

NEUTRAL CITATION NUMBER: [2019] EWCA Crim 793

No: 2018 02205 C4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday 16th April 2019

B e f o r e:

LORD JUSTICE HADDON-CAVE

MR JUSTICE GOSS

RECORDER OF GREENWICH
HIS HONOUR JUDGE KINCH QC

R E G I N A

v

JONATHAN NDILA

Computer Aided Transcript of the Stenograph Notes 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)

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Non-counsel application

J U D G M E N T

(Approved)

1. MR JUSTICE GOSS:
2. This is a renewed application by Jonathan Ndila for leave to appeal against his conviction in the Crown Court at Stafford on 27th April 2018 of an offence of false imprisonment for which he was sentenced to three years' imprisonment. He was acquitted of an offence of assault by beating but was convicted of an offence of the unauthorised possession in prison of a knife or offensive weapon.
3. This application requires an extension of time of approximately one week. The applicant attributes the delay to the prison, which, he says, is short staffed.
4. The offences were committed on 31st March 2017 in HMP Brinsford, where the applicant was imprisoned. When attending the consultation room in the healthcare wing of the prison to see Dr Malik, the applicant allegedly punched him without warning, forcing the doctor to back himself into a corner and held a chair in front of himself. The applicant then took out a toothbrush with a razor attached, held it to his own throat and demanded to see the governor.
5. Dr Malik gave evidence that the applicant made unsuccessful attempts to barricade the door and had stood by the door whilst holding the weapon to his own throat.
6. In his evidence, the applicant denied having thrown any punches. He accepted he stood by the door of the room holding the knife to his own throat in the hope of getting the governor to agree to come and speak to him about the problems he was having. He claimed the door was open and he did nothing to prevent the doctor from leaving.
7. The applicant was acquitted of the offence of assault but convicted of false imprisonment on the basis of having used force or the threat of force to prevent Dr Malik from leaving the room. Essentially, he had no defence to the offensive weapon, admitting in his evidence that he held the improvised knife to his neck.
8. A submission of no case to answer on the count of false imprisonment, made under the second limb of R v Galbraith focused on the inconsistencies in details of the accounts of various members of staff at the scene, was unsuccessful on the basis that, although there were inconsistencies, it was open to the jury to find that the complainant was falsely imprisoned in a situation where he was at one end of the room and the applicant - a much larger man - was standing between the complainant and the only exit from the room.
9. There are two grounds of appeal: (1) the judge erred in rejecting the submission of no case to answer on the count of false imprisonment which was made on the basis of the inconsistent evidence given by the witnesses; and (2) the guilty verdict on Count 1 (false imprisonment) and the acquittal on count 2 (common assault) were inconsistent.
10. As the Single Judge observed when refusing leave, the trial judge's approach to the inconsistencies in the evidence of the prosecution witnesses was correct. They were

matters to be considered by the jury. It was open to the jury to find that Dr Malik was falsely imprisoned.

11. In his written directions to the jury, the judge made clear that the prosecution must make the jury sure that the applicant used force or the threat of force to prevent him from leaving the room to find him guilty of false imprisonment. In relation to their verdicts, he directed them that the evidence in relation to the three counts was different and their verdicts did not need to be the same. He then went on, correctly, to direct them that, even if they found the applicant not guilty of assault by punching, they still had to consider the context in which the alleged false imprisonment took place, because assault includes not just the direct use of force by punching somebody but also the threat of force, thereby preventing the doctor from leaving the room.
12. By its verdicts, the jury was not sure the applicant threw punches, but they were sure he unlawfully used the threat of force to prevent Dr Malik from leaving the room. There was no inconsistency in the verdicts.
13. Accordingly, there is no arguable basis for his conviction for false imprisonment being unsafe. There being no merit in any appeal, we refuse the applications.

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

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