

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.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 480



No. 202100733 B5

Royal Courts of Justice

Tuesday 29 March 2022

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE FULFORD)
LADY JUSTICE WHIPPLE DBE
SIR NIGEL DAVIS

REGINA
V
JON PAUL CHATWOOD

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 R ENGLISH appeared on behalf of the Applicant.

J U D G M E N T

LADY JUSTICE WHIPPLE:

1. On 22 February 2021 at Preston Crown Court before Openshaw J, the applicant (who was then 26) was found not guilty of murder but guilty of an alternative offence not charged, namely manslaughter. He was acquitted of count 2, a charge of attempted murder, and count 3, a charge of attempting to cause grievous bodily harm with intent. On 24 February 2021 (before the same court) the applicant was sentenced to 14 years' imprisonment. He now renews his application for leave to appeal against sentence and for a representation order after refusal by the single judge. He is represented before us by trial junior counsel, Mr Richard English, who appears *pro bono*. We are very grateful to Mr English for his helpful submissions orally this morning, noting that the written submissions were drafted by his leader at trial.

2. The facts in brief are these. The applicant and his co-accused Dean Qayum were local Class A drug dealers in Blackburn trading as the "Bully Line" from the applicant's house in Walsh Street. They had around 30 customers to whom they sold heroin and cocaine. Amongst their customers were Alison McBlain and Christian Rivers. The applicant recruited Kaylib Connolly (who was then aged 18) to deliver drugs for the Bully Line, and for that purpose the applicant bought an old Fiat Punto.

3. On 18 November 2019, Ms McBlain and Mr Rivers had stolen drugs from the Bully Line. They had arranged for Connolly to deliver the drugs to them under a deserted and derelict railway bridge. As Connolly handed over the drugs, Mr Rivers produced a knife and ran off with Ms McBlain and the drugs without paying. Connolly reported this to the applicant and Qayum.

4. There was evidence from several sources that a search for Ms McBlain and Mr Rivers began on the evening of 18 November 2019. On the next evening (19 November 2019) the Fiat Punto, which had been purchased by the applicant and was being driven by Connolly with three passengers, deliberately mounted the pavement of King Street, Blackburn. It drove along the pavement and mowed down Ms McBlain and Mr Rivers. Mr Rivers was able to jump out of the way and sustained only a slight injury to his foot. Ms McBlain was struck from behind and thrown into the air. Her head hit the windscreen and her body was flung 13 metres from the point of impact. She sustained extensive fracturing to her skull with resultant brain damage which was not amenable to treatment nor was it survivable. She died two days later. Following the collision an unsuccessful attempt was made to destroy the Punto by fire.

5. It was the Crown's case at trial that this driving incident was in retribution for the drug theft and that what had occurred was the result of a planned revenge attack, that Mr Rivers and Ms McBlain were to be targeted and either killed or caused to suffer serious harm.

6. The jury were provided with written directions on the law, and a Route to Verdict to guide their discussions. Question 9 set out the various questions the jury needed to answer in relation to the charge of murder against the applicant including Question 9(iii) which asked whether the jury were sure that:

“[the applicant] intended that they ... would cause them [namely Mr Rivers and/or Ms McBlain] some really serious bodily harm...”.

7. If they found the applicant not guilty of murder, the jury were directed to go on and consider the alternative of manslaughter, by a series of questions including Question 10(ii) which asked whether the jury were sure that:

"[The applicant] realised that, if found, they [namely Mr Rivers and Ms McBlain] would be attacked and would be caused some harm, albeit not really serious harm."

8. The jury returned a verdict of guilty of manslaughter and it was apparent from that verdict that they were sure that the applicant had sent the team out in the Punto to search for Mr Rivers and Ms McBlain and, when found, to attack them and cause harm, albeit harm falling short of really serious harm.
9. In passing sentence, the judge found that the applicant could not have known or contemplated that the Punto would have been used as a weapon but he drew an inference that the applicant could not have contemplated that this group would tackle Mr Rivers, who had previous offences for violence, unarmed, so the use of arms or of some weapon was in the applicant's contemplation.
10. The judge referred to the Guidelines relating to Unlawful Act Manslaughter. He said that this was a case where death was caused in the course of an unlawful attack which carried a high risk, if not of death then at least of causing some grievous bodily harm which was or ought to have been obvious to the offender. This was a category B offence with high culpability. That led to a starting point of 12 years with a category range of 8 to 16 years. He said that the offending was further aggravated by the

following features: the attack upon the two individuals was planned and premeditated; the attack was executed to punish them for having robbed the Bully Line of drugs and to deter others from doing likewise; the killing took place in a public place in front of shocked eyewitnesses; and there was an attempt to destroy evidence by burning the car in which the applicant was implicated. The cumulative effect of these factors required a considerable increase in the starting point. The judge rejected the applicant's submission that the offending fell within category C. Further, the judge referred to the aggravating factors mentioned in the non-exhaustive list in the Guidelines which included the use of a weapon and others being put at risk. The judge concluded that the applicant performed the *leading role* in the group. The judge noted that the applicant was 26. He had 15 convictions for 30 offences spanning the years from 2007 to 2020. Those previous convictions were an aggravating factor. The judge described this as a "bad case of manslaughter" and the term of imprisonment he imposed was 14 years.

11. In grounds of appeal settled by leading trial counsel a single ground of appeal is advanced, namely that the judge erred in placing this offending in category B. It is said that it should have been in category C and that placing it in category B was inconsistent with the jury's verdicts.

12. In oral submissions Mr English has pressed the point that the overall term of 14 years was simply too long, adopting earlier arguments based on categorisation but also standing back and taking an overview, and in particular placing reliance on the judge's finding that this applicant did not know or envisage that the car would be used as a

weapon.

13. We are not persuaded that the applicant has an arguable case. The trial judge was well positioned to assess the role that this applicant played in this offending. The jury acquitted the applicant of murder but they convicted of manslaughter, a verdict reached after answering the various questions in the Route to Verdict. It was open to the judge to conclude that the death was caused in the course of an unlawful act, which carried a high risk of death or grievous bodily harm, or really serious bodily harm and that that risk was or ought to have been obvious to the applicant. That conclusion is not inconsistent with question 9(iii) (which the jury must have answered in the negative) or 10(ii) (which the jury must have answered in the affirmative) in the Route to Verdict. Question 10(ii) asked whether the applicant realised that some harm, albeit not really serious harm, would be inflicted. That was a question going to intention. Even if the jury could not be sure that he had realised or intended really serious harm (question 9(iii)), it was open to the judge to conclude that the applicant had nonetheless run the obvious risk of such harm being inflicted. Category B is appropriate where there is a high risk of at least really serious harm being inflicted and that risk "was or ought to have been obvious to the offender". That was what the judge found. He was entitled to make that finding. That puts this offending into category B not category C. The starting point was 12 years.

14. There were significant aggravating features noted by the judge including the use of a weapon, others being put at risk, the applicant performing a *leading role* in the group, the fact that this was a premeditated offence, the fact that attempts were made to

destroy evidence, and that the applicant had many previous convictions. We too have stood back and considered whether the resulting sentence of 14 years is or is even arguably manifestly excessive or wrong in principle and we conclude that it is not. We refuse leave to appeal.

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