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Case number: 201802510/C5

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday 31 July 2019

B e f o r e:

LORD JUSTICE LEGGATT

MR JUSTICE WILLIAM DAVIS

HIS HONOUR JUDGE MICHAEL CHAMBERS QC
(Sitting as a Judge of the CACD)

R E G I N A

v

LUKE MARTIN

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Miss Chloe Gardner appeared on behalf of the **Applicant**

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

LORD JUSTICE LEGGATT: This is a renewed application for leave to appeal against the applicant's conviction on 18 May 2018 after a trial at Woolwich Crown Court of two offences of wounding with intent to cause grievous bodily harm. The applicant was aged 19 at the time of his conviction. He was sentenced for these offences by the trial judge, His Honour Judge Shorrocks, to four years' detention in a young offender institution. His application for leave to appeal against his convictions was refused by the single judge after consideration of the papers, but has been renewed orally this morning by counsel, Miss Chloe Gardner, who also represented the applicant at the trial. For her assistance today pro bono the applicant has reason to be grateful.

The background in brief is that, just after midnight on 19 March 2017, a group of five young people were chatting in a park having spent the evening in a pub. Several young men climbed over the railings into the park and started behaving aggressively towards them. There was no reason for such hostility and some of the young men were clearly drunk. Callum Augustine, who became the victim of one of the offences of wounding, tried to defuse the situation. He was then set upon by a group of (he thought) four or five males. He was knocked over, punched and kicked in the head and chest and sustained damage to his teeth and a broken rib. He managed to get up more than once during the attack but was knocked down again each time he did so. When he got up for the last time he was struck on the back of the head by what he believed to be an iron bar. He was also hit on the side of the head almost simultaneously.

The second complainant, Connor Langridge, went to his friend's aid and tried to pull the attackers away. They then turned their attentions to him. Connor Langridge was punched and kicked to the head and legs, and someone hit him on the forehead with a bottle. He recalled one blow with the bottle, perhaps two. He then took a few more hits before the group backed off and he was at that stage threatened with a knife. At that point the police arrived and the complainants were taken to hospital.

Callum Augustine sustained two cuts to the head which required stitches, as well as bumps and bruises to the head and a small cut to his finger. Connor Langridge sustained a cut on the side of his head which also required stitches.

The prosecution case was that the applicant participated with others in jointly attacking the two complainants. A witness, Rhiana Hill, gave evidence that all the members of the group were involved in the attack. The case that the applicant was part of the attacking group was based in particular on the following matters: his mobile phone was found at the scene; his DNA was found on the phone; he lived adjacent to the park; and a formal identification procedure subsequently took place at the police station at which Connor Langridge was asked whether he could identify the person who hit him with the bottle and he positively identified the applicant. Connor Langridge gave evidence at the trial that the person he identified in this procedure was the person who hit him with the bottle causing the wound which required stitches. He also said he had seen that person punching Callum Augustine.

The applicant's case was that he was so drunk that evening that he could not recall anything after about 6 o'clock and had passed out in his flat. He was confident that he was in his flat and not present when the attack took place. If he had been present, he was too drunk to have taken part in it. He explained the fact that his mobile phone was found at the scene on the basis that it must have been stolen by one of the people who visited his flat that evening.

Six grounds of appeal were originally advanced. Three of those were until today to be pursued

at this hearing, but in her oral submissions this morning Miss Gardner has confined herself realistically to the first ground of appeal, which is that the judge was wrong not to exercise the court's discretion under section 78 of the Police and Criminal Evidence Act 1984 to exclude from the evidence given at the trial evidence of the positive identification of the applicant made by Connor Langridge in the video identification procedure. On the first day of the trial the defence made an application for this evidence to be excluded, which the judge rejected. It was argued that there was reason to think that the identification of the applicant was not the result of Connor Langridge's unaided recollection and may have been affected by communications that he had had with someone who knew the applicant during the period between the assault in March 2017 and July 2017 when the identification procedure took place.

What happened was that the mother of Connor Langridge posted a picture of her son on Facebook with details of the assault. That led to someone referred to as "Adele" contacting the mother. Connor Langridge then communicated with Adele and they exchanged descriptions of, on Adele's side, the applicant, who it seems lived next door to her, and on the part of Connor Langridge the people who had assaulted him. Connor Langridge visited Adele's home to discuss the descriptions further. He subsequently drove past the address on several occasions keeping an eye out for the assailant but did not on those occasions see anyone he recognised. Adele told the police that she had numerous problems with the people who lived at the applicant's address and it was suggested by the defence that she may have had a bias against the applicant on that account. In these circumstances, the defence argued that the identification evidence was tainted and that its admission would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

The trial judge, as mentioned, rejected that application and in our view he was clearly right and certainly entitled to do so. The matters relied on by the defence, in particular the communications between Connor Langridge and Adele, raised a question about whether it was possible to be confident that the identification made by Connor Langridge in the identification procedure of the applicant as the assailant was accurate and reliable. But that was a question which could be and was explored at the trial and which the jury could decide. We see no reason to suppose that a jury, provided that they were given proper directions about the nature of identification evidence and any potential weakness in the particular evidence that was given at the trial, could not consider this question fairly along with all the other factual issues in the case. It is plain from the judge's summing-up, which Miss Gardner took us to this morning, that the judge gave a full Turnbull direction to the jury in which he did indeed identify the potential weaknesses in the identification evidence.

In these circumstances, we see no reason why the judge should have excluded the identification evidence at the trial and no merit in this ground of appeal.

The other grounds of appeal, as we have said, have not been pursued this morning and they were not in our view reasonably arguable for the reasons given by the single judge.

Accordingly, the application for leave to appeal is refused.

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