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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202300452/B4

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 16 May 2024

Before:

LORD JUSTICE DINGEMANS
MR JUSTICE WALL
HER HONOUR JUDGE DE BERTODANO
(Sitting as a Judge of the CACD)

REX
V
HENDERSON DOMINGO

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NON-COUNSEL APPLICATION

J U D G M E N T
(Approved)

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of a renewed application for leave to appeal against conviction and an application for an extension of time of 189 days to renew, following refusal by the single judge.
2. The applicant was convicted of four offences of robbery, two offences of attempted robbery and one offence of having a bladed article. He was sentenced to an overall sentence of 14 years' imprisonment. There was an order for forfeiture in the sum of £14,881.09, which represented cash found in a safe in the applicant's house.
3. The robberies were of supermarkets and occurred from October 2020 until February 2021. So far as count 6 was concerned, on 8 February at 6.00 am at the Sainsbury's store at White Hart Lane in Barnes there was a confrontation with an employee before the perpetrator, alleged to be the applicant, left the scene. So far as count 8 was concerned, the prosecution case was that there was an attempted robbery on 25 February 2021 of a Sainsbury's store on Northfield Avenue.
4. The prosecution case was that each robbery and attempted robbery was committed by the applicant. The shop assistants concerned in counts 1 to 7 variously described the perpetrator as a black male, approximately 5' 8" inches tall, medium stocky build, wearing a face covering or gloves and carrying a large knife and bag or holdall. He was described as having a Jamaican, Caribbean and Nigerian or Ghanaian accent. The differences have been highlighted in correspondence which the applicant has sent in support of his renewed application.
5. In respect of count 8 the applicant was observed by police officers looking at the store

when a woman, said to be believed to be an employee, was about to open the store and approached the doors. The applicant moved towards her but she walked past the store as if she was a member of the public. It was at that stage that the prosecution claims that the applicant aborted the robbery. The applicant particularly complains about the use of the word "aborted" which was used in the summing-up. Upon arrest a carving knife was found in the applicant's bag, along with two bin liners which were said to be the robber's tool kit.

6. There was CCTV evidence and cell site evidence from mobile phones and the circumstantial evidence was that £14,800-odd was found in the applicant's safe at his home. There were also deposits into the applicant's bank account and the timing of those transactions tallied in some respects with some of the robberies. There was also alleged to be the claiming of prize money from scratch cards stolen in counts 5 and 7, although the applicant disputed that those had been proved to be the scratch cards which had been stolen. There was the falsification of work records and time sheets from his employment as a night concierge at Kew Bridge Road and the applicant was linked to two vehicles and a number plate had been removed from those vehicles.
7. The applicant denied any offending. In respect of counts 1 to 7 issues of identification and misidentification were raised. The accuracy of the descriptions given by the witnesses were said not to match him and, as we have already indicated, this is a point that the applicant places particular emphasis on. He said that in relation to counts 1 to 3 he was at his partner's home asleep; counts 4 to 6 he was at work; count 7 he was on leave from work and would have been asleep. He said he was given the scratch cards linked to count 5 by others which he accepted he attempted to claim. He did not accept attempting to claim the prizes for count 7. He did not conduct any reconnaissance of the

stores and on 18 February he was due to collect a colleague but they did not show up and he returned to work. On 24 February he was outside Sainsbury's to purchase some eggs. In respect of count 8 he had removed his vehicle licence details because his car had previously been cloned. He accepted a knife was found in his bag on arrest, claiming it was for his protection, which he later stated was a sarcastic remark. The £14,000 or so in his home safe represented the sale of cigarettes and generous tips from his work as a night concierge. £3,000 was from his partner's father. The applicant's partner gave evidence that during the offending the applicant was at her address and was asleep at various dates during the offending.

8. There were various rulings given in the course of the trial which are relevant to the grounds of appeal. This included a ruling on the admissibility of a rum bottle. The judge ruled that the evidence could be admitted. It was objected to on the basis that it was a standard rum bottle and could have been sold in other stores but it did at least match the description of a rum bottle taken in one of the robberies.
9. There was a ruling on a submission of no case to answer in relation to count 8 and the judge ruled that it was a matter for the jury to decide whether the applicant had embarked on the actual commission of the offence by walking past, whereas the applicant's case was that he had done nothing wrong.

Grounds of Appeal

10. So far as the grounds of appeal are concerned, the applicant has advanced various grounds of appeal in a number of letters which we have read. He also seeks to adduce fresh evidence. The applicant complains that his version of events was wrongfully and unfairly discredited. He complains that the judge was wrong to say that he carried out a reconnaissance of the Sainsbury's store. He identifies various factual errors that were

made in the summing-up, some of which were identified by counsel at the time, and then corrected by the judge. The applicant complains that the judge's propensity direction encouraged the jury to convict him of all the counts and the cell site evidence was said to link him to his home. The judge should not have speculated on his financial position and there was no evidence about how the applicant was alleged to have committed the offences. The summing-up was misleading. Evidence relating to the money should not have been admitted because there was nothing to suggest that it derived from an illegitimate source. The applicant had already complained about the cloning of his number plates. The judge should not have admitted the evidence of the empty Mount Gay rum bottle because it was just like any other Mount Gay rum bottle.

11. As far as the fresh evidence was concerned, the applicant seeks to rely on witnesses Dennis Sharrocks and Harry Daniels. Harry Daniels provided a character reference at the time, but also could give evidence about the culture of excessive gift-giving (explaining the money in the safe) at the luxury building where the applicant worked.
12. The applicant made substantial criticisms of his trial representatives and provided a waiver of privilege. Counsel and solicitors have responded. They submit that there is nothing in the allegations and answered each of them. The prosecution lodged a Respondent's Notice in which they addressed each of the applicant's grounds of appeal. They submit that this was not a case where there was any lurking doubt and concluded that the unanimous convictions were not unsafe.
13. In our judgment having looked carefully through the papers there are no arguable grounds of appeal against conviction. The judge's reasons for the rulings that were given were right. The summing-up was fair and balanced. It is right to record that there were various factual errors that were made by the judge but these were put right at the time.

14. So far as cell site evidence was concerned, the judge directed the jury at page 25 of the summing-up that:

"There are limitations about mobile phone cell site analysis, which I am sure you are now aware of, even if you were not before you heard the evidence in this case. Which cell, which mast your phone is connecting to, only shows the general direction which the phone was travelling, not exactly at that location."

15. There was nothing in the criticisms of the judge's directions on circumstantial evidence which was in accordance with established authority and properly given. The judge had given proper directions to the jury about the facts being their responsibility and the submission that the judge should have withdrawn count 8 was in our judgment unsustainable. There was evidence that the applicant was walking past the relevant shop at the material time, which shows more than merely preparatory work to the commission of the offence.

16. Having looked through all of the materials there is nothing that we can see that would render this conviction unsafe.

17. So far as the fresh evidence is concerned, no good reason has been explained for permitting the applicant to adduce this evidence at this stage. It has been said by this court on numerous occasions that the trial is not a dress rehearsal; it is the time at which evidence should be adduced.

18. All of the grounds show that the applicant strongly disagrees with the jury's verdict and considers that they were simply wrong to convict him on the evidence which was before the court. That is not a basis on which this court is able to interfere.

19. For all these reasons, the application for an extension of time is refused and similarly the renewed application for leave to appeal is also 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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