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IN THE COURT OF APPEAL
CRIMINAL DIVISION
Case No: 2020/02618/B1
[2021] EWCA Crim 1227

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 16th June 2021

LORD JUSTICE COULSON

MR JUSTICE WALL

THE RECORDER OF REDBRIDGE
(His Honour Judge Zeidman QC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v –

AARON SINFIELD

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Mr N Wade appeared on behalf of the Applicant

J U D G M E N T

Wednesday 16th June 2021

LORD JUSTICE COULSON: I shall ask the Recorder of Redbridge, His Honour Judge Zeidman QC, to give the judgment of the court.

THE RECORDER OF REDBRIDGE:
1. On 18th September 2020, following a trial in the Crown Court at St Albans before Her Honour Judge Caroline Wigin and a jury, the applicant was convicted of three offences against his ex-partner: assault occasioning actual bodily harm, acting in breach of a restraining order, and criminal damage.

2. On 19th February 2021 he was sentenced to a community order. No issue arises in relation to the sentence.

3. The applicant renews his application for leave to appeal against those convictions, following refusal by the single judge.

4. Given that this is a renewed application, rather than a full appeal, we set out the facts briefly and highlight the evidence against the applicant.

5. The prosecution relied on four key aspects. The first was the 999 call. On 3rd February 2020, at 7.01, the complainant dialled 999. She said to the operator , "Can I have the police here immediately, please?" Significantly, she also added, "I've just been struck by my ex-partner".

6. The second aspect of the evidence is what the police found at the address and what the complainant said had happened, although she was reluctant to go into details or directly to identify the assailant. The timing is important. The police arrived at 7.16, so very quickly after the call. They found the complainant bleeding from a laceration to the head. There was blood staining throughout the ground floor and a clump of hair in the hallway. A mirror in the hallway was smashed, as was the complainant's mobile phone. She appeared to be intoxicated to some degree. Over the next 30 minutes officers asked her what had happened. She said that she had been drinking; she had had a bottle of wine and three gins. A male had been present with her. At one point they had been in bed and he accused her of cheating on him; she told him that she had not done so. It was at the stage when she called the police that he punched her repeatedly to the face. At one point she picked up a broom and struck the male with it, but he grabbed it off her and he hit her with it. The male also damaged the mirror and the phone. The complainant was reluctant to identify the person who had done these things to her but, significantly, she said that the male was "not meant to be here", that he was prohibited from seeing her by a restraining order. The only person who had a restraining order preventing them from seeing her was the applicant.

7. The third piece of evidence is the applicant's proximity to the address at the material time. At 7.25, that is 24 minutes after the 999 call, the applicant was seen to park his car close to the complainant's property.

8. Finally there is the applicant's state at the time he was arrested. He smelt of alcohol. In his Defence Statement he said that he was on his way to work.

9. We have taken the matter briefly but those are the main pieces of evidence. in this case.

10. For whatever reason, the complainant was not prepared to make a statement about these events and did not wish to give evidence. The Crown took the view that they could proceed without her and they did so.

11. At the trial the applicant had the good fortune to be represented by Mr Wade, who also appears before us today. In careful, robust submission, Mr Wade argued before the trial judge, as he argues before us today, that the evidence of what the complainant said in the house falls short of the requirements for *res gestae* evidence; and, in any event, even if it were strictly admissible, Mr Wade argues that it should be excluded under section 78 of the Police and Criminal Evidence Act 1984 on the ground of unfairness.

12. It was common ground that the court needed to apply the principles set out in the speech of Lord Ackner in the House of Lords' decision in *R v Andrews* [1987] AC 281. Mr Wade's arguments were set out in his written submissions of 14th September 2020, developed in his carefully prepared grounds of appeal and attractively pursued in oral submissions before us today.

13. Mr Wade submitted that the court needed to ask itself whether the evidence from the complainant was so emotionally overpowered that the possibility of concoction or distortion can be disregarded. The questions have arisen in other cases and references have been made in the course of this hearing to *Morgan v DPP* [2016] EWCA 3414; to *McGuinness v Public Prosecutor for Northern Ireland* [2017] NICA 30. In his written and oral submissions, Mr Wade had emphasised, in our view rightly, that each case turns on its own particular facts, and that there is a limit to how much advantage or benefit one can have from comparing the instant case with the facts of other cases. We acknowledge, as Mr Wade has submitted, that the search is for principle rather than example. Put simply, on the facts of this case, Mr Wade submits that the evidence does not satisfy the necessary criteria. In particular, he argues that it is significant that the police arrived only 15 minutes after the departure of the assailant, that the complainant did not offer the information voluntarily, but rather he says that the information was "cajoled" from her by the officers. We will return to that concept.

14. Apart from human fallibility, Mr Wade argues that there are five reasons why this evidence runs the risk of concoction or distortion: first, the complainant was drunk; secondly, there are aspects of what she says that are incoherent and inconsistent: for example, her explanation about the use of the broom; thirdly, that she had lost a large amount of blood, having suffered at least two blows to the head; fourthly, that she had taken painkillers which had made her sleepy; and finally, that the style of questions from the officer was in effect of a leading nature which could easily have influenced what she said.

15. Having regard to these points, it is argued that there was no legal basis upon which the evidence should be regarded as admissible within the *res gestae* principle. Further, the defence argued that the complainant was an "available witness" and therefore should be called in the ordinary way, as in any other trial.

16. Having reviewed the video footage, the judge found that, although intoxicated, the complainant spoke clearly and coherently. The complainant was extremely reluctant to make allegations against the applicant. The officers gave her the opportunity to make allegations, but the trial judge did not accept that she had been "cajoled". In the judge's view, she spoke with sufficient clarity and objectivity that concoction and distortion could be discounted. Of course, it was for the jury to determine what weight to attach to the admitted evidence. Such admission required a special direction, which was given.

17. There is no criticism of any part of the judge's summing-up in relation to either the law or the facts.

18. The trial judge made a point of analysing the body-worn footage before giving her ruling. We are grateful to defence counsel for the appendix to his grounds of appeal which gives us a transcript of what is contained on the footage. We found it very useful. We have had the opportunity of watching the body-worn footage and have considered each of the points raised

both individually and also cumulatively.

19. We have reached the following conclusions. First of all, the evidence, in our view, fully satisfied the requirements for *res gestae* evidence; it could also have been fairly adduced under the hearsay provisions of section 114 of the Criminal Justice Act 2003. Our impression from viewing the body-worn footage is very different from that submitted. We reject entirely the suggestion that the complainant was "cajoled" or improperly pressed by the officers at the scene. There can be no proper criticism of their conduct. Secondly, the fact that the complainant did not want to give evidence and that she instead wanted to move on in her life does not make the admission of the evidence unfair. There is an important public interest in cases of this kind being heard, and the desire of the complainant is by no means determinative. There was no proper basis for excluding the evidence under section 78. There is a real distinction to be drawn between evidence which is detrimental to the defence (as this clearly was), as compared with evidence which is unfair or prejudicial falling within section 78. The fact that the evidence had been recorded and does not depend upon the recollection of an officer is further material that enhances the fairness of its admission. The issue of the weight to be attached to the evidence was a matter for the jury.

20. The applicant had the right to give his account. He chose not to do so; that was his right, as we have been reminded this morning. The judge dealt impeccably with that aspect of the evidence in her summing-up.

21. Thirdly, the jury were entitled to believe the evidence of the complainant, and the case against the applicant was, in our view, formidable. There is nothing that casts doubt upon the safety of these convictions.

22. We adopt the observation of the single judge when refusing leave:

> "While your counsel is to be commended for the legal quality of the advice and grounds, they do not ultimately disclose an arguable appeal."

23. We merely add that the commendation should be extended to the submissions that we have heard today.

24. But it follows that, for the reasons that we have set out, the renewed application for leave to appeal against conviction 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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