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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 19 June 2019

B e f o r e:
LORD JUSTICE HOLROYDE
MRS JUSTICE SIMLER DBE
MR JUSTICE JACOBS

R E G I N A

v

DURRELL GOODALL
REANO WALTERS
TREY JACOB WILSON

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Mr J Harrison QC & Mr R Simons appeared on behalf of the **Applicant Goodhall**
Mr D Josse QC appeared on behalf of the **Applicant Walters**
The Applicant Wilson did not attend and was not represented

J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: Abdul Hafidah, aged 18 at the time of his death, was a member of a street gang in the Moss Side area of Manchester known as the "Rusholme Crips". There was a history of tit-for-tat violence between that gang and a rival gang in the Moss Side known as "AO". Each of the gangs was fiercely territorial. On 12 May 2016 Hafidah deliberately went into territory which AO members treated as their own. He was seen by AO members and was chased through the streets. He was knocked down by a car driven by one of his pursuers, severely beaten and, as he lay on the ground, he was stabbed in the neck and left to die.

2. A detailed police investigation resulted in 13 young men being charged with murder. Because of the obvious impracticability of trying all 13 together, an order was made, on the application of the prosecution and without opposition by any defendant, for there to be two separate trials. In the first trial, four of the accused were convicted of murder and three of manslaughter. Those convicted of murder included Devonte Cantrell, who inflicted the fatal stab wounds and Nathaniel Williams, who drove the car which struck the deceased. At the second trial, these three applicants were convicted of murder. One of their co-accused entered an acceptable plea to manslaughter, another was not proceeded against by the prosecution, and a third was acquitted of both murder and manslaughter.

3. All those convicted of murder in the two trials were sentenced to the form of life sentence appropriate to their respective ages. In relation to these three applicants, differing minimum terms were specified by Openshaw J, the learned judge who had presided over both trials. The minimum terms were 16 years in the case of Durrell Goodall, aged 19 at the time of the murder and now aged 22; 20 years in the case of Reano Walters, aged 18 at the time and now aged 21; and 18 years in the case of Trey Wilson, aged 17 at the time of the murder and now aged 20.

4. All three applied for leave to appeal against conviction. Walters also applied for leave to appeal against sentence. Those applications were refused by the single judge (Langstaff J). The applications are now renewed to the Full Court. In the case of Wilson, application is also made for a necessary extension of time of 22 days.

5. It is sufficient for present purposes to summarise the facts briefly. In doing so we shall refer to persons by their surnames only. We intend no disrespect by doing that.

6. Hafidah received a call on the afternoon of his death from a phone which the judge was satisfied was controlled by a member or supporter of AO. Minutes later, all of the accused were gathered in the area of Westwood Street, in the heart of the territory which AO members regarded as their own. The judge was satisfied that all of those who were convicted at the two trials were members of, or at least affiliated to, AO.

7. Some of the accused were in two cars, one of which was a Vauxhall Corsa, driven by Williams with Walters as a passenger. Hafidah was spotted by one or more of the accused. He ran across a street. Both cars turned and followed him. They stopped briefly at a junction, and passengers including Walters got out. They ran in one

direction, others went in different directions, it being the prosecution case that they were splitting up in order to increase their chances of catching Hafidah.

8. A group led by Goodall, and including Cantrell and Wilson, moved off more or less together, initially walking and then breaking into a run. Cantrell was wearing a shoulder bag, the prosecution case being that the murder weapon (a knife) was in that bag. Hafidah concealed himself for a time behind an advertising hoarding. He then emerged and ran along Moss Lane East. He was pursued by a number of the accused. One of them was the applicant, Wilson, who stopped to pick up the remains of a broken umbrella for use as a weapon. Another of the accused threw a hammer at Hafidah but missed. Hafidah tried unsuccessfully to get into passing cars to escape. He was eventually struck by the Corsa driven by Williams which caused him to fall to the ground. Once on the ground he was kicked and punched by a number of the accused before Cantrell inflicted the fatal stab wounds. The broken umbrella was found close to the body.

9. None of the three applicants made any comment in interview. At trial, and in the presence of the jury, Goodall and Wilson pleaded guilty to manslaughter. Those pleas were not accepted and the trial proceeded. The applicants made little, if any, challenge to the evidence given by prosecution witnesses. Goodall gave evidence to the effect that AO was a music group not a street gang. His case was that he had joined in the pursuit of Hafidah and had assisted or encouraged others to cause some injury to Hafidah but had not intended that Hafidah should be killed or seriously injured.

10. Wilson similarly gave evidence to the effect that AO was a rap group not a street gang. He admitted that he had taken part in the chase and that "on the spur of the moment", he had picked up the broken umbrella. He denied any intention to kill or cause serious injury and denied that he had struck Hafidah with the umbrella or taken any part in the attack carried out by others. He said he had seen the attack, including the fatal stabbing, and had then run away.

11. Walters gave evidence to the effect that he was not a member of any gang. He denied playing any part in either the pursuit or the attack and denied seeing the events which we have summarised.

12. Walters had himself been run over by a car some nine days before the murder of Hafidah. In text messages describing that incident, he said that the car which knocked him down had been driven by "some Libyan kid". Most of the members of the Rusholme Crips were of Libyan or Somalian heritage.

13. In each of the two trials the judge gave directions as to the law of joint enterprise, about which no criticism is or could be made. The convictions of the seven accused in the first trial were adduced in evidence in the second trial. The judge gave a firm direction that those convictions were not evidence against any of the accused in the second trial.

14. The ground of appeal against conviction, raised by all three applicants, is that each of their convictions of murder is inconsistent with the convictions of manslaughter returned against three of the accused in the first trial. In written submissions on behalf

of Goodall, a particular comparison is drawn between him and two of those convicted of manslaughter at the first trial, namely George and Neish. It is submitted that the evidence and issues relating to those three accused were essentially the same, and that no reasonable jury could have found George and Neish not guilty of murder whilst concluding that Goodall was guilty of murder.

15. It is acknowledged, in the light of the decision of this court in R v Fanning [2016] EWCA Crim 550; [2016] 1 WLR 4175, that in circumstances in which reliance is placed on inconsistent verdicts, the burden is on an appellant to satisfy this court that no reasonable jury, who had applied their mind properly to the facts of the case, could have arrived at the combination of verdicts which were in fact returned. It is however submitted that Goodall was not at the forefront of the chasing group, did not join in the attack and had left the area of the attack before Cantrell inflicted the fatal stab wounds. The conclusion which the jury in the second trial must have reached, namely that Goodall was encouraging or assisting others, is said to have been wholly inconsistent with the way the jury in the first trial treated George and Neish.

16. On behalf of Walters, written submissions made similar comparisons between the evidence against him and the evidence in the first trial against those convicted of manslaughter. It is acknowledged that separate trials of persons charged with the same offence may properly be ordered, and it is accepted that no objection was made to the order in this case that the accused should be divided into two trials in the interests of fairness and efficiency. It is however submitted that when separate trials are ordered a risk of inconsistent verdicts arises. It is argued that in this case the verdict against Walters is inconsistent with some of the verdicts in the first trial.

17. It is similarly submitted, in written grounds put forward on behalf of Wilson, that the order for separate trials has, in this case, resulted in inconsistent verdicts. It is submitted on the evidence that Wilson did not play a leading role in the attack, nor was he at the forefront of the attack, whereas all three of those convicted of manslaughter in the first trial are said to have been more heavily involved in the incident than was Wilson. It is submitted that the two juries must have taken "a fundamentally different approach to the case" and that there is no sensible basis on which the juries could have come to "such different conclusions on the central issue of intention of the respective defendants".

18. The written submissions have been developed orally today by Mr Harrison QC, on behalf of Goodall, and Mr Josse QC, on behalf of Walters. We are grateful to both of them. Wilson has not been represented at this renewed application and in his case the court has proceeded on the basis of a paper application. It is however important to emphasise that to a very substantial degree all three applicants make common cause on the issue which lies at the heart of their proposed appeal against conviction. We have proceeded on the basis that a point successfully made on behalf of any one of them will assist each of the other two. Nor has there been any appearance today on behalf of the respondent, although we have had the assistance of a detailed written respondent's notice.

19. In Fanning the court was concerned with a number of cases in which the verdict of a jury, against a single defendant, was said to have been inconsistent with one or more other verdicts in the same trial and therefore unsafe. Having considered a number of previous cases the court made clear that the correct test in such a case was that originally stated by Devlin J (as he then was) in the unreported case of R v Stone (1954):

> "When an appellant seeks to persuade this court as his ground of appeal that the jury had returned a repugnant or inconsistent verdict, the burden is plainly upon him. He must satisfy the court that the two verdicts cannot stand together, meaning thereby that no reasonable jury who had applied their mind properly to the facts in the case could have arrived at the conclusion, and once one assumes that they are an unreasonable jury, or they could not have reasonably come to the conclusion, then the convictions cannot stand."

20. Thus an appellant seeking to argue that the verdicts in a single trial are so inconsistent as to render one or more convictions unsafe, faces a heavy burden.

21. In the present case however, the applicant's ground of appeal is based upon differing verdicts, returned by different juries, in different trials, in which inevitably the evidence was in some respects different.

22. Such a situation was considered in relation to one of the appellants in the case of R v Andrews Weatherfoil Ltd (1972) 56 Cr App R 31. The court said:

> "As long it is possible for persons concerned in a single offence to be tried separately, it is inevitable that the verdicts returned by the two juries will on occasion appear to be inconsistent with one another. Such a result may be due to differences in the evidence presented at the two trials or simply to the different view which the juries separately take of the witnesses... where the verdicts are returned by different juries, the inconsistency does not, of itself, indicate that the jury which returned the verdict was confused or misled or reached an incorrect conclusion on the evidence before it. The verdict 'Not Guilty' includes 'Not Proven'. We do not therefore accept [counsel's] submission that inconsistent verdicts from different juries *ipso facto* render the Guilty verdict unsafe. If, as will usually be the case, the evidence of the two trials was significantly different, this not only explains the different verdicts but also defeats the claim that inconsistency alone renders the Guilty verdict unsafe."

23. It is relevant to note that those observations were made in the context of the court's dismissing an appeal against conviction by an appellant called Sporle, who had been convicted of corruptly accepting emoluments from one Smith. Smith was separately tried at a different time and was acquitted of corruptly offering the emoluments to Sporle. Thus, two juries had separately considered what might be regarded as two sides of the same coin. The court was nonetheless satisfied that Sporle's conviction must stand, noting that the jury in his case had heard Sporle's evidence and that there

was no suggestion that evidence favourable to Sporle had been given in Smith's trial but not given in Sporle's trial.

24. In the present case similarly, the jury in the second trial heard the evidence of all three applicants. It is submitted by Mr Harrison that in one respect part of the evidence against Goodall emerged more favourably to him in the second trial than the evidence given at the first trial. But no applicant suggests that the second jury did not hear favourable evidence which had been heard by the first jury.

25. In the current edition of Archbold at paragraph [7-72] it is said of the decision in Andrews Weatherfoil Ltd that in practice the onus cast upon an appellant will be "an almost impossible one to discharge" because inevitably there will be a difference in the evidence, however similar the evidence may be, against two persons jointly charged with an offence but separately tried.

26. In the present case no challenge is or could be made to the order for separate trials. We think it important to emphasise that point. One of Mr Josse's oral submissions was to the effect that the differing verdicts might, if anything, be less troubling if they had been returned by a single jury which had considered all the evidence against all of the accused, whereas in the events which have happened he submits there is a lingering concern that the two juries approached their respective tasks differently. We see no basis for that concern, both juries having been similarly directed as to the legal principles and there being no reason to doubt that each of the juries properly gave separate consideration to the evidence against and for each of the accused whose cases they were considering. Furthermore, it seems to us that the logical conclusion of the argument is that there never could be separate trials of persons accused of involvement in the same crime, however lengthy or unworkable a single trial of all of them might be.

27. Each of these applicants was fairly tried. In each case there was undeniably evidence on which the jury could properly convict. It is, in our view, unarguably the case that the evidence heard by the juries in the two trials differed significantly. In this regard, it suffices to point out that the jury in the second trial heard the evidence of these three applicants but did not hear the evidence of an accused who gave evidence in the first trial.

28. In addition, whilst the respective juries in the two trials of course heard evidence about the actions of all those accused of involvement in the murder, they were focused on the evidence relating to those who were on trial before them and not on the evidence related to those who were not. The first jury did not know that Goodall and Wilson would plead guilty to manslaughter before the second jury, thereby admitting some involvement in the relevant events. Thus, submissions seeking to compare the evidence against one of these applicants with the evidence against one of those convicted of manslaughter in the first trial, face the insuperable obstacle that they are not comparing like with like.

29. In those circumstances, it is, in our judgment, simply impossible to argue that there is such inconsistency between the manslaughter convictions in the first trial and the murder convictions in the second trial as to render the convictions of the applicant's

unsafe. We entirely agree with the observations to that effect made by Langstaff J when refusing leave to appeal on the papers.

30. As we have indicated, no applicant suggests that, on the evidence heard by the jury in his trial, the jury were not entitled to convict him. Thus, if the second trial alone is considered, each applicant must concede that his conviction is safe. It is not, in our judgment, arguable that any of the convictions are rendered unsafe because a different jury, hearing different evidence about different accused in a different trial, found some of them not guilty of murder but guilty of manslaughter.

31. We do not go so far as to say definitively that there can never be circumstances in which such an argument might succeed, because we cannot foresee all possible circumstances in which the point may be raised. But we are satisfied that if the point ever were to be arguable, the circumstances would have to be truly exceptional.

32. Although the point is not covered by direct authority other than Andrews Weatherfoil Ltd, and one more recent case in which that decision was cited, we do not accept the submission that leave to appeal should for that reason be granted. We regard that as an indication that an applicant relying on a suggested disparity of this sort will very rarely, if ever, be able to mount an arguable case.

33. We should add that in the respondent's notice detailed submissions are made as to features of the evidence against each of the applicants which, it is said, would, in any event, defeat grounds of appeal based on alleged inconsistency of verdicts. It suffices to say that we see considerable force in those written submissions. It is not however necessary for us to deal with them in any detail because, as we have indicated, the applicants have simply failed to put forward any basis on which it could properly be argued that their convictions are unsafe by reasons of inconsistency with verdicts reached by another jury in another trial.

34. If we had come to any different view about the merits of the ground of appeal against conviction, we would have been willing to grant Wilson the necessary extension of time, the relevant delay being comparatively short and a satisfactory explanation having been given. As it is, however, no useful purpose would be served by extending time. For those reasons the application for an extension of time and the applications for leave to appeal against conviction fail and are refused.

35. We turn to consider Walters' renewed application for leave to appeal against sentence. In his sentencing remarks Openshaw J expressed very clearly the gravity of this offence of murder. He properly considered schedule 21 to the Criminal Justice Act 2003. He identified a number of aggravating features, including the facts that the murder was in furtherance of gang feuding, the chase was undertaken by many members of the gang acting together, at least one of whom had a hammer, and in addition to Cantrell at least one other had a knife. The judge was sure that all those who had been convicted knew that another or others had a knife or knives. He emphasised that in an incident of this kind, "numbers really do count" because the more people who attacked Hafidah, the more likely it was that he would be overcome and the less likely it was that anyone would intervene to protect him. The judge observed that this was a public display of

force intended to show the power of the AO gang. There had been a prolonged chase over the course of about 10 minutes, crossing one of Manchester's principal arterial roads during rush hour in the sight of many passers-by. He said:

> "Abdul Hafidah was left for dead in the middle of the road, thereby causing great distress and anguish to the eyewitnesses and, I might add, to the outrage of the community and indeed to the City. Their conduct displays an arrogance and ruthlessness characteristic of the membership of street gangs which impose a strict code of silence upon its members."

36. The judge took, as his starting point, a minimum term of 25 years in accordance with paragraph 5A of schedule 21 for those aged over 18, saying that in his judgment:

> "... everyone who participated in that final attack must have known and intended that the hunt for and chase of Abdul Hafidah would result in his death or serious injury by a weapon brought to the scene by one of them, so as to engage Paragraph 5A and a starting point of a minimum term of 25 years for those over eighteen at the time..."

37. He noted that the only substantial point of mitigation was the young age of the offenders, but added that none of the accused was immature or easily influenced and all knew exactly what they were doing and the consequences which would follow. Having conducted both trials, he observed that none of the accused had yet shown any regret or remorse for what they had done, though he recognised that their attitudes may change over time.

38. The judge noted that Walters was only 18 at the time of the murder and had no convictions or cautions. The judge had read a number of testimonials written on the applicant's behalf. However, he took into account that Walters had a personal grievance against members of the rival gang, having recently been run over, and that he was "one of the most active gang members during the search". By way of illustration the judge referred to the fact that Walters had jumped out of a moving car in order to pursue his chase on foot. The judge was further satisfied that at the end of the chase Walters had followed Hafidah back across the road and joined in the final joint assault. The judge said:

39.

> "I accept that he personally did not have a weapon, and he may not have known that Devonte Cantrell had the knife, but he knew perfectly well that others had deadly weapons; indeed he admitted that in evidence. He must have joined in and continued in this attack knowing and intending that someone would use a deadly weapon to cause at least some really serious injury."

40. The grounds of appeal against sentence are that the judge erred in taking a starting point pursuant to paragraph 5A rather than paragraph 6 of schedule 21, and further erred in

concluding that the applicant had joined in the final assault. It is submitted that in all the circumstances the minimum term of 20 years was manifestly excessive.

41. In support of the first of those submissions, it is argued that in the passage which we have just quoted, the judge acknowledged that Walters may not have known that Cantrell had the knife. It is argued that for the purposes of paragraph 5A the relevant weapon is that which is used to kill. In those circumstances, it is submitted that paragraph 5A did not apply to this applicant.

42. We are unable to accept that submission. Paragraph 5A applies to an offender who took a knife or other weapon to the scene intending to commit an offence or have it available to use as a weapon and used that knife or other weapon in committing the murder. There is therefore no doubt that paragraph 5A applied to Cantrell who inflicted the fatal stab wound. The judge was correct to say that paragraph 5A also applies to a joint participant who, though not personally responsible for the fatal injury, participated in the murder with the intention that the victim would be killed or seriously injured by a weapon brought to the scene by one of the attackers. We reject the submission that paragraph 5A could only apply to a joint participant who, in addition to having that intention, correctly predicted which of his co-accused would inflict the fatal injury with which weapon.

43. Nor can we accept the submissions made in support of the second ground of appeal. Having presided over both trials, the judge was in the best possible position to assess the role and culpability of the individual defendants. In his sentencing remarks, both in his account of the overall circumstances of the pursuit and murder and in the passages dealing specifically with this applicant's case, he identified the key features of the evidence against Walters. We are satisfied that on the evidence he was unarguably entitled to reach the conclusion he did.

44. We have considered anxiously, particularly having regard to the applicant's young age, whether there is any other ground on which it can be said that the minimum term was manifestly excessive in length. We are satisfied that there is none. Young though he was, this applicant played an important part in what was a dreadful murder, with many aggravating features. It is apparent that in dealing with the many accused whom he had to sentence, the judge carefully discriminated between them in determining the necessary length of the minimum term in each case. In Walters' case he correctly identified the starting point, correctly assessed the aggravating and mitigating factors and was clearly entitled to reach the conclusion he did. There is no ground on which it can be argued that the minimum term which he imposed was manifestly excessive.

45. For those reasons, grateful as we are to counsel, the renewed application for leave to appeal against sentence fails and is refused.

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