Neutral Citation Number: [2024] EWCA Crim 629

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202400149/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 23 May 2024

Before:

LORD JUSTICE WILLIAM DAVIS
MRS JUSTICE CHEEMA-GRUBB DBE
HIS HONOUR JUDGE DENNIS WATSON KC
(Sitting as a Judge of the CACD)

REX
V
TYLER JOHN HUNT

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MISS S JONES KC appeared on behalf of the Applicant
MR M BURROWS KC appeared on behalf of the Crown

J U D G M E N T

1. LORD JUSTICE WILLIAM DAVIS: On 30 November 2023 in the Crown Court at Bristol, Tyler Hunt, born on 20 June 2005, was convicted of murder. He had previously pleaded guilty to having an article with a blade or point. He had a co-accused who also was convicted of murder. The co-accused was a boy born on 19 January 2008. In the Crown Court an order was made pursuant to section 45 of the Youth Justice and Criminal Evidence Act 1999 that no matter relating to that individual may be published that would identify them, including their name, address, any educational establishment or workplace they may attend, or any picture of them. That order will remain in force until 19 January 2026. We shall refer to the co-accused as "D".
2. Tyler Hunt was ordered to be detained at His Majesty's Pleasure with a period of 18 years and 63 days being specified as the minimum term. No separate penalty was imposed in relation to the offence of having a bladed article. His application for leave to appeal against the sentence has been referred to the full court by the Registrar. We shall give leave.
3. D, who was 14 when the murder was committed, was also ordered to be detained at His Majesty's Pleasure. In his case the minimum term was 11 years and 81 days.
4. At around lunchtime on 4 December 2022, Tyler Hunt and D rode on borrowed e-bikes from the Walcot area of Swindon to the north of the town near to a large shopping park. That was a trip of about eight miles. Hunt had suggested that the two of them should make this trip. They were dressed in black. They were wearing Balaclavas which left only their eyes visible. Each had an 18-inch machete down their trousers. They had bought the machetes at some point prior to 4 December.
5. When they arrived in the area of the shopping park, Hunt and D spent about 40 minutes riding around. From what was seen by witnesses and from what could be seen on CCTV

footage they appeared to be looking for someone or something. Just before 1.30 pm they were on a road called Mazurek Way, close to a children's playground. They had been there for about five minutes when an 18-year-old young male named Owen Dunn came towards them on his bicycle. Hunt and D did not know Owen Dunn. Dunn did not know them. As he rode up to Hunt and D, they got off their e-bikes. D shouted to Dunn asking who he was. Dunn did not reply. Hunt and D took out their machetes. As Dunn rode past them, Hunt swung his machete at Dunn. That blow did not land. D then stabbed towards Dunn with his machete. The blow was delivered with moderate force. The machete entered Dunn's chest to a depth of about six inches. It caused catastrophic injury to Dunn's lung and heart. Hunt swung a further blow but that missed. Dunn rode on for about 60 metres before he fell to the floor. He died within minutes.

6. Hunt and D shouted out: "Oh fuck, oh shit, he's down". They remounted their e-bikes and rode away. They went to some nearby woods where they abandoned the e-bikes. At some point thereafter they got rid of the machetes.
7. Hunt was not arrested until 7 March 2023. His involvement had become apparent because his movements could be tracked by the movement of an electronic tag he was wearing at the time. When he was interviewed he denied presence at the scene and involvement in the killing of Dunn. By the time of trial he accepted that he was at the scene. He said that he had done no more than act in reasonable self-defence when Dunn had produced a machete which he (Hunt) believed would be used against him and/or D. The trial judge found as a fact that Dunn had not produced any weapon nor had he made any aggressive move towards Hunt and D.
8. Hunt had four previous court appearances relating to a total of eight offences. These predominantly were offences of relatively minor violence. On 4 December 2022 he was

on bail for an offence of threatening behaviour. D had no previous court appearances.

9. The judge referred to the victim personal statements she had received in received to Owen Dunn. She said this:

> "I have read your moving victim personal statements and the wonderful vivid details of his life that brought to life his personality so well and I have considered grief at his loss with very great care."

10. The judge had reports in relation to Hunt and to D. Hunt had had a very difficult childhood. He had lived with his mother as a single parent. She sadly had significant problems with alcohol and her mental health. He had made significant progress whilst on remand at Parc YOI, making real progress academically. The judge had been able to observe Hunt when he was giving evidence. Her conclusion was that he was immature for his age.
11. D had a close and supportive family. The judge considered that D was bright. He also had made a great deal of progress educationally during his time on remand at a secure children's home.
12. The judge applied paragraph 5A of Schedule 21 of the Sentencing Code when determining the starting point for the minimum term in each case. Had either defendant been an adult when the offence was committed, the minimum term would have been 25 years because the defendant had taken a weapon to the scene. D was 14 when he committed the offence. By reference to paragraph 5A his starting point was 13 years. Hunt was 17 when he committed the offence. Paragraph 5A provided a starting point of 23 years.
13. The judge determined that there were no aggravating factors requiring an uplift to the

starting points supplied by paragraph 5A. She found that neither defendant had an intent to kill, which amounted to mitigation. In relation to D she further mitigated the sentence to reflect the progress he had made at the secure children's home. She reduced the starting point from 13 to 12 years, namely a reduction of one year. The minimum term she imposed was to take account of time spent on remand.

14. Hunt's sentence was mitigated because he had not caused injury to Owen Dunn and by reason of his troubled background. The judge reduced the starting point to 19 years, namely a reduction of four years. She referred to the comparative minimum terms, as between the two defendants, by saying: "A greater disparity in sentence would also be unjust just for Tyler". The meaning of that is opaque. We take it to mean that the judge adjusted the sentence in Hunt's case to ensure that the gap between his starting point and that of D was significantly less than that identified in paragraph 5A.

15. The sole ground of appeal is that the gap in the minimum terms imposed on Hunt and D respectively led to injustice, whether this was an issue of disparity or a question of the judge failing to give sufficient weight to the mitigating factors relating to Hunt's disadvantaged childhood and his immaturity. Reliance is placed on what was said in R v Taylor [2007] EWCA Crim 803 and Attorney General References Nos 143 and 144 (R v Brown and Carty) [2007] EWCA Crim 1245.

16. The difficulty with drawing support from Taylor and Brown and Carty is that those cases dealt with the position prior to the introduction in 2022 of paragraph 5A. The context was explained in R v Kamarra-Jara [2024] EWCA Crim 198 at [32]:

> "... where two or more offenders fall to be sentenced in respect of the same murder, some of whom are just over 18 and some of whom are just under 18, it would be neither just nor rational for significantly divergent terms to be imposed on grounds of age

> alone: see R v Taylor ... The proper approach is to move from each starting point to a position where any disparity is no more than a fair reflection of the age difference: see Attorney General's References Nos 143 and 144 (R v Brown and Carty) ... "

17. Prior to June 2022 any offender aged under 18 when the offence was committed using a weapon taken to the scene would have been subject to a starting point of 12 years, whereas an offender aged 18 would be subject to a starting point of 25 years. The authorities to which we have already referred sought to remedy the plain injustice that would result if someone a matter of months older than their co-accused had a starting point more than twice as long, simply due to a marginal difference in age. Paragraph 5A seeks to remedy that injustice by very significantly increasing the starting point for young defendants close to their 18th birthday. By that route significantly divergent terms as between those under 18 and those just over 18 on the face of it can be avoided. We do not address the position of whether it will be appropriate mechanistically to apply an adult starting point to an 18-year-old. That was the issue considered in Kamarra-Jarra where it was said at [33]:

> "Age governs the normal starting point for a minimum term, but not the assessment of culpability by reference to maturity. The court is always obliged to look beyond mere chronological age."

18. The issue which arises in this case is the divergence between the minimum terms for a 14 year old, albeit one close to their 15th birthday, and for a 17-year-old who has another six months to go until their 18th birthday. Applying paragraph 5A arithmetically leads to a 10-year difference in the minimum terms for a murder committed using a weapon brought to the scene. This divergence is not the result, as it used to be, of a single starting point for the minimum term applying for every offence of murder committed by an offender under 18. Rather, the divergence is the result of the statutory scheme designed

to cure what was seen to be the potential injustice created by a single minimum term for offenders under 18 when the offence was committed. The proposition being argued in this case must be that the statutory scheme itself is unjust. In oral argument Miss Jones on behalf of Tyler Hunt invited us to find that the table in Schedule 21 paragraph 5A does not reflect a case where different age groups appear together. We do not accept that proposition. Very many, if not almost all cases of murder, involving those under 18 are cases where two or more such young people are charged together. The notion that Parliament set out this schedule simply to deal with cases where a single offender was being sentenced is not tenable. Had that been Parliament's intention it would have said so in clear terms.

19. It seems to us that the answer to the conundrum is what was said in Kamarra-Jarra. A judge sentencing two offenders for an offence of murder where both were under 18 when they committed the offence must look beyond mere chronological age. We take the ages of Hunt and D as an example. It might be that the older offender took the leading role in the offence and demonstrated a level of maturity at or beyond his chronological age, whereas the younger offender played a subsidiary part in the offence and lacked maturity. In those circumstances it may be that little adjustment would be needed to the starting points in paragraph 5A, prior to the consideration of other aggravating and mitigating factors. Where the younger offender showed maturity and played an active role in the murder, as opposed to the lesser role being played by an immature older offender, the position will be different. It will always be a matter for the judgment of the sentencing judge to balance the different factors to achieve a just result whilst taking into account the statutory framework provided by paragraph 5A.

20. In this case the sentencing judge had heard the trial. She was best placed to determine the

respective culpability of the offenders. She could not ignore the provisions of paragraph 5A. In our judgment she achieved as much as she could within the confines of those provisions to do justice to Taylor Hunt. Taken in isolation there can be no criticism of the minimum term fixed in his case. The judge was generous in not finding that the offence was aggravated by such matters as disposal of the evidence and planning of the offence. The mitigating factors were taken fully into account. Hunt's immaturity and his troubled childhood served to reduce the minimum term. The reduction applied by the judge was four years, which more than adequately reflected the available mitigation.

21. If there remains any injustice due to the difference in the minimum terms we consider that this may be due to an unjustified degree of leniency afforded to D. He was almost 15 at the time of the murder. Paragraph 5A indicates a starting point of 17 years for a 15-year-old where a weapon is brought to the scene. Given his role in the offence and his background, it could be said that the judge ought to have increased rather than reduced the starting point of 13 years in D's case. Had she done so the divergence would have been significantly less. This court will not reduce an otherwise proper sentence because of the apparent disparity with a sentence more lenient than it should have been.

22. In all of those circumstances, although we have given leave, we do not find that the sentence imposed on Tyler Hunt was manifestly excessive or wrong in principle. We dismiss his appeal.

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Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk