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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 25 July 2019

B e f o r e:

LORD JUSTICE HADDON-CAVE

MRS JUSTICE FARBEY DBE

HER HONOUR JUDGE MOLYNEUX

R E G I N A

v

DARREN IMRA KIDD

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Mr Michael Sharpe appeared on behalf of the **Applicant**

J U D G M E N T
(As approved)

1. **JUDGE MOLYNEUX**: On 5th January 2017, in the Crown Court at Mold, the applicant was convicted of an offence of assault occasioning actual bodily harm and sentenced to 18 months' imprisonment. A restraining order was imposed for a period of 5 years. After refusal by the single judge, he renews his application for an extension of time and for leave to appeal against conviction.

2. In June 2016 the applicant was a lodger at 35 Pen-y-Glyn. His landlord (Mr Jones) had on-going issues with the neighbours at No 33 and was subject to a Protection from Harassment Order, one of the terms of which prohibited him from "talking or shouting loudly".

3. On 15th June 2016, at around 6 pm, Mr Jones was arrested by the police for standing outside No 33 and shouting and swearing in breach of the order. Tensions grew. The applicant began to shout outside No 33. The police moved him on. He returned with another man and became abusive towards a resident of No 33, the partner of the complainant. He began to argue with her. The complainant stood between the applicant and his partner in order to protect her. The applicant struck the complainant in the face, hitting him on the right eye with a metal object (believed to be a chain with keys attached). The applicant struck the complainant again by punching him on the nose, causing it to bleed. A scuffle followed. Another man joined in to assist the complainant. At the end of the incident, the applicant had a head injury which required hospital treatment; the complainant had ligament damage to his ankle, an internal split to his nose and a cut below his right eye which required to be glued and stitched.

4. The applicant gave evidence. He denied having been verbally abusive and claimed that he had acted in self-defence. He said he did not have a dog lead or house keys. He had got into a car and was ready to leave but was dragged out by the complainant. He was convicted after trial.

5. He seeks leave to appeal on one ground. Two previous convictions for three offences were admitted in evidence. One of those convictions had subsequently (and before the date of the trial) been quashed on appeal. The applicant says that the first two convictions would not or might not have been in evidence had it not been for the third, and the fact of three convictions cannot but have had an influence on the jury.

6. The history is this. On 4th November 2016 the prosecution gave notice of intention to adduce evidence of bad character. The applicant had 31 convictions for 74 offences. The prosecution sought to admit evidence of two offences of common assault (dated 10th January 2012) and one offence of common assault (dated 27th May 2014). An application was made under section 101(1)(d) of the Criminal Justice Act 2003. It was said to be relevant to an important matter in issue, namely the applicant's guilt. All three of those offences were committed within the context of a relationship.

7. Trial counsel has provided observations. She had discussed the bad character application in conference with the applicant prior to trial on 4th January. She was not aware that the 2014 conviction had been quashed. The applicant did not tell her that it had been. On

4th January 2017 she indicated to the court that the bad character application was not opposed. She says in her observations that she would not have agreed to the application had she known that the 2014 conviction had been quashed.

8. The evidence was admitted and questioning was permitted. We have a transcript of the cross-examination. The transcript is nineteen pages in length. The cross-examination relevant to bad character begins on page 15. It reads:

> "Q. You told the police in your interview that you are no stranger to violence when you told them that you know what it feels like to be hit in the head with a weapon.
> A. I used to live in a rough estate where fights break out. I have been in trouble for fighting.
>
> Q. We know you have been in trouble for fighting. Twice in the last four-and-a-half years you have attacked others in violence, haven't you?
> A. No. I've defended myself.
>
> Q. Do you have a bad temper?
> A. No."

9. The questioning moved on to the account given by the applicant when interviewed by the police in which he first denied having struck out and had then gone on to say that he might have connected to someone. It concluded:

> "Q. As per usual, your aggression got the better of you and you attended at their property, not once but twice, intent on abusing and assaulting them.
> A. Once I attended to take the dog back."

10. He denied that he was the aggressor.

11. In summing up, the judge said this:

> "You have heard that Mr Kidd has previous convictions. It's what we call a bad character. He's got two criminal convictions that you heard about for common assault. That is the least serious type of assault and you heard that they occurred two years ago and four years ago. You have been told about them because, it's a matter for you, they may be relevant to an important matter in dispute. In this case that being, who is the aggressor?
>
> What the Crown say to you is that Mr Kidd has a propensity, a tendency, to do just what is alleged against him now and that if he has that tendency then you can take that as support for the prosecution case. It is a matter for you to decide. Do those convictions show a tendency? When you consider that, you will look at the number of convictions - well, there are two. You look at the type of offences - the least serious assaults. You look at when they

were - two years ago, four years ago. The defence suggest to you that if somebody has a tendency to do something they will do it more often than that. You decide whether those convictions help you.

If you take the view that they don't indicate a tendency, disregard them, they do not help you. If you take the view that they do show that tendency, then if you think it is right that can support the Crown's case. What you mustn't do, and I'm stating the obvious, you mustn't jump to the conclusion he has done it before, he must have done it now. That propensity is only part of the evidence. You could only convict the defendant if you were sure on all the evidence and what you must not do is convict him simply because of those, or mainly because of those convictions."

12. The respondent accepts that the PNC record was inaccurate: the conviction dated May 2014 had indeed been quashed. They accept that the 2012 conviction was for two offences of common assault against the applicant's partner and her son arising from a single incident. They accept that this would not, on its own, be evidence of propensity. They submit that the 2012 conviction was admissible under section 101(1)(g), as were the applicant's other offences, as he had made an attack on the character of the prosecution witnesses. This evidence, both at the police interview and at trial, was that he had been the victim of an unprovoked attack by the complainants: they had been verbally abusive to him and then struck and kicked him. The respondent accepts that the jury would have been directed differently had the evidence been admitted under this section.

13. In our judgment this argument has difficulties. The applicant was entitled to raise a defence of self-defence without risking the admission of his previous convictions. The direction given to the jury would have been very different. In our judgment the better approach is to assume that the evidence was wrongly admitted and then go on to analyse the safety of the conviction. We note the following:

1. There was strong evidence against the applicant. In addition to the complainant, three eyewitnesses related to the complainant gave evidence that the applicant was the aggressor. An independent witness gave evidence that she had seen the applicant swing a lanyard with keys on at the complainant at the outset of the incident. Although she could not say who dealt the first blow, she said that she had seen the applicant approach the complainant swinging the keys aggressively.

2. The applicant gave an account to the police which contained some inconsistencies; although he did explain in cross-examination that he was very confused at the time of the interview.

3. The complainant suffered injuries consistent with the witness accounts.

4. The bad character evidence was a small part of the case. The judge fully and carefully directed the jury on the extent to which, if at all, it could help them.

5. The applicant did not inform his trial counsel or anyone at trial of the fact that his 2014 conviction had been quashed. He did not raise the issue as a potential appeal point with trial counsel. He did not raise it until April 2017, when he instructed new representatives.

14. The single judge said:

> "I am satisfied that this was a minor error which did not affect the safety of the conviction."

15. We have considered the application for leave to extend time. Our initial view was that the application was hopeless, but we are grateful for the focused submissions of Mr Sharpe which we have heard this morning. Having heard those submissions, we are of the view that an extension of time is appropriate because what has been submitted to us was arguable. However, we are satisfied that the single judge was right: the evidence was admitted in error, the jury were directed on propensity based on that error, but that does not render the conviction unsafe. For the reasons set out above, we are sure that the evidence was overwhelming and that the conviction should stand. In the circumstances, therefore, although we extend time, the application is refused.

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

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