IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 1437
CASE NO 202301100/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 16 November 2023

Before:

LORD JUSTICE MALES

MR JUSTICE JOHNSON

RECORDER OF LEEDS
(HIS HONOUR JUDGE KEARL KC)
(Sitting as a Judge of the CACD)

REX

V

JOSHUA JAMES CAMERON PRESCOTT

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RICHARD LITTLER KC appeared on behalf of the Appellant
JASON PITTER KC appeared on behalf of the Crown

J U D G M E N T
(Approved)

LORD JUSTICE MALES:

1. This is an appeal by Joshua Prescott against his sentence of custody for life, with a minimum term of 17 years less time spent on remand, for the murder of Thomas

Williamson, on 25 September 2021. He was convicted on 16 February 2023, in the Crown Court at Manchester, and sentenced on 14 March 2023 by the trial judge, HHJ Maurice Greene. At the date of the murder the appellant was 19 years of age, by the time of the conviction and sentence, he was 20 and he is now 21.

2. There were two co-accused. Ben Dawber was convicted of murder and attempted robbery, and sentenced to detention for life with a minimum term of 20 years' detention less time spent on remand. Because he was 17 years old at the date of the murder, this was an unlawful sentence - it should have been a sentence of detention during His Majesty's Pleasure (see section 259 of the Sentencing Act 2020). Dawber was also sentenced for two robberies and aggravated vehicle taking committed on 4 August 2020, and a further robbery committed on 17 November 2021, for which concurrent sentences were imposed. Kane Adamson, who was 18 at the date of the murder, was also convicted of murder and attempted robbery. He was sentenced to custody for life, with a minimum term of 18 years' detention less time spent on remand.

The Facts

3. During the evening of 24 September 2021, the appellant, Ben Dawber and Kane Adamson were driving around in a Chevrolet Kalos motor vehicle with false number plates. They had exchanged messages earlier in the day, which referred to the criminal activity they intended to undertake, which included theft, robbery and dealing in drugs. They had all taken illegal substances. During the evening, various people got in and out of the vehicle. At approximately half past midnight on 25 September, Dawber and Adamson committed the attempted robbery of a man called David Bagnall, close to his home address. However, they fled after being disturbed by a neighbour who shouted at them, hence the

offence was one of attempted robbery. They both pleaded guilty to this. The appellant was not involved in this offence.

4. At 1.10 am, the appellant, Ben Dawber and Kane Adamson were in the vehicle with another man called Ambrosius Kibula, when they saw a fight taking place in the street between two men, Jake Dinning and David Shuttleworth. Both Dinning and Shuttleworth were unknown to the defendants. Dawber, who was driving, stopped the vehicle and the others got out. Shuttleworth, believing the defendants were friends of Dinning, ran off. Dinning was instructed to get into the vehicle, which Dawber then drove away with the appellant and Adamson also inside. Kibula was left in the street along with Dinning's girlfriend.

5. It appears that the appellant and his co-defendants intended to look for Shuttleworth. As the judge put it, they were in effect hunting him down. However, it is not clear why they chose to involve themselves in this confrontation beyond the fact that they were out looking for trouble. At about 1.30 am, they came across Thomas Williamson (the deceased). He was unknown to the defendants and also to Dinning. The defendants asked Dinning whether this was the person with whom he had been in a fight, and he said that it was, although in fact that was not so.

6. Thomas Williamson was a man who had been diagnosed with Unstable Personality Disorder and was awaiting assessment for Autistic Spectrum Disorder. He had a sad history of self-harm but was described as someone who would not be aggressive towards others. Mr Williamson had been drinking earlier on 24 September and had become angry and upset. He threatened to harm himself with a knife. Shortly before 1.30 am on 25 September, he left his house to go for a walk and clear his head. It was likely that he took with him the knife with which he had threatened to harm himself and with which he

was to be killed. His mother could not find it and, concerned, she contacted the police.

7. When Dinning told the defendants, wrongly, that this was the person with whom he had been fighting, they got out of the car. Dinning took the opportunity to run away. The appellant, Dawber and Adamson approached Mr Williamson and all three of them surrounded him. This was captured on CCTV but some of what took place was obscured by a van. At one point an attempt was made to cut Mr Williamson off as he walked down the street. Dawber told Mr Williamson to "Give him everything you've got". A witness from a nearby house heard Mr Williamson being apologetic. Mr Williamson was punched and kicked. The judge considered it likely that he produced his knife in an attempt to defend himself. That knife was then used to stab Mr Williamson at least four times. He also suffered separate defensive injuries.

8. In his evidence, Dawber admitted stabbing Mr Williamson, although he claimed that he had done so in self-defence, a claim which the jury clearly rejected. Adamson was unable to recall if he stabbed Mr Williamson and attributed this lack of memory to having been under the influence of drugs. The appellant did not give evidence.

9. The defendants then went back to the car and drove up to where Mr Williamson lay wounded before driving away. Mr Williamson was found unresponsive at 1.51 am by police officers who were looking for him following the call from his mother. Attempts were made to revive him at the scene without success. He was declared dead at 2.42 am. He had sustained the following injuries: a 6-centimetre deep stab wound to the lower front of his neck which passed into a major vein; two stab wounds to the front right shoulder or outer chest; and a stab wound to the left front side of the chest, which penetrated through the inner edge of the left lung into the heart; two stab wounds to the surface of the heart but only one entry wound. Those injuries could have been caused when the knife was

withdrawn and reinserted, or when Mr Williamson's beating heart contacted the tip of the blade. In addition there was a 0.7 centimetre slither of bone from the interior border of the third rib found in the chest cavity; bruising over both cheekbones and the left side of the jawbone; two incised wounds to the right hand and two superficial incised wounds to the right finger that were consistent with defensive injuries.

10. The cause of death was a combination of the interruption of the pumping function of the heart due to the penetrating injury, the collapse of the left lung and severe bleeding.

11. After the attack, Dawber and Adamson dropped the appellant off and made arrangements to destroy any incriminating evidence. Attempts were made to set the Chevrolet on fire. Dawber and Adamson disposed of their mobile telephones and Adamson also got rid of clothing.

12. The appellant was arrested on 11 October 2021 and gave a "no comment" interview. He was rearrested on 12 April 2022. He provided a prepared statement, in which he admitted being in the Chevrolet on the evening of 24 September 2021 and said he had been dropped off at his mother's in the early hours of the morning. He claimed to have taken around 25 Xanax tablets at 8.00 pm, which made him fall asleep. He denied any knowledge of the attempted robbery committed by the other two defendants or the murder.

Antecedents

13. The appellant had two convictions for two offences in 2020 and 2021. One of these was a conviction for possessing an offensive weapon in a public place - that was the 2021 conviction. Dawber had two convictions for four offences between September 2020 and September 2021. His relevant convictions included offences of robbery, threatening words or behaviour with intent to cause fear or provocation of violence and theft, all in

2020. Adamson was more heavily convicted. He had 12 convictions for 22 offences between December 2019 and October 2021. His relevant convictions included offences of theft, of which there were two in 2019, robbery in 2020, threatening words or behaviour likely to cause harassment, alarm or distress in 2021, threatening words or behaviour with intent to cause fear or provocation of violence, also in 2021, witness intimidation (two convictions in 2021), battery, assault occasioning actual bodily harm and attempted robbery - all in 2021.

The Sentence

14. Having described the facts, as we have set them out, the judge said that it was difficult from the CCTV evidence to say exactly who had done what. Accordingly, he did not distinguish between the three defendants as to the roles which they played in the murder. Although Dawber had said that he had inflicted the wounds, the CCTV showed that there was a swap over at one point between two of the defendants, with one of them moving away from Mr Williamson and another going towards him. Accordingly, the judge was not able to be sure who had inflicted the fatal stab wound or when during the incident.

15. The judge noted that he had to determine where the case fell within schedule 21 to the Sentencing Act 2020. For that purpose, he decided that the murder was not done for gain, but that its main motivation, fuelled by the illicit substances which the defendants had taken, was to gain some revenge on behalf of Dinning and to attack Mr Williamson. The defendants had not taken weapons to the scene, which resulted in a starting point of 15 years for the appellant and Adamson, who were respectively 19 and 18 at the date of the murder, and 14 years for Dawber, who was 17. The judge identified aggravating and mitigating features which were relevant to all three defendants. They were all out looking

for trouble with a view to committing offences, were all under the influence of illicit substances, the attack on Mr Williamson was not spontaneous, as they were looking for an individual in order to attack him, albeit they had got the wrong person. There was an element of seeking to gain. It was a group attack, committed at night, on a vulnerable individual, even though the defendants were not aware of his vulnerability. A weapon was used, even though it was Mr Williamson's own knife with which he had been attempting to defend himself.

16. As for mitigation, the defendants were very young. They had difficult backgrounds, and it was more likely that their intention was to cause really serious harm than to kill. In the appellant's case he had a relevant conviction for possession of an offensive weapon, although the judge noted that he did not have any convictions for violence. That led, in the judge's view, to a minimum term in the appellant's case of 17 years less time on remand.

Submissions

17. For the appellant, Mr Richard Littler KC submits that the minimum term of 17 years was manifestly excessive for three reasons. The first is that insufficient account was taken of the appellant's character. That was the way the matter was put in Mr Littler's written submissions, but he developed that point orally by submitting that the minimum term imposed in the case of the appellant was too close to the 18-year minimum term which was imposed on the co-defendant, Adamson. The position was that the appellant was lightly convicted, with no convictions for violence, whereas Adamson had 12 convictions for 22 offences, including robbery and other violence, as we have described. In addition, Adamson fell to be sentenced for count 2 on the indictment, the attempted robbery, which was itself a serious street robbery by defendants wearing balaclavas, which had been

committed some 45 minutes before the murder. The judge had treated that as an aggravating factor in setting the minimum term in Adamson's case.

18. Mr Littler submitted that in light of the differences between the antecedents of Adamson and the appellant, and the fact that the appellant did not fall to be sentenced for the attempted robbery and had not been involved in the disposal of evidence, a distinction of only 1 year between the minimum terms imposed on those two defendants was not sufficient. There should therefore have been a reduction below 17 years in order to give effect to the distinction between them.

19. The second ground of appeal was, as we have already mentioned, that the appellant was not involved in the disposal of evidence, which was an aggravating factor applicable to the other two.

20. Thirdly, Mr Littler submitted that the judge was wrong in failing to distinguish on the evidence between the different roles which the defendants had played in the murder itself. He submitted that it was apparent from the CCTV evidence that the appellant was in effect a secondary party and, unlike the other two defendants, was not a joint principal in the murder. He had moved away at one stage of the incident and had not gone back to the deceased.

21. For the prosecution, Mr Jason Pitter KC submitted that the judge was entitled to impose the sentence which he imposed, which reflected the way that the prosecution had put the case at the trial. He submitted that this Court should not engage in a micro-analysis of the facts: the judge had heard the case and had seen the CCTV footage and, as a result, was best placed to analyse it. The prosecution did not share the analysis of that CCTV advanced by Mr Littler. Mr Pitter submitted that the CCTV did not make it possible to identify which defendant was which: all that could be seen was figures moving. It could

not be discerned when the weapon was used or when it changed hands. The appellant was party, however, to an attack when the knife was used. It was not a case where the appellant should be regarded as only a secondary party. In any event, whether regarded as a secondary party or not, he was actually engaged in the fatal violence which took place over a very short period of time. Mr Pitter submitted that this was an appropriate sentence for this appellant, whether or not there would be a disparity argument, and that is what mattered.

22. We are grateful for the measured and helpful submissions of both counsel.

Decision

23. We take the appellant's submissions in turn. The appellant's character, turning to the way in which it was put in the written submissions, was not a mitigating factor. He had a relevant conviction for possession of an offensive weapon in a public place. The judge was entitled to regard this as an aggravating factor, albeit the appellant was not as heavily convicted as the co-defendants. The judge noted and took proper account of the fact that the appellant's convictions did not include violence.

24. As the matter was put orally, the submission was not so much concerned with the appellant's character as a disparity argument, that there ought to have been a greater differentiation between the defendants. That was put especially by reference to the position of Adamson, in view of the greater and more serious convictions which he had, the fact that the co-defendants alone were responsible for attempting to destroy evidence and the fact that they alone fell to be sentenced for the attempted robbery.

25. In our judgment, however, there is no real force in that point. In the case of Dawber, there was, in view of his age, at the date of the murder, a lower starting point, but he

nevertheless received a higher minimum term, while Adamson also received a high minimum term although only by 1 year. Plainly therefore the judge did draw some distinction between the overall culpability of the appellant, on the one hand, and the co-defendants on the other. The submission is that he did not do so sufficiently, but that is always a difficult submission in this Court. The extent to which to distinguish between the defendants was essentially a matter for the judge, having presided over the trial. If the co-defendants and, in particular, Adamson were to some extent fortunate, as to which we say nothing, that does not mean that the sentence on the appellant was wrong in principle or manifestly excessive. Our task is to focus on the sentence imposed on the appellant. This case does not, in our judgment, approach the kind of unfairness which needs to be shown in order for a disparity argument to succeed. Nor is the fact that the appellant was not involved in the destruction of evidence a mitigating factor; on the contrary, it was an aggravating factor for the co-defendants, albeit not one to which the judge would be expected to give very significant weight.

26. Finally, there is the submission that the judge ought to have differentiated between the appellant, on the one hand, and the co-defendants on the other as regards their involvement in the murder itself. Mr Littler emphasised the fact that Dawber had admitted stabbing Mr Williamson and that Adamson, in his evidence, had acknowledged that he had no clear recollection of what had happened, and said that he did not know if he had stabbed Mr Williamson. On the basis of this evidence, Mr Littler invited the conclusion that the CCTV appeared to show movements consistent with two people stabbing Mr Williamson and that those two people must have been the two co-defendants and not the appellant. In our judgment, this logic is flawed. Dawber's account of stabbing Mr Williamson alone was part of, and was a necessary part of, his case of self-defence, which the jury rejected.

Adamson did not admit that he had stabbed Mr Williamson, only that he did not know whether he had or not. For his part, the appellant did not give evidence. But the jury must have rejected his prepared statement in interview, in which he said he had been asleep after taking 25 Xanax tablets and had no knowledge of the murder. If he had given evidence, he would either have repeated his claim to be asleep, which the jury has rejected, or would have had to accept that that account was not true. After having first claimed to be asleep, it would seem unlikely that he could have said with any credibility that he did remember after all what had happened and that he was not involved in stabbing Mr Williamson or participating in the violence. Such violence would not, therefore, have added materially to the evidence which was already before the jury.

27. Accordingly, no safe conclusions can be drawn, in our judgment, from the rejected evidence given by the two co-defendants. Further, the judge was entitled to conclude that the CCTV evidence similarly presents no firm foundation for drawing distinctions between the participation of the three defendants. It is clear that all three were present and participating. Whether or not the appellant actually wielded the knife, he was engaging in violence, encouraging the others to do so and doing so with the necessary intent for murder.

28. Mr Littler said that the principal murderer is usually the leader of the group, while the others are merely supporters, and that there needs to be a different and more severe sentence on the principal. We would not accept that as a necessary rule. The defendants here were all in this together, on the judge's findings, and he was not bound to impose different sentences, particularly when it was so difficult to distinguish between the defendants from the CCTV. Accordingly, we conclude that the judge was entitled to sentence the defendants on the basis that all three had played their part and that for the

purpose of sentence, it was not possible to distinguish between their respective roles. As the judge says, the CCTV shows Mr Williamson surrounded by all three defendants engaging in this incident.

29. We would accept Mr Littler's submission that it is important, where possible, to analyse the evidence but we are not persuaded that the judge failed to do so. He did what he could with the material available and was entitled to reach the conclusions which he reached. He was correct also to take a 15-year starting point for this appellant on the findings which he made. The aggravating features, to which we have referred, were serious and required a significant uplift. They outweighed the mitigation. The minimum term of 17 years which he imposed cannot, in the circumstances, be regarded as manifestly excessive. Accordingly, the appeal is dismissed.

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

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