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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/01379/B1

NCN: [2021] EWCA Crim 1412

Royal Courts of Justice

The Strand

London

WC2A 2LL

Thursday 23rd September 2021

LORD JUSTICE SINGH

MR JUSTICE HOLGATE

MR JUSTICE JULIAN KNOWLES

REGINA

- v -

NATHAN OLOYOWANG

Mr E Seller appeared on behalf of the Applicant

Mr N Peters appeared on behalf of the Crown

J U D G M E N T

Thursday 23rd September 2021

MR JUSTICE HOLGATE:

1. On 26th March 2021, in the Crown Court at Wood Green, the applicant was convicted of dangerous driving. On 4th June 2021, he was sentenced to ten months' imprisonment. He was disqualified from driving for a total of 23 months and, furthermore, until an extended test is passed.

2. Immediately after sentence was imposed, the applicant absconded from the dock and remains unlawfully at large. However, we are satisfied that the solicitors on the record have the applicant's authority to make this application. Indeed, we accept that those instructions were given by the applicant to the solicitors before sentence was imposed and therefore before he absconded. Accordingly, applying the principles set out in *R v Okedare* [2014] 1 WLR 4071, we will proceed to determine the application.

3. The applicant's application for an extension of time of 16 days in which to apply for leave to appeal against conviction has been referred to the full court by the single judge. The question of whether time should be extended depends upon whether the proposed ground of appeal is arguable.

4. The police were involved in an operation against drug dealing around phone boxes on Hampstead Road and Eversholt Street, London NW1. Class A drug users would call their dealer to arrange to meet in order to make a purchase.

5. On 22nd March 2019, three plain-clothes officers observed a dishevelled-looking male who came out of a local hostel, used a phone box and then walked quickly along Eversholt Street. They followed him on bicycles. He approached a parked car and got into the front passenger seat. The applicant was the driver. The officers suspected that a drug deal was about to be carried out between the two men and so they decided to detain and search them, along with the vehicle, under [section 23](#) of the [Misuse of Drugs Act 1971](#).

6. The prosecution case was that the applicant ignored the officers' instruction to stop and then drove off dangerously.

7. The defence applied under [section 78](#) of the [Police and Criminal Evidence Act 1984](#) to exclude all references to drugs and drug dealing as being the reason for the attempt to stop the applicant on the basis that the prejudicial effect of this evidence would outweigh any probative value it might have. The prosecution submitted that the officers' suspicion was important explanatory evidence for the jury properly to understand the case, and that it supported the prosecution's contention as to why the applicant might not have wished to comply with the instruction to stop his car and drove off in a dangerous manner. The prosecution accepted that a direction should be given that there was no evidence that the applicant was dealing in drugs.

8. In her ruling, the Recorder rejected the application by the defence. She set out the relevant principles she had to apply. She decided that the officers' suspicions and the reasons for them were important explanatory evidence for the jury. Without hearing evidence from the officers about their reasons for attempting to stop the vehicle, the jury would not properly be able to understand the case. In particular, the prosecution would effectively be prevented from putting a positive case about the reasons why the applicant may have driven in the way alleged and the police officers would be prevented from explaining to the jury why they acted in the way they did, which could lead to the jury being given a misleading impression of the evidence of those officers. Defence would be able to cross-examine the officers. In his police interview the applicant had provided an explanation for the meeting that had taken place. The jury would need to be directed that the applicant faced a charge of dangerous driving and not drugs offences. Any perceived or actual prejudice to the applicant could be overcome by a direction. The evidence would not have such an adverse effect on the fairness of proceedings that it ought not to be admitted.

9. We summarise the evidence upon which the prosecution relied.

10. PC Murphy gave evidence about the behaviour of the male who got into the applicant's car, the officers' suspicion that a drugs deal was about to take place, and the decision to detain the men for a drugs search. As he approached the vehicle on his bicycle he shouted "Police - stop!" He approached the driver's side and stopped. He was astride his bicycle with his feet on the ground. Suddenly the car came towards him and his bicycle was "almost being sucked under the car". It all happened very quickly and he had to use his hands on the car to push himself away from it as his bicycle went under the wheel. He shouted "Police - stop!" a number of times, and his colleagues also shouted. The driver sped off. The officer's bicycle was dragged underneath the car, until it was dislodged at the next junction.

11. PC Eaglestone saw PC Murphy in front of the car with his arms outstretched and shouting "Police - stop!" He followed the car when it went off quickly, dragging PC Murphy's bicycle underneath. He saw the passenger exit the vehicle while it was moving and tumble into the road. The officer relayed the registration number by radio. He caught up with the car when it was held up in traffic and he tried to open the driver's door to detain the driver. Again, he said "Police - stop!", but the driver managed to drive off.

12. PC Kosiorek said that he was behind his two colleagues. PC Murphy was in front of the car. All three officers shouted "Police". The driver of the car turned the wheel towards PC Murphy and then drove off at speed. The witness believed that PC Murphy would have gone under the vehicle if he had not managed to push himself clear. The vehicle was going very fast and the bicycle was dragged under it for about 50 metres. He followed the vehicle while he could and it was his belief that the passenger was pushed out when it was moving, because he ended up on the road head first.

13. The applicant was interviewed under caution on 4th April 2019. He gave an account that he was on his way to meet a friend because he wanted to buy some perfumes from him for Mother's Day. His friend got into the car. He seemed worried and told him to drive off straight away. As he did so, he saw men running towards the car. He did not know that they were police officers. They were not in uniform and they did not say that they were the police. It seemed very aggressive. He thought he was under attack and so he drove away. Something got stuck under his car. He denied driving dangerously or at speed. Further on, his friend asked to be let out, so he slowed down for him to get out of the car.

14. The defence case was that the applicant did not drive dangerously. He gave evidence broadly on the same lines as his interview. He did not know that the men were police officers and he was certain

that they did not shout "Police". He did not drive at the officer or deliberately run over his bicycle, and he did not speed off. The officer tried to obstruct his vehicle by pushing his bicycle in front of it. The applicant just wanted to get away from the situation.

15. In cross-examination the applicant denied that he had been desperate to get away from the police.

16. The key issue for the jury was whether the applicant drove dangerously.

17. We are grateful to Mr Seller for his clear and succinct submissions this morning. He submits that the evidence about the suspicion of drug dealing and the making of a drugs search had a grossly prejudicial effect on the applicant's case and added nothing to the prosecution case. The evidence implied that the passenger had gone to the car to buy drugs and that the applicant was a dealer attempting to evade the police. The jury should not have been told that the police were intending to conduct a drugs search. The prosecution case could have been put simply on the basis that the police were investigating crime in the area. The prejudicial effect could not be cured by judicial direction. The evidence should not have gone before the jury.

18. In a Respondent's Notice the prosecution submits that the reason for the factual suspicion was important explanatory evidence to assist in the jury's understanding of the case. It also lent support to the prosecution case as to why the applicant might have decided not to comply with the officers' instruction to stop and instead decided to drive dangerously in order to get away from the police. It is submitted that the Recorder exercised her discretion correctly.

19. In our judgment there is no merit in the proposed ground of appeal. It is unarguable that the conviction is unsafe. First, the defence were correct not to suggest that the evidence to which they objected was irrelevant. Second, it was not suggested that that evidence engaged the bad character code in the [Criminal Justice Act 2003](#). The evidence was material and had to do with the alleged facts of the offence charged (see section 98(a)). Third, the sole basis upon which the Recorder was asked to exclude the evidence was [section 78 of the 1984 Act](#). Fourth, there is no suggestion that the Recorder misdirected herself as to the correct principles to be applied. She set out her reasoning clearly and carefully. In reality, the applicant's criticism goes solely to the exercise of the Recorder's discretion. We see no basis upon which that judgment could, arguably, be impugned. Fifth, in her directions to the jury, the Recorder told them, in effect, that the applicant was accused of, and being tried solely for, dangerous driving, and not any drugs offence.

20. Accordingly, in our judgment, it is not arguable that the conviction is unsafe. The application to extend time 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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