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IN THE COURT OF APPEAL

CRIMINAL DIVISION

NEUTRAL CITATION NUMBER: [2021] EWCA Crim 659

Case No: 2019/02727/B1

Royal Courts of Justice

The Strand

London

WC2A 2LL

Thursday 22nd April 2021

B e f o r e:

LADY JUSTICE CARR DBE

MR JUSTICE LAVENDER

THE RECORDER OF NEWCASTLE

(His Honour Judge Sloan QC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

ALEXANDER STEPHEN ANDREWS

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)

Non-Counsel Application

J U D G M E N T

Thursday 22nd April 2021

LADY JUSTICE CARR: I shall ask Mr Justice Lavender to give the judgment of the court.

MR JUSTICE LAVENDER:

1. This is a renewed application for an extension of time (15 days) in which to apply for leave to appeal against conviction following refusal by the single judge.

2. On 21 March 2019 in the Crown Court at Oxford the applicant pleaded guilty to two counts of being the owner of a dog which caused injury to a person while dangerously out of control, contrary to section 3(1) and (4) of the Dangerous Dogs Act 1991. He was sentenced to concurrent terms of 18 months' imprisonment on each count. He was ordered to pay a victim surcharge of £140, a total of £2,750 in compensation, a contribution to the costs of the prosecution in the sum of £4,000 and the costs of kennelling his dog, in the sum of £9,820.23. A contingent destruction order was made in respect of the dog and the applicant was disqualified from keeping a dog without limit of time.

3. The applicant was the owner of a black Staffordshire Bull Terrier named "Piglet", to whom he was clearly very attached. In 2017 the applicant was living in Oxford and regularly walked his dog along Parks Road. The applicant did not like the fact that a number of cyclists did not dismount at a certain location on the pavement in Parks Road where building works were taking place and blocking the cycleway. It appears that a sign telling cyclists to dismount may have been removed.

4. The case for the prosecution in relation to the first incident was as follows. On 9 October 2017 the applicant was walking his dog in Parks Road. The applicant spoke to a number of cyclists, including Paul Mitchell. The dog bit Mr Mitchell once above his left knee, causing a

superficial injury. That was the subject of count 1. We have seen photographs of the injury allegedly caused by the dog and a video of the incident taken on Mr Mitchell's body-worn video camera, which the prosecution say shows the applicant's inability to control his dog.

5. We entirely understand why the prosecution say that this video shows that the applicant was unable to control his dog and why a jury might have concluded that the dog was dangerously out of control, even though it was on a lead. Indeed, at one point in the video the applicant said, "I suggest you don't get any closer", which was clearly a reference to the dog. Mr Martin replied, "He should be muzzled." Moreover, a passer-by said to the applicant, "I really recommend you train that guy, man. That's going to be a real danger."

6. The prosecution's case as to the second incident was that the applicant was in the same location with his dog at about 10.15am on 14 November 2017 when Victoria Lackey was cycling towards him in the direction of Broad Street. The applicant stood facing her, shouted at her and told her to dismount. As she passed him, the dog bit her and hung on to her leg for three to five metres. She sustained a wound to her right leg measuring 2 centimetres in depth, which penetrated the tissue, but not the muscle. Again we have seen photographs of this injury.

7. The police seized the applicant's dog on 20 November 2017.

8. The applicant instructed counsel, Michael Peters, and had a conference with him on 2 November 2018, which he says lasted for three hours. According to the applicant, Mr Peters advised him that his case was winnable. 2 November 2018 was the date on which an unsigned defence statement was uploaded to the Digital Case System. According to that document, the applicant denied that his dog was out of control on either occasion, asserted that Mr Mitchell cycled right up to his dog, who became scared and distressed, denied that his dog bit Mr Mitchell, asserted that Miss Lackey cycled directly towards his dog and failed to stop, as a

result of which the dog became distressed and reacted in an instinctive, defensive manner.

9. The applicant's trial was listed to commence on 20 March 2019. His original counsel, Mr Peters, was on holiday on that day. The applicant applied, unsuccessfully, for an adjournment of his trial. The applicant was unrepresented on 20 March 2019 and the hearing was adjourned to the following day for him to seek representation. He was given a copy of the prosecution opening note.

10. On 21 March 2019 the applicant was represented by Sean Smith of counsel. The applicant pleaded guilty to both counts. We will return to the events of that day.

11. The applicant says that he tried to initiate his appeal within 28 days of his conviction, but that he was unfamiliar with the process and did not follow the correct procedure. In those circumstances, we have considered the merits of the proposed grounds of appeal.

12. The applicant has drafted his own grounds of appeal. We make allowance for the fact that he is not a lawyer. The first page lists eight grounds of appeal which, although not numbered, we will refer to by number as if they were numbered in the order in which they appear. The applicant has also drafted a number of other documents, including: a 13 page letter to the judge, dated 10 April 2019; a ten page response to a statement from Mr Smith; 36 pages of submissions in response to the single judge's decision; and a 26 page executive summary prepared for this hearing.

13. We have read all of these documents and have taken account of them. We do not intend to deal with many of the points which are raised by the applicant, a large number of which are simply irrelevant to this hearing. For instance, he complains that the seizure of his dog was unlawful. However, the legality of the seizure has no bearing on the question which we have

to decide.

14. The applicant is a layman and may not appreciate it, but the question which would arise on any appeal is a narrow one. It is whether his conviction was safe. Putting it another way, an appeal is not an opportunity for a wide-ranging exploration of complaints about the investigation or prosecution of the applicant or the treatment of his dog. Rather, it is concerned solely with the question of whether or not his conviction was safe.

15. Ordinarily, the conviction of a defendant who pleads guilty is safe because, by pleading guilty, the defendant has admitted his guilt. It follows that the circumstances in which this court would allow an appeal against conviction following a plea of guilty are extremely limited.

16. In his letter to the judge, the applicant set out the reason why he said that he pleaded guilty. The principal reason was that Mr Smith had advised him that he had only a slim chance of acquittal. The applicant did not have to accept that advice. He says that he had received different advice from Mr Peters. In the light of that conflicting advice, he had to choose whether or not to contest the charges against him. He chose to plead guilty.

17. There is a dispute between the applicant and Mr Smith as to whether Mr Smith advised the applicant fully (as Mr Smith says that he did) as to the consequences of a guilty plea. It is unnecessary for us to go into the details of that dispute. The applicant said in his letter to the judge that his overriding concern was for the welfare of his dog and that a positive report on his dog was obtained that day from the kennels, which gave rise to a chance that the dog would be returned to him if he pleaded guilty. Of course, the dog would have been returned to him if he had maintained his not guilty plea and been acquitted. No doubt the applicant would have maintained his not guilty plea if he had considered that he had a chance of being acquitted. Instead, the applicant chose to plead guilty.

18. In those circumstances, we are confident that the applicant's conviction was safe. The contrary is not arguable.

19. We deal briefly with the eight grounds of appeal. Ground 1 is that the applicant was severely disadvantaged by not being allowed to be represented at trial by the counsel of his choice. That does not give rise to an arguable ground of appeal. The court was not obliged to adjourn the trial to a date when the applicant's original counsel was available. The applicant had ample time in which to instruct fresh counsel. In any event, the applicant had had the benefit of Mr Peters' advice, but still chose to plead guilty.

20. Ground 2 is that the applicant was unable to offer a proper defence as the prosecution failed to state exactly how he was alleged to have committed the offences. This is unsustainable. The prosecution's case was clear.

21. Ground 3 is that the applicant did not have adequate time to prepare a defence with his "last minute barrister". This is unarguable. The applicant's defence was set out in his defence statement, which was uploaded over five months before the trial. He was not starting from scratch on the second day of trial. The applicant could have instructed Mr Smith, or any other barrister who was available, in advance of the trial. He chose not to do so. He cannot rely on that choice as a ground of appeal.

22. Ground 4 is that the case was not brought to trial within a reasonable time. That does not give rise to a ground of appeal. If the applicant had considered that the delay had been such that there could no longer be a fair trial, then the appropriate course would have been for him to apply for the prosecution to be stayed as an abuse of process. We do not suggest that any such application would have had any prospect of success. However, the applicant did not make

such an application. Instead, he pleaded guilty.

23. Ground 5 is that the applicant was not of sound mind when, with extreme reluctance, he conceded to change his plea to guilty, which he did for the purpose of securing the return of his dog. We have already dealt with the applicant's decision to plead guilty. The suggestion that he was not of sound mind is not supported by any medical evidence.

24. Ground 6 is that the applicant's barrister was professionally negligent by failing to advise the applicant of the full consequences/ramifications of pleading guilty and incorrectly advised the applicant that he would be given credit for his guilty pleas. We have already indicated that we do not regard the dispute between the applicant and Mr Smith as to the adequacy of Mr Smith's advice as relevant to the determination of this application. The applicant would not have considered pleading guilty, whatever its consequences, unless he considered that he had no prospect of being acquitted.

25. Ground 7 is that the trial judge displayed prejudice from the outset of the trial. We see no basis for this allegation. We note that it formed no part of the reasons offered by the applicant for his decision to plead guilty. Moreover, the appropriate remedy in a case of apparent bias on the part of the judge would have been to invite the judge to recuse himself. That was not done.

26. Ground 8 is that there were very few agreed or established facts in the case by virtue of the witness statements being largely contradictory. Any contradictions between the witnesses' evidence could have been explored at trial if the applicant had chosen to maintain his not guilty pleas. He chose not to do that.

27. In the submissions which he has made since filing his grounds of appeal, the applicant has,

amongst other things, placed particular emphasis on his contention that a dog who is on a lead is, by definition, not out of control, with the result that he could not have been guilty on either count. There is no basis in the Act for such a contention. Indeed, the decision of this court in *R v Gedminintaite* [2008] EWCA Crim 814 flatly contradicts it. In other words, it would not have been a defence for the applicant to say that his dog was on a lead.

28. In his submissions today, the applicant has referred to various items of evidence which he says support his case as to the causation of the injuries sustained by Mr Mitchell and Miss Lackey and as to the conduct of his dog. These are all matters which could have been ventilated at a trial if the applicant had chosen to maintain his plea of not guilty. He chose, instead, to plead guilty.

29. Accordingly, and for the reasons which we have given, this renewed application is dismissed.

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
