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IN THE COURT OF APPEAL
CRIMINAL DIVISION
IN THE COURT MARTIAL APPEAL CHAMBER



CASE NO 202301744/B5
NCN: [2024] EWCA Crim 620

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 23 May 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE JAY

MRS JUSTICE FOSTER

REX

V

SHAUN NICHOLAS INTEGRITY

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MR M LEVY appeared on behalf of the Applicant.
MS L JONES appeared on behalf of the Service Prosecuting Authority

J U D G M E N T

LADY JUSTICE MACUR:

1. On 23 March 2023, the applicant was convicted of committing a criminal conduct offence, contrary to section 42 of the Armed Forces Act 2006, namely assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861. On the same day, the court martial sentenced the applicant to 90 days' service detention, reduced him in rank to Private and also made a Service compensation order in the sum of £750.
2. He renews his application for an extension of time in which to apply for permission to appeal against conviction following refusal by the single judge.

The Facts

3. On 14 July 2022, a barbecue was held at the barracks where the applicant resided. Around 10.00 pm the complainant (Craftsman Young) and two others were sat outside the accommodation block. The complainant had been drinking and decided that it would be funny to throw a sausage into the window of a nearby room in the block. It transpired that he threw it into the applicant's room. The applicant came outside and punched him once to the left side of his face. He then went back inside. The complainant later went to the applicant to apologise.
4. Subsequently, X-rays showed the complainant to have suffered multiple fractures to his cheek bone and bruising and redness around his eye, which was treated by painkillers and the application of ice. The prosecution case was that the applicant had unlawfully and without provocation punched the complainant aggressively in circumstances where self-defence did not arise; that is, the complainant said that the applicant came straight to him and he, the complainant, apologised. However, the applicant then punched him in

the face with a right hook, which was hard enough to break bone. The complainant said that he had his arms out, palms open and had not moved until after the punch. The other two men who had been present with the complainant gave evidence supporting his account.

5. The applicant's case was that he had been acting in reasonable self-defence at all times. The single punch by him to the left side of the complainant's face was not in dispute. He gave evidence at trial, to the effect that when he challenged the complainant, the complainant made a quick move, bobbing down to the right and that he had his hands out. He said that they had lost eye contact and that he felt that the complainant was going to hit him. He was concerned for his safety. It all happened in the heat of the moment, and he had had to make an instant decision. He had felt very threatened, so he punched the complainant. He explained that the other two men were right behind the complainant saying things like: "Yeah, yeah, it's happening now" in excitement. He felt surrounded. The applicant was of previous good character, with no convictions or cautions or any military findings against him.
6. The Deputy Judge Advocate's legal direction to the Board on self-defence was in conventional terms. No issue is now taken as to the substantive content of that direction; the sole ground of appeal upon which this renewed application relies is that the Deputy Judge Advocate was wrong to direct the Board on the second limb, relating to the reasonableness of the amount of force used, which it is asserted, had not been advanced as part of the prosecution case.
7. This draft ground was not considered by the single judge. Mr Levy, who now appears on behalf of the applicant, submits that the orthodox two-limb direction was inappropriate and should have been modified and that counsel appearing for the applicant should never

have agreed otherwise. He submits that it was never part of the prosecution case that the force used was excessive; rather that the case was advanced on the basis that it was an unlawful/unnecessary attack, not carried out in the belief of the necessity to act in self-defence. There was no mention or suggestion in the prosecution opening or final address, which indicated that the amount of force used was excessive and neither was it clearly put or suggested in cross-examination of the applicant.

It is impossible to know upon which basis the Board convicted the applicant; the applicant may have been convicted on a basis never advanced by prosecution, and not dealt with adequately or at all by the defence.

8. Mr Levy relies upon the Judges' Bench Book (edition August 2023, at paragraphs 23 and 24). Paragraph 23 indicates:

“A jury does not have to be told the whole of the law, they need directions to enable them to resolve the issue of whether the defendant should be found guilty or not guilty.

24. In some cases the only real issue for a jury is whether they are sure that the force used by the defendant was unlawful or whether it may have been used in lawful self-defence, that is the issue of the reasonableness of the force used does not arise because the parties agree that, if the force was used in self-defence, it was reasonable. In such circumstances, there is no need to burden the jury with directions about the second limb (see R v Keen and R v McGrath [2010] EWCA Crim 25 414.)”

9. The respondent makes rejoinder in written Respondent's Notice to the grounds in terms that:
 - (i) Court martial defence counsel did not object to the draft written directions which were provided in advance by the judge. It is difficult to see how the defence case would have been conducted differently and the applicant's counsel appears to have accepted that reasonable force was a live issue, as she specifically mentioned this in her closing speech.

(ii) There was no agreement that the single aggressive forceful punch was reasonable in the circumstances.

(iii) The applicant was asked in cross-examination that: “And it could be considered a hard punch, could it not?” to which he responded: “I was acting out of instinct so I can’t measure the type of force that I’ve used.” He was also asked to agree that the forceful punch caused a significant injury.

(iv) The court martial sentencing exercise is carried out by Judge Advocate and the lay Board members acting together. As such, prior to reaching a decision or sentencing, the judge advocate would have been appraised on which basis the Board had convicted the applicant. Had the applicant’s counsel wished to make inquiries to support mitigation or sentencing submissions, she could have done so.

(v) In the alternative, if the Deputy Judge Advocate was wrong to give directions on both limbs to the Board, the applicant has failed to satisfactorily demonstrate why the verdict is not unsafe (see R v Johnson [2016] EWCA Crim 1613):

“...for there to have been some misdirection or error in the conduct of the trial. What is critical is whether the verdict is thereby rendered unsafe... The decision in any case must be fact-sensitive: a misdirection of law which was not, in reality, in relation to a true (or real) issue in the trial, does not thereby render a conviction unsafe.”

Discussion

10. We can dispose of this renewed application in very short order. We are satisfied that no agreement was reached between the prosecution and defence that the degree of force he used, if used in reasonable belief that he needed to defend himself, was ‘reasonable’. Mr Levy’s assertions to the contrary are not substantiated. This issue was visited in the course of evidence, as indicated in the Respondent’s Notice, and to which Mr Levy has

no answer. Further, we are told that the applicant's counsel did address this issue in her closing speech and made no objection to the proposed draft directions. We consider that this stance was entirely in keeping with the nature of the case and did not in any way indicate that she was negligent in conducting the applicant's defence.

11. The applicant conceded that he punched the complainant, which punch caused, obviously, significant injuries. It is unrealistic, and would have been unsafe from the applicant's perspective, for the Deputy Judge Advocate to have failed to have explained the concept of reasonable force, that is: "... in the heat of the moment, when fine judgments are difficult.... [and he] cannot be expected to weigh up with precision the exact amount of force required."
12. We fail to see how the full and correct legal direction renders the conviction arguably unsafe. This renewed application is dismissed. It is therefore unnecessary to consider any extension of time.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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