

[2019] EWCA Crim 1593
2018/03287/C3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 24 September 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE SPENCER

and

MR JUSTICE EDIS

REGINA

- v -

JACKIE ANGUS-BARTON

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Mr D W Lyons appeared on behalf of the Applicant

J U D G M E N T
(Approved)

LADY JUSTICE NICOLA DAVIES:

1. On 21 June 2017, in the Crown Court at Maidstone, the applicant was convicted of the offence of theft. A conditional discharge for twelve months was ordered, as was a compensation order of £250 and a victim surcharge. At trial, the applicant was represented by a firm of solicitors and counsel. The applicant now applies for an extension of time (approximately six months), following refusal by the single judge, in which to renew her original application for an extension of time of 384 days in order to call a witness and to apply for leave against her conviction.
2. By a letter dated 27 June 2019, the applicant states that, following refusal by the single judge in mid-December 2018, her partner, in a misguided attempt to protect her from this bad news, concealed the correspondence and emails from her. She was unaware of the single judge's refusal and the likely time frame required by the court for a response. It was not until May 2019, when she took the matter up with her solicitors, that she learnt of the single judge's refusal of the original application.

The facts

3. On 23 December 2015, the applicant and her husband were shopping in the John Lewis store in Bluewater. The complainant, Miss Saunders, was at a till point in the women's clothing area purchasing a gift voucher. CCTV cameras recorded the incident. When at the till point, Miss Saunders took out her purse and put it on the ledge or counter in front of the till point. She then decided to buy some wrapping paper, found coins to pay for the paper, and, having paid, she left the till point. Unfortunately, Miss Saunders forgot to pick up her purse which contained £250 in cash, bank cards and a driving licence. Within minutes she realised her mistake and returned, but the purse was missing. The assistant was asked if she had seen it. The answer was no. The assistant, together with another member of staff, helped Miss Saunders look for the purse. It was not found. When they returned to the till point, present were the applicant and her husband. They were concluding their own transaction.
4. As a result of the loss of the purse, the CCTV footage was examined. It showed the applicant and her husband approach the till point after Miss Saunders had left. When the purse was in front of the till, hidden from the view of the assistant but where it would have been visible to a person standing in front of the till, the applicant was in that position. It was the Crown's case at trial that when her husband was occupied at the till point, the applicant saw the purse, moved it and picked it up. She placed her elbow over the purse. Shortly thereafter, she removed the coat she was wearing in what was described as rather an odd way. She kept arm either on or at least concealing the purse. Having taken her coat off, the applicant put the coat over or onto the counter where the purse was and then picked up the purse such that it was no longer seen on the counter. At trial, it was the Crown's case that the applicant scooped up the purse within the folds of her coat. Shortly thereafter, the applicant and her husband left the store.
5. The applicant was traced by the police. She attended the police station for a voluntary interview on 10 January 2016. She was offered free and independent legal advice, which she declined. During the course of the interview, the applicant denied taking the purse. She stated that one of the reasons for the removal of her coat in a particular way was that she had sustained a whiplash injury of her neck which was aching and painful. At

interview, the applicant was shown the CCTV footage. She accepted that she had moved the purse and placed her elbow on it. She said that she had no particular recollection of the incident, but denied picking up or stealing the purse. She remembered a “kerfuffle”, which would appear to have been the return of the complainant and the assistance of the staff in looking for the purse.

6. At trial, the statement of the complainant was read; the officer in the case produced the CCTV footage; and the evidence of the recorded police interview of the applicant was before the jury. The jury were told that the applicant was of good character; she has no previous criminal convictions.
7. The applicant gave evidence. She called no witnesses. She gave evidence that she had worked as a registered nurse for four years and that she and her husband were foster carers. She told the court of being involved in a car accident on 1 December 2015, as a result of which she sustained a whiplash injury, causing pain and stiffness in her neck, left arm and hand. The pain required medication; she took both opiate painkillers and lorazepam in order to help her to sleep. In addition, the applicant was taking two types of antibiotics to treat abscesses in her mouth. The judge allowed the applicant to give evidence as to the effects of the medication upon her. She said that the sleeping tablets made her head feel “muzzy”, she and her husband had to leave the store in order to allow her to take the medications at six o’clock. The pain in her arm was such that the weight of the arm was too heavy. She had to remove her coat because her temperature spiked due to infection.
8. At trial, the CCTV footage was played before the court and the jury. The applicant was asked to comment upon it. She accepted that she placed her arm down, but denied picking up any item. The applicant made the point that she was a 60-year-old woman, a professional nurse who signed for Class A drugs. She stated that she was not very well, “not on the planet”, and that she probably should not have been out. Asked why she declined legal advice at the police interview, the applicant stated that it was because she had not done anything; she had no need of legal representation.
9. In his legal directions to the jury, the judge raised the issue of the effect of prescription drugs upon the intention of the applicant. He identified the fact that she is a qualified nurse who had suffered a whiplash injury in a car accident and had been prescribed medication to help her sleep, together with antibiotics. The judge referred to the applicant’s evidence that the medication made her feel “muzzy” and “not on this planet”. He reminded the jury that it was for the Crown to make sure that the applicant had the intention to steal the purse and its contents. The judge gave a full good character direction and referred to the fact that the applicant is married, has the care of eight children, acted as a foster carer, is a professional nurse, is trained to prescribe Class A drugs and worked in a hospice.

Grounds of appeal

10. The grounds of appeal are threefold:
 - i. The applicant’ solicitors acted without any instructions from her;
 - ii. Her solicitors failed to call good character evidence on her behalf; and
 - iii. The applicant’s solicitors failed to instruct a medical expert to deal with the issue of *mens rea* and/or call such evidence at trial.

11. Criticism having been made in the grounds of appeal of the solicitors but not of counsel, the applicant waived privilege and responses have been received from the solicitors then acting for the applicant and trial counsel. We note that the written responses received are detailed and clear. They have been of assistance to the court. In a detailed letter dated 10 July 2018, the representative of the applicant's previous solicitors responded to the criticisms raised. The essence of the response was that the applicant did not engage with himself or anyone at the solicitors' firm until trial. He received no instructions from the applicant, and in particular no specific instructions to negate what she had said at interview. The representative of the firm, who has a family relationship with the applicant's husband, had conversations with the applicant's husband and there was email correspondence between the two. On one occasion he telephoned the applicant's husband and asked to speak with the applicant, but was told that she was too busy to speak to him.
12. In a letter to the court dated 19 September 2018, the solicitors' representative repeated that from the incident until the date of her conviction the applicant did not speak to him on the telephone. He received no letter, email or text from her. With his response he enclosed a letter dated 26 May 2016, written by him and addressed to the applicant. That letter states that on 13 May 2016 the applicant attended the court for a plea and trial preparation hearing. She was represented by counsel who spoke with the applicant, took instructions, advised on the evidence and on the issue of credit for a guilty plea. It is recorded that the applicant instructed counsel that she wished to plead not guilty. In the letter of 26 May 2016, the solicitors' representative states that it would be to the benefit of the applicant were she to meet with him in order to go through the evidence, and in particular the CCTV footage. He points out that a Defence Statement will have to be served which will set out her defence in some detail. He identifies the fact that the CCTV footage is the only piece of contentious evidence, and that is the reason why he would like to go through it with her. The solicitors' representative offers to meet the applicant at her home address, rather than her being troubled to travel to the office. The applicant did not respond to the letter or to the invitations contained within it.
13. Counsel now instructed on behalf of the applicant informs us that, notwithstanding the fact that the letter was addressed to her, in an effort to protect her, her husband did not show the letter to her.
14. In an email dated 13 December 2016 to the applicant's husband, the solicitors' representative again points out that it would be advantageous for him to meet with the applicant together with her barrister prior to trial in order to discuss the case. As to the possibility of instructing a medical expert, the solicitors' representative sensibly points out that that would depend upon the defence which the applicant wished to give.
15. In our judgment, a ground of appeal based on the allegation that the applicant's solicitors acted without instructions from her is devoid of merit. She had previously met with counsel at court. She gave instructions which formed the basis of instructions which were subsequently sent to trial counsel. The letter advising her to meet with the solicitor, which included the offer of the solicitor's representative travelling to her home was not responded to by the applicant or by her husband. If now the applicant states that her solicitors did not have any instructions from her, that situation is wholly of her making, as it was she (and it may well be her husband) who ignored the sensible advice and offers of meeting which were proposed by her solicitors' representative. We are unable to understand how failing to show a letter to the applicant which offers sensible advice is in some way or another protecting her.

Failure to call character evidence

16. In his summing-up, the judge gave a full good character direction. There was before the jury evidence not only of the absence of previous convictions on the part of the applicant, but of her good character, both personal and professional. The judge fully repeated this evidence in his summing-up. In our judgment, as to good character the judge said all that he reasonably could in respect of this aspect of the applicant's case. The absence of character witnesses does not begin to undermine the safety of the applicant's conviction.

Medical experts

17. The judge permitted the applicant a significant degree of latitude in giving evidence as to medication which she was taking and the effect which it had upon her. Had the applicant wished to call medical evidence, that is a step which could have been taken before trial or raised at trial. This was not done. The applicant's case at trial was that she did not take the purse. It is difficult to see how medical evidence would have been relevant to that assertion. The issue was not one of intent; it was a denial of physically removing the purse and taking it from the store. The issue of intent was identified by the judge who went further in his consideration of it and in his legal directions than others might have done. What he did was of assistance to the applicant.
18. An application is now made to adduce evidence from a psychiatrist contained in a report dated June 2018. In that report, the psychiatrist states that at the time of the offence the applicant was suffering the effects of concussion related to the head injury which she sustained in the car crash and that the offence took place while she was impaired due to memory, concentration and difficulty planning tasks. He states:

“She maintains that she did not do the act. This could be either a fact, or she had memory impairment for the event.

She was impaired, and I have serious doubts about her ability to form intent.”

We note that an inability to form an intention to steal was not the applicant's defence at trial. Her defence was that she did not take the purse. It is of note that this report is the second report obtained subsequent to the trial. An earlier medical report was not deemed acceptable to the applicant. An application is now made, pursuant to section 23 of the Criminal Appeal Act 1968, to adduce this psychiatric evidence. The application is refused: firstly, because it is a report which could reasonably have been obtained prior to the original trial; and secondly, because the issue of intent raised in that report was not one relied upon by the applicant as part of her defence at trial and thus would not provide a ground for allowing this appeal.

19. Available to the jury was the CCTV evidence. They had the opportunity to view and consider it. It was evidence which the judge highlighted to the applicant and to both counsel in advance of the trial. The judge permitted the showing of it before the jury were sworn, so as to enable the applicant further to consider the footage. In our judgment, having viewed the CCTV footage, we accept that there was evidence before the jury upon which they could properly conclude that the applicant had moved the purse and taken it.
20. The applications seeking an extension of time are refused, as the merits of the case do not justify the granting of them. There are no grounds upon which to grant any of the applications sought. Accordingly, they are 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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