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IN THE COURT OF APPEAL
CRIMINAL DIVISION



[2021] EWCA Crim
1693
No. 202101025 B4
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Royal Courts of Justice

Wednesday, 27 October 2021

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE DOVE
HIS HONOUR JUDGE POTTER

REGINA
V
KAMAL PARRISH (1)
MICHAEL LAWRENCE (2)

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MS M. BRAUN appeared on behalf of the First Appellant.
MR P. L. GUEST appeared on behalf of the Second Appellant.
MR M. SHAW appeared on behalf of the Respondent.

J U D G M E N T

LORD JUSTICE POPPLEWELL:

1 On 12 March 2021, following a trial before HHJ Pounder a jury in the Crown Court at Snaresbrook, the appellant Parrish (then aged 29) and the applicant Lawrence (then aged 23) were convicted, by a majority, on three counts of a five count indictment as follows:

Count 1: conspiracy to commit grievous bodily harm with intent;

Count 2: possessing a firearm, namely an Uzi submachine gun, with intent to endanger life contrary to s.16 of the Firearms Act 1968;

Count 5: possessing a firearm, namely a Sag Sauer 9mm pistol, with intent to endanger life contrary to s.16 of the Firearms Act 1968.

2 The jury did not agree on Counts 3 and 4 which charged possession of two other firearms, which were ordered to lie on the file.

3 A co-defendant Mohammed was also convicted on Counts 1, 2 and 5.

4 Parrish appeals against conviction by leave of the single judge. Lawrence did not seek to appeal until that leave was granted to Parrish. His application for an extension of time of 177 days in which to apply for leave to appeal against conviction has been referred to the this Court by the Registrar.

5 The incident giving rise to the charges occurred in the early hours of 28 October 2017 in and outside a pay to enter party which was held at 20A Rigg Approach, London. Rigg Approach is a cul de sac of commercial premises off the Lea Bridge Road and the party venue was at the far end of it with the entrance down an alley. The road was covered by CCTV cameras over almost its entire length which captured events outside the party venue

and at the entrance to the alley. There was no CCTV coverage within the alley or inside the venue.

6 At around 4.53 a.m. the CCTV cameras captured the arrival of a white Peugeot vehicle bearing a false registration number and showed three males decamping from the vehicle leaving behind a female driver, whose name was Thomson. Two of the three males were subsequently identified as Ozger and Ekwiburi, the third remaining unidentified. The four were referred to at the trial collectively as Team A.

7 After getting out of the Peugeot, Team A approached the party and put on face coverings. They confronted a number of individuals outside the party before producing at least two handguns.

8 A second group of men who were already inside the party produced further firearms and started to discharge them from inside the venue towards Team A. These were referred to as Team B. A gun fight ensued with weapons being discharged inside the venue, in the alleyway and in Rigg Approach itself. During the exchange, over 30 rounds of ammunition were fired from at least six or seven weapons, two of which were fully automatic weapons. Eighteen casings were found from an Uzi submachine gun, both inside and outside the party venue; two casings were found from a Sag Sauer pistol, both of those being found outside the venue. Realising that they were outnumbered, Team A started to retreat to the waiting Peugeot and left the scene. Police officers in due course attended and found that two individuals had sustained gunshot injuries inside the venue during the crossfire.

9 The prosecution case was that each of Parrish, Lawrence and Mohammed were part of Team B and that this incident was as a result of gang-related rivalry. Two months earlier, in August 2017, Ekwiburi had been shot in an underground car park on the Broadwater Farm Estate and the prosecution alleged that he, Ekwiburi, believed that Team B were

responsible; and that as a result Team A had sought to target them at the party at Rigg Approach. It was the prosecution case that Team B were expecting them and that on the day in question Parrish, Lawrence and Mohammed had conspired to engage in the shooting with the intention of causing grievous bodily harm to Team A and were in possession of the Uzi and Sag Sauer guns for these purposes.

10 It was common ground that Parrish, Lawrence and Mohammed were at the party, but they denied any conspiracy and denied taking part in any of the shooting.

11 The crown called no eye witnesses to give any evidence identifying Parrish, Lawrence or Mohammed participating in the gunfight. The prosecution relied primarily on the CCTV footage for that purpose and upon circumstantial evidence.

12 The CCTV footage was introduced into evidence by DC Walker, the initial officer in the case, who explained its provenance and how it had been compiled. The CCTV footage fell into two parts. The first covered the arrival of Team B at Rigg Approach and for the half hour or so before they entered the party in company with each other at about 3.00 a.m. The second captured events outside the venue with the arrival of Team A shortly before 5.00 a.m. and the part of the ensuing gunfight outside the venue which took place in Rigg Approach itself. DC Walker explained that the police had marked the suspects with a differently coloured arrow for each participant. Mohammed was alleged to be the man marked with a blue arrow. Parrish was alleged to be the man marked by a magenta arrow. Lawrence was alleged to be the man marked by a green arrow. Although DC Walker gave evidence that he had engaged in hundreds of hours of CCTV analysis, he did not himself purport to make any identification of Parrish or Lawrence from the footage in accordance with *Clare & Peach* [1995] 2 Cr App R 233, although he did do so for Mohammed and Ekwiburi. Nor did any other prosecution witness seek to make an identification of Parrish or Lawrence from the CCTV footage itself.

- 13 Team A were also marked with different coloured arrows on the footage and their identification was not in issue at the trial by reason of the previous convictions of Thomson, Ozger and Ekwiburi for offences arising out of the incident.
- 14 Turning to the CCTV footage in a little more detail, the first part of the footage showed Mohammed arriving at about 2.30 a.m. in a Ford Focus. At about 2.52 a.m. Parrish, Lawrence and a third man, whom the defendants identified as someone known to them only as "Talls", arrived in a VW Golf. Shortly thereafter, these three ran along Rigg Approach and appeared to hide behind a box van, apparently concerned at the arrival of a white vehicle which turned out to be an Audi. It was the prosecution case that they did this because they mistakenly thought that this was Team A arriving in the white car. Thereafter, having joined up with Mohammed, they walked towards the party. On the way Mohammed was seen to be handed the Uzi machine gun by a person who removed it from a bag. The man alleged to be Lawrence, marked with a green arrow, was close by and watching when this happened. Immediately thereafter, the man identified by the police as Lawrence by the green arrow is seen to be answering a telephone call. Telephone data showed that a call was made to the phone attributed to Lawrence at this time. Lawrence accepted that the phone was to be attributed to him, but said that at the time it was in the possession of "Talls".
- 15 The four continued to the party venue entrance, more or less together and in part in company with others, and having waited outside for a period of over a minute went in one after the other at about 3.00 a.m. In this first section of the footage, Mohammed accepted that he had been correctly identified as the man with the blue arrow and Parrish accepted that he was correctly identified as the man marked with the magenta arrow. He did so not on the basis that the CCTV footage itself enabled such an identification to be made, but, as he explained when he gave evidence, because he remembered running from the white car and hiding behind the box van and the conduct of the magenta arrowed man must therefore correctly

identify him; and that that identification was corroborated from phone records of a call he is seen making at about that time when he has gone down an alley.

- 16 Lawrence, on the other hand, did not accept that he was the man identified by the green arrow in the first part of the footage. We shall refer hereafter to that man as "green man". Lawrence's case, and Lawrence's evidence when he came to the witness box, was that this was the other occupant of the VW in which they had arrived, namely "Talls"; and that he, Lawrence, was the other member of the group who could be seen to be wearing a longer parka jacket. He produced at the trial a green parka as the jacket which he had been wearing on the morning in question. We will refer to the image of this other man as "parka man".
- 17 Turning to the second half of the footage, the coverage of the gunfight after people emerged from the party venue at about 5.00 a.m. had also been marked by the police with the blue, green and magenta coloured arrows. Mohammed accepted, again, that the man marked with a blue arrow in this part of the footage was him. Lawrence maintained that the green man was not him but "Talls", as in the earlier footage. Parrish's case, and his evidence from the witness box, was that the person who could be seen at this stage with a gun who was marked with the magenta arrow in this part of the footage after 5.00 a.m. was not him. We shall refer to the man so marked in this section of the footage as "magenta man".
- 18 The footage showed that after the gunfire these three, namely Mohammed, green man and magenta man, walked back up the road, mostly together, to the mouth of Rigg Approach where Mohammed and magenta man left in the Ford Focus and green man left in another car, which was not the car in which Lawrence had arrived.
- 19 Parrish gave evidence in which he set out his family and personal circumstances. He stated that by 2017 he had known Lawrence and Mohammed for around seven years, he had known Ozger for around ten years and Ekwiburi since they were children. He accepted that he attended the party at Rigg Approach. He stated that he was in possession of some

cannabis which he was planning to give to a friend and that he hoped to sell the rest at the party. He accepted, as we have said, that the magenta arrowed man shown on the footage prior to entering the party venue was him, on the basis we have set out. He thought, he said, that the white Audi which arrived at the party was a police car and as he had drugs in his possession, he ran away and hid nearby as he did not want to be caught by the police. He had not thought that Team A were the occupants of this car. He said that he subsequently met his friends, gave them some cannabis and went into the party. He was, he said, in the bar area when he heard shots being fired. He was with his ex-partner Montana and followed the crowd to leave the party. He ran out and eventually ended up by himself. He denied that magenta man was him or that he was with Mohammed or green man or Lawrence after he emerged from the party venue. He said that having run out of the party, he ran out of Rigg Approach and went to a cab station where he took a cab to his girlfriend's address in Woodford Green. In support he relied upon the telephone records of two calls from his phone to the cab company at 5.17 a.m. and 5.21 a.m. and the cab company's records which confirmed that a cab had been booked in the name of "Jamming", which Parrish said was the name he used, to take a fare to the postcode which was indeed that of his girlfriend's address. Parrish said that he had heard about Mr Ekwiburi being shot but denied that he had fallen out with him. He did not know Ms Thomson and he maintained that he had not been part of any conspiracy to injure Team A, had not been in possession of a gun and had not left the party with Lawrence or Mohammed.

20 Lawrence gave evidence that he knew Parrish and Mohammed well and would see them when he came to London. He denied knowing the members of Team A. He accepted that he had attended the party. He said that earlier that day he had lost possession of his phone and subsequently found out that it was with an acquaintance called "Talls". He had arranged to meet him in order to retrieve the phone and subsequently drove "Talls" and Parrish to the party. He said that when they saw the white car drive past, which was

the Audi, he ran away because he thought that the police were coming and he was aware that he had been driving whilst under the influence of alcohol. He denied that he was green man at any stage in which green man was identified in the footage, and said that this was "Talls". He said that he was parka man. He said that he heard the shots but did not see who had fired them. At the time he was inside the party with his aunt. He said he left the venue once the shooting had stopped, went back to his car which was parked in a nearby alleyway and drove to his girlfriend's house in Stoke Newington. He denied that he had fired or was in possession of any gun. He maintained that he was not part of Team B and stated that he did not know Mr Ekwiburi.

- 21 He also relied upon the testimony of his aunt who gave evidence. She had attended the party in Rigg Approach and said that Lawrence was standing behind her when the shooting started. She said she had not seen him after that. She went on to say that he was not the man marked with the green arrow in the CCTV footage.
- 22 The sole ground of appeal on behalf of both Parrish and Lawrence is that the judge misdirected the jury in relation to the use which they could make of the CCTV footage in order to identify Parrish and Lawrence as magenta man and green man respectively.
- 23 In his directions to the jury, provided in this respect also in writing, the judge told the jury that they could use the CCTV footage if they thought it was of sufficient quality in the way the prosecution relied upon to assist in identifying Parrish as magenta man and Lawrence as green man. He invited them to compare the defendants against the person attributed by the crown in the footage by reference to (a) still photographs of the defendants, which were before the jury, which had been taken the following year after the incident, and (b) what they had seen of the defendants during the trial, which was taking place some three and a half years later. He said that they should "look for any features which are common both to the defendant and the footage and also for any features which are different." He explained that what he meant by features was "both physical appearance but also other characteristics,

such as the way a person walks, the way a person stands, the way a person gestures and all those sorts of things which are individual to a human being." He then urged them to exercise caution in all the ways and for all the reasons identified in the standard direction in the Bench Book Compendium. That direction as to the exercise of caution is not the subject matter of any criticism on behalf of Lawrence or Parrish.

24 The sole ground of appeal is that the nature and quality of the CCTV footage was simply insufficient to permit any jury to draw any safe conclusions from it as to the identity of magenta man or green man. This objection was raised before the judge when his directions to the jury were circulated in draft to counsel, in the usual way, prior to final speeches. Part of the argument also proceeded on the footing that the defence had not understood at the trial that this was one of the purposes for which the prosecution were seeking to use the CCTV footage.

25 In his ruling rejecting the objection, the judge referred to the authority of *Attorney General's Reference No. 2 of 2002* [2002] EWCA Crim 2373, which identifies four circumstances in which, subject to the judicial discretion to exclude the evidence and subject to appropriate directions in the summing-up, a jury could be invited to conclude that a defendant had committed the offence on the basis of a photographic image from the scene of the crime. The first of these is expressed as follows:

"Where the photographic image is sufficiently clear, the jury can compare it with the defendant sitting in the dock."

26 Reference was made in that *AG's Reference to R v Dodson & Williams* 79 Cr App R 220. In *Dodson & Williams* two men were involved in an attempted armed robbery of a building society. There were no available witnesses who knew the defendants, but there were photographs available to be placed before a jury taken from security cameras. The case demonstrates that it is permissible for the crown to place before a jury photographs taken by a security camera and then to invite the jury to conclude that the offender shown in

the photograph is the man in the dock based on their observations during the course of the trial. Watkins LJ, at p.228 of the report, said that a jury, in performing such a task, were not acting as experts, but were doing no more than the average person "in domestic, social and other situations" does from time to time, "namely to say whether he is sure that a person shown in a photograph is the person he is then looking at or who he has seen recently."

27 The judge correctly recognised that whether the CCTV footage was of sufficient nature and quality as to be capable of supporting a conclusion on identification was a threshold matter for him, whereas whether it did so was a matter for the jury to assess if the threshold were passed, it being for the jury at that stage to take into account the nature and quality of the footage as one of the relevant factors in that exercise. That was part of the direction which he gave to the jury. He said that he had always understood throughout the course of the trial to that point that the prosecution were relying on the CCTV footage for the purposes of the jury identifying the participants from the footage itself. He said that in his view the footage was of a sufficient quality to be capable of enabling them to do so. He then gave the direction, which as we have said is not criticised as being inadequate or inappropriate in itself, that the CCTV evidence was capable of supporting a conclusion on identification.

28 We have watched the CCTV footage a considerable number of times and examined it with care, although doubtless not as many times as the judge and the jury would have seen it in the course of the trial. It is of comparatively good quality for the purposes of identifying what magenta man, green man, Mohammed and the other participants were doing. It enables one to see what the participants were doing by way of firing of guns, what they were doing on the way to the venue and on the way back, and indeed was of sufficient quality to identify the guns being used. The footage was clearly admissible for these purposes of demonstrating the course of events, the use of the guns, the co-location of the defendants, and correlation of what could be seen on the footage of making or receiving phone calls with telephone data, which the prosecution relied upon as strands of the circumstantial

evidence against all three defendants. The issue for us is whether it was also admissible for the purposes set out in the judge's direction, namely to provide support for a conclusion that Parrish and Lawrence were correctly identified as green man and magenta man (in the second part of the footage) respectively.

- 29 That question turns upon whether the nature and quality of the CCTV was capable of supporting such a conclusion. We have concluded that it was. We take each defendant in turn.

Parrish

- 30 We accept Ms Braun's submission that there is nothing in the footage of magenta man in the second part of the footage after 5.00 a.m. which portrays his face sufficiently for any meaningful comparison to be drawn with the facial features of Parrish, which the jury had the opportunity to observe in the still photo, and at the trial, and indeed in the earlier part of the footage. In our view, the CCTV footage is simply of insufficient quality for that purpose. However, the imagery of his clothing is in our view sufficiently clear that a jury could properly conclude that magenta man in the second part of the footage is the same person as magenta man in the first part, which Parrish accepted was him. Whilst waiting outside the venue to go into the party his hoodie can clearly be seen over a period of up to two minutes to have something on the left breast which catches the light, probably a logo. The same is true of the footage which captures him in the alley after he was hiding from the white Audi. As we have said, on both occasions he accepts this was him. A similar flash can repeatedly be seen on magenta man during the gunfight on a number of separate occasions and again can be seen on magenta man at various stages when he is walking back to the car back up Rigg Approach.

- 31 Ms Braun referred to Mr Parrish's responses in cross-examination, when taxed with this and other points, that his clothing would have been bought from two well-known high street

stores and that such clothing would have been ubiquitous amongst the many partygoers who were present on that occasion. That is not, however, something which in our view undermines the fact that the CCTV footage meets the relevant threshold. That was a matter for the jury to consider.

32 Mr Shaw, on behalf of the prosecution, also drew our attention to a stripe which could be seen on the footage in the earlier section on magenta man's trousers, that is Parrish's trousers, when he was in the alleyway after hiding from the Audi; and stripes which he submitted to us, and submitted to the jury, could be seen on magenta man after he emerged from the venue at 5.00 a.m. Whilst the similarity is less strikingly obvious on the footage than the flash on the breast of the hoodie, the quality of the images is in this respect also sufficient to reach the threshold of being capable of being used by the jury to support a conclusion of identification.

33 Although DC Walker did not in the course of his evidence purport to identify Parrish from the footage, he did say that the man shown with a purple arrow at 5.00 a.m. was wearing "similar clothing seen before, hoodie and tracksuit." Whilst he did not draw attention to the features to which we have referred in relation to the clothing, they were features which were fully ventilated in cross-examination and, as we understand it, in speeches to the jury. It was open to the jury, as we have said, to observe those features and draw conclusions as to the identification of Parrish, if they saw fit.

34 Moreover, we accept Mr Shaw's submission that the jury could properly make a comparison between the build of magenta man, and how he bore and conducted himself, by reference on the one hand to what was accepted to be Parrish in the early footage, and on the other the footage of magenta man after 5.00 a.m. The nature and quality of the CCTV footage was in our view sufficient to be capable of being used in that way and in the minds of a reasonable jury could have provided some further support for the identification of Parrish particularly, because the footage of magenta man had him placed close to Mohammed and

green man, as did the earlier footage prior to entry of the party venue, so that the two of them, Mohammed and tall man, who were of different weight and build, could provide a frame of reference.

- 35 Ms Braun submitted that even if these comparisons were permissible, the judge fell into error in directing the jury specifically to compare facial features. In our view that is not a fair characterisation of the direction which the judge gave. His direction was that they could make comparisons. He then referred to comparisons of features which they could make both to look for similarities and for differences. He then explained what he meant by features and referred, amongst other things, to physical features, not specifically to facial features. "Physical features" was an apt description in Parrish's case to mean clothing. It could also cover facial features and that was an apt description in Lawrence's case, because, for the reasons we will explain, it was legitimate for the jury to make comparisons of facial features in Lawrence's case. It is a mischaracterisation of the direction to treat it as inviting the jury specifically to draw a comparison based on facial features in Parrish's case.

Lawrence

- 36 Green man can be seen throughout both parts of the footage to be wearing a distinctive jacket with a paler shoulder section than the rest of it. The jury could properly conclude from this, and from the continuity of the clip, that green man was one and the same person throughout both parts of the footage. Indeed, Mr Guest on behalf of Lawrence accepted before us that that was so. The jury were therefore in a position to make comparisons between Lawrence and what could be seen of green man at any stage of the footage, provided it was sufficiently clear for that purpose.
- 37 There are significant parts of the footage when the facial features of green man are visible in a relatively clear way. In particular, there is plainly good quality footage of the facial features of green man waiting to go into the club for over a minute and, as Mr Guest

accepted, particularly good quality footage in the earlier section whilst green man was hiding from the white Audi.

38 Moreover, there is in this part of the footage a clear view of the facial features of parka man, whom it was Lawrence's case was him. If the jury were to conclude that the features supported the conclusion that parka man was not Lawrence, that would of itself provide support for the conclusion that he was green man, since on the evidence in the case, and the parties' respective cases, the jury could properly conclude that Lawrence must have been one or the other.

39 In our view the quality of the footage of the facial features of green man and parka man, which could be seen in the earlier part of the footage, was sufficient to reach the threshold and was sufficiently good to be capable of enabling the jury to conduct the comparison exercise which the judge directed they were permitted to undertake, subject to all the caveats and the cautionary warnings which he properly gave them.

Conclusion

40 Our conclusion, therefore is that the nature and quality of the CCTV footage was capable of supporting a conclusion about the identity of Parrish as magenta man and Lawrence as green man in the way which the judge directed the jury; and the appeal and application, respectively, must therefore be dismissed.

CERTIFICATE

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