IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202104068/B3-202104069/B3
[2022] EWCA CRIM 1487

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 25 October 2022

Before:

LADY JUSTICE SIMLER DBE

MR JUSTICE JAY

MRS JUSTICE COCKERILL DBE

REX

V

IBRAHIM KHAN

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MR N MIAN KC & MS M KARAISKOS appeared on behalf of the Applicant.

J U D G M E N T

LADY JUSTICE SIMLER:

Introduction

1. Between 15 and 29 November 2021 in the Crown Court at Luton before Goss J and a jury, the applicant, Ibrahim Khan, was tried and ultimately convicted of murder (count 2) and having an article with a blade or point in a public place (count 1). He was sentenced on 30 November 2021, by the same judge, for the offence of murder, to be detained during Her Majesty's Pleasure with a minimum term of 16 years less 169 days spent on remand and in relation to count 1, no separate penalty imposed. Appropriate ancillary orders were made.

2. The applicant was represented at trial by Liberty Law Solicitors and counsel, Mr Naeem Mian KC leading Ms Maria Karaiskos. The applicant now renews his applications for leave to appeal against conviction and sentence and for representation orders in respect of his defence team, who appear pro bono on these applications. We are grateful to both counsel for the written and oral submissions that we have received.

The facts

3. On 8 June 2021 Humza Hussain (then 16 years old) like the applicant, was fatally stabbed to death outside Challney High School for Boys in Stoneygate Street in Luton. Three stab wounds were inflicted to his chest, using a knife which the applicant had taken with him to the scene. One of the stab wounds involved the knife passing almost through Hussain's body to a depth of just over 20 centimetres. A second wound travelled 13 centimetres into his chest and back. The stabbing took place in a busy street in broad daylight when children were leaving the school. Members of the public and emergency services tried to save Hussain's life, but he was pronounced dead approximately two hours later at 6 pm that evening.

4. There was no issue that it was the applicant who inflicted all of the fatal injuries to Hussain. The only issue was whether the applicant was acting in self-defence and used the knife in self-defence or accidentally.

5. The stabbing was the culmination of a history of animosity between the applicant and Hussain. Both were at primary school together and then attended Challney High School for Boys. There had been an occasion when both their fathers had attempted to resolve the conflict between the two boys by way of a mediation type meeting undertaken by a football coach. During that meeting both boys agreed to stay out of one another's way.

6. Notwithstanding that meeting, on 7 October 2020, the applicant was set upon by Humza Hussain and three friends in the school playground. The applicant was punched, kicked and stamped on. He suffered a bloody nose and other soft tissue injuries, all of which were captured on CCTV. As a result of the attack on the applicant, three of Humza Hussain's group (his friend Sameer Idrees, his cousin Abdul Hussain, and another boy) were permanently excluded from the school.

7. A month later on 7 November 2020, another incident took place. This time Humza Hussain and his cousin Abdul were lured to Chaul End Park and attacked by the applicant and four other boys. They were punched and kicked. At one point the applicant recorded the attack on a mobile phone, demanding that Humza Hussain apologise for the school playground attack. During that incident Humza Hussain was stabbed in his arm with a small knife and the applicant could be heard urging the boy with the knife, who was in fact the applicant's cousin, to "shank him" and then saying: "Humza just remember you got shanked". This was recorded on a mobile phone. Humza Hussain was detained in hospital for four days following that attack.

8. The occasion of the fatal stabbing was preceded by a period during which the applicant was on his bicycle loitering outside the school. Adeeb Idrees (aged 14) and the younger

brother of Sameer Idrees, was leaving school at about 3 pm. Before he left the grounds, the applicant confronted Adeeb and said he wanted to talk to him in a nearby alleyway. Adeeb was scared. He saw the outline of a knife in the applicant's tracksuit. Teachers intervened at that point and Adeeb was taken back into the classroom for his own safety. Adeeb immediately telephoned his older brother Sameer. That telephone call led Sameer Idrees and Humza Hussain to travel to the school. Sameer Idrees came armed with a hammer which appeared to have been broken and had the head and handle in two parts. Though at trial and now, it is asserted on the applicant's behalf that Sameer Idrees was also armed with a knife, no knife was in fact recovered and evidence of any such knife was far from clear. Humza Hussain was armed with a metal file or rasp.

9. At trial the Crown relied on evidence of the animosity between the applicant and Humza Hussain, including the CCTV footage of the earlier incidents and Humza Hussain's witness statement, which was read, regarding the incident in the park.

10. There was CCTV footage from the school grounds on the day of the stabbing which showed the applicant outside the school gates on his bicycle and also the start of the confrontation between the applicant and the two boys.

11. The Crown's case was that the applicant attacked both boys with the knife and the footage demonstrated his thrusting motions in the direction of Humza Hussain and showed him to be the aggressor holding a dangerous knife. There were also eyewitness accounts of the stabbing, and the knife (described as a "savage" weapon) was an exhibit. There was expert medical evidence about the number of stab wounds, their depth and force and there were also photographs of the deceased's injuries taken at the scene. These were relied on as part of the prosecution case that the injuries were not inflicted in lawful self-defence. The knife was found in the shed in the garden belonging to the applicant's home. It was forensically tested. Blood was found on the tip and was forensically linked to Humza Hussain.

12. The Crown relied on lies told by the applicant to police and ambulance staff including that he had been a victim of an attack and had been set upon by two men wearing masks and hoods each carrying knives (in one case a Zombie knife, 22 inches long and the other a Rambo knife, 18 inches long).

13. The Crown also relied on lies told in the applicant's prepared statement to police and on the fact that his mobile telephone disappeared notwithstanding that it was depicted in CCTV footage on the day of the stabbing. The Crown also relied on bad character evidence in relation to the previous attack in Chaul End Park and on the applicant's failure to give evidence at his trial.

14. The applicant's defence case was that he was attacked outside the school by Sameer Idrees and Humza Hussain in a joint attack by chance. It was his case that Sameer threw the head of the hammer at him and that Humza Hussain grabbed him from behind. He drew the knife that he had been carrying in self-defence to ward off his attackers and he stabbed Humza Hussain in self-defence and/or by accident.

15. The applicant had given a prepared statement to police in interview, in which he explained that police and youth services had previously warned him that his life was in danger. He said that was why he had resorted to carrying a knife in self-defence, believing that he was in imminent danger. Otherwise the applicant did not answer questions in interview and nor did he give evidence in his own defence at trial. He relied on his previous good character, on the evidence that Sameer Idrees and Humza Hussain arrived at the scene armed with weapons, namely the hammer and the rasp, and that another prosecution eyewitness said Sameer Idrees had a knife. He relied on the evidence from the Crown showing that Sameer Idrees was first to produce and use a weapon, namely the hammer, and that it was a joint attack by two against one. He also relied on the suggestion in the Crown's opening that Sameer Idrees was defending himself from the applicant and their suggestion of

evidence of the seriousness of the defensive wounds caused to his hands, arguing that it was not consistent with the prosecution failing to call Sameer Idrees as a witness for the prosecution. He relied on the fact that the applicant himself was injured in the attack and on the trail of blood that was left by him from the scene to his home, where he arrived and collapsed in the garden, requiring hospital treatment. He sustained a cut to his wrist which severed the tendons in his arm and required surgery as well as a puncture wound to his left arm and a wound to his temple. Those injuries were also photographed at the hospital where he was treated.

The applications

16. On the application for permission to appeal conviction, both in writing and orally, Mr Mian KC submitted that the judge failed to sum up the defence case in a balanced and comprehensive way. Particular complaint is made about the way in which the judge addressed the prepared statement to police. Moreover, whilst recognising that it was not obligatory for the judge to summarise the defence closing speech, he submitted that the judge nonetheless made insufficient reference to much of the evidence relied upon by the defence in the course of his summing-up.

17. Carefully, as those submissions were made, we do not accept them. It is undoubtedly the case that it is part of a judge's duty to identify the defence in his or her summing up, but the way in which that is done inevitably depends on the circumstances of the case. Here the applicant made a prepared statement rather than answering questions in interview, and he did not give evidence in his defence at trial.

18. In R v Singh-Mann [2014] EWCA Crim 717, this Court (Fulford LJ) said at paragraph 90:

> "... it is clear that when a defendant has said little or nothing in interview and has elected not to give or call evidence, ordinarily the limit of the judge's duty is simply to remind the jury of 'such assistance, if any, as (defence) counsel had been able to extract from the Crown's witnesses in cross-examination' and any 'significant points made in defence counsel's speech'. In this context, it is to be stressed that in order to present a defence to

> the charges the defendant is not compelled to give or to call evidence; instead, he is entitled to rely on evidence presented by the prosecution or by his co-accused when advancing arguments for the jury's consideration as to whether the prosecution has established his guilt. The rehearsal of this material by the judge does not necessarily have to be extensive or detailed – indeed, frequently it will be sufficient merely to identify the central submissions and the evidence that underpins them – but the judge must generally ensure that the jury receives a coherent rehearsal of the main arguments that are being advanced by the accused."

Those observations were approved and applied by this Court in R v Lunkulu [2015] EWCA Crim 1350, and we too endorse them.

19. In our judgment, the summing up was sufficiently balanced and fair and the defence case was adequately summarised by the experienced judge in this case.

20. Early on in his summing up the judge set out the defence case based on the prepared statement at interview. He referred expressly to the warning that the applicant said that he had received that his life was at risk, and that he had been advised to wear a stab vest. He referred to the fact that the applicant said he had a knife on him "out of fear for my safety". He said the defence say he had good reason to be armed to defend himself from what he feared was an imminent attack. A little later the judge set out the defence case relating to murder. He said:

> "The defendant raises two potential defences to the charge of murder. It is not for him to prove either of them. It is for the prosecution to make you sure that neither applies in his case. His case is that the use of the knife was not unlawful because he did not deliberately stab Humza Hussain and he was acting in reasonable self-defence, as I shall define it. Let me explain these elements in more detail."

21. The judge then went on to do precisely that. He provided the jury with what was a detailed and clearly analysed summary of the defence case against the legal framework. This was more than merely the identification of the central submissions in the case. The judge provided a coherent rehearsal of the main arguments advanced on the applicant's behalf.

22. In the second part of the summing up the judge referred to the prepared statement and

made clear that the jury would have the prepared statement in retirement. He told the jury that the applicant's reason for being in the area of the school was that he was going on a bike ride with his friend. He went on to summarise for the jury that the applicant had:

> "... stated he had been attacked without warning by Humza Hussain and [Sameer] who were armed with a machete and a large knife [respectively]. He did not pull out his knife until he got hit on the forearm by Humza with a machete. He did that in order to defend himself. He was struck several times with the knives and simply stood his ground with his arm outstretched when Humza came at him and swung at him with his machete. He took the opportunity to escape on his bike and went home.
> He had his knife on him when he went out – when he went back into his home but he did not know where it went. He only struck each of them, that's Humza and [Sameer], once. He was just trying to save himself. As I say, you can refer to his statement when you retire."

23. The judge also referenced the background between these boys. He referenced the attempt at mediation and the long standing animosity, together with the incidents that preceded the fatal attack. The judge expressly referred the jury to the agreed facts. It was not unfair not to recite those agreed facts given that they were contained in a document that the jury had in retirement.

24. Moreover, we can see nothing wrong or unfair in the fact that the judge did not seek to analyse each and every one of the points made on behalf of the defence in a single passage. It seems to us, overall, that the judge sufficiently set out the evidence heard by the jury in a way that made that evidence relevant to their considerations. He identified the four prosecution witnesses Muhammad Haroon, John Fanning Milstead, Adil Ahmed and Ronald Burk and summarised what was said by those witnesses. He referred to the phone evidence and timeline and he addressed the absence of the applicant's own mobile phone in a way that was far from unfair.

25. Mr Mian expressly accepted that the judge was not obliged to rehearse the closing submissions made by the defence, notwithstanding the initial written complaint to this effect. That was a correct concession to make. The judge referred to the submissions and

also to the difference between submissions and evidence. We can see no basis for criticising his approach in that regard either. Ultimately, we are entirely satisfied that the jury were properly directed in relation to the applicant's defence case. There is nothing in the written grounds of appeal or the ground advanced in relation to the prepared statement that even arguably undermines the safety of the applicant's conviction in this case. Accordingly, the application for permission to appeal against conviction is refused.

26. We turn therefore to the sentence application. The applicant was born on 27 April 2005. He was of good character. By agreement between all parties no pre-sentence report was requested in relation to him. We are satisfied that such a report was unnecessary then and is not now necessary.

27. The court had victim personal statements from Asim Hussain (Humza Hussain's father) dated 23 November and 26 November 2021 and we too have read those moving statements. The judge applied the provisions of section 322 and schedule 21 of the Sentencing Act 2020. By reason of the applicant's age he took the appropriate starting point of 12 years for determining the minimum term.

28. There can be no doubt that an appropriate upward adjustment had then to be made to address the full seriousness and circumstances of this offence. The judge said the offence was aggravated by being a planned and premeditated confrontation, whereby the applicant in effect lured Sameer Idrees and Humza Hussain to the school for a fight. The applicant took with him to the scene a large and fearsome knife which he took out to use in a busy public place, close to a school, in the presence of many people, including children, who were no doubt distressed and traumatised by the horror of the event. There was an attempt to conceal the weapon and the applicant disposed of or arranged for the disposal of his mobile phone, thereby making his communications over social media irrecoverable.

29. In terms of mitigating factors, the judge identified the use of the large knife to inflict two

very deep stab wounds to the front of the chest and said the nature and position of the wounds meant he could be sure that the applicant used the knife with an intention to kill in that moment. This was not therefore a mitigating feature.

30. The applicant had no previous convictions or cautions but the judge was in no doubt that he planned the previous attack on Humza Hussain and his cousin in Chaul End Park on 7 November, in which the applicant had incited one of the other boys to use a small knife to wound Humza Hussain. Although the applicant did not give evidence the judge reached the conclusion that he was clearly streetwise, not unintelligent and not unduly immature or led by others. The judge, as we have said, took account of the offence of having a bladed article in a public place in fixing the minimum term.

31. On behalf of the applicant, in relation to the application for leave to appeal against sentence, Mr Mian accepted that there were undoubtedly aggravating factors that warranted an upward adjustment from the starting point of 12 years in this case. However, he contended that the end point of 16 years was simply too high and failed to have regard to the applicant's youth (he was 16 at the date of the offence) and the principles of sentencing children and young people. Moreover, he submitted that the judge failed to have regard to the wider context of this case, including the earlier incidents involving these boys and to the significant fact that at the time the applicant inflicted the fatal stab wounds, he was being attacked by two other armed boys.

32. We have considered those grounds with care but have concluded that they too are unarguable. In our judgment the judge fully and fairly accounted for the applicant's age, both in the lower starting point taken by the judge and in the relatively limited upward adjustment ultimately made from that starting point to an end point of 16 years. This was a case in which the aggravating factors significantly outweighed any mitigating factors. The applicant took a very serious knife to be used to commit an offence in the street. There

was planning. The offence was committed outside a school, in the presence of children and there was concealment of both the knife and a mobile telephone. Those factors undoubtedly justified a move significantly beyond the 16 year end point reached by the judge in this case. This sentence was proportionate to the seriousness of the offending and not arguably manifestly excessive. Despite the cogent submissions made on the applicant's behalf, attractively presented by Mr Mian we therefore refuse this application.

33. Accordingly all applications are refused.

MR MIAN: My Lady thank you. The "cogent written submissions"; I cannot take credit for; they were drafted by Ms Karaiskos who sits behind me. What flows from that is an application - as you know we both appear pro bono. I am happy do so, as we both are - on behalf of Ms Karaiskos alone for a representation order, not for me, just to reflect the work that has been done by her.

(The Bench Conferred.)

LADY JUSTICE SIMLER: Mr Mian it is tempting in situations like this to accede to such an application, particularly where it is as attractively presented as it has been, but I am afraid we cannot grant it.

MR MIAN: One can but ask.

LADY JUSTICE SIMLER: We are grateful though for the assistance we were provided with. Thank you both.

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

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