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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
Case No: 2023/01883/B5  
NCN: [2024] EWCA Crim 210



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 16<sup>th</sup> February 2024

**B e f o r e:**

**LORD JUSTICE COULSON**

**MR JUSTICE HOLGATE**

**THE RECORDER OF REDBRIDGE**

**(Her Honour Judge Rosa Dean)**

**(Sitting as a Judge of the Court of Appeal Criminal Division)**

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**R E X**

**- v -**

**LINTON BLOOMFIELD**

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Non-Counsel Application

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**J U D G M E N T**

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Friday 16<sup>th</sup> February 2024

**LORD JUSTICE COULSON:** I shall ask Mr Justice Holgate to give the judgment of the court.

**MR JUSTICE HOLGATE:**

1. On 1<sup>st</sup> June 2023, following a trial in the Inner London Crown Court before Mr Recorder Barnett and a jury, the applicant (then aged 43) was convicted of causing serious injury by dangerous driving. On 8<sup>th</sup> December 2023, he was sentenced by the judge to 4 years' imprisonment. He now renews his application for leave to appeal against conviction following refusal by the single judge. He also seeks leave, pursuant to section 23 of the Criminal Appeal Act 1968 to introduce fresh evidence of the road layout and from Marc Cullen, Steve Paciello, and Tristan Swain relating to the trial process and the evidence.

2. The case concerned a road traffic incident between a cyclist, Mr Thomas Lewis (the complainant) and the applicant who was driving an Audi A4 vehicle.

3. The prosecution case was that at about 6.30 am on 7<sup>th</sup> June 2021 both the applicant and the complainant were travelling in the same direction. The complainant was ahead in a cycle lane. The applicant pulled very close alongside him and the complainant tapped on the vehicle's bonnet to alert the applicant. As they approached a narrowing in the road with bollards in the centre of the carriageway, the complainant repeated this tapping action. The applicant then deliberately swerved his vehicle left into the complainant who was thereby knocked off his bicycle. The applicant did not stop. Instead, it was said that he drove away at speed.

4. Mr Steve Paciello was travelling in a vehicle behind, at a distance of about 200 metres.

He observed the incident. He called the emergency services. He had a dashcam in his vehicle.

5. The complainant sustained a partial amputation and lost sensation to the tip of his finger, which required multiple surgery. The nerve was irreparable. He had chronic pain for weeks. His left ankle also required surgery.

6. The defence case was that it was the complainant who caused the accident; he was both violent and aggressive. The applicant gave evidence that the complainant attempted to undertake him. In the process of hitting the Audi, the complainant fell off his bicycle and struck the kerb. The applicant called the police around 30 minutes after the incident and stated that damage had been caused to his vehicle. He received a crime reference number. He was not interviewed by the police.

7. The main issue for the jury was whether the applicant's driving fell far below that expected of a competent and careful driver.

8. The trial was listed to begin on 30<sup>th</sup> May 2023. The applicant represented himself. At a case management hearing on 4 May 2023 the applicant said that the proceedings should be stayed. He submitted that as the dashcam footage in Mr Paciello's vehicle was not available, the continuation of the case amounted to an abuse of process. Counsel for the prosecution submitted that no abuse was involved, relying upon the decision of the Divisional Court in *R(Ibrahim) v Feltham Magistrates' Court* [2001] 1 WLR 1293. His Honour Judge Reid directed that the prosecution should make inquiries and explain the process to the applicant. This was dealt with in a witness statement provided by Mr Swain dated 16<sup>th</sup> May 2023, to which we will return.

9. A further case management hearing was held before His Honour Judge Seed KC on 26

May 2023. The applicant submitted that as the prosecution had failed to serve further evidence properly (because it had been sent to his previous address), he needed additional time within which to review the material and to seek legal advice.

10. Counsel for the prosecution accepted that the material had been sent to the applicant's old address, but paper copies of the documentation would be provided to him that day and the audio recordings of the 999 telephone conversations would be provided on the first day of the trial. The transcripts of those conversations had been given to the applicant previously.

11. The judge ruled that the trial would remain listed for 20 May 2023. He did not accept that there was any justification for the matter to be adjourned generally, or to be refixed for another trial date. However, he ruled that the trial would not begin before 2 pm and that no witnesses would be called on the first day.

12. When the trial began before Mr Recorder Barnet on 30 May 2023 the applicant again asked for the trial to be adjourned on essentially the same grounds. The judge ruled that the trial would start that day but the applicant would have the rest of the day to go through the material.

13. The Respondent's Notice filed on 4<sup>th</sup> August 2023 in response to the application for leave to appeal against conviction contains a very helpful and detailed chronology, which sets out the key events between the date of the offence and the applicant's ultimate appearance for trial.

14. On 14<sup>th</sup> and 15<sup>th</sup> February 2024, this court received applications on behalf of the applicant that the renewed application for leave to appeal be adjourned so that he could be represented by new counsel. We refused both applications. In our judgment it was clear that

they were made at the last moment. They are consistent with the manipulative approach that the applicant has taken towards the trial process, as is plainly revealed by the Respondent's Notice.

15. With regards to the complaint about the submission of late material, the prosecution has explained that, although they accepted that the bundle they produced for the trial had been sent to an old address for the applicant, it nevertheless contained material which had been provided to him by other means about ten weeks before the trial. So, in essence, he was not taken by surprise by the presentation of the documents in the form of a convenient paper bundle. The prosecution said that the only additional evidence which they had served after the date when material was previously disclosed was the statement of Mr Tristan Swain, dated 16<sup>th</sup> May 2023. That had been uploaded to the Digital Case System on 19<sup>th</sup> May 2023. This point appears in the Respondent's chronology at entry 25 and at entry 37. It is explained that the prosecution sought to serve Mr Swain's statement on the applicant at court after the hearing on 26<sup>th</sup> May 2023, but he was not prepared to wait to receive it. A similar point is also made in entry 38.

16. The applicant has not made any material challenge to this explanation by the prosecution at any point. We are satisfied that there is no possible basis upon which either of the decisions not to adjourn the trial could possibly be criticised. No prejudice was suffered by the applicant in the way that the trial was handled, even allowing for the fact that he was a litigant in person.

17. It was suggested at the trial that the judge should rule on the admissibility of Mr Swain's statement. The prosecutor said that ordinarily the contents of the statement would be agreed, but he recognised that the applicant was a litigant in person. The applicant said that he would not agree the document as he had a number of questions about it.

18. We have carefully considered the information in Mr Swain's statement. It is a very short document indeed. In summary, it contains two paragraphs, the first of which confirms that on 17<sup>th</sup> June 2021 the case manager had contacted Lambeth Council by email and requested that a check be made on the local cameras for CCTV footage. Full details were provided, confirming the day, date, time and place of the incident. On the same day a response was received confirming that the incident was not caught on camera.

19. That information was contained in the Respondent's Notice served in August of last year. It appears at entry 6, an entry for 2<sup>nd</sup> July 2022, when the information was conveyed to the applicant. We also note that on 6<sup>th</sup> July 2022 the applicant wrote to the officer concerned thanking her for checking these matters and expressing his appreciation for her assistance.

20. In the second paragraph of his statement Mr Swain says that on 27<sup>th</sup> September 2022 Mr Paciello was contacted by the case officer regarding any dashcam footage which he might have. He responded on the same day and confirmed that he checked it an hour after the incident, but for some reason it had not filmed the few relevant hours. That information is also set out in the Respondent's Notice. It appears in the entries to which we have already referred and so the position was made clear to the applicant as long ago as September 2022.

21. We appreciate that in a handwritten note at 7.45 am on the day of the incident, Mr Paciello suggested that he had deleted the dash footage – a slightly different explanation. But, either way, there is no conceivable basis upon which it could be said that the prosecution should be stayed as an abuse of process. There was no failure by the prosecution to take appropriate steps to ascertain whether any such material existed which could have led to the trial being stayed.

22. The applicant has made two applications to adduce fresh evidence which we have

carefully considered. They do not contain a witness statement. Instead, there is a brief assertion by the applicant as to what might be said by Mr Paciello and Mr Swain. No proper details are provided of what additional evidence they could give, different from that which was provided to the trial. This material does not satisfy the requirements for admissibility under s. 23 of the 1968 Act.

23. The letter from Mr Cullen has not been provided to the court as fresh evidence in the appropriate way, but all three matters were before the single judge and were fully considered by him in his reasons for refusing the application for leave to appeal. In particular, the material from Mr Cullen would not be admissible and it had no bearing on the conduct of the trial.

24. The single judge had the benefit of the very detailed Respondent's Notice to which we have referred. He gave detailed reasons as to why the application for leave to appeal against conviction should be refused on the basis that it was wholly unarguable.

25. We have considered each of the matters which the applicant seeks to raise. We have considered the Respondent's Notice and the careful reasoning of the single judge. We entirely agree with what the single judge has stated. We note in particular that there has been no attempt by the applicant in renewing his application to explain why the Respondent's Notice is inaccurate, or why the single judge was wrong. In these circumstances we do not find it necessary to repeat the single judge's reasons in this judgment.

26. The proposed grounds of appeal are wholly unarguable. We refuse the applications for leave to call additional evidence and we refuse also the renewed application for leave to appeal against conviction. The applicant should consider himself fortunate that the court does not propose to make a loss of time order in this instance.

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