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IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202100105/B5

[2021] EWCA CRIM 1367

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 7 September 2021

LADY JUSTICE SIMLER DBE
MRS JUSTICE CHEEMA-GRUBB DBE
MR JUSTICE ANDREW BAKER

REGINA
V
JOSEPH HINDLE

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MS F GERRY QC and MR A ALTY appeared on behalf of the Applicant

J U D G M E N T

LADY JUSTICE SIMLER:

Introduction

1. Having pleaded guilty before trial to count 3 (robbery), on 15 December 2020 in the Crown Court at Preston before His Honour Judge Altham, the Honorary Recorder of Preston, and a jury, the applicant was convicted of murder (count 1). On 7 May 2021 he was sentenced for that offence to life imprisonment with a minimum term of 27 years less the 470 days he had spent on remand. He was sentenced for the robbery to thirteen and a half years' imprisonment concurrent. He renews his application for leave to appeal against the murder conviction and is represented by Ms Gerry QC and Mr Alty.
2. There was a co-accused, Louise Henwood, who pleaded guilty to manslaughter and was sentenced to an extended sentence of 18 years, comprising a custodial term of 13 years and an extension period of five years.

The facts

3. The applicant and Louise Henwood were in a relationship and living together with the applicant's sister Faye Hindle. Louise Henwood had previously been in a relationship with a man called Mark Fisher. It was not in dispute that she was hostile towards Mark Fisher and there was evidence that she would tell the applicant how badly she had been treated by him and she spoke negatively about him.
4. Louise Henwood, Mark Fisher and indeed all of the witnesses in this case presented as sad and vulnerable people who had reached a very low ebb of existence as chronic drug addicts who were under the influence of any number of drugs at the material time.
5. On the evening of Saturday 18 January 2020, the applicant, Louise Henwood and Faye Hindle went into Accrington to sell tobacco and borrow money to fund the purchase of drugs (crack cocaine and heroin) and to collect cigarette ends to use to smoke the drugs. They saw Mark Fisher, a known cannabis dealer, who was selling cannabis. They returned to Faye Hindle's house where Louise Henwood speculated that Mark Fisher must have stolen the cannabis and that there would be more at his home. A plan was formed to rob him.
6. Later that evening and the following morning arrangements were made by Louise Henwood to buy five bags of cannabis on Facebook through communications with Natalie Long who shared a house with Mark Fisher and another man, Jason Stephens, also a drug addict.
7. Around lunchtime on Sunday 19 January 2020 the applicant and Louise Henwood went to the house of Mark Fisher at 39 Eddleston Street in Accrington. The applicant went to the back kitchen door and asked Mark Fisher for the bags of cannabis as arranged. He did not pay for them. A knife was used by him to attack Mark Fisher, inflicting a number of stab and slash wounds to his chest. Natalie Long made a 999 call at 12.52 pm reporting that there had been a stabbing at the property. Police and paramedics attended and despite attempts to save the life of Mark Fisher, he was pronounced dead at 1.34 pm. The applicant and Louise Henwood left the scene and were arrested the following day.

The trial

8. The prosecution case at trial was that this was not simply a robbery relating to cannabis but a plan to attack Mark Fisher because of the wrongs he had done to Louise Henwood. It was not the prosecution's case that there was joint liability for murder, nor was any case advanced that the applicant was liable on a secondary liability basis. The prosecution case was squarely put that it was the applicant who was the principal in inflicting the injuries

that caused Mark Fisher's death and that he was guilty of murder having had the requisite intent. It was also contended however, that Louise Henwood repeatedly poured poison into his ear, winding him up and causing what was ultimately an explosion of anger that led to him carrying out the sustained knife attack, going beyond what was necessary to achieve the theft of the cannabis. But the prosecution case, as we have said, was fairly and squarely put on the basis that he was the principal and that this was not a case of joint liability.

9. The prosecution relied on evidence from a number of the people to whom we have just referred. Faye Hindle gave evidence about the toxic and volatile nature of the relationship between the applicant and Louise Henwood, about their drug use, about Louise Henwood "revving up" the applicant with her allegations about Mark Fisher and how he mistreated her and used to beat her up while they were in a relationship together. She was a key witness in relation to the planned robbery and in relation to what was said and done in the period leading up to the killing.
10. Natalie Long gave evidence. She was the only witness to the attack itself. Her evidence was that when she and Mark Fisher answered the door to the applicant she saw that he was holding a knife. She described him as "rattling" - that is to say in drug withdrawal. He was sweating and his eyes were bulging. She gave evidence that Mark Fisher gave him three bags of cannabis and that he pushed Mark Fisher and stabbed him repeatedly, smiling as he did so. She said he was demanding more drugs and that Mark Fisher was trying to fend off the knife saying, "You've got it all, please stop." The stabbing continued while Mark Fisher was on the kitchen floor and she said she eventually managed to get out of the house and call the police.
11. Jason Stephens said he was in bed with Natalie Long when they heard knocking at the door. Mr Fisher and Ms Long went downstairs to answer the door whilst he stayed upstairs hiding in the loft space. He said he did not see what happened, although he did hear some of the words and after about 10 minutes it went quiet and he came downstairs and found Mark Fisher slumped and breathless on the doorstep. He then left the scene.
12. There was pathology evidence from Dr Charles Wilson who described the stab wounds to the chest and neck and concluded that the cause of death was one wound in particular that penetrated the heart and was not survivable. He also noted wounds to the hands consistent with the deceased attempting to defend himself.
13. There was CCTV evidence tracking the movements of the applicant and Louise Henwood as they made their way to and from the scene of the attack. There was also forensic evidence in relation to findings of blood and DNA at the scene and blood on the applicant's clothing.
14. The defence case accepted that the applicant went with Louise Henwood to Mark Fisher's house, and that he took a knife for self-protection. It was accepted that he was involved in a violent incident with Mark Fisher but did not believe that he caused the fatal stab wounds. It was argued on his behalf that if it was proved that he did cause the fatal stab wounds this occurred when protecting himself from attack. His case was that he had no intention to cause serious harm or death and that, in effect, the injuries were caused during a scuffle which began when Mark Fisher headbutted him for not paying for the cannabis. He said in police interview that he had memory problems and declined to answer questions. He did not give evidence at his trial.
15. The defence contended in the course of the trial that the evidence of the only eyewitness,

Natalie Long, was unreliable and inconsistent, as well as being inconsistent with other evidence. In particular it was inconsistent with Mr Stephens' evidence, which itself was inconsistent. There was conflicting evidence as to the mechanism of injury. There was no clear evidence as to which knife was used and descriptions of the knife were inconsistent. The result was that the jury had no reliable account and so could not be sure how Mark Fisher met his death. There was a real possibility that the injuries were caused in the course of a failed robbery without the requisite intent for murder.

16. At the close of the Crown's case the defence made a submission of no case to answer. First, it was argued by the defence that the prosecution had put their case on the basis that this was a shared intention case and there was no evidence to support it. The contention that this was the basis of the Crown's case was not accepted by the judge. The judge made clear in his ruling that the evidence showed that the applicant was the only person to enter the house and to use force against the deceased. The judge concluded that there was ample evidence in the ferocity and nature of the attack and what was said and done before and during the attack upon which the jury could conclude that the applicant had the intention to cause grievous bodily harm. Whether or not he and the co-accused shared an intention was not the point. The judge said there was evidence that they planned to rob Mark Fisher and evidence that Louise Henwood wound the applicant up by making various allegations about Mark Fisher and providing motivation for what happened. The judge concluded that these were all proper matters for the jury: there was sufficient evidence to be left to the jury of the applicant's individual intention to kill or cause really serious harm and to the requisite standard.
17. A second strand of the defence submission concerned whether the prosecution had proved that when the knife injuries were inflicted the applicant's intention was anything more than an intention to rob. Here too the judge was satisfied there was ample evidence of the applicant having formed an intention throughout to kill or cause really serious harm and he identified the evidence in his ruling.
18. Natalie Long was a vulnerable witness. Having concluded her evidence there was a later application to recall her in order to ask her about an item on the schedule of unused material which had been disclosed to the defence well in advance of trial, but for whatever reason had only just come to defence counsel's attention. The item was a police officer's report of what he said Mark Fisher's sister, Kirsty Fisher, told him that Natalie Long had said to her about the stabbing. The statement reported was inconsistent with the evidence given by Natalie Long. Defence counsel wished to cross-examine her about it. The judge concluded that it was multiple hearsay evidence and even taken at its highest, that it would be of no real assistance to the jury. He weighed up the fact that Natalie Long was a vulnerable witness who had been traumatised by these events and found giving evidence distressing, and ruled that there was no very good reason to recall the witness and that ultimately it was not in the interests of justice to do so.
19. Finally, so far as relevant to the grounds of appeal, Ms Gerry QC (on behalf of the applicant) submitted to the trial judge that when summing-up the evidence, and in particular the evidence of Natalie Long, a direction should be given in relation to her evidence about her unreliability. She submitted that the judge should direct the jury that she may be unreliable given her accepted evidence that she had taken drugs in the lead up to the events in question and that they should exercise caution in determining whether to accept Natalie Long's evidence and in deciding what weight to give it and who was

- involved and what weapon was used.
20. Both defence and prosecution made detailed submissions to the judge on this issue: the defence supported the argument for a direction to that effect by identifying all the inconsistencies in the evidence and the basis for unreliability in this case; the prosecution for its part resisted the direction and made detailed submissions in opposition. Having heard the submissions, the judge made a careful ruling concluding that this was not a case that merited such a warning and that it was for the jury to determine the extent to which, if at all, they found Natalie Long to be a reliable witness and to make their findings about her evidence and what weight to place on it.

Application for permission to appeal

21. In written grounds of appeal developed orally, Ms Gerry advanced challenges (to some extent interlinked) to the sufficiency of the evidence in this case which together with the absence of an opportunity to have Natalie Long recalled and questioned about a matter that was likely materially to affect her credibility and/or a direction from the judge about her evidence being not only inconsistent but unreliable, she said, establishes doubt as to the safety of the murder conviction and an arguable case for permitting this appeal to proceed.
22. The grounds advanced by Ms Gerry are all grounds that were refused by the single judge with detailed reasons. We have considered them carefully and have looked with real care at all the material in this case, including the rulings made by the judge, the summing-up he gave to the jury, in particular in relation to the evidence of Natalie Long which drew attention to inconsistencies in her evidence and the direction he gave as to circumstantial evidence. We have concluded ultimately that none of the grounds is arguable for the reasons given by the single judge. We deal with each of the grounds shortly in those circumstances.
23. First, the applicant contends that the judge erred in rejecting the submission of no case to answer because there was no evidence that the applicant had the requisite individual intent for murder, to the requisite standard. As a result of deficiencies in the evidence and the inconsistencies in the evidence of Natalie Long, who was the sole witness to the attack itself, there was no reliable or sufficient evidence upon which a jury could be sure that this was a direct attack with intent to kill or cause really serious harm, rather than simply injuries or threats where no serious harm was intended. The evidence could have supported a manslaughter conviction but not a murder conviction.
24. We disagree. There was ample evidence identified by the judge upon which a jury could convict this applicant of murder. There was evidence of his own intention to inflict grievous bodily harm as principal in the attack on Mark Fisher in the fact that he was the only person to use force against Mark Fisher and in the ferocity and nature of the attack as soon as the door was opened. The evidence of Natalie Long that he had the knife out when he arrived at the door and the severity of the wounds to the chest and neck which went far beyond anything necessary to effect a robbery were also directly relevant to this issue. Whether or not Louise Henwood shared that intention was, as the judge observed, nothing to the point. There was no evidence that she went into the house and she could not have caused any of the wounds. The evidence against the applicant was strong and in our judgment the judge was undoubtedly right to reject the defence submission.
25. As to the argument that the judge erred in refusing to allow the defence to recall Natalie Long to explore the account given as recorded in the police officer's note, the note indicated that she had given Mark Fisher's sister a completely different account of the

incident. Ms Gerry submitted that since her evidence was critical evidence about the attack and in particular about the applicant's intent, the failure to re-call her meant that the jury did not have a complete picture of her as a witness and/or was deprived of evidence that was directly relevant to her credibility. The fact-finding process required her re-call and the failure to do so means that the conviction is unsafe.

26. On this issue the judge made what was ultimately a case management decision. He is an experienced trial judge who presided over this trial. He weighed up the relevance, the nature and the value of the evidence in question. He identified that it was multiple hearsay evidence and that the account given as recorded by the police officer could not have been true and was contradicted by the CCTV evidence showing that only two people arrived that evening and only one entered the house. He concluded that it was highly unlikely that the jury would accept that the witness said what was reported in the multiple hearsay account, but even if they did, he concluded that it was highly unlikely to be material to their ultimate findings in any event.
27. Ms Gerry's submissions made much of the asserted inconsistencies in Natalie Long's evidence to support her arguments. While it is true that there were inconsistencies in various aspects of the account she gave, she was not inconsistent in relation to how the incident started, how it progressed, where she was and who did or said what. Indeed, her evidence as between the ABE and the evidence given at trial was consistent on the critical points, namely that she saw an attack starting as soon as the door was opened and saw it pursued with repeated stabs. Her explanation of how the injuries were caused - she described seeing stabs to the chest - was consistent with the evidence given by the pathologist and she did not claim (either in her ABE or at trial) to have seen all the wounds inflicted. As to the question whether Mark Fisher headbutted the applicant, there was pathology evidence about marks to his head that could possibly have been from contact with a tooth, but there could equally have been other causes and the agreed facts are unclear as to how he came to lose a tooth or when it was damaged. As for the asserted inconsistencies as between the evidence of Natalie Long and Jason Stephens, again we do not consider that there is anything in those inconsistencies that casts doubt on the safety of this conviction or justifies the conclusion that Natalie Long had to be recalled.
28. Having seen all the evidence and having had the inconsistencies relied on drawn to his attention by defence counsel, the judge concluded that the evidence in the police officer's note was unlikely to have any material impact on the trial. That is a conclusion we do not consider open to arguable challenge given the undisputed fact that only the applicant entered the house. Against that evidence, the judge weighed up the effect on Natalie Long as a vulnerable witness of being recalled and concluded that the interests of justice did not require her recall in all the circumstances of the case. We are satisfied that decision is not arguably open to challenge as wrong in law or perverse.
29. Alternatively, Ms Gerry submitted that having refused to allow Natalie Long to be recalled the judge was in error in refusing to give an unreliable evidence warning in relation to that witness. Ms Gerry identified the chronic addiction issues suffered by Natalie Long that made her a vulnerable witness in fact. She had admitted to taking a number of drugs, and there was as close to agreed expert evidence as there could have been about the effect the drugs she took had on her generally and at the material time. In these circumstances, she submitted that the warning given in R v Makanjuola [1995] 2 Cr.App.R 469 should have been given here; and without it the conviction is unsafe.

30. Whether or not to give a warning of this kind is a matter for the discretionary judgment of the trial judge and as the cases indicate, even where a witness may be said to be unreliable, it is a direction that is given sparingly and only in a case where it is appropriate to do so. The judge concluded that this was not a case where the witness was inherently unreliable. There were inconsistencies but as we have indicated, her evidence was internally consistent on many of the important issues and was consistent with other evidence, such as the nature and location of the stab wounds.
31. Having seen and heard the evidence in the case and received detailed submissions from both sides in relation to this question, we are satisfied that the conclusion that such a warning was unnecessary and inappropriate in this case cannot arguably be challenged. We agree with the judge that an unreliable evidence warning in this case would have usurped the jury's fact-finding role. It is undoubtedly the case that the judge drew attention to the inconsistencies between Natalie Long's evidence given in the ABE interview and at trial, and as between her evidence and the evidence given by others, and those inconsistencies were also explored and relied on by defence counsel. We are satisfied that in all the circumstances of this particular case, such a warning was not necessary. The jury were well aware of the chronic drug problems experienced by this particular witness and of the drugs she had taken and their effect on her and other witnesses. Her reliability was a matter for them. We consider that this ground too is unarguable.
32. For all those reasons, and notwithstanding the force with which the grounds were advanced on the applicant's behalf, this application 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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