IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202201156/B3 & 202201157/B3

[2023] EWCA Crim 248

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 23 February 2023

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE
MR JUSTICE GARNHAM
MRS JUSTICE CHEEMA-GRUBB DBE

REX
v
BOBBY GEORGE NETHERCOTT

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS
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MR R CHRISTIE KC appeared on behalf of the Appellant
MR W CLEAVER appeared on behalf of the Crown

J U D G M E N T
(Approved)

NOTE – THE RE-TRIAL IN THIS CASE HAS NOW TAKEN PLACE. ACCORDINGLY, THIS JUDGMENT IS NO LONGER SUBJECT TO THE REPORTING RESTRICTIONS PURSUANT TO S.4(2) CONTEMPT OF COURT ACT 1981 WHICH ARE MENTIONED IN PARAGRAPHS 1 AND 64. IT REMAINS THE RESPONSIBILITY OF ANY PERSON INTENDING TO SHARE THIS JUDGMENT TO ENSURE THAT NO OTHER RESTRICTIONS APPLY, IN PARTICULAR THOSE RESTRICTIONS THAT RELATE TO THE IDENTIFICATION OF INDIVIDUALS.

1. This judgment is subject to an order made pursuant to s.4(2) of the Contempt of Court Act 1981 postponing publication of any report of these proceedings until the conclusion of the re-trial in order to avoid a substantial risk of prejudice to the administration of justice in those proceedings.

THE VICE-PRESIDENT:

2. On 21 March 2022, after a trial in the Crown Court at Chelmsford before Her Honour Judge Lynch and a jury, this appellant was convicted of manslaughter and of two offences of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861. He was subsequently sentenced to a total of eight years' imprisonment. He now appeals against his conviction on a single ground by leave of the single judge. He renews to the full court his applications (refused by the single judge) for leave to appeal against conviction also on other grounds and for leave to appeal against sentence.

3. The facts can be briefly summarised. On 23 April 2021 a party was held at a house in Jaywick, Essex. Many of those attending were drinking and some were using cocaine. The evening degenerated into ugly scenes. Initially a young man, Ben Kelly was attacked following a misunderstanding as to whether he was assaulting a girl. Later, members of the Cooper family were told to leave the party having been found taking cocaine in a child's bedroom. Several of them, and others who had attended the party, were involved in violence in the street a short distance away from the house. The appellant was alleged to have punched several persons, causing one of them, Michelle

Cooper, a 40yearold mother of three, to fall and strike her head on the ground. She sustained brain injury from which she sadly died on 25 April 2021.

4. The appellant and four others were charged on an indictment containing six counts. The charges against the appellant in chronological sequence of the relevant events were: assault occasioning actual bodily harm to Ben Kelly (count 3); assault occasioning actual bodily harm to Alfie Griggs (count 2); assault occasioning actual bodily harm to Elise Cooper-Leat (count 4); assault occasioning actual bodily harm to Louise Cooper (count 5); murder of Michelle Cooper (count 1); and manslaughter of Michelle Cooper (count 6). His defence to count 4 was that he had not done anything to Elise Cooper-Leat. His defence to all the other charges was that any force he had used towards any of the complainants had been in self-defence. He denied any intent to kill or cause grievous bodily harm to Michelle Cooper.

5. The prosecution adduced evidence from complainants and from other witnesses who had heard or seen relevant events. They also called a consultant forensic pathologist and adduced bad character evidence concerning two recent convictions of the appellant.

6. The pathologist, Dr Cieka, gave evidence that Michelle Cooper had sustained a number of recent external injuries, including a bruise to the left side of her jaw, and that she had sustained a significant blunt force impact to her head which had resulted in the fatal injury to her brain. He said that:

> "The findings are of a blow to the side of the face with an accelerated fall onto the back of the right side of the head."

7. In cross-examination there was the following exchange between Dr Cieka and Mr Christie KC, then (as now) representing the appellant:

> "Q ... All of those injuries are explicable by either a punch or a hard push with say the heel of the hand to the left side of the face leading to a backwards fall and severe impact on the right side of the head on the ground, do you agree?
>
> A: I agree, a blow to the left side of the face and then severe impact to the right side of the head, yes."

8. Later in his cross-examination Dr Cieka reiterated that the findings were consistent with a blow to the left side of the jaw causing an accelerated fall.

9. The bad character evidence was admitted by the judge following a prosecution application pursuant to section 101(1)(d) of the Criminal Justice Act 2003, and was placed before the jury in the form of agreed facts. These showed that on 12 August 2021, in the Crown Court at Bristol, the appellant had been convicted of two offences of assault occasioning actual bodily harm, which were committed on 20 October 2019 outside a public house where he worked. One of the victims was a woman. The agreed facts recorded that the trial judge had refused an application to adjourn the trial, and that the appellant had been convicted in his absence, his legal representatives having withdrawn from the case.

10. Following successful submissions by all defendants of no case to answer, count 1 was withdrawn from the jury.

11. The appellant gave evidence in his own defence. He said that he had seen Ben Kelly

being ejected and falling to the ground. He had tried to help him up but Kelly had hit him so he punched him back. Later, away from the house, he had seen Alfie Griggs and another man fighting and women fighting. He had tried to get between Griggs and the other man but Griggs had punched him so he punched him back. He had then tried to get between the fighting women but Louise Cooper attacked him. He pushed her away several times but she kept coming back so he punched her to stop her hitting him. Michelle Cooper then attacked him, punching him in the stomach and wounding him. He pushed her away with his open hand and she fell backwards off the kerb.

12. Before closing speeches the judge discussed matters of law with counsel. Mr Cleaver, then (as now) appearing for the respondent, made clear that the prosecution case had been conducted throughout on the basis that the jury would have to be sure that the appellant had punched rather than pushed Michelle Cooper. The judge declined to give written directions, notwithstanding that she had recently been criticised by this court for failing to do so in another case. She did however provide a written route to verdict document. Counsel collectively produced an alternative route to verdict document which the judge said she would accept but "tweak". It does not appear that she informed counsel of the extent of her tweaking or gave them an advance copy of the revised document, which was in due course given to the jury and read to them by the judge in the course of her summing up.

13. In his closing speech, Mr Christie criticised the prosecution's reliance on the evidence of the Bristol offences, suggesting that there had not been "due process" and inviting the jury to question why the appellant could not have had a remote hearing. The judge

interrupted him, pointing out that the judge in Bristol had ruled that there should be a trial in the appellant's absence.

14. The summing up repeatedly made clear that the jury must be sure that the appellant had punched Michelle Cooper. The judge directed the jury that self-defence was a complete defence and reiterated the appellant's case that it was "a push and not a punch".

15. The judge then added:

> "However, members of the jury, the agreed medical evidence is that death resulted from her striking her head on the ground as the result of an accelerated fall caused by a punch to the left jaw. You'll remember the experts gave evidence and said, punch to the left jaw and there is injury consistent with a punch to the left jaw. And the expert evidence was that the likely cause of death was – or that death resulted from striking her head on the ground, as I have said, as a result of an accelerated fall caused by a punch to the left jaw. Punch to the left jaw, hit her head on the right side you've heard, causing the brain injuries that subsequently led to her death."

16. At the next adjournment counsel reminded the judge that Dr Cieka had accepted that the fall could have been caused by a hard push or a punch. The judge said that she had made a slip and would be coming back to the medical evidence. When she did return to that topic later in her summing up, she reminded the jury of Dr Cieka's evidence that the injuries to the deceased were "consistent with a blow to the left side of the jaw." Shortly after that she again directed the jury that they would only convict of count 6 if they were sure it was a punch not a push.

17. The jury acquitted the appellant of counts 4 and 5 but convicted him of counts 2, 3 and 6.

18. The judge in her sentencing remarks noted the anguish suffered by the bereaved members of Michelle Cooper's family, who had provided victim personal statements. She condemned the "pointless, stupid violence" and wholly unacceptable behaviour which had escalated into a death. She placed the offence into category C of the Sentencing Council's definitive guideline for offences of unlawful act manslaughter and therefore took a starting point of six years' custody. The offence was aggravated by the previous convictions for the Bristol offences, the fact that the appellant was on bail for those offences at the time of this incident and the wider group violence in a public place. She took into account the appellant's mitigation. She reflected the other offences by increasing the sentence for manslaughter. In the result she sentenced the appellant to eight years' imprisonment on count 6, with concurrent sentences of 12 months' imprisonment on each of counts 2 and 3.

19. The grounds of appeal against conviction relate to the judge's decision to admit the evidence of the Bristol convictions, her interruption of counsel's closing speech, her failure to provide written directions of law, her failure to direct the jury about the "householder defence" and her inaccurate summing up of the evidence of Dr Cieka. The single judge gave leave only in relation to the last of those matters, but we must address them all. We shall take the first two areas of challenge together.

20. Mr Christie submits that evidence of the Bristol offences was not admissible, or should in the alternative have been excluded because of its prejudicial effect. He argues that the circumstances in which the appellant had been convicted of those offences were relevant to the fairness of admitting evidence of them in this trial. He argues that the appellant

had been unable to present his defence and that the convictions were "almost inevitable". He submits that Judge Lynch misunderstood his submission, misdirected herself and was wrong to have interrupted him as she did. He further submits that the judge later compounded her errors by implying in her summing-up that trials in absence are perfectly normal.

21. Mr Cleaver submits in response that the judge's ruling was correct. He submits that the Bristol offences were capable of showing a propensity to use violence, including against women, in circumstances similar to those in the present case. The judge in Bristol had made a ruling and those convictions had not been challenged by an appeal, albeit that the appellant said he wanted to appeal. In those circumstances, he submits, there can be no criticism of the way the judge dealt with these issues.

22. As to the judge's declining to provide written directions, Mr Christie invites our attention to R v BQC [2021] EWCA Crim 1944, judgment in which was handed down on 17 December 2021. The trial in that case had also been conducted by Judge Lynch, who had not provided written directions. This court, differently constituted, stated that the case "cried out for written directions" because the necessary directions were not straightforward. In allowing the appeal against conviction, the court identified a number of failings in the oral directions given by the judge which had been exacerbated by the absence of a clear written direction. At paragraphs 70 to 71 the court explained the advantages of written directions. It concluded at paragraph 73 that, since the oral directions were seriously flawed, it was not necessary to decide whether it was an exceptional case in which the convictions were unsafe simply because of the absence of

written directions. The court made plain however, at paragraph 74, that it was no longer acceptable for a judge to decline to give written directions just because it was not her practice.

23. Mr Christie points out that in the present case the judge in rejecting his submission that written directions would be appropriate said:

> "I don't think it's necessary.
>
> ...
>
> No. It's not that I don't think it's necessary. I'm not going to do it."

24. He acknowledges the judge's provision to the jury of the route to verdict document but criticises its content. He submits that the judge wrongly failed to direct the jury about the householder defence.

25. Mr Cleaver submits in response that a failure to provide written directions will not render a conviction unsafe unless the directions given orally to the jury were flawed. Here, he submits, the judge correctly directed the jury about selfdefence and about the bad character evidence. On that basis the case can be distinguished from R v BQC.

26. As to the summing up of Dr Cieka's evidence, Mr Christie submits that the judge misstated the evidence and failed to correct her error. As a result the jury were left with an incorrect impression that those witnesses who gave evidence of seeing the appellant punch Michelle Cooper were expressly supported by expert evidence.

27. Mr Cleaver in response acknowledges, as did the judge, that a slip was made in the first reference to this evidence, but submits that the second reference accurately referred to Dr Cieka's evidence of a "blow". He argues that the jury could not have been in any doubt about the need to be sure of a punch rather than a push.

28. The grounds of appeal against sentence are that the total sentence of eight years' imprisonment was manifestly excessive, in particular because the judge should have placed this offence into category D culpability rather than category C under the guideline. Alternatively, if category C was correct, the judge should have moved downwards from the guideline starting point and should have given greater weight to the mitigation.

29. Mr Christie emphasises that the appellant was acquitted of count 5, the alleged assault on Louise Cooper, which immediately preceded the appellant's contact with Michelle Cooper. He submits that the judge should therefore have treated the appellant's manslaughter of Michelle Cooper as falling within the category D culpability factor of death being caused in the course of an unlawful act "which was in defence of self or others (where not amounting to a defence)". Even if category C were correct, with a starting point of six years and a range of three to nine years, Mr Christie submits that a downwards adjustment should have been made to reflect the background of self-defence and that greater weight should have been given to the continuing effects of Covid on those serving custodial sentences, particularly having regard to the appellant's vulnerability due to a rare blood disorder for which he requires medication.

30. Mr Cleaver submits that the offence was correctly categorised and the total sentence was

not manifestly excessive. He argues that the acquittal on count 5 did not necessarily mean that the jury had accepted the appellant was acting in self-defence against Louise Cooper and in any event that verdict could have no bearing on the sentence for count 6. The decision in R v Manning [2020] EWCA Crim 592, on which the appellant relies, can only have limited effect when a substantial prison sentence is unavoidable.

31. We are grateful to both counsel for their helpful submissions. We wish in particular to express our gratitude to Mr Christie, who came into this appeal at short notice and at substantial personal inconvenience when junior counsel who had been due to represent the appellant unexpectedly had to withdraw for medical reasons.

32. We consider first the ground of appeal against conviction for which the single judge gave leave, which relates to count 6 alone.

33. Given the way the trial was conducted, the central issue of fact for the jury on count 6 was whether they were sure that the appellant punched rather than pushed Michelle Cooper. We agree with Mr Cleaver that that issue was clearly and repeatedly identified by the judge, and that the jury can have been in no doubt as to what question they had to answer. That, however, is not a complete answer to Mr Christie's submission that the verdict on count 6 is unsafe because the jury were given a materially inaccurate reminder of the evidence of Dr Cieka.

34. Dr Cieka's evidence, given about a month before the judge began her summing up, was that the accelerated fall which led to the fatal head injury had been caused by a blow to

the left side of the jaw. In cross-examination he had accepted, importantly, that the blow could have been in the form of a punch or a hard push. The jury were never reminded of that answer, which was obviously highly relevant to their consideration of whether the appellant's hand had made contact with Michelle Cooper's face in an aggressive or a defensive action. On the contrary, the jury were quite wrongly told that there was agreed medical evidence that the fall had been caused by a punch. When this was pointed out by counsel, the judge acknowledged in the absence of the jury that she had spoken in error and indicated that she would correct the error. But she did not in fact do so. True it is that her later references to the expert evidence were correct as far as they went; but at no point did she explicitly tell the jury that her initial statement had been incorrect and must be ignored.

35. In short, the central question was correctly identified to the jury, but key evidence relevant to that question was by error misstated. We have considered carefully whether the conviction on count 6 is nonetheless safe. The jury had to consider evidence, some of it from witnesses who had been drinking or taking cocaine, about fast-moving events in a scene of general disorder. A judicial indication that there was agreed expert evidence that Michelle Cooper's fall had been caused by a punch may well have been seized upon by the jury as reliable independent expert evidence, and was potentially decisive. In those circumstances we cannot be satisfied that the conviction on count 6 is safe. It must accordingly be quashed.

36. That being so, we can consider the other grounds of appeal against conviction quite briefly. We agree with the single judge that they are not arguable, for the following

reasons.

37. At the time of this trial, the appellant stood convicted of the Bristol offences. By virtue of section 74(3) of the Police and Criminal Evidence Act 1984, he was to be taken to have committed those two offences unless he discharged the burden of proving on the balance of probabilities that he was not guilty of one or both of them. He did not attempt to do so. It was therefore irrelevant to raise any question as to whether the judge in Bristol had been right to order that the appellant be tried in his absence. As Judge Lynch observed, that would be a matter for this court if there were an appeal against the Bristol convictions.

38. The position might have been different if the appellant had taken up the burden of proof and had sought to adduce evidence with a view to establishing that he was not guilty of the Bristol offences and to explain why he was convicted in his absence. But that was not the position. As it was, suggestions that the Bristol trial had been unfair would have the unintended effect of challenging the Bristol convictions impermissibly by the back door.

39. We are not persuaded by Mr Christie's submission that questions such as whether the appellant could have taken part in the Bristol trial by video link would have a bearing on the fairness of the present trial. So long as the appellant was to be taken to have committed the Bristol offences, which were the facts capable of showing a relevant propensity, the fairness of the present proceedings could not be affected by any consideration of what might have happened in the Bristol trial. In any event, no such consideration would have been possible. We are therefore satisfied that the judge was

correct to admit this evidence, and to decline to exclude it pursuant to section 101(3), and that her intervention in counsel's closing speech was not inappropriate.

40. The judge should have provided written directions of law, and we think it very regrettable that she displayed the attitude she did in declining to do so. The directions which she gave orally were not simple or straightforward, including as they did issues, relevant primarily to other defendants, of joint enterprise and overwhelming supervening event. Moreover, as this court has repeatedly stated, the discipline of preparing written directions has important benefits even in a straightforward case. Had they been provided in this case, they would have enabled the judge and counsel to have a clearer focus on any remaining areas of disagreement. They would also, of course, have been a valuable aid to the jury during their retirement.

41. In fairness to the judge, however, we recognise that one of her reasons for not providing written directions was that the route to verdict document would be a sufficient reminder to the jury of her oral directions. We also bear in mind the principle, stated in R v Grant [2021] EWCA Crim 1243 and endorsed in R v BQC, that a failure to provide written directions will not necessarily render a conviction unsafe. We therefore consider the correctness and sufficiency of the directions which the judge gave orally and in the route to verdict document. In this regard the principal criticism put forward by Mr Christie is that the judge did not address the householder defence which he submits was relevant to the jury's verdicts on counts 2 and 3.

42. So far as is material, section 76 of the Criminal Justice and Immigration Act 2008 states

that where an issue of self-defence arises:

> "(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.
>
> ...
>
> (5A) In a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was grossly disproportionate in those circumstances.
>
> (6) In a case other than a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.
>
> ...
>
> (8A) For the purposes of this section 'a householder case' is a case where— (a) the defence concerned is the common law defence of self-defence; (b) the force concerned is force used by D while in or partly in a building, or part of a building, that is a dwelling …; (c) D is not a trespasser at the time the force is used; and (d) at that time, D believed V to be in, or entering, the building or part as a trespasser."

43. There are two reasons why we are satisfied that the judge did not err in failing to direct the jury in accordance with those provisions.

44. First, we do not accept that any of the incidents giving rise to the charges comes within the definition of a householder case. The appellant involved himself in contact with Ben Kelly after Kelly and others had left the house. The other charges related to later events some distance away from the house. At no stage was the appellant using force "while in or partly in a building" where he believed his victim to be a trespasser.

45. Secondly, even if any of the charges was a householder case, it is important to keep in mind that the correct interpretation of section 76 has been determined in R on the application of Collins v Secretary of State for Justice [2016] EWHC 33 Admin, [2016] QB 862 and in R v Ray [2017] EWCA Crim 1391, [2018] QB 948. It is not the law that the degree of force used by a householder is necessarily reasonable provided it is not grossly disproportionate. All that the section provides is that grossly disproportionate force is not reasonable; it does not say that disproportionate force falling short of grossly disproportionate is automatically reasonable. It remains for the jury to consider the fundamental question of whether the force used was reasonable in all the circumstances.

46. The essence of the appellant's submission is that the jury should have been directed that they could not convict him unless they were sure he had used grossly disproportionate force. That submission does not correctly reflect the law, and the judge was therefore right not to direct the jury in those terms. In the circumstances of this case, and bearing in mind that the appellant was alleged at most to have punched his victims, we do not see how it would have assisted the jury, or indeed the appellant, for a direction to have been given relating to grossly disproportionate force.

47. We therefore conclude that, although the jury certainly were not helped as much as they should have been, the absence of written directions did not arguably result in the jury being misdirected or the convictions being rendered unsafe. We do not condone the judge's approach, but our focus must be on the safety of the convictions.

48. The appellant, in the light of our decisions, will remain convicted of counts 2 and 3. That

being so, and an indication having been given that a retrial is likely to be sought, we think it appropriate to consider the renewed application for leave to appeal against sentence. We can do so briefly.

49. We reject the submission that the verdict on count 5 should have caused the judge to treat the offence charged in count 6 as a category D offence. We agree with Mr Cleaver that it does not follow from the acquittal that the jury accepted that the appellant was acting in self-defence against Louise Cooper. Even if they did, it does not follow that count 6 had to be regarded as a case of excessive force in self-defence. The judge, having presided over a trial which had lasted some 14 weeks, was perfectly placed to determine the correct basis for sentencing.

50. The circumstances of the offence put it in our view squarely within category C, with no reason to make an initial downwards adjustment of the starting point before considering aggravating and mitigating features. The aggravating features correctly identified by the judge significantly outweighed the mitigation. The judge also had to reflect the overall criminality, including the other two offences. Neither the particular difficulties faced by prisoners in general at present, nor the appellant's medical issues, justified any substantial reduction.

51. In those circumstances we agree with the single judge that it is not arguable that the total sentence was manifestly excessive. Nor do we see any basis on which the sentences imposed on counts 2 and 3 were in themselves manifestly excessive. If we had thought otherwise, we would have granted the necessary short extension of time. As it is, no

purpose would be served by our doing so because an appeal against sentence could not succeed.

52. For those reasons, and bearing in mind that an application for a retrial will shortly be made, we refuse the renewed application for leave to appeal against conviction. We will allow the appeal against conviction on count 6 and quash that conviction. We refuse the application for an extension of time to apply for leave to appeal against sentence.

53. The effect of those decisions from the appellant's point of view is that his conviction for manslaughter will be quashed, though we will very shortly deal with the issue of a retrial. He remains convicted of the two offences of assault occasioning actual bodily harm and subject to the concurrent sentences of 12 months' imprisonment for each of those offences.

54. Mr Cleaver, conviction to be quashed on count 6?

55. MR CLEAVER: Yes, indeed. As previously foreshadowed, given the importance of the allegation in count 6 we do seek a retrial in relation to that count. Clearly the events of that night resulted in the death of Michelle Cooper and we continue to maintain that the defendant was responsible for that, and upon that basis we would submit that it is certainly in the interests of justice that he should be retried on that allegation.

56. THE VICE-PRESIDENT: Thank you. Mr Christie?

57. MR CHRISTIE: My Lord, there are two points that I would like to make. First, that in relation to the pathological evidence it was potentially consistent with his case. In the circumstances, it not having been properly left to the jury, and the jury could easily have come back and acquitted had they been properly directed in relation to that, it seems to me, it is a matter of course for the court, but it seems to me in the circumstances that that is a factor, bearing in mind the defendant has been in custody now for a considerable period of the sentence that he did have imposed upon him in respect of it, that the court should weigh that in the balance.

58. The other aspect is this. That we now, with all of the differing results in relation to the case, will be faced with a very unusual set of circumstances in relation to any witnesses coming to court to give evidence, some of whom will have effectively been not accepted and some of whom who may have been and others of whom have, as I have foreshadowed, read about matters in the paper. So the only point that I would urge upon you then in those circumstances is to reflect on all of that and it seems to us in those circumstances that it is an application that I should resist.

59. THE VICE-PRESIDENT: Thank you. You referred to the appellant having been in custody for a considerable time on count 6. What is the position? Presumably at some stage he was serving the Bristol sentence?

60. MR CHRISTIE: Yes. I have to say I am not entirely clear as to exactly how that has been dealt with but certainly he has been in custody since these events in March of 2021.

61. THE VICE-PRESIDENT: Thank you. We will retire to consider the position.

(The court adjourned for a short time)

62. THE VICE-PRESIDENT: We are entirely satisfied that it is in the interests of justice that there should be a retrial of count 6, the manslaughter of Michelle Cooper.

63. We therefore make the following orders:

a. We allow the appeal against conviction on count 6.

b. We quash that conviction.

c. We order a retrial of count 6.

d. We direct that a fresh indictment be served in accordance with the Criminal Procedure Rules, which require the prosecutor to serve a draft indictment on the Crown Court Officer not more than 28 days after today.

e. We direct that the appellant be rearraigned on the fresh indictment within two months.

f. We see no reason why the retrial should not also take place in the Crown Court at Chelmsford, before a judge to be allocated by the Resident Judge of that court.

64. For reasons which have become very clear in the course of the oral submissions, we are satisfied that there is a substantial risk of prejudice to the administration of justice in the retrial if the circumstances and argument in this appeal were to be reported. We therefore make an order pursuant to section 4(2) of the Contempt of Court Act 1982 postponing any reporting of this appeal until after the conclusion of the retrial. We direct that the prosecution must notify the Criminal Appeal Office when that stage is reached.

65. Mr Christie, you and your solicitors will know this but as an important practical matter the existing legal aid order does not cover the retrial. A separate application has to be made to a specific office of the Legal Aid Agency in Liverpool. The Associate will be able to assist you with the address if that is needed.

66. MR CHRISTIE: I am very grateful, thank you.

67. THE VICE-PRESIDENT: Should any question of bail arise at any stage that will be a matter for the Crown Court, not for us. Thank you. Does that cover everything gentlemen?

68. MR CHRISTIE: Yes, indeed it does. So I understand in relation to the issue of bail, given that the sentence has effectively been quashed as well because of the necessary result of that –

69. THE VICE-PRESIDENT: He still has the sentences for the two actual bodily harms.

70. MR CHRISTIE: Indeed, I accept that.

71. THE VICE-PRESIDENT: Whether he is a serving prisoner or not at the moment –

72. MR CHRISTIE: I do not think he is a serving prisoner but essentially what the court is saying is that any issue if he is not a serving prisoner is reserved to the Crown Court for any application to be made in that Court?

73. THE VICE-PRESIDENT: Yes, in the usual way on the usual notice.

74. MR CHRISTIE: Thank you. I say it as much so that my client can hear as well.

75. THE VICE-PRESIDENT: Yes, of course. Thank you very much. Mr Cleaver, no difficulty letting the Court Office know as and when the retrial is concluded?

76. MR CLEAVER: Absolutely.

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

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