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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202400772/B2
[2024] EWCA Crim 582

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 15 May 2024

Before:

LADY JUSTICE MACUR DBE
MRS JUSTICE YIP DBE
MRS JUSTICE HILL DBE

REX
V
NICOLA TAMS

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MISS C ANDERSON appeared on behalf of the Applicant
MR J NORMANTON appeared on behalf of the Crown

J U D G M E N T

1. LADY JUSTICE MACUR: On 31 January 2024 Nicola Tams (the applicant) and her co-accused Michael Allen were convicted of robbery, contrary to section 8(1) of the Theft Act 1968 and wounding with intent, contrary to section 18 of the Offences Against the Person Act 1861. They both await sentence.
2. The Registrar has referred this application for permission to appeal against conviction to the full court to decide whether to direct the Criminal Cases Review Commission to conduct an investigation under section 23A of the Criminal Appeal Act 1968, that is as a matter relevant to the determination of an application for permission to appeal which cannot be resolved by the court without an investigation by the Commission (see sections 23A(a) and (c)) or otherwise to determine the extant application.
3. The brief facts comprising the offences charged against the applicant are as follows. On 9 August 2023 John Young (the complainant) and the co-accused met the applicant who was in a relationship with the co-accused and another woman. They were all regular drug users. They consumed drugs at John Young's house and then went to the co-accused's residence to consume some more.
4. Once there, the complainant said he was assaulted by the applicant and co-accused and robbed of his bank card after he refused to provide the cash to purchase cocaine. He eventually made good his escape and was treated in hospital overnight. He suffered bruising and cuts to his face and his limbs. He said the applicant started the attack, stabbing him with a knife to the legs and then the face. Afterwards the co-accused joined in by punching and then slashing him across the forehead. He gave evidence at trial to this effect.
5. The applicant was arrested later the same day and was found in possession of John

Young's bank card. She said she was not aware of any assault, she had not been present when John Young was assaulted or robbed and if he had been assaulted and robbed she did not know who it was who had attacked him. She said that she had been in an occasional sexual relationship with John Young and he had given his bank card to her daughter to allow her (the daughter) to withdraw cash that she had transferred to him as she did not have her bank card with her. After withdrawing the cash her daughter had given the applicant the bank card to return to John Young but she had forgotten to do so and hence it was still in her possession when she was later arrested. (As a matter of fact it was agreed during cross-examination of the applicant that there had been no withdrawal of money from the cash point up to that point).

6. The co-accused also denied being responsible for the assault but gave evidence that did not entirely accord with that of the applicant. That is he said that he saw John Young's injuries when he and the applicant returned home from buying drugs.
7. At trial the complainant, applicant and co-accused gave evidence. The prosecution also relied upon the applicant's previous conviction for unlawful wounding as evidence of her propensity for violence. Of some significance, in view of the nature of the application made on behalf of the applicant, the prosecution adduced evidence that the applicant had been remanded in custody between January and June 2022 to rebut her evidence that she had been in a sexual relationship with John Young at that time.
8. In this application no criticism is made of the trial judge's case management or his summing-up. The application is directed to events post-verdict.
9. On 31 January 2024 the jury returned guilty verdicts on all counts. On 1 February a prison officer is said to have asked the applicant how she was, as he had heard about her guilty verdict from his friend who was a juror on her trial. The applicant's counsel,

Miss Anderson properly asked the court below to reconvene in relation to a possible jury irregularity which it did on 5 February. The trial judge, having heard her application, stated, correctly, that he had no jurisdiction and no power in relation to a jury irregularity that had come to light during the adjournment between verdict and sentence.

10. Miss Anderson submits that the conversation between the prison officer and his "friend on the jury" needs to be investigated:

- (a) to discover which juror was the friend of the prison officer;
- (b) to discover the content of the conversation between them and what information/extraneous material was passed between them; and
- (c) what information the juror relayed back to his/her other jurors. It is said that the jury were not made aware that the applicant was remanded in custody throughout her trial which may have distorted their opinion of her:

"It is not known what impact that potential conversation could have had upon the jurors when deciding the applicant's guilt."

11. Consequential directions are sought from this court.

12. The relevant part of the applicant's witness statement filed as fresh evidence in this application states that:

"On Thursday 1st February, I went down to healthcare at some time between 2pm - 2.30pm, I go to healthcare every day between Monday - Friday. PO Anderson was standing at the gated door next to healthcare doing the register. I walked down to healthcare on my own but there were others in the queue. PO Anderson asked me if I was alright as he had heard that I had been found guilty. I asked him how he knew this as I had only been found guilty the previous day, to which he replied, 'one of me pals was on your trial and I asked him how you were getting on and he told me you were found guilty.' I asked him which juror it was and he told me it was a scouse lad. There were two inmates by the name of CS and LC

who also heard what PO Anderson said and they are willing to make statements if needed.

Once I finished at healthcare for the afternoon, I walked back to my wing and went to my cell to ring my solicitor Abigail Taylor. I informed Abigail of the discussion I'd had with PO Anderson and that I was slightly concerned."

13. Other witness statements have been served to which we need not refer.
14. There is a Respondent's Notice which, without prejudice to the applicant's reliability in relating the conversation and other events, asserts that even if her account is credible the conversation took place after the verdicts had been returned, the content of the conversation does not imply any irregularity, there is no account from any other juror as to any other irregularity and the jury were aware the applicant had spent time in prison and so there was no prejudice. Further, the applicant has failed to address why the conversation could affect the safety of the convictions. There was nothing to justify an investigation.
15. Mr Normanton, on behalf of the Respondent, cites Mirza [2004] UKHL 2 and Thompson [2010] EWCA Crim 1623 at paragraphs 3 to 5 in support of the proposition that in all but a very limited set of specific circumstances (none of which apply here) jury deliberations are "forbidden territory".

Discussion

16. It is important not to overlook the import of paragraph 6 of Thompson to the following effect:

"The verdict of the jury, whatever it is, is delivered in open court in their presence. It is the verdict of them all (or where appropriate, the statutory majority). They have collective responsibility for the verdict. What has perhaps not been sufficiently emphasised thus far is that the collective responsibility of the jury is not confined to the verdict. It begins as soon as the members of the jury have been

sworn. From that moment onwards, there is a collective responsibility for ensuring that the conduct of each member is consistent with the jury oath and that the directions of the trial judge about the discharge of their responsibilities are followed. Where it appears that a member of the jury may be misconducting himself or herself, this must immediately be drawn to the attention of the trial judge by another, or the other members of the jury. So, if for example, an individual juror were to be heard saying that he proposed to decide the case in a particular way regardless of his oath to try it on the evidence, or he were demonstrating a bias based on racism or some other improper prejudice, whether against a witness or the defendant, these things must be reported to the trial judge. So must outside interference, such as imparting information or views apparently gathered from family or friends, or using a mobile telephone during deliberations, or conducting research on the internet. The collective responsibility of the jury for its own conduct must be regarded as an integral part of the trial itself."

17. We accept for the purpose of the application, which includes an application in relation to the admissibility of fresh evidence, that the applicant's account of her conversation with the prison officer is capable of belief. However, we fail to see how this fresh evidence supports or is capable of implying any suggestion of jury irregularity. The clear indication is that the prison officer had received news of the verdict which was in any event in the public domain. There is no suggestion that he provided information concerning the applicant to the jury during the trial. His reported enquiry was supportive of the applicant's wellbeing. There is no suggestion of bad faith.
18. Miss Anderson confirms to us that the judge gave the orthodox direction to the jury regarding conduct at the outset of the trial, that is that they were to report any matter of concern to a jury bailiff if that became necessary. No such report was made at any stage of the trial. The judge confirmed in summing-up the case that the jury were to try the case on the evidence that had been called. It was a straightforward issue for the jury to determine. Did they believe the complainant?

19. In reality, the only information the prison officer possessed was that the applicant was remanded in custody. We do not understand why this circumstance would prejudice the applicant in the jury's eyes in the context of the evidence to which we have referred and which was before them.
20. Consequently, we refuse to admit the fresh evidence since it is incapable of affording an arguable ground of appeal. This necessarily means that we refuse the application to direct the Criminal Cases Review Commission to conduct inquiries and the application for permission to appeal conviction since this inquiry is not necessary to determine such an application.
21. Before we conclude, we should make clear that we regard Miss Anderson to have behaved impeccably at all stages. She immediately alerted Mr Normanton and the court of the information which had been passed to her. She has made realistic concessions before us today and has made every possible endeavour to ensure the integrity of the trial is thoroughly reviewed and appraised at all stages. For this her client should be grateful.
22. In the circumstances, therefore, this application is refused and it follows from what Miss Anderson says that there will be no further applications to be made.

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

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