



Neutral Citation Number: [2022] EWCA Crim 452

Case No: 202100940 B2 /
202101712 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM NORTHAMPTON CROWN COURT
HIS HONOUR JUDGE MAYO

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/04/2022

Before :

LORD JUSTICE WARBY
MR JUSTICE JULIAN KNOWLES
and
HIS HONOUR JUDGE LODDER QC
RECORDER OF RICHMOND-UPON-THAMES

Between :

REGINA
- and -
PATRICK MCDONAGH

Applicant

John Price QC instructed by the **Applicant**

Hearing date : **17 March 2022**

Judgment Approved by the court
for handing down
(subject to editorial corrections)

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Mr Justice Julian Knowles:

Introduction

1. This is a renewed application for permission to appeal against conviction and sentence following refusal by the single judge. An extension of time of eight days is also sought for the renewed application. That is on the basis there had been an oversight by solicitors. In his oral submissions Mr Price QC focussed on the conviction application. Following those submissions we reserved our judgment.
2. On 19/03/2021 in the Crown Court at Northampton (before His Honour Judge Rupert Mayo and a jury) the Applicant (then aged 37) was convicted of the Attempted Murder of Tony Stokes (Count 1), Causing Grievous Bodily Harm with Intent to John Stokes Jr (Count 2); the Wounding with Intent of John Stokes Snr (Count 3), and other offences. He was acquitted of Count 4 on the trial indictment (Wounding with Intent re Kathleen Stokes).
3. As we will explain, the trial concerned an alleged revenge attack by the McDonagh family on the Stokes family following an earlier dispute.
4. On 18/5/2021 at the same court before the same judge he was sentenced: on Count 1, an extended sentence of 22 years comprising a custodial term of 18 years and an extension period of 4 years; on Count 2, 12 years imprisonment concurrent; on Count 3, 12 years imprisonment concurrent; and other concurrent terms, making a total sentence of an extended sentence of 22 years comprising a custodial term of 18 years and an extension period of 4 years. Other orders were made with which we are not concerned.
5. There were co-accused, who were members of the Applicant's family. By the time the case reached the jury, indicted with him on Count 1 were John McDonagh and Thomas McDonagh. Other defendants had been discharged on that count following submissions of no case to answer.
6. John McDonagh was acquitted on Count 1. He was convicted of Causing Grievous Bodily Harm with Intent (Count 1A, an alternative to Count 1); Causing Grievous Bodily Harm with Intent (Count 2); Wounding with Intent (Count 3) and Possessing an Offensive Weapon (Count 5) and sentenced to a total of 13.5 years' imprisonment. He was acquitted of Count 1 (Attempted Murder) and Wounding with Intent (Count 4).
7. Bernard McDonagh was convicted of Causing Grievous Bodily Harm with Intent (Count 1A); Causing Grievous Bodily Harm with Intent (Count 2); Wounding with Intent (Count 3) and Possessing an Offensive Weapon (Count 6) and sentenced to a total of 8 years' detention in a Young Offender's Institution. He was acquitted of Wounding with Intent (Count 4).
8. Charlie McDonagh was convicted of Causing Grievous Bodily Harm with Intent (count 1A); Causing Grievous Bodily Harm with Intent (Count 2); Wounding with Intent (Count 3); and Possessing an Offensive Weapon (Count 9) and sentenced to a total of 9 years' imprisonment. He was acquitted of Wounding with Intent (Count 4).
9. Edward McDonagh pleaded guilty to Intimidation (Count 10 on the original joinder indictment) and was sentenced to 24 months' imprisonment. The judge acceded to a submission of no case

to answer on the sole remaining counts (Counts 1, 2, 3 and 4) and discharged the jury from reaching verdicts.

10. Thomas McDonagh was acquitted of all offences he was indicted with, namely Attempted Murder (Count 1); Causing Grievous Bodily Harm with Intent (Count 1A); Causing Grievous Bodily Harm with Intent (Count 2); Wounding with Intent (Count 3); Wounding with Intent (Count 4) and Possessing an Offensive Weapon (Count 8).
11. Michael McDonagh was also acquitted of the all offences he was indicted with, namely Causing Grievous Bodily Harm with Intent (Count 1A); Causing Grievous Bodily Harm with Intent (Count 2); Wounding with Intent (Count 3); Wounding with Intent (Count 4) and Possessing an Offensive Weapon (Count 10.)

The facts

12. At 04.37 on New Year's Day 2020 a 999 call was made from a Travellers' site at Irchester, Northampton. Four casualties, belonging to the Stokes family, were attended to by paramedics and taken to hospital. The Stokes family were related to the McDonagh family, to which the Applicant and the co-defendants belonged. The McDonaghs were identified variously by witnesses as present at the scene of the attack. The complainant Tony Stokes received a deep cut across the front of his neck, between 10 and 25 cm in length. He also had cuts to his face, arm, wrist and chest. The medical evidence showed the severity of his injuries, from which he might well have died.
13. The prosecution case was that there had been an earlier incident between the Stokes and McDonagh families. The Applicant and his son, Michael McDonagh, had celebrated New Year with other members of the extended McDonagh and Monghan families in Wellingborough. During the evening the Applicant was attacked by an unconnected member of the public. That incident escalated when Tony Stokes and others tried to intervene and pull the Applicant away. Tony Stokes and the Applicant threatened each other; the Applicant threatened to kill Tony Stokes and repeatedly invited him to fight outside. Outside the Applicant's father Edward McDonagh was hit by the complainant John Stokes Junior and Christopher Stokes struck the Applicant's son Michael McDonagh. Body worn footage taken from police officers who attended the incident captured the Applicant shouting 'they're dead, they're dead'.
14. Following the incident, the Applicant and John McDonagh (the Applicant's brother) made contact via phone, at 02.49, and the Applicant was overheard shouting again, 'They're dead'. At 03.20 members of the Stokes family made their way to Irchester. The Applicant, his partner, and Michael returned to their address in Crabb Street, Rushden. At around 04:15 two vehicles, a Citroen and a Ford, arrived in Crabb Street. ANPR cameras later showed that the cars had travelled from a Traveller's site north of Leicester. Mobile phones attributed to the co-defendants, John McDonagh, Bernard McDonagh, Thomas McDonagh, Charlie McDonagh and Edward McDonagh showed that they had in essence, made the same journey. A witness who lived on Crabb Street, Catherine Roberts, also identified Bernard McDonagh as the driver of the Ford. The two cars left Crabb Street after around seven minutes and it was the Crown's case that within them were those who had travelled from Leicester, the Applicant and his 16 year old son, Michael McDonagh.

15. A second witness, Nicholas Reynolds, also saw the two cars leaving Crabb Street. She thought she saw one man leaving the Applicant's house with an iron bar and saw several men get in to the two cars.
16. Shortly after, the cars arrived at the Traveller's site in Irchester. The Applicant was identified by John Stokes Junior, Kathleen Stokes and Anne-Marie Stokes as being one of those who jumped out of the cars. John, Bernard, Thomas, Charlie and Michael McDonagh were also variously identified.
17. The eye witnesses to the attack gave the following evidence:
 - a. Martin Stokes – told police officers, who attended the site, that about eight of his cousins had entered the site and named the Applicant and John McDonagh as being part of that group. He gave evidence that John McDonagh was holding a silver or metal machete about two or three foot across and a silver metal dagger around 10 to 12 inches long. His brother John Stokes got out of the caravan and John McDonagh hit his brother above his left ear with the machete. When his brother John fell to the floor, Thomas and Michael McDonagh hit him on the knee and top of the head. His brother was cut with the machete, stabbed in the stomach and side of the legs by Thomas McDonagh and to the front of the legs by Michael McDonagh. His brother Tony Stokes was attacked and dropped to the floor. John McDonagh and the Applicant ran over to Tony and hit him with machetes across the right side of his face and hand. He accepted calling the Applicant after the Wellingborough incident and said he called to say that what happened in the street was stupid.
 - b. Tony Stokes – gave evidence that he woke to the sound of fast cars driving, then the caravan windows were smashed. He jumped up and looked through the front door, which got smashed. He saw the Applicant, John, Thomas, Bernard and Charlie McDonagh outside. He and his brother John Stokes were surrounded. When he first went out he had a wooden stick which he dropped in shock. The Applicant had a machete with a three or four inch blade. He was attacked by the Applicant, John and Thomas McDonagh. John McDonagh held an axe over his head and swung it. He put his hands up to protect himself and cut his wrist. Thomas McDonagh then cut him under his eye and cheek and cut him across the chin and chest. The Applicant then struck him with a machete on his left elbow. He then saw the Applicant, John McDonagh and Thomas McDonagh join Bernard and Charlie McDonagh in their attack on John Stokes. They were hitting John Stokes with items in their hands. He saw Michael McDonagh holding something around three foot in length.
 - c. John Stokes Junior - said that the caravan door and window were broken and he and Tony Stokes were by the door. He saw his cousins Thomas McDonagh and John McDonagh outside. John McDonagh had a knife similar to a machete, it was around two feet long. Thomas McDonagh was swinging something with a blade and both were threatening to kill. Thomas and John McDonagh tried to get in to the caravan and he and Tony Stokes tried to get out, Tony Stokes got out first and he followed. He was hit on the back of the head and wrestled to the ground. He was then hit and grabbed, he was unsure by how many people. He blocked blows to his face and felt a knife in his left side whilst he was getting hit by

other things on his left leg. He accepted that earlier on in the evening in Wellingborough he had struck Edward McDonagh and that his brother had struck Michael McDonagh. He thought “it was all over Pat (the Applicant) and Tony fighting because of what happened in the pub. The others were still involved after Pat had left”.

- d. John Stokes Snr – gave evidence that five or six people carrying weapons broke in to his caravan. He was stuck by a machete whilst in bed. He got out of his bed and was hit on his head. He saw his two nephews, Thomas and Bernard McDonagh, in the caravan over his bed.
 - e. Kathleen Stokes (married to John Stokes Snr) - said that she was woken by her husband screaming inside the caravan and screams of ‘You’re dead, you’re dead’. She noticed that Thomas and Bernard McDonagh were in the caravan, both had knives and were cutting her husband. When she was outside the caravan with her son John Stokes Junior, she saw John McDonagh and the Applicant, both had knives. She also saw Charlie McDonagh attacking her son John McDonagh Junior. The Applicant’s son, Michael McDonagh kicked John Stokes to the head, broke windows in cars and had a knife with him.
 - f. Anne-Marie Stokes (married to Tony Stokes) – said that she saw the Applicant and John McDonagh in the yard of the site. She did not remember what John McDonagh was doing. The Applicant was around John Stokes and Tony Stokes. There were a lot of people, about six or seven of them.
 - g. After the attack, the Citroen and Ford returned to Crabb Street, arriving at 04:49. Catherine Roberts saw the Applicant being carried from the Citroen in to his house when it returned. Nichola Roberts also saw the two cars return and the Applicant being helped out of the car and with blood on his hands. Both cars departed minutes later and headed back towards Leicestershire. Shortly before the arrival of the cars, at 04:41, Edward McDonagh Senior had contacted the ambulance service and medical aid arrived at Crabb Street. John McDonagh had cuts to his upper torso, leg, arms and waist. The Applicant had a significant injury to his right hand and a wound to his left hand. They were both arrested and taken to hospital.
18. The Citroen and Ford were later found abandoned at different locations close to the M1.
 19. As part of the police investigation items of clothing were recovered and sent for analysis. John McDonagh’s right trainer had John Stokes Junior’s blood on it. Other items recovered from John McDonagh had both his and the Applicant’s blood on them. Bernard McDonagh’s left trainer had Tony Stoke’s blood and his right trainer had the Applicant’s blood on it.
 20. The Applicant’s blood was found at Irchester on the ground. It was also found on weapons recovered from the back of the transit van in Crabb Street. On one of those items, LN/9, bore the blood of the Applicant, John Stokes Senior and John Stokes Junior. The Applicant’s blood was also found on a jacket found in a bin liner at Crabb Street and Tony Stokes blood was found on the Applicant’s jogging bottoms. Bloodstains belonging to the Applicant were found inside and outside the Citroen, recovered in Leicestershire.

21. Following their arrest, the Applicant and John McDonagh were remanded in custody. On 17 January John McDonagh called his father, Edward McDonagh Senior and discussed the incident including that John Monghan had spoken to John Stokes and John Stokes said that it was ‘your boys that started it on New Year’s Day’. John McDonagh replied, ‘yeh well you see they should understand that they should accept what they have done wrong what do you call it and man up err err you know what I mean. [...] They’ve got to accept what they’ve done wrong themselves. They don’t like that they, they fouled themselves, they’re the ones that did the fouling. [...] John’s got to accept that this was his own son’s doing, no one else. His own sons brought this on themselves’.
22. On 11 January 2020 the Applicant called his father, Edward McDonagh Senior and asked him to ring John Monghan, ‘and tell John Monghan I want to talk Fairies John can you get me in contact with Fairies John.’ Edward McDonagh Snr replied that he had spoken to Fairies John and apologised but that he, ‘still won’t drop the charges’. The Applicant later said, ‘give him a call it’s that Tony that caused all this thing’. On 21 January 2020 the Applicant called again and said, ‘The main thing is the charges are dropped. It shouldn’t have happened. The guy who cut John, it was a bad thing and should never have happened. If it takes a couple of moths I don’t mind’. On 29 January 2020 in another call to his father, the Applicant said, ‘I was chatting to John Monghan today and asked what kind of money they’d be looking at to drop the charges. [...] Couple of grand, they might do, do you know what I mean? [...] They’ll drop the charges in a couple of weeks. Do tell the boys’. Edward McDonagh Snr says he’s not going to make any offers and they wouldn’t take it anyway. The Applicant then asks his father to mention it to John Monghan anyway, “four or five grand like’.
23. The prosecution case therefore was that following an incident on New Year’s Eve between the Applicant and members of the Stokes family, the Applicant summonsed members of his family, who travelled from Leicester to his address in two cars. The Applicant then travelled with his co-defendants to a traveller’s site in Irchester where the Stokes family were residing. The Applicant and those he travelled with had weapons and travelled with the intention to kill or seriously injure members of the Stokes family as evidenced by his repeated earlier threats of death. On arrival at the traveller’s site, four members of the Stokes family were attacked and the injuries to Tony Stokes were so severe, that whoever was involved in that attack, intended to kill him.
24. To prove its case, the prosecution therefore relied on:
 - a. eyewitness evidence from the Stokes family;
 - b. eyewitness evidence from others present at Crabb Street;
 - c. cell site analysis;
 - d. forensic evidence.

25. The defence case for the Applicant was identification, and that he was not present at the Gypsy Lane Travellers' site in Irchester. He did not give evidence in his defence.
26. The primary issues for the jury were therefore identification, participation and intention.

Ruling on the submission of no case to answer

27. It was agreed that there were three ways in which the jury could arrive at a guilty verdict on Count 1 against the defendants charged on Count 1); firstly, that with the necessary intention to kill Tony Stokes the particular defendant physically struck Tony Stokes or used a weapon on him; secondly, the particular defendant encouraged another person at the scene to do so; or thirdly, the particular defendant assisted or encouraged another person or person from the time that they left Crabb Street to kill Tony Stokes for example by their presence or by other means.
28. Counsel for the defence on behalf of all co-accused submitted that there was insufficient evidence on Count 1 from which a jury could properly infer that, save for the stabber, the others present shared the intention to kill when they attended Irchester and participated in the general attack. There was no distinction between the attack on Tony Stokes and the others (in respect of whom attempted murder had not been charged); it was a group attack and it was chance that the attack on Tony Stokes occurred first.
29. Counsel for the prosecution submitted that there was nothing 'exceptional' about Count 1, it was founded on the facts of the case, namely there was evidence of a clear intention to kill Tony Stokes at the point he was attacked and the evidence was such that a jury could properly conclude the plan was to kill and not merely cause really serious harm.
30. In his ruling the judge outlined the facts. The jury had been given directions in general terms in relation to identification evidence prior to the eyewitness evidence and reminded that all seven defendants denied being present at Irchester. During cross-examination a number of salient issues had been raised by defence counsel, including in relation to lighting and the speed of the incident generally. In addition, specific challenges were made. There was unchallenged evidence as to mobile attribution which placed the telephones of the Applicant and other co-defendants close to Irchester at the time. The Applicant's blood was found on the inside of the Citroen car which had been tracked from Crabb Street and back to Markfield and weapons were recovered from his Ford van, which was parked in Crabb Street and bore DNA from both John Stokes Junior and Senior. Tony Stokes blood found on the Applicant's jogging bottoms and items attributed to John McDonagh had the Applicant's blood on them. The Crown had also relied on extracts from phone calls made by the Applicant to family members, which could be interpreted as admissions or attempts to pay off members of the Stokes family over what had occurred.
31. The court had been referred to *R v Jogee* [2016] UKSC 8, *R v Lowther* [2019] EWCA Crim 1499 and *R v Khan (Wassab)* [2013] EWCA Crim 1345. Those cases fortified the view that it would be perfectly proper to direct that the Crown apply to amend the indictment to allege a conspiracy to murder in respect of all defendants and to include a similar count for each of

the four complainants. That would follow the evidence and avoid the internal tension complained of, although such a course would be radical and arguably unfair. The case, however, should not proceed with the internal tension described; the jury should not be hampered by considerations of whether the enterprise was to kill or to cause grievous bodily harm from when the six defendants left Crabb Street. Therefore the judge ruled that there was insufficient evidence for the jury to conclude that Bernard, Charlie and Michael McDonagh had intended to kill Tony Stokes; on the evidence it was possible that at the time Tony Stokes was assaulted, their physical exertions and weapons were deployed elsewhere and against other members of the Stokes family. A new Count 1A would instead be added to the indictment alleging Grievous Bodily Harm with Intent to Tony Stokes, in relation to all six defendants. The jury would be directed that as an alternative to Count 1, they could return guilty verdicts on Count 1A in relation to the Applicant, John and Thomas McDonagh if they were not sure that either or all had an intention to kill.

Sentence

32. In passing sentence, the judge said the defendants would be sentenced on the basis that they met at Crabb Street because it was what the Applicant wanted. The court had no doubt that he alone orchestrated the event from its inception, the jury's verdict on Count 1 supporting that view and he alone amongst the attackers at the site harboured an intention to kill.
33. The Applicant alone was convicted of the Attempted Murder of Tony Stokes. The prosecution note considered his culpability and placed it between levels 2 and 3 in the sentencing guidelines. It had been submitted on his behalf that his culpability was at level 3.
34. In relation to Counts 2 and 3, the prosecution placed the offending in Category 1, greater harm and greater culpability.
35. The guidelines for s 18 Wounding applied to a single offence. In respect of each defendant, there were three complainants. One determinate of greater harm was 'a sustained or repeated assault on the same victim'. The court was satisfied that because there were three separate complainants, all of whom were attached by more than one person, each of whom carried and used a weapon intended only to cause really serious injury, it would be contrary to the interests of justice to place the harm in the lower category. Each defendant participated in multi-focal injury on three separate people.
36. The overall culpability and harm would be reflected in the sentence on Count 1 re the Applicant, and Count 1A re John, Bernard and Charlie McDonagh. The sentences on the remaining counts would be concurrent.
37. In relation to Counts 1A, 2 and 3, the aggravating factors were the use of a weapon, a significant degree of premeditation, to an extent the complainants were vulnerable because they were asleep and not expecting the attack, and there were children and female family members in John Stokes Snr's caravan.

38. The Applicant: he played a leading role. Without his orchestration and what he perceived as a wrong done to him after he attacked the man in the public house in Wellingborough and the assault on Edward McDonagh at that time, none of the events thereafter would have happened. In 2002 he was convicted of having a bladed article, in 2003, Assault Occasioning Actual Bodily Harm, in 2004 threatening behaviour and in 2008, he was sentenced in Northern Ireland for assaulting a police officer. It had been submitted that his offending was out of character and in his own letter to the court he maintained his denial but stated, 'I should never have gone there that day and do fully regret the alteration (sic). However, the full facts were never shown'. He was a widower with a new partner, a father, and a grandfather to young children.
39. It had been submitted on his behalf that it would be wrong to find him dangerous because there was nothing so serious in his past and a substantial determinate custodial term would create a sufficient period on licence to protect the public. The court said it had to look at his present risk. The activity that he orchestrated and continued to deny was horrific. He was in a drunken rage in Wellingborough and yet the rage did not dissolve or dissipate on reflection. He was not daunted when his family attended, and the presence of his parents and young children did not deter him from encouraging two car-loads of armed members of his close family to make the trip to Irchester. It was an unjustified and totally uncontrolled rage against his own cousins and uncle. The judge was satisfied that he met the criteria of s 308 of the Sentencing Act 2020 and that the public could only be protected by means of an extended sentence on Count 1.
40. His offending on Count 1 was at level 2 because of the two further complainants. His personal mitigation was taken into account. He would be sentenced to an extended sentence which would be made up of a custodial term and an extended licence period. The sentences on Counts 2, 3 and 7 would be concurrent.
41. There were obviously also sentencing remarks about the co-accused which we do not need to address.

Grounds of appeal

Conviction

42. Leave to appeal was refused by the single judge on the following grounds:
 - a. The judge should have upheld a submission of no case to answer in respect of Count 1, the attempted murder of Tony Stokes, on the basis (per the second limb of *Galbraith*) that there was no or no sufficient evidence the Applicant shared an intent to kill with the man who inflicted the neck injury;
 - b. Alternatively, the Applicant's conviction on Count 1 was inconsistent with the acquittal on that count of John McDonagh, such that the conviction of the Applicant is unsafe.
43. As orally amplified by Mr Price on the first of these grounds, he said the judge had been wrong to leave Count 1 to the jury in respect of the Applicant. He said that the only basis for the intention to kill (which he accepted could rightly be inferred on the part of the assailant from

the nature of the injury to Mr Stokes' neck), was and could only have been a spontaneous intention formed by the assailant at the moment of infliction and there was no proper basis on which a secondary party could have been found to have shared that intention so as to make him guilty on Count 1. He maintained that that had been accepted by the Crown in the way it had framed its case. He argued that it was only the nature of the neck wound which distinguished Tony from other members of the Stokes family injured in the attack (in respect of whom there had not been counts of attempted murder) and so the intention to kill must have been formed spontaneously, which 'remorselessly' excluded any such intention on the part of the Applicant. He said evidence of antecedent threats by the Applicant (eg in Wellingborough) did not assist on his intention at the time of the attack on Mr Stokes in the seconds in which that injury was inflicted.

44. As to the second ground, Mr Price did not formally abandon it but said in effect it was a different way of saying the same thing as the first ground and so did not press it.

Sentence

45. The grounds on which leave was refused and which are now renewed are that:
- a. The judge erred in finding the Applicant to be a dangerous offender. The information available and cited by the judge did not justify the finding.
 - b. Alternatively, it was unnecessary in the circumstances to pass an extended sentence. Adequate protection would be afforded to the public by a conventional determinate sentence, matching the length of the custodial term because the Applicant would be nearly 60 when the licence expired.

Grounds of opposition

46. In response, in its Respondent's Notice, the prosecution submitted that:
- a. The incident at Wellingborough was not an isolated incident; it was one part of a sequence of violence that commenced with the Applicant assaulting a member of the public, threatening Tony Stokes and trying to attack him before the melee outside and the attack upon the Stokes family at Irchester. The Applicant's aggression in Wellingborough was primarily directed towards Tony Stokes and within recorded prison telephone conversations, the Applicant continued to blame Tony Stokes;
 - b. The issue in the case was identification, the Applicant having denied presence at the scene. In respect of Count 1 the judge ruled that here was a distinction to be drawn between those identified in the attack upon Tony Stokes and those present but involved in the attacks upon John Stokes Junior and Senior. The judge's ruling was logical. He directed the jury that they had to be sure that he person who cut Tony Stoke's throat had an intention to kill at that point in time before they could go on to consider whether the Applicant or John McDonagh had assisted and/or encourage that person and that they also had the required intention.

- c. The Applicant appeared to accept that it was open to the jury to conclude that the person who cut Tony Stoke's throat had the required intent for attempted murder and the legal directions on intent and generally were impeccable. Of relevance was the direction that the case for and against each defendant had to be considered separately; the evidence in respect of each defendant was different and the jury were properly told to look at ALL of the evidence against each defendant. The positions of Patrick McDonagh and John McDonagh were different and was such as to explain the jury's different verdicts notwithstanding that they had both attacked Tony Stokes.
- d. John McDonagh was not in Wellingborough during the earlier incident. He had not witnessed what happened to any member of his family. He was the recipient of calls from Applicant and others and travelled from Whitegates to Irchester. Tony Stokes gave evidence that first, John McDonagh put a hatchet to his wrist, then his throat was cut by a person he believed was Thomas McDonagh and after that, the Applicant hit him with a machete. He then ran away.
- e. In relation to the Applicant, he was present at Wellingborough and was the cause of the trouble. He took exception to Tony Stokes intervening and threatened to kill him. Having considered all of the evidence, the jury were sure that there was an intention to kill when the Applicant assisted and or encouraged the person who cut Tony Stokes' throat. There was no inconsistency with the verdict in relation to John McDonagh.

The single judge's reasons

47. Refusing leave to appeal against conviction the single judge ((Robin) Knowles J) said:

“I have considered the papers in your case and your grounds of appeal. The proposed appeal is not arguable. Three were alleged to have been involved directly in the attack on JS. You were one of these and JM was another. A shared intent to cause grievous bodily harm is conceded (Grounds para 24). It was also conceded (Grounds para 39) that an intent to kill could properly be alleged against the (third) person who actually inflicted the crucial injury (the throat cut) on JS.

Where that intent to kill was formed just before the injury was inflicted there is nothing “wrong or illogical” (Grounds para 40) in the possibility that it was also formed by you though not by JM. The “spontaneous decision” referred to by the prosecution (Grounds para 41) could be formed by two and not just one or three.

The matter was properly left to the jury. The jury was properly directed to consider all the evidence, and that evidence was not the same against each of the three persons involved in the attack on JS. The evidence against you was the basis for your ultimate conviction by the jury. There is in any event no inconsistency by reason of JM's acquittal. He too did not inflict the

crucial injury but the evidence as to his intent was not the same as the evidence as to yours.”

48. Refusing leave to appeal against sentence, he said:

“I have considered the papers in your case and your grounds of appeal. The proposed appeal is not arguable. It is accepted on the Defendant’s behalf that an overall determinate sentence of 18 years would not be open to challenge.

The finding of dangerousness was open to the judge on the evidence; in particular the finding of “significant risk” to the public, having regard to the Defendant’s involvement in this offending as summarised by the Judge in his sentencing remarks when dealing with dangerousness. There was no error of principle.

The extension of sentence by 4 years was a proportionate consequence of that finding in the circumstances of the case. There is no arguable error of principle.”

Discussion

Conviction

49. Despite Mr Price’s submissions, for which we are grateful, we are not persuaded that the application for leave to appeal against conviction is arguable and we therefore refuse the application for the extension of time (which we would likely have granted had there been merit to the underlying application).
50. Regarding the first argument, that the judge should have upheld the Applicant’s submission of no case to answer on Count 1 on the basis that there was insufficient evidence of an intent to kill on the Applicant’s part, the starting point is that the jury were entitled to conclude that whoever slit Tony Stokes’ throat plainly had an intention to kill. The serious nature of the injuries which he received was summarised by the judge at [4.2] of his ruling and, as we have said, they could easily have been fatal.
51. The question then was whether the jury were sure that each of the three men indicted on Count 1 had that intention at the relevant time, whether or not they were the assailant via one of the three routes which, as we have said, the judge in his ruling said had been agreed were three ways the case on Count 1 could be proved against those charged on that count.
52. The acquittals of John and Thomas McDonagh on Count 1 show that the jury cannot have been sure of any of these routes as against John McDonagh or Thomas McDonagh. But the case was left to them on the basis that they could convict even if they were not sure who committed the actual act, so long as they were sure that the assailant had the necessary intention. The questions relevant to Count 1 on the Route to Verdict were:

“Question 1

Are we sure that the defendant we are considering (“D”) was present at the site at Irchester when Tony Stokes was injured?

- If the answer is ‘yes’, go on to Question 2
- If the answer is ‘no’ your verdict in relation to D will be Not Guilty and you will move on to the next defendant or the next count

Question 2

Are we sure that D used a bladed weapon to cut Tony Stokes across his neck?

- If the answer is ‘yes’, go on to Question 3
- If the answer is ‘no’, go on to Question 3A

Question 3

Are we sure that, when D used a bladed weapon to cut Tony Stokes across his neck, D intended that Tony Stokes would be killed?

- If the answer is ‘yes’, your verdict for D will be Guilty of Attempted murder and you will move on to the next defendant or the next count.
- If the answer is ‘no’, go on to Question 3A

Question 3A

Are we sure that the person who used a bladed weapon to cut Tony Stokes across his neck (even if we are not sure who he was), D intended that Tony Stokes would be killed?

- If the answer is ‘yes’, go on to Question 4
- If the answer is ‘no’, your verdict in relation to D will be Not Guilty of Count 1 and you will move on to Count 1A.

Question 4

Are we sure that D intentionally assisted or encouraged that other person to use a bladed weapon to cut Tony Stokes across his neck?

- If the answer is ‘yes’, go on to Question 5
- If the answer is ‘no’, your verdict in relation to D will be Not Guilty of Count 1 and you will move on to Count 1A.

Question 5

Are we sure that when D intentionally assisted or encouraged that other person to use a bladed weapon to cut Tony Stokes across his neck, D intended that Tony Stokes would be killed?

- If the answer is ‘yes’, your verdict for D will be Guilty of Attempted murder and you will move on to the next defendant or the next count.
- If the answer is ‘no’, your verdict in relation to D will be Not Guilty of Count 1 and you will move on to Count 1A.”

53. In his ruling at [4.2]-[4.3], the judge summarised the way the case was put for the Crown:

“4.2 In their skeleton, the prosecution states that there is nothing “exceptional” about Count 1, it is founded on the facts of the case, namely there being evidence of a clear intention to kill Tony Stokes at the point he is being attacked, by reason of the nature of the injury sustained and the surrounding circumstances. They say that the defence do not submit there is no evidence capable of going to the Jury that at least one person had the intention to kill. The defence submission is that it cannot be properly inferred that all of the others shared that intention when they attended the Irchester site and participated in the general attack. In §5 (i) to (vii), Mr House QC rehearses and repeats the evidence from which the Jury could conclude that this was a plan to kill and not merely to cause really serious harm.

4.3 This point is conceded, but the defence jointly ask ‘why the distinction?’. Mr House indicated that the reason for selecting Attempted Murder as the allegation to reflect what happened to Tony Stokes is that he received the most severe injury. He said that this was a group attack against the Stokes family and it was chance that the attack on Tony happened first. It was Tony’s ability to escape from his assailants that [a] stopped the attack on him and [b] enabled those attacking him to switch their violent intentions elsewhere.”

54. In our judgment the Crown’s approach was sound. There was ample evidence to support the ingredients of the offence against the Applicant even on the basis that the jury could not be sure he was the person who cut Tony Stokes’ neck. There was evidence he had taken part in the attack on Tony Stokes, which it was open to the jury to accept. We set out some of it earlier, not least the evidence from Tony Stokes himself who said the Applicant attacked him. We disagree with Mr Price that other evidence and the surrounding circumstances, e.g. of threats made by the Applicant earlier, and the evidence of his very strong *animus*, was not capable of being relevant to the question of the Appellant’s intention at the point of attack. It was material from which the jury could well have derived considerable assistance on the Applicant’s state

of mind at the time of the attack. It was evidence, as my Lord the learned Recorder of Richmond-on-Thames pointed out in submissions, that could have a bearing on whether the Applicant supported the intention to kill which it was accepted the jury could find the primary assailant had. It might have indicated a predisposition which then became an intention. There was, in our view, evidence fit to go to the jury on this question.

55. In his response to the Respondent's Notice, Mr Price argued:

“5. Within the context of an organised, premediated joint attack upon several members of a family, marshalled by the applicant and allegedly characterised by a shared intent on the part of the assailants to cause them really serious harm, and where the only distinction in the case of Tony Stokes is the fact his throat was cut, it is submitted on the evidence to be impossible to infer any intent on the part of any participant in these events beyond that shared intent, other than in the case of the person who made the decision to inflict that neck injury.

6. Of course, the jury was indeed entitled to have regard to all the evidence about what happened in advance and after the attack in order to infer an intent on the part of those who took part. With justification, the prosecution alleged in the light of all that evidence, that anyone who travelled to that site on the occasion in question could only have done so to take part in the attack, and furthermore with an intent to cause really serious injury.

7. So far as the applicant is concerned, it is accepted that of all the defendants, the evidence indicated he bore the greatest responsibility for what took place because the evidence showed that he organised it. That however is evidence aggravating his participation in the main joint enterprise to attack and seriously to injure. It does not assist, it is submitted, in proving any more serious intent on his part in respect of the neck injury to Tony Stokes, admittedly spontaneously inflicted during the said attack by someone else.”

56. It follows from what we have said that we disagree that an intent to cause grievous bodily harm was all that the evidence was capable of showing; it was also capable of showing an intent to kill on the part of the Applicant.

57. Going back to the questions in the Route to Verdict, the Applicant's conviction on Count 1 is therefore explicable and justifiable on the basis that the answers to the questions are: (1) yes; (2) no; (3) not applicable; (3A) yes; (4) yes; (5) yes.

58. Although not directly pursued by Mr Price, for completeness, we make clear that nor was there, in our judgment, any inconsistency between the Applicant's conviction on Count 1 and John

McDonagh's acquittal on that Count, notwithstanding there was evidence both had attacked Tony Stokes.

59. As the Respondent's Notice compellingly argues, the jury were rightly directed by the jury that in order to determine the question of what a particular defendant's intention had been at the relevant time, they had to look at all of the evidence. As between the Applicant and John McDonagh, that evidence was not the same, and the positions of the two men were distinguishable for all of the reasons explained in the Respondent's Notice at [21]-[23]:

"21. Therefore, the jury were correctly directed to look at ALL the evidence against the person who actually cut Tony's throat, whoever that person was and they must have concluded that whoever that person was they had the required intention for attempted murder. Having reached that conclusion, the jury were properly directed to consider the cases in respect of both JM and PM separately and to look at ALL of the evidence as against each in turn when considering whether they were sure either or both had the required intention for attempted murder at the point Tony Stokes' throat was cut.

22. In respect of JM, he was NOT in Wellingborough during the earlier incident. He had not witnessed what had happened to any member of his family. He was the recipient of calls from PM and other members of the McDonagh family and he travelled down from Whitegates, gathered together with the others and travelled to Irchester for the attack. Tony Stokes gave evidence that the order in which his injuries were caused was a blow by JM with a hatchet to his wrist. His throat was then cut (TS believed this was by Thomas but he was acquitted, after his throat was cut PM hit him with a machete, as he raised his arms to protect himself the machete struck his elbow. Tony stated he was then able to break away and ran from his attackers who then turned their attention to his brother John jnr. This was the only reason the attack upon him did not continue.

23. In respect of PM, he was not only present in Wellingborough Town Centre, he was also the cause of the trouble, when he assaulted a member of the public. He took exception to Tony intervening. He tried to physically get at Tony and he made threats to kill him and repeatedly invited Tony outside to fight. The evidence was overwhelming that it was towards Tony that Patrick had a particular animus on that night. After the melee outside when Edward McDonagh Snr and Michael were punched, Patrick was captured on the body worn camera of an attending police officer shouting aggressively "they're dead, they're dead". It was Patrick that the telephone evidence overwhelmingly demonstrated was the person who orchestrated the mustering of the McDonagh family at Patrick's home address from where they set off to launch the attack. As

referred to above, Patrick continued to blame Tony for what happened during a recorded telephone call from prison after his arrest and in a different telephone call told his partner his 'head had been fucked up' and he had 'never got so angry'."

60. We therefore refuse the application for an extension of time, as we explained earlier.
61. Turning to the renewed sentence application, whilst not pursued orally by Mr Price, again for completeness, we agree with the single judge that the sentencing judge had not been wrong to impose an extended sentence. The eighteen years custodial component is conceded in the Grounds of Appeal against Sentence at [1] to have been appropriate and justified had it been a determinate sentence. The issue is therefore dangerousness, and on that we consider the judge was not arguably wrong. The extension period of four years was appropriate. We therefore dismiss the application for an extension of time, and hence this renewed application also.