It is further submitted that the conduct had involved the same parties and allegations involving the use of knives. It is submitted that the incidents were temporally linked being just four months apart and also that the later conduct of the victim was strikingly similar to that which the applicant maintains is how the victim behaved on 9 January 2022. It is finally submitted that the judge placed too great an emphasis on the risk of satellite litigation when refusing the application. Mr Scobie submits that, in these circumstances, the applicant's conviction is arguably unsafe.

13. We do not agree. The judge who conducted the trial was in a good position to decide, in the context of the evidence as a whole, whether the statutory criteria for the introduction of evidence about a separate, later and unproven attack were met. We are in no doubt that she was entitled to conclude that the evidence of an attack on the applicant by the victim four months later did not meet the statutory criteria for its admission as bad character evidence. We have been provided with no proper reason to take a different view to the judge. Even if the applicant was stabbed by the victim, the stabbing postdated the applicant's offence by a significant period. Evidence of the stabbing could cast no light on any issue that the jury had to decide in the applicant's trial. We do not accept that any attack by the victim on the applicant has any, let alone any substantial, probative value either in relation to a matter in issue in the proceedings or in relation to a matter of substantial importance in the context of the case as a whole.
14. It cannot properly be deployed to support the applicant's case on any element of the section 18 offence for which he was convicted or on any defence raised including self-defence and accident. We are also in complete agreement with the judge that its admission would have generated undue satellite litigation that would have served no purpose other than to distract the jury.
15. We have reviewed the CCTV that was before the jury. It plainly shows the applicant chasing the victim with an object that the jury would have been entitled to conclude was a knife. It plainly shows the applicant lunging at the victim until he falls to the ground. Some part of what ensued is obscured from view, but throughout the CCTV the jury were unarguably able either to see or to infer what actually happened. The CCTV shows that the applicant repeatedly makes aggressive swings towards the victim's body at a time when the victim is lying on the ground and that when the victim gets up the applicant lunges towards him again, so that the victim falls to the ground again. The applicant then moves away. He is followed for a short time by the victim but then goes out of sight.
16. By their verdict, the jury disbelieved the applicant and rejected his account that the victim brought the knife to the scene and then received his injuries while the applicant tried to disarm him. There was ample evidence for the jury to be sure that this was a sustained knife attack by the applicant with intent to do really serious harm. It makes no difference that the victim stabbed the victim months later, if that is what happened. For these reasons, the applicant's conviction is not arguably unsafe and this renewed application is refused.

The Court having heard further submissions, the judgment continued:

17. We note the clear terms in which the single judge refused leave which would have enabled the applicant to understand why his grounds of appeal were not arguable and could not succeed. We are informed by Mr Scobie that the applicant was advised that loss of time was a possibility. In order to protect the resources of the Court and to ensure that those resources are spent on meritorious cases, we consider that we should make a loss of time order in this case. We direct that 28 days shall not count towards his sentence.

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

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