

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

[2021] EWCA Crim 2040

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202003239/B2



Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 7 December 2021

LORD JUSTICE HADDON-CAVE

MR JUSTICE PICKEN

MR JUSTICE JACOBS

REGINA

V

SAMUEL ODUPITAN

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR I HENDERSON QC & MR M PINKUS appeared on behalf of the Appellant.

MR O GLASGOW QC & MS D HEER appeared on behalf of the Crown.

J U D G M E N T

1. LORD JUSTICE HADDON-CAVE: On 1 December 2020, in the Crown Court at Croydon before HHJ Robinson (the Recorder of Croydon), the appellant, Samuel Odupitan (now aged 25), was convicted unanimously of murder. On 7 December he was sentenced by HHJ Robinson to imprisonment for life, with a minimum term of 30 years less days served on remand. He appeals against conviction by leave of the Full Court, which is limited to one ground, namely that the judge erred in refusing to admit bad character evidence of a non-defendant witness, Jermaine Blake.
2. We have been much assisted today by the clear and succinct submissions of Mr Henderson QC, on behalf of the appellant, and Mr Glasgow QC on behalf of the Crown. We are indebted to them both and their teams for both the careful written submissions and preparations for this case as well as for their submissions this morning.
3. The tragic facts of this case are clearly set out in the judgment of the Full Court, delivered on 9 November and it is not necessary to repeat them all again today. The facts are also set out in detail in the full summary of the Court of Appeal Office.
4. Briefly, on the night of Tuesday 25 February 2020, Tyler Roye (who was born in 1995) was working a late shift and he left work just after 11.00 pm. His journey home took him to London Bridge and then to East Croydon tram station. Just before midnight a tram pulled up at the East Croydon stop. Mr Roye boarded and walked past the appellant, who was a complete stranger to him. Mr Roye was carrying a very distinctive Bengal Tiger Gucci man bag and he made his way along the carriage towards the rear, initially sitting in seat 46 before moving soon afterwards to one nearer the exit in seat 55. Over the course of his journey to his intended destination (the Arena tram stop) for the 8 minutes or so he remained in seat 55.
5. There was another man, Jermaine Blake, who sat in seat 53. He spent his entire journey, until 30 seconds or so before the Arena stop, on his mobile. During the journey, as the CCTV shows very clearly, the appellant changed seats on several occasions. Initially he sat in seat 28 and on a number of occasions looked over his right shoulder. He then moved to seat 46 which provided a view of the rear of the carriage, before moving to seat 36, which provided an even clearer view of the rear of the carriage. A few moments later he moved to seat 40 which allowed him, said the prosecution, to see Mr Roye by simply looking over his left shoulder, which he did on nine separate occasions during the remainder of the journey. The tram pulled into the Arena stop and five people disembarked including Mr Roye, Mr Blake and the appellant. Mr Roye made his way on foot towards Gladeside where he lived. His route took him along Bywood Avenue. He sent a text message to his girlfriend, Jaiya Williams. She rang back almost immediately at 12.01 am. The call was answered but he did not speak directly to her, instead she heard him saying "bro bro" before the phone went dead.
6. It was the prosecution case that Mr Roye was confronted by the appellant in Bywood Avenue, that he was stabbed five times and his Gucci bag was stolen. Several residents heard two male voices arguing and the sound of a struggle. One resident said she heard "stop it, don't hurt me", another one said she heard one of the men say "it is a disrespect" and the other man "it is not that deep". She also heard a scream and a male voice cry out "what you doing, get off me". Following the stabbing Mr Roye made his way to a friend's house, Andrew Richards, in Stroud Green Way around the corner from Bywood Avenue, where he was shown on CCTV arriving at 12.13 after midnight. A 999 call was made at 12.13.52 seconds after midnight. An ambulance attended and Mr Roye was

taken to King's College Hospital where he underwent emergency surgery. Tragically his life was pronounced extinct at 4.18 am.

7. A narrow issue is raised by way of appeal in respect of which leave has been given, namely whether or not the judge erred in refusing to admit bad character evidence of Mr Blake. In summary, the appellant's case was that having disembarked from the tram at Croydon Arena station, he said he held back because another male (Mr Blake) was "eyeballing" him. He said that as a result he waited by the bike rack at the station between 2 to 4 minutes (or however long it took him to smoke two cigarettes) before walking home via Long Lane. The relevance of this was that by way of an explanation by the appellant as to why he did not take his direct route home and why he says, by sheer coincidence, he happened to be following behind Mr Roye.
8. It was on that basis that Mr Henderson, before the learned trial judge, sought to adduce bad character evidence in respect of Mr Blake who had convictions in January 2009 for wounding and inflicting grievous bodily harm, convictions in 2010 for affray, convictions in 2012 for possession of an offensive weapon and violent disorder and convictions by way of pleas in 2013 to two robberies. There was also police intelligence that Mr Blake was affiliated to the "Field Boys Gang" previously known as "Block Cartel". There was also an outstanding case against Mr Blake for possession of an offensive weapon, violent disorder and grievous bodily harm with intent, which Mr Henderson informs us has led to a recent conviction.
9. It was submitted on behalf of the appellant at trial that this evidence established that Mr Blake had a propensity to behave in the way described by the appellant, namely to eyeball a stranger without provocation, which the appellant at trial, although he did not himself give evidence, Counsel submitted on his behalf put him in fear and that was the reason that he took the route that he did.
10. In determining the application, HHJ Robinson was required to exercise her judgment on whether the evidence had "substantial probative value" in accordance with section 101B (ii) of the Criminal Justice Act 2003, which has a higher standard than the test of mere relevance in section 101 of the same Act (see R v Braithwaite [2010] EWCA Crim 1082 at paragraph 12). Mr Henderson, before us, effectively makes the same submissions again in support of his ground of appeal that that the learned judge erred in refusing to admit the bad character evidence of Mr Blake.
11. In refusing the application the learned judge gave essentially two reasons. First, that the bad character evidence in respect of Mr Blake was not properly "in issue" because there was no proper evidential basis upon which Mr Blake could be regarded as a potential suspect in the attack unless Mr Blake was an "international athlete" and could cover a distance of 633 metres in 70 seconds. Therefore the judge concluded that it was not necessary to consider whether the evidence had substantial probative value in respect of that issue.
12. Second, whilst the judge accepted that the reason put forward by the appellant for choosing to wait and go the long way home was an issue in the case that for present purposes could be described as one of substantial importance, in the context of the case as a whole, the convictions which were the subject of the bad character evidence were old and did not, in the judge's view, justify a finding that they were of substantial probative value in relation to the issue in question.
13. Before us today Mr Henderson submits that the judge erred in those conclusions and

should have admitted this evidence which would have enabled the jury potentially to take a different view as to the movements of the appellant, the reasons for the movements of the appellant having left the tram.

14. Mr Glasgow, on behalf of the Crown, submits that, whilst it is accepted that the issue why the appellant did not take the most direct route home was an issue of "substantial importance", in principle, the learned judge was correct to conclude that the evidence of Mr Blake's previous convictions did not have substantive probative value in respect of that issue. Central to Mr Glasgow's submissions was that the CCTV in this case was exceptionally clear and it provided a substantial body of evidence upon which the jury could have and would have concluded that there was simply no eyeballing of any sort on the tram by Mr Blake to the appellant and no evidence whatsoever that the appellant was in any way concerned by the presence of Mr Blake on the tram and indeed his movements on the tram would have suggested quite the opposite.
15. We have studied the CCTV evidence in this case carefully. It provides exceptional clear and important contemporaneous evidence in this case. We are informed that the jury saw the full length of the CCTV which was from both ends of the tram. From the moment that the appellant and Mr Blake boarded the tram neither looked at each other. Mr Blake spent almost the entirety of the journey looking at his phone. He did not look at the appellant. The appellant on the other hand, as it is plain from the CCTV, was much more interested in Mr Roye. His movement of seat to seat and his glancing over his shoulder to take surreptitious looks at Mr Roye all suggest very clearly that he was effectively stalking Mr Roye.
16. The appellant as the judge pointed out also gave inconsistent statements. In his first interview, he said nothing untoward had happened on the tram. It was only in his second interview that the appellant said that he had smoked cigarettes and waited by the tram stop after alighting because he was concerned about Mr Blake eyeballing him. This might be thought to be a late invention by the appellant, having been mentioned by him only at the second interview when he was shown the CCTV. Further CCTV evidence from another tram showed that there was indeed nobody waiting or loitering by the bike racks as the appellant had alleged.
17. In our judgment, this is a plain case when it can be clearly said that the bad character evidence which it is sought to admit has no substantial probative value because the issue in respect of which it was sought to introduce the bad character evidence is on the evidence that was before the court not a viable issue at all.
18. The jury had before them a substantial body of CCTV evidence which plainly demonstrated that there was no eyeballing and that the appellant was not concerned by Mr Blake. In our view, the judge was entirely justified in refusing to admit this bad character evidence which did not go to any viable issue.
19. In any event, in our view, taking the totality of the evidence together, the conviction in this case cannot be said to be unsafe. There was overwhelming circumstantial evidence and CCTV evidence before the jury upon which they could properly convict. The introduction of this bad character evidence would not have assisted and indeed simply led to unnecessary speculation. So whilst we are grateful to Mr Henderson for his clear and careful submissions, the appeal in respect of this ground is dismissed.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk