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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday 7 July 2020

LORD JUSTICE HOLROYDE

MR JUSTICE NICKLIN

MRS JUSTICE THORNTON DBE

R E G I N A

v

SHERYAR KHAN NAWAZ

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Mr B Kelly QC appeared on behalf of the **Applicant**

J U D G M E N T

1. LORD JUSTICE HOLROYDE: This appellant, Sheryar Khan Nawaz, was convicted of an offence of wounding with intent, contrary to section 18 of the Offences Against the Person Act 1861. His application for an extension of time to apply for leave to appeal against conviction was refused by the single judge. It is now renewed to the full court. He was sentenced by the trial judge, His Honour Judge Bury, to 10 years' detention in a young offender institution. He appeals against that sentence by leave of the single judge.
2. We summarise the facts. For convenience, and meaning no disrespect, we shall for most part refer to persons by their surnames only.
3. On the night of 30 October 2017, Nawaz and his friends travelled by car to a party. Nawaz had a distinctive haircut and was wearing a distinctive coat. In the early hours of the morning there was a confrontation between him and William Nicholson, then aged 19. It seems that Nicholson had been informed that Nawaz was carrying a knife. The prosecution case was that he told Nawaz either to put the knife on a table or to leave the party. Nawaz pushed Nicholson away. Nicholson pushed him back. Nicholson then felt a blow to his lower abdomen and struck Nawaz in the face. The blow which Nicholson had felt was in fact a stabbing with a knife. His evidence was that the person who was involved in this incident and the person who he struck in the face was the person who stabbed him. He said that he had seen Nawaz before, and he was able to describe him, to show police officers a Facebook picture of him and to pick him out at an identification procedure.
4. Six prosecution witnesses gave evidence of the confrontation between Nicholson and Nawaz or its immediate aftermath. Four of them picked Nawaz out at identification procedures; two did not. Unsurprisingly, there were differences between their respective accounts.
5. Shortly after the incident there was a further separate incident, said to amount to an affray, in which the prosecution alleged that Nawaz and two his friends, Mortimer and Omar, were involved.
6. Nawaz's case was that he did not have a knife and did not inflict any injury on Nicholson. Nicholson pushed one of Nawaz's friends and when Nawaz asked what his problem was, Nicholson had either punched or headbutted him on the nose. Nawaz had recently received treatment for an injury to his nasal area and the blow had caused him acute pain. He immediately moved away, and returned to the car in which a short time later he and his friends travelled home.
7. It was thus admitted by Nawaz that there had been an incident between him and Nicholson in which Nicholson had either punched or headbutted him. Nicholson for his part always denied that he headbutted, but two of the prosecution witnesses gave evidence that he did.
8. No knife was recovered either from the scene, or in the possession of Nawaz or any of his companions, or in the car in which they were travelling when stopped.
9. In March 2019, Nawaz, Mortimer and Omar stood trial together in the Crown Court at Kingston upon Hull. Nawaz was charged in count 1 of the indictment with wounding

with intent. All three were charged in count 2 with affray. All three were acquitted of that charge, Nawaz and Omar by direction of the judge, and we need say no more about it.

10. Nawaz was represented at trial by Mr Iqbal QC. At the conclusion of the evidence the usual discussions took place between the judge and all counsel as to the appropriate directions of law. The judge initially felt that the case involved an issue of identification and that a Turnbull direction would be needed. Mr Iqbal QC explained however that Nawaz did not dispute that he was the man who had been at close quarters with Nicholson. Nawaz accepted that witnesses correctly identified him as "the man who was in a scuffle". He may have swung out at Nicholson but there was nothing in his hand. No witness gave evidence of actually seeing a knife, save for one prosecution witness who had ascribed possession of the knife to a man wearing clothing different from that worn by Nawaz. The defence case was that Nawaz did not have a knife. It was suggested that after Nawaz had been struck in the face, another man might have run in to Nicholson and stabbed him. It was further the defence case that the prosecution witnesses had discussed the matter and had either deliberately or inadvertently persuaded themselves and each other that the stab wound was inflicted during the scuffle between Nawaz and Nicholson. There was, said Mr Iqbal, no identification issue, it was just that Nicholson was wrong about the stabbing. In those circumstances, Mr Iqbal did not seek a Turnbull direction.
11. Counsel for the prosecution, Miss Alistari was content with that approach. The judge agreed. Now that he had heard clarification of how the defence case was put, he said:
 - i. "It does seem somewhat artificial to give a Turnbull direction because it is not disputed that there was this confrontation between Mr Nicholson on the one hand and the defendant on the other. The prosecution witnesses say that is when the stabbing occurred. The defence say no it did not occur then, it occurred a bit after, but not long after."
12. In his summing-up, the judge directed the jury in accordance with the terms which had been discussed. He provided the jury with written copies of his directions. He left to them the alternative offence of unlawful wounding. He directed them that the first issue for them to decide was whether they were sure that Nawaz was the person who inflicted the injury. If they were, they would then have to decide whether they were sure he did so with the requisite intent.
13. The jury retired to consider their verdict at 1037 on Thursday 7 March 2019. The judge had informed counsel but not the jury that he would not be able to sit on the following day.
14. At 1546 he informed counsel that he had received a note from the jury indicating that they had reached a verdict on count 2 in relation to Mortimer and that "they would like some assistance on count 1." The jury were then brought into court and given a majority direction in what the transcript shows to have been conventional terms. They retired again, and at 1617 returned a majority guilty verdict.
15. Fresh solicitors and counsel were subsequently instructed. Mr Kelly QC, to whom we are grateful, sought to advance three grounds of appeal against conviction in his written advice, but in his oral submissions limited himself to the first of those grounds.

16. The first ground is that in a case in which the identity of the person who inflicted the wound was in issue, the judge erred in not giving a direction in accordance with R v Turnbull (1977) QB 224. Mr Kelly submits that the judge was correct in his initial view that such a direction was necessary but was then wrongly persuaded not to give it. He argues that the submissions made by Mr Iqbal were mistaken. The nature of the defence case, that as a result of contamination prosecution witnesses had wrongly identified Nawaz as the stabber, merely emphasised that identification was in issue and the Turnbull direction was necessary. The essential error in Mr Iqbal's approach, submits Mr Kelly, was to separate out the issue of identification of the stabber from the issue of possible contamination between prosecution witnesses. They were, he argues, all part of what was at heart an issue of identification.
17. We are grateful to Mr Kelly for his submissions on this point, but like the single judge we see no merit in this ground. The guidelines in R v Turnbull apply to cases which involve disputed identification evidence. True it is, as Mr Kelly submits, that there may be such a dispute even though a defendant's presence at the relevant scene is admitted. But everything depends on the true nature of the issues between the prosecution and defence in a particular case, and Mr Iqbal QC's analysis of the issues in this case was in our view correct. Nawaz did not challenge the identification of himself as the man involved in the only incident which Nicholson described. His challenge was as to what he did in that incident. It was common ground between Nicholson and Nawaz that there was a confrontation between them. Each of them spoke of a single incident which ended when Nicholson either punched or head-butted Nawaz in the face. Nicholson's evidence was that the stabbing occurred in that incident before he struck his blow. Nawaz's evidence was that it did not. It was accordingly the defence case that there must have been, by necessary inference, another incident a short time later in which someone else inflicted the wound. The issue was not one of identification but of what was done by the man correctly identified as Nawaz.
18. The judge was clearly correct to conclude that a Turnbull direction would have been inappropriate and confusing to the jury. It was unnecessary and would have been unhelpful to direct the jury that when considering whether they were sure that the stabbing occurred during an encounter between Nicholson and Nawaz they must consider matters such as the quality of the lighting, or the terms of the first description which Nicholson gave of Nawaz, or other aspects of the Turnbull direction which Mr Kelly submits should have been given. It would have been wholly artificial to direct the jury as to whether there was other evidence capable of supporting Nicholson's identification of Nawaz when that identification was admitted to be correct.
19. The second and third grounds advanced in writing contended that the jury had been placed under undue pressure to reach a verdict on 7 March 2019 and that the judge had made inappropriate and impermissible enquiry of the jury at the time of their deliberation. The basis on which those grounds were put forward in writing was that it was said to be "the recollection of the appellant and those present" that untoward events had occurred. Given that these grounds are no longer pursued, it suffices to say that appropriate enquiries were made on Mr Kelly's advice and that neither Mr Iqbal QC or his solicitor, nor prosecuting counsel, nor the relevant transcripts, provided any support whatsoever for the version of events which had been put forward. The written ground of appeal raised, we are bound to say, rather remarkable allegations. It has not however been pursued and

in the circumstances we say no more about it. It follows from what we have said thus far that we are satisfied that there was no arguable foundation for the second and third ground of appeal.

20. The delay in making the application for leave to appeal against conviction was largely attributable to the need for the newly-instructed legal representatives to obtain transcripts. Like the single judge, we would have been prepared to grant the necessary extension of time if there had been arguable grounds of appeal against conviction. As it is, no purpose will be served by granting an extension of time to bring an appeal which has no prospect of success. The renewed applications in relation to conviction are accordingly refused.
21. We turn to the appeal against sentence. The injury sustained by Nicholson was a three-centimetre oblique wound to the lower left abdomen which lacerated the muscle layers, reaching the abdominal cavity and perforating two sections of the small intestine. There was no significant bleeding externally, but Nicholson could see his intestine protruding through the wound. As he was being taken to hospital by ambulance he coughed, and further intestine protruded, which understandably caused Nicholson to fear that he might die. He underwent bowel surgery. Initial recovery of his intestinal function was slow. Nicholson remained in hospital until discharged on 6 November 2017.
22. In victim personal statements dated 21 January 2018 and 13 February 2019 he indicated that he had been confined to bed for four weeks and off work for three months. As at the time of the later statement he remained unable to resume rugby or his previously frequent visits to the gym. At that time, well over a year after the incident, although he had made a substantial physical recovery, he was still suffering from impaired sleep, a loss of confidence, and anxiety in crowds or if someone made a sudden movement. We note that at the conclusion of the trial, when adjourning sentence, the judge indicated that whilst an updated victim person statement would be helpful, it was not essential because Nicholson "did tell us quite a lot about how it affected him during the course of his evidence."
23. The appellant was nine days short of his 18th birthday at the time of the offence. He had no previous convictions but had received a juvenile caution on 21 February 2017 for a public order offence. It was submitted on his behalf that that caution arose from an incident which occurred because, not for the first time, he had been subjected to racial abuse. He came from a good family, was clearly very hard working and was about to take up a place at college to study architecture. The judge was provided with a large number of impressive testimonials from persons who know him well. They all spoke of their shock and sadness upon hearing of the offence which clearly was far removed from the character of the young man they know. There was clear evidence that despite his young age, the appellant was both active in various commercial activities, with others depending on him for their livelihoods, and would go to considerable lengths to help the homeless and other disadvantaged persons. Sadly, both his parents are in poor health and they have been subjected to racial abuse following their son's conviction. The appellant had been on bail for some 18 months pending trial and had led a law-abiding and very industrious life.
24. The judge had to consider the Sentencing Council's Definitive Guideline on sentencing for offences of this nature. In his sentencing remarks he indicated that he placed this in

Category 1 of that guideline. This was because there was higher culpability in that a weapon had been used and greater harm in that the injury was "serious in the context of the offence." The judge stated that it was a very serious aggravating feature that the appellant had travelled a distance of some 25 miles to the party carrying a knife which he was prepared to use if the situation arose. The evidence showed that at least one of his friends was aware that he was armed. As to the circumstances in which the incident between the appellant and Nawaz occurred, the judge said that Nicholson had been deputed by the host of the party to speak to the appellant in the terms which we have summarised. Nicholson, said the judge, "was less than polite, but was not threatening". The appellant at that point had options to avoid a confrontation which he did not take. Instead, said the judge:

- i. "... you escalated the situation by pushing him. He pushed you back, and you then produced a knife and stabbed him in the abdomen. At first, he didn't appreciate he'd been stabbed and thought that you'd punched him, and he punched you back twice in the head, before collapsing on the floor of the garage."

25. The stabbing had led to the flaring up of a fight involving a number of persons, and guests present at the party were very upset. The judge also referred to the fact that the appellant had successfully disposed of the knife.
26. The judge took into account the appellant's young age at the time but said that on the evidence he was mature for his age and that only a limited reduction in sentence could be made on grounds of youth. He referred to what he described as the "truly impressive" set of references for someone who was still a teenager. He took into account that it would be the appellant's first experience of custody. He also took into account the effects that this offence has had and will continue to have on the appellant's family's health and businesses, and he recognised that a promising future had been blighted. The judge summarised his approach by saying that the nature of the offence and the injury caused, together with the aggravating features which he had identified, would have led to a notional sentence of about 14 years before taking account of mitigation. Taking into account the impressive features of the appellant's character and other matters of mitigation, he concluded that the appropriate sentence was one of detention for 10 years.
27. It is submitted in this appeal that the judge erred in his assessment of the harm suffered by Nicholson. The wound, it is submitted, was not serious in the context of the offence. Mr Kelly emphasises in this regard that the range of injuries which may be caused by an offence of wounding with intent is a wide one and he argues that this case fell at the lower end of the range. It is further submitted, by reference to material culled from social media, that Nicholson had exaggerated the extent of any continuing anxiety and loss of confidence. It is conceded that the use of a weapon would be a factor indicating higher culpability, but Mr Kelly submits that the judge should overall have placed the offence into Category 2. He should have given greater weight to the appellant's youth. He should also have accepted the evidence given by one prosecution witness which pointed to Nicholson having headbutted the appellant before the appellant swung his arm in a movement which it is suggested must have been the stabbing. In this regard

Mr Kelly points to the indication in the guideline that "a greater degree of provocation than normally expected" is a factor indicating lower culpability.

28. We have reflected anxiously on these submissions, acutely conscious of the young age of the appellant. The judge had seen and heard Nicholson give evidence at trial, including as to the continuing effects of his injury. The social media content which has been shown to this court does not in our view provide any basis for going behind the judge's assessment of the significance of those continuing effects. He was in our view entitled to find that the injury was serious in the context of the offence, although it can fairly be said that the injury fell towards the lower end of the range covered by that phrase. Further, we are unable to accept Mr Kelly's submission as to the provocation given to the appellant before the injury was inflicted. The passage which we have cited from the judge's sentencing remarks is in our view a clear finding of fact. The sequence of events was as Nicholson described, namely that it was not until after he had been stabbed that he delivered the blow which he described as a punch, but some witnesses described as a headbutt.
29. It follows that the judge was entitled to place the offence into Category 1 with a starting point for an adult offender of 12 years' custody and a range from nine to 16 years. The use of a weapon and the seriousness of knife crime were reflected in that categorisation, but the judge was entitled to treat as an aggravating feature the fact that the appellant had gone to the party armed with the knife and the subsequent disposal of the knife was a further aggravating feature.
30. There were however a number of important factors to be taken into account in the appellant's favour. Although mature for his age, he was still only 17 at the time of the offence. He had, as we have said, no previous convictions and was able to point to most impressive character evidence. A first experience of custody would inevitably be hard, but in his case it is made the harder by his knowledge of the great distress suffered by his family and by others who depended on him. We are told that he has become depressed in custody.
31. The judge's approach was, as we have indicated, that the aggravating features justified an increase from the starting point up to 14 years, but that the mitigating features then brought the final sentence down to 10 years. The judge was clearly correct to conclude that after balancing the aggravating and mitigating features it was appropriate to move downwards from the adult starting point. The essential submission on behalf of the appellant is that he should have moved significantly further down. We acknowledge that the judge might have approached the matter somewhat differently. He might, for example, have treated the aggravating features of the offence as being counter-balanced by the fact that the harm caused was at the lower end of the scale, but he might also have been less generous than he was in the extent of the reduction he made to reflect personal mitigation.
32. It is important to emphasise that the issue for this court is whether the sentence of 10 years' detention was in all the circumstances manifestly excessive. We are unable to say that it was. Accordingly, grateful though we are to Mr Kelly, the appeal against sentence must be dismissed.

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

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