IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 201901764/B4-201901766/B4

NEUTRAL CITATION NO: [2021] EWCA Crim 1178

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 8 July 2021

LORD JUSTICE HOLROYDE

MR JUSTICE JAY

MRS JUSTICE STEYN DBE

REGINA

V

ANDREW SPENCER EVERSON

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The APPELLANT appeared in Person via Video Link.

MR J PRICE QC appeared on behalf of the Crown.

J U D G M E N T

1. LORD JUSTICE HOLROYDE: On 3 April 2019, after a trial in the Crown Court at Reading before Nicol J and a jury, the appellant was convicted of the murder of David Watkins. On the following day he was sentenced to life imprisonment with a minimum term of 27 years less 895 days in respect of time he had spent remanded in custody or on bail subject to a qualifying curfew.
2. He now appeals against his conviction by leave of the single judge on one ground relating to the judge's directions of law. In addition, he renews his application for leave to appeal against conviction on other grounds, which were refused by the single judge, and seeks leave to add further grounds. He also renews his application for leave to appeal against sentence following refusal by the single judge.
3. David Watkins was murdered as long ago as 14 January 1993. The appellant was arrested 10 days later and charged with murder. He stood trial initially in 1994. The jury returned a verdict of not guilty.
4. Following a cold case review some 20 years later, the prosecution in July 2018 obtained the leave of this court to quash the acquittal in accordance with the provisions of Part 10 of the Criminal Justice Act 2003. The decision can be found at [2018] EWCA Crim 1838. The Court was satisfied that new and compelling evidence was now available and that it was in the interests of justice for the acquittal to be quashed and a retrial ordered. Thus it was that the appellant stood trial in 2019.
5. For present purposes the relevant facts can be stated briefly. The appellant was a drug dealer. He had on occasions sold large quantities of cannabis to the deceased, David Watkins. On the evening of 14 January 1993 Mr Watkins left his family home carrying, it was said, £6,000 in bank notes. He met some friends and told one of them (Mr Bedwell) that he was expecting to buy cannabis from the appellant later that evening. Mr Watkins was last seen alive at about 8.30 pm. His body was found the following day in a lane bordered by woodland and rough undergrowth. He had been shot in the back of the head at close range, whilst kneeling or crouching, with a double-barrelled shotgun. £695 in bank notes was found in a bag which he was wearing. The murder weapon was never found. The prosecution case was that the appellant was short of money at the time and had murdered Watkins and stolen most of the cash.
6. When arrested and interviewed the appellant denied any involvement in the murder. He denied that he had supplied drugs to Mr Watkins, denied being a drug dealer and denied that he had met Mr Watkins on the night of the killing. He said that the cash found in his possession on arrest had been given to him by his father - an assertion which his father later refuted.
7. The appellant was arrested and interviewed again in 2015, after the decision had been taken to recharge him with the murder. He maintained his denial of killing Mr Watkins but, in contrast to his earlier interviews, he now admitted that he had sold cannabis to Mr Watkins on a number of occasions including on the evening of the murder. He also admitted that he had bought a shotgun as alleged in 1992, but said that he had disposed of it a short time later. He admitted that he had told lies in his 1993 interviews but said he had done so because he did not want to reveal his drug dealing actives.
8. At the trial in 2019 the prosecution relied on circumstantial evidence. This included evidence to the following effect:

    a witness Mr Aird, who had introduced the appellant to Mr Watkins in September 1992, said he had seen the appellant and another man in a car.

There were bags in the car containing a large quantity of cannabis and what appeared to be a shotgun;

in November 1992 the appellant bought a double-barrelled shotgun from a Mrs McCarthy;

a friend of the appellant, Mr Bayliss, gave evidence of the appellant's drug dealing and said that in late 1992 the appellant had shown him a double-barrelled shotgun. Another friend, Mr Pilbeam, gave similar evidence. He said that on 10 January 1993 (a date which could be ascertained by reference to a television programme he was watching) the appellant showed him a shotgun and asked him to obtain cartridges for it, which Mr Pilbeam refused to do.

in early 1993 the appellant was in financial difficulty. After the murder he paid off some debts and bought some furniture.

the police arrested the appellant for an unrelated matter on 16 January 1993. Approximately £3,500 in bank notes were seized from him. The notes were bundled and folded in the manner which Mr Watkins had been accustomed to use and Mr Watkins' fingerprints were found on two of them.

the appellant owned a Peugeot car. Some gunshot residue was found in it. Fibres from Mr Watkins' clothing matched those used in the manufacture of the seats in Peugeot cars of that type.

9. The prosecution additionally relied at trial on the admitted telling of lies by the appellant in his 1993 interviews. They did not seek to adduce evidence of all the appellant's many previous convictions but were permitted to adduce evidence of previous convictions in 1989 and 1999, for offences relating to shotguns.
10. The appellant's counsel challenged the admissibility of some of the evidence on which the prosecution relied. We shall say more about the judge's rulings when we address the relevant grounds of appeal.
11. The appellant did not give evidence. The case advanced on his behalf was that he was not short of money at the relevant time, had no motive to murder Mr Watkins and did not do so. There were others who might have been responsible for the killing. An expert witness was called on his behalf to challenge aspects of the prosecution evidence about the finding of gunshot residue in the appellant's car.
12. Following the appellant's conviction, counsel who had represented him at trial advised in favour of an appeal against both conviction and sentence. They settled five grounds of appeal against conviction and one of appeal against sentence. The single judge, as we have said, gave leave only in relation to one of the grounds of appeal against conviction.
13. The appellant's legal representatives gave notice they would seek to renew the other grounds to the full court. The notice of intention to renew was filed out of time but an acceptable explanation was given and we need say no more about that.
14. The appellant subsequently dispensed with his legal representatives, asserting that they had continuously ignored his instructions, requests and concerns and had manipulated him for their own benefit. He alleged that they were either incompetent or were deliberately sabotaging his defence. They had ignored his instructions as to grounds of appeal which he wished to put forward and had instead lodged grounds of appeal which he had not authorised. The appellant waived his legal professional privilege so that the lawyers could have an opportunity to respond to these allegations which they have done.

The appellant's response to their comments was that by denying his criticisms, they were continuing to undermine his appeal.

15. The appellant has subsequently put in a number of further grounds of appeal. He has done so having initially requested and been granted an adjournment of the hearing of his appeal which was initially listed in December 2020.The court authorised his being represented on appeal by different leading counsel. The appellant nominated one leading counsel, but that gentleman was not able to accept the instructions. The appellant thereafter chose to act in person. We have considered everything which he has put forward notwithstanding that in a number of respects there had been a failure to comply with the Criminal Procedure Rules. We make it plain that in deciding his appeal and applications we have focused on the merits of his grounds and not on technical or procedural issues.
16. The respondent has responded in writing to the various grounds of appeal and we have heard oral submissions today from Mr Price QC who also acted at trial.
17. We will briefly address in turn each of the grounds of appeal against conviction. We have had the advantage of being addressed at some length this afternoon by the appellant who, if we may say so, has been extremely articulate in stating the points which are of concern to him. We would also emphasise that we have well in mind, and fully understand, the importance of this case to him.
18. First, we consider the one ground on which the appellant has leave to appeal. The point which the single judge identified as arguable and as meriting consideration by the full court is that the trial judge, when directing the jury about how they should deal with the appellant's previous convictions, did not given an explicit direction not to treat the convictions as demonstrating any relevant propensity.
19. The judge gave his directions to the jury both in writing and orally. The relevant written direction formed part of a section in the document headed: "Bad character evidence and why we heard about it". It was in the following terms:

    i. "**Convictions for possession of a firearm in 1989, the defendant's account of that offence in interview and his conviction for the possession of two shotgun cartridges in 1999**

    ii. The evidence of the two convictions and of the defendant's own account in interviews in 1993 and 2015 of what he did with a shotgun in the Winston Francis incident are said by the prosecution to be a part of the evidence going to the true nature of [the appellant's] relationship with shotguns in 1993. They say that this evidence helps to undermine his claim made in October 2015 to have purchased the McCarthy shotgun out of mere passing curiosity and to have disposed of it only a few days later. Rather, they say it supports the evidence of [Pilbeam], that [the appellant] still had it on the 10th of January 1993 and thus he will have had it still on the 14th.

    iii. Furthermore, the prosecution submits that possession by [the appellant] of two shotgun cartridges in 1999, giving rise, they say,

to an inference that he again had access to a shotgun, helps to show that his lies in interview in 1993 when he denied any association with firearms were not borne out of fear for the consequence of such possession when a 'prohibited person'.

iv. It is for you to say whether these convictions do have these affects or whether they are not such (when taken with all of the evidence) to lead to these inferences. In any event, you must not convict Mr Everson wholly or mainly on the basis of these convictions."

20. The admissibility of that evidence was not challenged. It appears that in their submissions to the judge at trial, counsel on behalf of the appellant had not sought to argue that the previous convictions could not be evidence of a propensity at all. They accepted that the jury could find that the evidence showed that the appellant "has a tendency to commit offences of this type and so it is more likely that he was in possession of a gun on January 14 1993." They did however ask the judge to give a direction about the correct approach to such a finding.
21. In their advice on appeal counsel submitted that the judge should have given "a standard propensity direction". They argued that the evidence could be viewed by the jury as showing a propensity on the appellant's part to obtain and use firearms, and a direction in that regard was necessary.
22. For the respondent, Mr Price submits that the previous convictions manifestly did not provide evidence of a propensity to kill with a shotgun. No further direction in that regard was requested and none was necessary. He further submits that the evidence was capable of showing a propensity to possess a shotgun. The prosecution, however, specifically invited the judge to limit his direction to the narrower focus of the evidence.
23. The purpose of this evidence was to respond to the appellant's claim in the earlier interview that he had only possessed a shotgun (purchased from Mrs McCarthy) for a very short period rather than because of any wider practice of possessing or purchasing shotguns. Mr Price submits that the judge directed the jury perfectly properly in that regard. The narrower focus of the direction, he submits, was intended to assist the appellant and did so.
24. We have reflected on the submissions. We understand why the single judge felt that this point should be considered by the full court. Having considered it, however, we are satisfied that it does not cast any doubt on the safety of the conviction. The judge's direction correctly identified and made clear the limited purpose for which the jury could legitimately use the evidence of these previous convictions. It could not have assisted the appellant for the judge to add that the jury could not use it for a different purpose, which no one had suggested. No such direction was necessary in the circumstances of this case. We therefore reject this ground of appeal.
25. We turn next to the four grounds in respect of which the single judge refused leave but which the former legal representatives wish to argue on a renewed application to the Full Court. We bear in mind that the appellant claims that he never wished his counsel to put forward these grounds, and they should instead have argued different points. We are however satisfied, having considered the response of the legal representatives, that the appellant was at the time content to accept their advice. In fairness to Mr Everson, we consider these as grounds of appeal which at any rate his legal representatives thought to

be arguable, even if Mr Everson himself no longer supports them.

26. At trial it had been argued on a number of grounds that the prosecution should not be permitted to adduce evidence of what the appellant had said when interviewed under caution in 2015. Summarising these arguments very briefly, it had been admitted by the prosecution that the disclosure given to the then legal representative before interview had been unintentionally misleading about what had been said concerning the evidence of gunshot residue, when application was made to this court to quash the acquittal. Reliance was placed on that admitted error, and it was further submitted on behalf of the appellant that the solicitor who had represented him at that time had been incompetent and that the appellant should have had the assistance of an appropriate adult at interview. It was submitted that the admissions made by the appellant in the 2015 interview should be excluded under either section 76 or section 78 of the Police and Criminal Evidence Act 1984.
27. The judge addressed those arguments in a careful ruling. We having considered it a fresh and agree with the single judge that the trial judge's decision to admit this evidence was unarguably correct for the reasons given in the ruling.
28. Next, it was submitted that the evidence of an expert witness called by the prosecution to give evidence about matters relating to firearms and shotguns should not have been admitted. At trial the judge had been asked to exclude it on the basis that it had little or no probative value, was likely to be misinterpreted by the jury and had a serious prejudicial effect. The judge gave a ruling explaining why he rejected that submission.
29. We accept the written argument of the respondent that this ground of appeal is no more than an argument about the weight to be given to the evidence of the prosecution witness. That was a matter for the jury and the judge was correct to allow the evidence to go before them for their consideration. The appellant, as we have said, adduced expert evidence to a contradictory effect, and the admission of the prosecution evidence caused him no unfair prejudice.
30. Next, in the renewed grounds of appeal there was a criticism of the trial judge's ruling that the statements of a prosecution witness (Mr Cannon) could be admitted as hearsay evidence pursuant to section 116(2)(b) of the Criminal Justice Act 2003, on the ground that the witness was unfit to give oral evidence by reason of his mental ill-health. There was clear medical evidence, in a report from the witness's general practitioner dated 13 February 2019, that the witness had been diagnosed in 2003 as suffering from paranoid schizophrenia and had been taking anti-psychotic medication since that time. He had suffered a relapse in 2016, since when he had also taken additional medication. He needed ongoing support, was unable to work and in the opinion of the GP was unfit to be a witness. The judge in his ruling made the compelling point that he was bound to take very seriously the GP's evidence that the witness could suffer a relapse leading to a psychotic episode if he was required to give evidence.
31. Like the single judge, we can see no arguable basis on which the judge's ruling in this regard could be challenged. On the evidence before him, the judge was plainly entitled to find that the witness was unfit to give evidence through ill-health.
32. Finally, complaint was made that the judge refused to allow the appellant's counsel to cross-examine a police officer about the error in the pre-interview disclosure notice as to the status of the evidence relating to gunshot residue. In another careful ruling the judge held that the inaccuracy in the disclosure notice, "such as it was", was not material to any

issue which the jury had to decide. He was, in our view, unarguably correct. The proposed cross-examination was irrelevant and could only have served to divert the jury's attention from the real issues.

33. For those reasons, which are essentially the same as were given by the single judge, we are satisfied that none of those four grounds of appeal is arguable.
34. We turn to the points raised by the appellant in his letters to the court, dated or received 3 December 2020, 16 April 2021 and 14 June 2021, and to the further points made orally by the appellant in his address to us today. There is some overlap between the various points. We address them as follows.
35. First, the appellant points out that there was no direct evidence that he was at the scene of the murder and no scientific evidence linking him to that scene. That is correct, as far as it goes, but it does not provide him with a successful ground of appeal. The absence of such evidence meant that there were points which could be made on the appellant's behalf to the jury, but it did not mean that he was not the murderer. This was a circumstantial case, in which the jury were invited to consider a number of strands of evidence which were said to lead to the conclusion that the appellant was the murderer. The jury were entitled to accept that circumstantial evidence as proving the appellant's guilt.
36. Secondly, the appellant asserts that he was not in financial difficulty at the relevant time and the prosecution suggested motive therefore could not be correct. Mr Everson has developed this point with some vigour in his submissions to us today. As we have already indicated, it was a point which was advanced on his behalf at trial, and was there for the jury's consideration. Thus, for example, a prosecution witness who asserted that the appellant in late 1992 or early 1993 was complaining that he would have to sell his car could be cross-examined in accordance with the appellant's instructions. The position has not changed in this regard since the trial. Although the appellant gave an account when interviewed under caution, and the defence that he was not short of money was advanced on his behalf, he chose not to give evidence and therefore did not himself provide any evidence to contradict the motive suggested by the prosecution.
37. In our judgment, this ground of appeal is at best a jury point, both as set out in writing by Mr Everson and as expanded orally by him today. In our view, it cannot assist him at this stage of the proceedings.
38. Next, the appellant complained in his written grounds that the prosecution relied on a photograph of a shotgun cartridge which had no connection to the murder. Again, that is correct in one sense but does not provide an arguable ground of appeal. The prosecution did not suggest that the cartridge shown in the photograph was connected to the murder, they relied on it on the finding of it, in a remote location said to have been visited by the appellant, as further evidence of his connection to a shotgun. It was admissible for that purpose. Mr Everson has addressed us today about the suggested unreliability of the witness who directed the police to the scene at which the cartridge was found, but that was simply a matter for the jury's consideration if it was felt appropriate to raise it at trial. Defence counsel were, on any view, able to make the point that it was a cartridge which would not produce gunshot residue of the kind found in the appellant's car.
39. Fourthly, the appellant put forward in writing, and has expanded at length today, a number of allegations of police misconduct and a number of criticisms of the nature of the prosecution evidence. Summarising these compendiously, he alleges a failure to disclose material relating to others who could have committed the murder; he makes

allegations about the witness Mr Cannon; he argues that since Mr Cannon was not available to be cross-examined, it should have been possible for defence counsel to cross-examine a police officer about suggested dealings between Mr Cannon and Mr Bayliss; he complains that Mr Airds should not have been permitted to make a further statement in which he raised a new point for the first time; and he suggests that a number of witnesses must have been offered "deals" by the police. In addition, as we have already said, the appellant makes a number of criticisms of, and allegations against, his former legal representatives.

40. In his oral submissions today the appellant has -- we think for the first time -- added to those latter criticisms and allegations a complaint about his decision not to give evidence at trial: it was, he submits, the result of a misrepresentation to him of the reasons why counsel had advised him as they did on that point.

41. We think it best to address these various arguments together. There were agreed facts before the jury as to the arrest and interview of a number of persons who were initially suspected of the murder. The appellant's oral submissions make plain that the points he is raising before us are based upon material disclosed to him at trial, as a result of an application for public interest immunity. That being so, we accept Mr Price's submission that relevant disclosure was made and that the material on which the defence wished to rely was placed before the jury. Defence counsel were able to cross-examine a witness, Mr Wardle (to whom Mr Everson refers in his submissions). Mr Wardle was the subject of some of the agreed facts to which we have referred. Counsel at trial were able to cross-examine the witness Mr Miller, who was the only person to give evidence of any "deal". Counsel were also able to explore before the jury the fact that a witness, Mr Robinson, had refused to sign a statement on the grounds that it did not contain his evidence. They were of course able to cross-examine Mr Aird about the change in his account and about the fact that he had added a potentially significant point at a comparatively late stage.

42. We understand why these points are of importance to Mr Everson, but we can see no basis for any suggestion that he was unfairly prejudiced by any of the prosecution evidence or was in any way handicapped in presenting his case.

43. Nor do we see any basis for the allegations that the former legal representatives were, at best, incompetent. We note as to the further allegation, that the appellant, in suggesting that his former representatives were and still are deliberately undermining his defence and his appeal, has identified no reason why they might wish to do such a thing. It may be that his allegation stems from irritation that they did not put forward all the assertions which he would have wished them to make as to police misconduct, improper deals with witnesses and the like. If so, that irritation is based on a misunderstanding. Although counsel act on the instructions of their lay client and put forward his case, they are not required to say and do everything he wishes. As counsel have explained in their written response to the criticisms made of them, there was no basis for the allegations of police corruption which the appellant wished them to put forward. It would therefore have been professionally improper for them to make serious allegations for which there was no foundation. It would also have been damaging to the appellant's case. It could only have lowered him in the jury's estimation if he was seen to be making baseless allegations against others instead of addressing the evidence which implicated him.

44. We think that the appellant, with respect, also has a mistaken and unrealistic view of how

his case might have been improved by cross-examination of one or more police officers about the conduct of others whom the appellant suggests may have been implicated in the murder. The issue for the jury was whether the prosecution had proved for sure that the appellant was the murderer. We doubt if any of the cross-examination which the appellant suggests should have been advanced would have been of any relevance at all. But even if it might have been, there is nothing in his written and oral grounds of appeal which provides any basis for thinking that such cross-examination would have assisted his case.

45. It follows that we see no basis for the appellant's criticisms of the way the prosecution and defence cases were presented to the jury at trial. That being so, he cannot now seek a retrial in order to allow him to conduct his case in a different way. We are not persuaded by his repeated submission that if only he had known then all that he knows now, his case would have been very different. The simple fact is that the circumstantial evidence against the appellant was strong. It was uncontradicted by any evidence from the appellant himself. There was an ample evidential basis for the jury to convict and there was no error of law or serious irregularity in the course of the trial.
46. Each member of this Court has spent a considerable time reading and considering the many points put forward by the appellant. We have listened carefully to the articulate and helpful submissions which he has made to us today. We are satisfied that there is no arguable ground for questioning the safety of this conviction. We therefore dismiss the appeal against conviction and we refuse the renewed application for leave to appeal on the basis of the four grounds rejected by the single judge. We refuse the applications for leave to amend the grounds of appeal and leave to appeal in respect of the proposed new grounds of the appellant's own composition.
47. We turn to the renewed application for leave to appeal against sentence, which is put forward on the ground that the minimum term specified by the judge was manifestly excessive in length. Although Mr Everson told us that he has entirely understandably been concentrating on the issues relating to conviction, and therefore did not have any further oral submissions to make in relation to sentence, we are satisfied that all relevant points have been made in the written grounds of appeal advanced by his former representatives.
48. If the appellant had fallen to be sentenced under the provisions of schedule 21 to the Criminal Justice Act 2003, he could have expected a minimum term in excess of 30 years. Because of the date of the offence the judge was required by schedule 22 to that Act to adjust that sentence if necessary, to ensure that the minimum term did not exceed that which would have been imposed by the Secretary of State under the system which applied before the 2003 Act.
49. The judge in his sentencing remarks followed the correct approach. He rightly referred to the terror which Mr Watkins must have felt in the moments before he was executed. He identified the significant planning and the appellant's relevant previous convictions as aggravating features. He identified two features which made the offence particularly serious: the use of a gun and the purpose of robbery. He took into account three mitigating features: the strain on the appellant of facing trial for a second time; his unhappy personal history and difficult childhood; and the recent abating of his criminal record. The judge referred correctly to the pre-2003 practice stated by the then Lord Chief Justice in a letter dated 10 February 1997. He concluded that the minimum term

which would have been appropriate under the 2003 Act should be reduced to one of 27 years.

50. Like the single judge, we are satisfied that there is no basis on which it could be argued that the minimum term was manifestly excessive. This was a very serious offence of murder. It had the grave aggravating features mentioned by the judge, to which we would add that it was committed against a background of drug-dealing activity. There was in truth scant mitigation. A minimum term of 27 years was well within the range properly open to the judge. The renewed application for leave to appeal against sentence must accordingly be refused.

51. The effect of our decisions is that the appellant remains convicted of murder and his sentence remains as before.