

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



CASE NO 202202681/B5

[2023] EWCA Crim 937

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 21 July 2023

Before:

LADY JUSTICE SIMLER DBE

MR JUSTICE GOOSE

SIR ROBIN SPENCER

REX

V

GRANT HARDING

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)

NON-COUNSEL APPLICATION

J U D G M E N T

1. SIR ROBIN SPENCER: This is a renewed application for leave to appeal against conviction following refusal by the single judge.
2. On 5 August 2022, in the Crown Court at Northampton, the applicant (then aged 30) was convicted by the jury of murder. On 16 December 2022 he was sentenced by Her Honour Judge Lucking KC to life imprisonment with a minimum term of 27 years less 543 days spent on remand. The offence was aggravated by racial hostility. A suspended sentence for offences of common assault and criminal damage was activated concurrently.
3. The sole ground of appeal against conviction, settled by defence counsel at trial, is that the judge wrongly refused a defence application to adduce bad character evidence relating to the deceased. In order to put that bad character application in context, it is necessary to summarise the factual background very briefly.
4. The deceased, Robert Jadecki, was a 44-year-old homeless man, a Polish national, who was sleeping rough in the entrance to the loading bay of the Co-op store on Hester Street, Northampton. He was known to have alcohol-related behavioural problems. The applicant was living nearby in accommodation arranged by the Probation Service.
5. In the early hours of 16 June 2021, the applicant attacked and killed the deceased by brutally punching, kicking and stamping on him as he lay defenceless in his sleeping bag at that location. The applicant admitted that he had killed the deceased. In his defence statement, he asserted that he had been drinking heavily that night and taking cocaine. He was in a depressive state. He had little recollection of the killing. He remembered approaching the deceased and engaging him in conversation. He remembered the deceased being verbally abusive towards him and remembered the deceased lashing out

at his leg during the altercation. He remembered landing punches on the deceased but had no recollection of kicking him.

6. There were eyewitnesses to the incident. A neighbour watching from a window nearby described an initial conversation between the two men in which the applicant offered the deceased some beer and asked where he was from. The neighbour then witnessed the applicant repeatedly punching, kicking and stamping on the deceased's head and upper body with force, describing it as animalistic, brutal and vicious. Five independent witnesses heard the applicant verbally abusing the deceased in hostile racist terms, which we do not propose to repeat.
7. The deceased suffered multiple blunt force injuries, external and internal, including a fatal brain injury. Forensic evidence identified the deceased's blood on the applicant's shoes and clothing. The pattern of the blood distribution was consistent with punching, kicking and stamping in wet blood.
8. Soon after the attack the applicant sent a text message to a friend in which he said "Just knocked some man out... proper fuck him up." There was bad character evidence demonstrating the applicant's propensity for unprovoked violence.
9. The applicant did not assert that he had acted in self-defence. He did not dispute unlawful killing. However, he denied that he had intended to cause the deceased serious bodily harm, still less to kill him. In the alternative, if such an intent were to be proved, he relied on the partial defence of diminished responsibility supported by the evidence of a forensic psychiatrist, Dr Puri. It was said that the applicant was suffering from mixed personality disorder and recurrent depressive disorder. If, but only if, the applicant had found he was being assaulted by the deceased (as the applicant alleged), it was Dr Puri's opinion that the applicant's abnormal mental state would have had a severe impact on his

decision-making ability. Forensic psychiatric evidence called on behalf of the prosecution disputed this proposition.

10. It is plain from defence counsel's advice on appeal that when the applicant gave evidence, he elaborated on the account set out in his defence statement. The applicant told the jury that the deceased had sworn at him and was aggressive to him. He said it was the deceased who initiated the violence by lashing out at the applicant even though the deceased was lying on the floor in his sleeping bag.
11. The applicant had not originally intended to give evidence himself. The defence had intended to rely upon the account given by the applicant to Dr Puri, in which the applicant had asserted that the deceased had punched him in the leg. The prosecution objected to the admissibility of the applicant's hearsay account to Dr Puri in lieu of evidence from the applicant in the witness box which could be tested in cross-examination. The judge ruled in favour of the prosecution. There is no challenge to that ruling, nor could there be.
12. It was against this background that the applicant was called to give evidence himself. It was only after the applicant had given evidence that the defence made the application to adduce the bad character evidence relating to the deceased which resulted in the ruling that is challenged.
13. The bad character evidence in question consisted of a passage in a witness statement made by the deceased's key worker, Claire Hitches. The bulk of her witness statement, dealing with general background of the deceased, had been read to the jury as agreed evidence but the passage now sought to be introduced had been edited out by agreement. That passage read:

“Robert was known as a street fighter, both in the UK and Poland,

and although he was quite private about it, he did disclose that this had been his main means of making money... I last spoke to Robert about this on the Sunday or Monday prior to the last time I saw him on 15 June 2021 [which was, we interpolate, the following Tuesday, the night of the killing] as he had returned to the accommodation with bleeding knuckles, and I asked him how that had happened. He had said 'very horrible English man I fight'. Robert was very private about the actual details of any altercation he had and would say 'my business' in response to any questions asked."

14. The judge rightly insisted on a written bad character application in accordance with the Criminal Procedure Rules. In that application it was asserted that, in the light of the applicant's evidence that the deceased punched him in the leg following a conversation about someone called "Barry" and that this punch triggered the violence which led to the deceased's death, there was now a live issue as to whether the deceased had punched the applicant. It was submitted that the evidence contained within Claire Hitches' statement had substantial probative value in relation to the deceased's own propensity to violence.
15. The prosecution opposed this application, submitting that the evidence could not meet the requirements of section 100(1)(a) or (b) of the Criminal Justice Act 2003. The application was too late; it should have been made and ruled upon within the prosecution case before the evidence of the pathologist had been given. The pathologist had given evidence that injuries to the deceased's knuckles were likely to be defence injuries. That evidence had not been challenged or explored. It was also submitted that the content of the witness statement of the key worker amounted to unproven hearsay.
16. The judge refused the defence application. She gave full written reasons at a convenient later stage in the proceedings. She emphasised that the application should have been made much earlier, but she was nevertheless prepared to consider it. She identified the relevant provisions of section 100 of the 2003 Act. She explained that it was not "important explanatory evidence" within section 100(1)(a), the requirement for which is

that without it, the jury would find it impossible or difficult to understand other evidence in the case and that its value for understanding the case as a whole is substantial. The evidence did not explain anything. The applicant's case was clear, and the jury would have to weigh up his changing accounts, which did not initially include an assertion that the deceased had punched him in the leg. Nor did the evidence come within section 100(1)(b) which requires the evidence to have substantial probative value, in relation to a matter in issue with the proceedings which is of substantial importance in the context of the case as a whole.

17. The judge had regard to the required factors set out in section 101(3). The evidence related to the deceased's former occupation as a street fighter but there was nothing to explain what that term meant, or how long ago this was, or whether it was truthful; wholly inaccurate inferences were likely to be drawn. The fight with the "English man" he mentioned may not have been misconduct at all. Because the evidence was hearsay, it could not be tested or explored further to establish any hoped for probative value.
18. The grounds of appeal do not, in our view, advance any coherent criticism of the judge's decision and her reasoning. We agree with the single judge that the judge was entirely correct to refuse the application for the reasons she gave. The statutory tests were simply not met, and the evidence was rightly excluded. We observe that if the evidence in question was not in fact bad character evidence, because it did not constitute "misconduct" or "reprehensive behaviour" on the part of the deceased, the sole test for admissibility was relevance. It is plain, in our view, that the evidence was simply not relevant. Its admission would inevitably have led to speculation on the part of the jury. The evidence had no probative value at all.
19. Furthermore, we are quite satisfied that the case against the applicant was so

overwhelming that this evidence, even if it had been admitted, could have made no difference to the outcome of the trial. The contradictions in the changing accounts that the applicant gave of the altercation, including his elaboration in the witness box, must have weighed heavily against him with the jury in rejecting the defence of diminished responsibility, taken in conjunction with the clear and compelling evidence of the eyewitnesses.

20. For all these reasons, we are satisfied that there is no arguable ground of appeal. It is not arguable that this conviction for murder is unsafe or that the trial was in any way unfair. The application is therefore refused.

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