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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 201903608/B3-201904169/B3

NCN: [2021] EWCA Crim 601

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 16 April 2021

LORD JUSTICE SINGH

MR JUSTICE WILLIAM DAVIS

HIS HONOUR JUDGE BATE

(Sitting as a Judge of the CACD)

REGINA

V

CHARLES RIDDINGTON

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MR O POWNALL QC and MR J MILNER appeared on behalf of the Applicant.

J U D G M E N T

LORD JUSTICE SINGH:

Introduction

1. This is a renewed application for leave to appeal against conviction.
2. On 17 October 2019 at the Central Criminal Court, the applicant was convicted unanimously of the offence of murder. He was sentenced by HHJ Lickley QC to a sentence of life imprisonment. The minimum term specified was 19 years less 28 days which had been spent in custody in a foreign jurisdiction awaiting extradition and 342 days spent on remand in the UK.
3. The applicant was acquitted on count 2, which was an allegation of possession of an offensive weapon. He had earlier, on 19 August 2019, pleaded guilty to counts 3 and 4, each of which was a charge of possessing a prohibited weapon contrary to section 5(1)(b) of the Firearms Act 1968. On each of those counts the judge imposed a sentence of 3 months which was made concurrent both to each other and to the main sentence.

The Facts

4. On 14 November 2016, George Barker (aged 24) died as a result of multiple stab wounds inflicted by the applicant at the Double K Gym in Bexley Village, Kent. In total he sustained 17 injuries, three of which (the wounds to the torso) were fatal.
5. The applicant and Mr Barker knew each other and it would appear there had been a dispute between them apparently over money. The applicant arrived at the gym before the deceased that morning but did not start training. He was wearing goalkeeper's gloves. The deceased arrived at about 9.20 am and within minutes the applicant was seen to punch him in the face. As the two men struggled one of them produced a lock-knife. The applicant took hold of the knife and stabbed Mr Barker numerous times about the face and body. Mr Barker stumbled towards the front of the gym where he collapsed. The owner of the gym, Kieran Keddle, called the emergency services but despite the best efforts of the paramedics Mr Barker was pronounced dead at 10.44.
6. Following the incident the applicant disposed of the knife and bloodstained clothing and the next day fled the country using a false passport. Initially he flew to Germany and then spent some time in South Africa. He was eventually arrested in Cyprus on a European Arrest Warrant and extradited on 8 November 2019. He was arrested and charged on 9 November 2019 but was not interviewed by the police. The applicant's home address was searched and the police found a stungun and a CS canister. Those were the subjects of counts 3 and 4.
7. At the trial the prosecution's principal case was that the applicant had brought the lock-knife with him to the gym on 14 November 2016 in order to reap revenge. He waited behind a door and ambushed the deceased in a short ferocious attack. The number and extent of the wounds indicated that he was the aggressor. He had the requisite intent for murder and at no stage did he lose his self-control.
8. To prove the case against the applicant the prosecution relied upon the following strands of evidence. First, evidence from Mr Keddle was read. He was the owner of the gym. He became aware of a tussle between the applicant and the deceased and the applicant saying to the deceased that he owed him some money. He asked the men who were with the applicant to pull him away. They tried to do so screaming, "Stop, stop, that's too much". He thought the applicant was just throwing punches but he could see the deceased was bleeding and holding the side of his body. He then saw that the applicant

was holding a knife. The incident lasted only about 10 seconds or so, and the applicant left immediately with the same group of men. The deceased came towards Mr Keddle and collapsed.

9. Second was evidence from Luke Whelan, a personal trainer. This was also read to the jury. He knew the deceased and was not aware of any trouble. He saw five white men walking into the gym and knew something "dodgy" was about to happen. They were wearing gloves and their hoods were up. Not one of them said anything. The first man went straight behind the door. Minutes later the deceased walked in and the first man punched him straightaway. The deceased was pleading with him saying. "What have I done?" The man said, "You owe me money and you've gone behind my back". He then saw the same man pull out a knife and plunge it into the deceased's head. When Mr Whelan spoke up he was told to "sit the fuck down". It appeared to Mr Whelan that the deceased did not want to fight and had held his arms out indicating this.
10. Third, there was evidence from Charlie Peters, a personal trainer. He became aware of a commotion and noticed a group of men swarming around the deceased, preventing him from getting to the door. He heard the applicant accusing him and the deceased saying, "No, no, it wasn't me". Mr Peters jumped out of the way and ran towards the front door. He did not see any punches or any weapons being used.
11. Fourth, there was evidence from Carole Cocks who was also at the gym that morning to train. She went into hiding in a toilet at the relevant time and did not see the incident.
12. There was also expert evidence from a pathologist, Dr Chapman, who conducted a post-mortem. He identified 17 knife wounds on the head, body and arms of the deceased. They were a mixture of slashing type wounds and stab wounds. There were multiple slash wounds to the left side of the head and neck and one of them (to the left cheek) had severed the roots of an upper molar. There was a cluster of three deep stab wounds to the left side of the back; these were the fatal injuries and associated with two areas of stab damage to the lower lobe of the left lung and spleen. The grouping of these injuries suggested rapid infliction with very little movement between the applicant and the deceased.
13. Dr Chapman agreed that it was possible that some of the injuries could have been caused as a result of tussling over the knife. He also agreed that the injury to the right arm could have been a defensive action.
14. At the trial the defence case was that the applicant had been acting in self-defence during the fight. He gave evidence at trial. He had known the deceased for a number of years and they both trained at a number of gyms. The deceased owed some men about £20,000 in respect of a drug debt. He went to the gym to train and had a confrontation there with the deceased about the fact that he alleged he was owed money by him. The deceased punched him and the applicant punched him back. The struggle continued and the deceased then pulled the knife from his shorts. The applicant managed to disarm him and the two began grappling for possession of the knife. During the fight he accepted that he stabbed the deceased three times to the left side intending to cause really serious bodily harm. He might have lost his control as a result of the attack on him. When he subsequently heard that Mr Barker had died he decided to flee to Germany and then to South Africa where some of his family lived.
15. The main issue for the jury was whether they were sure that the applicant had not acted in self-defence. This would have been a complete defence to the charge of murder. There

was also an issue, in the alternative, whether the applicant had the partial defence of loss of control, which would have reduced the offence from one of murder to manslaughter.

16. Before we consider the grounds of appeal it is important to note what the judge said in his summing-up. The judge gave the second part of the summing-up having earlier given legal directions in Part 1, in which he summarised the evidence that the jury had heard at the trial. This was given on 2 September 2019. It is important to see how the issues were framed for the jury to consider. It was made clear that the case for the prosecution did not depend on the applicant having the knife from the outset - see the summing-up at page 3B-D and page 3F-G, see also pages 37D-E and 38E-F. It is also important to note the summing-up of the evidence of the pathologist Dr Chapman, at pages 17H-23B. The deceased had 17 sharp injuries including three which proved fatal. In contrast the applicant's evidence was that he had suffered no injuries in the struggle and, in particular, had suffered no injuries to his face, arms or body from the knife although he had some bruises - see the summing-up at pages 33H-34A.

<u>The Applicant's Original Grounds of Appeal</u>

17. The original grounds of appeal (in a document dated 1 October 2019) were the following two. First, the route to verdict document was equivocal as to the steps to be taken before reaching a verdict of guilty of murder. Secondly, the judge erred in omitting to direct the jury as to the interpretation of the phrase "considered desire for revenge". That of course is an issue in the context of the partial defence of loss of control.
18. Those grounds are not now in fact pursued by Mr Pownall QC who has appeared at this hearing with Mr Milner on behalf of the applicant. We can therefore deal with them briefly because, in our view, the points were in any event unarguable. In relation to the first ground, first, we note that the judge correctly directed the jury that they must consider each count separately and that their verdicts need not be the same on the two counts - see section 5 of his written legal directions. In particular, the judge directed the jury that it was open to them to acquit the applicant on count 2 but convict on count 1 depending on the view they took of the facts. In the end that is exactly what the jury did. There was nothing illogical about that. Furthermore, this outcome was consistent with the way in which the issues had been framed and the way in which the applicant himself gave evidence. It was common ground that whoever had brought the knife to the gym, there came a point in time when the applicant held the knife, that he used it to inflict at least some of the injuries which took place and that he did so with the intention of causing really serious harm. The main issue for the jury was therefore whether he may have done so in reasonable self-defence. The other issue for the jury was whether he had the partial defence of loss of control. There was therefore no necessary overlap between the issues which arose under the two counts.
19. Under the original ground 2 Mr Pownall submitted that the phrase "considered desire for revenge" needed further definition in order to assist the jury. We consider that this argument also was unarguable and has rightly been abandoned. First, the phrase "considered desire for revenge" comprises plain words of the English language which required no elaboration. If anything, elaboration might simply have served to confuse the jury. Secondly, we note that the direction which the judge gave corresponds exactly with the relevant passage in the model direction suggested in the Crown Court Compendium, at paragraph 35 in particular. This is a point which Mr Pownall expressly

accepted in withdrawing this ground at the hearing before us today.

Perfected Grounds of Appeal

20. In a document called "Perfected Grounds of Appeal" dated 6 December 2019, the applicant made some observations in response to the first of the respondent's notices. He also took the opportunity to add a further ground of appeal relating to directions on loss of control - see paragraphs 4-9. In essence, Mr Pownall now submits that there was ample evidence to show that the loss of control may have been cumulative, going back to events before the day of the incident and that it did not occur "in a flash". The difficulty with this submission is that it was the applicant's own evidence at the trial that he may have lost control "in a flash" - see the summing-up at page 38B.
21. Mr Pownall also fairly concedes that he did not raise this matter with the judge during the trial, even after a note had been passed from the jury, which he now submits raised this issue and made it such as to require further elaboration from the trial judge of this element of the potential partial defence of loss of control. We do not accept that this is an arguable ground of appeal.

Further ground of Appeal

22. Since the refusal of leave on the papers by the single judge, Mr Pownall has added a further ground of appeal. In support of that new ground he also makes an application, under section 23 of the Criminal Appeal Act 1968, to adduce fresh evidence, namely a witness statement by Luke Whelan dated 17 December 2020. In that context Mr Pownall relies on the decision of this Court in R v Ishtiaq Ahmed [2002] EWCA Crim 2781, to the effect that this Court must reach its own assessment of the evidence and then decide what effect it has on the safety of the conviction.
23. At the trial the evidence of Mr Whelan, as we have said, was presented to the jury by being read. This was because he was unwilling to give evidence and had disappeared. An appropriate warning was given to the jury about the need for caution in treating that evidence because he was not present before them to be cross-examined.
24. In his summing-up the judge summarised the evidence of Mr Whelan at pages 9H-12E. Mr Pownall now submits that the new evidence of Mr Whelan gives rise to a potential ground of appeal because it is substantially different from the evidence read to the jury at trial. The details of those suggested differences are set out in particular in the further grounds at paragraph 19. Mr Pownall has emphasised in particular that Mr Whelan now says that he does not know whether the applicant produced the knife and that he did not see the actual stabbing.
25. We do not consider that this evidence, even if it were admitted, would have any material impact on the safety of the conviction. First, as we have already noted earlier, the jury acquitted the applicant on count 2. It was not necessary for the jury to be sure that it was the applicant who had first produced the knife before they could convict him of murder. Furthermore, as we have noted earlier, the applicant himself accepted that there came a point in time when he held the knife, that he did inflict at least some of the injuries on Mr Barker and that he did so with the intention of causing really serious harm. In those circumstances, the main issue for the jury was whether they were sure that the applicant was not acting in reasonable self-defence. Another issue for the jury was whether he had the partial defence of loss of control. Mr Whelan's evidence was not crucial to their

determination of those issues. In this context we bear in mind the evidence of Dr Chapman, both as to the number of injuries and the degree of force which would have been required to inflict the three injuries which proved fatal. We also bear in mind that the applicant himself said that he had suffered no injuries from the knife, although his case was there was a struggle after Mr Barker had produced the knife. Finally, it should be noted that the applicant gave evidence in his own behalf at the trial and said that he had acted in self-defence. The fact of the matter is that the jury did not believe him.

26. At the oral hearing before this Court today Mr Pownall has elaborated a still further new ground of appeal although he fairly acknowledges that it has not so far been formulated in writing. We say straightaway that that is not an appropriate way to conduct appeals before this Court or applications for leave to bring an appeal. There have been many opportunities in this case, in numerous documents to which we have already referred, to formulate with precision the proposed grounds and further grounds of appeal. This is important for the Court to be able to do justice, not only to an applicant but to the prosecution and to the public interest.

27. That all said, we propose to deal with the merits of the further new ground which has been outlined before us today only in oral submissions. In essence Mr Pownall submits that there is now expert evidence before the Court which, particularly taken with the new evidence of Mr Whelan himself, to which we have already referred, gives rise to a potential ground of appeal that he was suffering from PTSD at all material times, to the extent that it is arguable that his evidence ought not to have been read to the jury at all - see counsel's note for this Court on the psychological report on Luke Whelan. The note is dated 13 April 2021, and our attention has been drawn particularly to what was submitted in paragraph 2. That is a reference to a report prepared by Professor Hacker-Hughes on 20 December 2019 following a client interview on 4 December 2019. Mr Pownall relies in particular in what is said at page 6 of that report. We will quote paragraphs 54 and 55:

> "54. Inability to recall important aspects of the trauma.
>
> 55. Mr Whelan told me that he could only recall 'the important bits' of the episode, with many aspects not being remembered and recall only possible with some effort. This continues currently."

28. With respect to Mr Pownall, we do not consider that that evidence can possibly give rise to any new ground of appeal casting doubt on the evidence that was read to the jury from Mr Whelan at all. To the contrary, what the evidence of Professor Hacker-Hughes highlights is that Mr Whelan was able to recall "the important bits" of the episode. In those circumstances, we have come to the conclusion that none of the grounds of appeal which are proposed in this application are reasonably arguable. Accordingly, this application to appeal against conviction is refused.

(Submissions re: sentence followed)

29. LORD JUSTICE SINGH: This is a renewed application for leave to appeal against sentence.

30. The background facts have already been set out in the judgment of the Court given earlier today in refusing the renewed application for leave to appeal against conviction.

Sentencing Remarks

31. In passing sentence the judge said that he would do so on the basis of findings of fact which he had made according to the criminal standard of proof. He said that the wounds suffered by Mr Barker were horrendous. The applicant had aimed the knife at his face and body, cutting and slashing him, causing severe and deep wounds. The judge expressly directed himself that he could not find that the applicant had the knife with him when he went into the gym and did so intending to cause harm. This was in the light of the jury's acquittal on count 2. However, he went on to say what was clear was that the applicant had waited for Mr Barker to arrive and had provoked a confrontation with him. He could also be sure that at some point in the incident the applicant was in possession of the knife and used it as a weapon to inflict the wounds that led to Mr Barker's death. In order to do that the applicant had pursued Mr Barker to the rear of the gym where he became trapped.
32. The judge found that there was an element of planning in this case, that the applicant had made enquiries of when Mr Barker might arrive at the gym. He did not start a training session that day himself but waited for about 30 minutes with other men for Mr Barker to arrive.
33. In setting the minimum term for the offence of murder the judge noted that both parties agreed that the starting point was 15 years pursuant to paragraph 6 of Schedule 21 to the Criminal Justice Act 2003. The judge endorsed that agreed position. He then carefully went on to consider the aggravating factors both statutory and other. He accepted that this was not a planned murder with a knife although there was some element of planning, there was also the use of a knife and the reason for the offence had been part of a dispute between those involved in the drug trade. There was then the factor of concealment of evidence since the applicant had disposed of both his clothes and, importantly, the knife itself. He accepted that they were bloodstained. Next, there was the applicant's departure from the UK early the next day. He then remained outside the UK for a number of years using a false identity. Finally, there was the location and timing of the offence. It was committed in front of other people who had to witness the attack and did their best to aid the dying Mr Barker.
34. The judge also carefully had regard to the mitigating factors, again both statutory and other. The judge found, as a fact, that the applicant had had an intention to kill and not simply an intention to cause really serious harm. Therefore that potential mitigating factor was not available to him.
35. The judge also took into account the personal circumstances of the applicant including the fact that he has a close bond with his two young children. The judge noted that the applicant did not have previous convictions for violence and that he had expressed remorse when giving evidence for the death of Mr Barker. For the avoidance of doubt, the judge rejected any suggestion that the applicant had been acting in self-defence or that he had lost his control when using the knife. As we have said in our earlier judgement, the judge fixed the minimum term to be served at 19 years less the number of days spent on remand and awaiting extradition.

The Applicant's Grounds

36. In renewing his application for leave to appeal against sentence Mr Pownall QC submits

that the judge first failed to make factual decisions which he was required to do for the benefit of the applicant. Secondly, that he made factual decisions as part of the sentencing exercise that were wholly unjustified on the facts and appeared to ignore compelling mitigating circumstances that should have served substantially to reduce the minimum term imposed. The applicant could be forgiven for thinking that the judge did not agree with the verdict of the jury and strove to ignore the necessary and obvious implications of their verdict on count 2.

37. We reject the suggestion that the judge sentenced on a basis which was inconsistent with the verdict of the jury, acquitting the applicant on count 2. The judge was carefully loyal to that verdict, otherwise he would have started with a minimum term of 25 years rather than 15 - see paragraph 5A of schedule 21 to the 2003 Act. Furthermore, we have reached the clear conclusion that the judge, in particular having presided over the trial and having heard all of the evidence, was entitled to make the findings of fact which he did. In particular, he was entitled to reject any suggestion that this had been an act of self-defence or that the applicant had lost self-control during the incident. He was entitled to find that there was an element of planning in the period leading up to the offence. He carefully took into account both the aggravating and mitigating features of the case. He was also entitled to find that there had been an intention to kill rather than only an intention to cause really serious harm.
38. In his oral submissions before us today Mr Pownall has emphasised certain matters. First, by reference to paragraph 9 of his perfected grounds of appeal re sentence, dated 19 December 2019, he submits that the judge wrongly declined to make a finding as to the provenance of the weapon despite being encouraged in the course of argument by the defence to do so. In assessing the factual basis and the merits of the application the court is left to guess as to the proper interpretation of the jury's verdict and the judge's view of the facts. It is submitted that remaining true to the jury's verdict no judge could have been sure that the applicant brought a knife with him to the gym.
39. We do not accept that submission. As we have already said, the judge was careful to be faithful to the verdicts of the jury, in particular, the acquittal on count 2. That is precisely why he declined to make a finding, for example, that after all it had been the applicant who had brought the knife to the gym. He was not required to do so. If anything, this was a feature of the case which fell to benefit the applicant rather than be adverse to him.
40. Another aspect that Mr Pownall has emphasised in his oral submissions is that the judge did not mention that the absence of premeditation is a statutory mitigating factor under paragraph 11 of schedule 21 to the 2003 Act. Mr Pownall fairly acknowledges that the judge did mention this absence in noting that there was the absence of premeditation as a statutory aggravating factor. Reading the sentencing remarks fairly and as a whole, we are unable to accept that there was any merit in this argument. It is quite clear to us that the judge had this point well in mind.
41. In all the circumstances of this horrific case we do not think that it is reasonably arguable, either that the sentence was wrong in principle or that the minimum term of 19 years was manifestly excessive. For those reasons the renewed application for leave to appeal against sentence is refused.

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