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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NOs 202301097/B2 & 202301291/B2

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday, 8 March 2024

Before:

LORD JUSTICE LEWIS

MR JUSTICE WALL

THE RECORDER OF NORWICH

HER HONOUR JUDGE ROBINSON

(SITTING AS A JUDGE OF THE COURT OF APPEAL (CRIMINAL DIVISION))

)

REX

V

JACK DAVIES

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MISS S WASS KC and MISS S LALANI appeared on behalf of the Applicant

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**J U D G M E N T**



1. LORD JUSTICE LEWIS: On 9 March 2023 in the Inner London Crown Court the applicant Jack Davies was convicted of manslaughter. On 12 April 2023 Davies was sentenced to 11 years' detention in a young offender institution. Davies was 19 at the time of the killing and 20 at the time of conviction and sentence. He is now aged 21. Applications for leave to appeal against conviction and sentence were refused by the single judge. The applicant now renews those applications.
2. The facts can be stated shortly. On 8 February 2022 Davies was with three others. They were Yusuf Aydin, Benedict Paul and Geraldo Annan. They had something to eat at a fast food restaurant. They then set off in a car together. Aydin was driving, Davies was in the front passenger seat, Paul and Annan sat in the rear.
3. At a roundabout they saw the victim, a young man of 21 called Bartosz Wyrzykowski, and his girlfriend. She was referred to in the case as "witness C". Ayden stopped the car on the roundabout. He and the other three, including Davies got out of the car. There was a confrontation between Aydin and Bartosz. There is CCTV footage of the events at the roundabout.
4. Bartosz and his girlfriend moved away from the roundabout at Lionel Road. They were followed by Annan, Paul and Aydin. Davies got into the driver's seat of the car, which was still on the roundabout, and moved it off the roundabout and stopped it at the side of the road. He was in the car for approximately 14 seconds. He got out of the car and stood next to it for approximately 10 seconds and can be seen on CCTV looking down Lionel Road. He then ran at speed down Lionel Road in the direction of the others. That can be seen on CCTV.

5. Bartosz was stabbed part of the way along Lionel Road near a nursery. There is no CCTV of this part of the incident. Annan produced a machete-style knife which he said had been in his waistband and which he had had with him in the car. He stabbed Bartosz twice, once to the stomach and once to the leg. Sadly Bartosz died of his wounds.
6. Aydin and Davies are seen on CCTV running back to the car. Paul and Annan also got into the car, although you cannot see that on the CCTV. The four of them then drove to a house owned by the mother of Davies' girlfriend, although other members of the group knew family members connected to that house as well.
7. Each of the four was charged with murder or in the alternative with manslaughter. Annan (the stabber) was said to have unlawfully killed Bartosz intending to kill or cause him serious bodily harm. His defence was that he had acted in lawful self-defence. The other three were charged with murder on the basis that they encouraged or assisted Annan intending that Bartosz be caused serious bodily harm, or alternatively that they encouraged or assisted Annan intending that some harm be caused to Bartosz.
8. In addition to the CCTV footage, there was evidence from a number of witnesses. We propose to refer simply to one or two witnesses but we have considered the evidence given by all the witnesses and Miss Wass's helpful comments about other witnesses. So the fact that a witness is not named in this judgment does not mean that we have not considered that witness's evidence. We have considered it all.
9. The witness includes witness C, Bartosz's girlfriend. She described the confrontation near the roundabout when she said all four males got out of the car and were aggressive. She also gave evidence that on Lionel Road one male struck her and she described that individual in terms of height and haircut but also in terms of ethnicity and build and one of the questions was whether the jury could accept that the man she described as hitting

her on Lionel Road was Davies. Witness C also described the later part of the incident more generally in Lionel Road near the nursery, saying that Bartosz was surrounded by four males and then Bartosz fell to the floor. She had not herself seen the actual knife that was used to kill him.

10. Other witnesses gave accounts of what they had seen. Kelly Seguss, for example, identified a different car from the black Seat Leon in which the four had arrived at the roundabout and in that respect at least she must have been mistaken. She also described a confrontation at the roundabout and referred to two groups of people. One was a group of two and the description of those two people are easily capable of being understood as referring to Bartosz and his girlfriend. The other group was a group of four males. She described one as punching the man. She said that Bartosz and witness C went down Lionel Road and all four followed. Another witness said that she saw four or five people running up Lionel Road. Other witnesses gave their accounts and they had seen two perpetrators at the time of the stabbing; one stabbing, one less involved.
11. At the trial, Miss Wass KC for Davies submitted that there was no case for Davies to answer. She submitted that there was no evidence that Davies was part of a joint enterprise to cause serious injury to Bartosz and no evidence safely identifying Davies as being present at the time Bartosz received the injuries which caused his death. Further, Annan had produced the knife when he was going down Lionel Road and was near the nursery where Bartosz was stabbed. He had not produced the knife at the roundabout.
12. The prosecution at the trial submitted that the evidence did raise a case from which a jury could properly conclude that Davies was part of a group in which he, Aydin and Paul were secondary parties, while Annan was the principal party and the killer.

13. The evidence was that the four got out of the car at the roundabout and had an altercation with Bartosz. Three followed Bartosz down Lionel Road and Davies moved the car off the roundabout and within seconds had got out of the car, looked to see what was happening and then ran at speed and joined the pursuit of Bartosz in Lionel Road. The prosecution said there was evidence which, if the jury accepted it, indicated that four people were present at around the time Bartosz was attacked and stabbed. Davies and Aydin were seen on CCTV returning from the incident, Aydin first and Davies second. The prosecution submitted that there was evidence on which the jury could properly find that Davies had been active in the initial confrontation with Bartosz, active in the infliction of unlawful violence on witness C and active in running down Lionel Road to lend encouragement and support to the continuing unlawful violence being used against Bartosz. The prosecution said there was evidence from which the jury could infer that Davies knew that Annan had a knife. Annan had an interest in knives and Davies knew Annan. The jury could infer that more specifically Davies and Annan had been together that day and had spent some time in the car where Annan had with him what was described as a large machete-type knife.

14. The judge dismissed the application and held there was a case for Davies to answer. She identified the main submission in the following terms. She said:

"The main submission is that there is insufficient evidence against this defendant in terms of identification and in terms of any fact pointing to encouragement in this attack, and/or the actual stabbing."

15. The judge noted that it is accepted that the law is that presence alone would not be sufficient and there had to be some encouragement at the time of the commission of the

offence. The judge noted that the CCTV footage showed the car at the roundabout where the victim and his girlfriend were walking and the car coming to a stop. It showed Aydin getting out and confronting the deceased. It showed others getting out, two moved closer to Aydin and the deceased and Davies stood behind the car but in close proximity. The judge noted that Davies got into the car and moved it away from the roundabout. The deceased backed off into Lionel Road with the other three following him. Within seconds Davies had got out of the vehicle, turned, looked at what was happening in Lionel Road and then ran at speed from the car to rejoin the group. The judge recognised that there were variable descriptions from the witnesses as to what had happened in Lionel Road. Then the stabbing having occurred all four run back to the car, they get into the car and they drove off to an address that she described as connected with Davies. The judge noted that Annan was a man who habitually carried knives or was linked to knives and he was travelling in the car with Davies at a time when he had a knife. The judge said this:

"And so even if this one was spontaneous in the sense that there was no planning or a prearranged meeting, the evidence suggests that there are four men in a car who know each other to a greater or lesser extent. The evidence is that the first defendant is a man who habitually carries knives or is linked to knives and that this defendant was in the car with him. The evidence is that there was a hostile confrontation and he was one of the number who was present at that time, and that he then joined the group which continued the hostile confrontation which then ended up with the stabbing, and that they all left together ... "

16. The trial continued. Davies did not give evidence. The judge properly directed the jury as to the circumstances in which adverse inferences could be drawn from the fact that Davies had not given evidence at his trial.

17. The jury convicted Annan of murder. The jury found that Aydin, Paul and Davies were not guilty of murder but they were guilty of manslaughter.

18. In her sentencing remarks, the judge said that by their verdicts the jury were sure that each of those three men encouraged Annan and intended that some harm came to Bartosz and that each knew that Annan had a knife. The judge said this of Davies:

"You and your co-defendants had got out of the car, witnessed and supported Aydin in the confrontation between him and Bartosz. You decided of your own volition to move the car away from the roundabout, and parked it nearby. You knew the incident was not over. You waited by the car, and then got out and watched what was happening. Then, you ran at some speed towards the group, when the physical altercation must have been taking place, which is a very short time before the stabbing. That was a real show of support and encouragement to what was to follow."

19. She later said:

"I am satisfied that you were present until moments before the stabbing and at the time when the knife was brandished by Annan."

20. She had found earlier that Davies knew that Annan had a knife, that he and Annan knew each other to a greater or lesser degree and were comfortable with each other's presence before the incident and that Annan had the knife with him then and indeed later in the car when they were driving around.

21. The judge placed the offending in Category B2 of the Sentencing Council Guidelines for Manslaughter. Category B is high culpability. The judge placed the offence in that category for two reasons, namely the death was (1) in the course of an unlawful act which involved an intention to cause harm falling just short of grievous bodily harm, and (2) in



the course of committing an unlawful act which carried a high risk of grievous bodily harm or death which was or ought to have been obvious to the defendant Davies. The judge bore in mind Davies' age. The starting point for a person of over 18 was 12 years' imprisonment with a sentencing range of eight to 16 years' imprisonment. The aggravating factors here, said the judge, were (1) it was a group attack, (2) the attack took place near a nursery in the presence of members of the public, many of whom were parents coming to collect their children, and (3) Davies provided a safe house for a while to which all four went after the murder. She sentenced Davies to 11 years' detention in a young offender institution.

22. In her written and oral submissions on behalf of the applicant, Miss Wass renews her application for leave to appeal against conviction and sentence. We deal with conviction first.
23. The first two grounds Miss Wass helpfully indicated could be taken together and concerned the acceptance by the judge that there was a case to answer and the refusal of the submission that there was no case to answer. Miss Wass submitted that the judge erred in reaching that decision and that that was apparent from the level of speculation that she engaged in during submissions to arrive at a situation where she could find there was a case to answer.
24. We do not see that grounds 1 and 2 are arguable. The judge was entitled to come to the view that there was evidence from which the jury could properly infer that Davies had been part of the initial confrontation at the roundabout, had then moved the car and within seconds had run at speed up Lionel Road to rejoin the group attacking Bartosz. In doing so, he participated in the attack, lending encouragement and support to the attacker and intending that Bartosz suffered serious harm. The fact that the judge tested certain

arguments in the course of submissions does not in any way indicate that the judge had to speculate in order to find a reason for dismissing the submission that there was no case to answer. The judge was also entitled to find that there was evidence from which a jury could infer that Davies knew that Annan had a knife.

25. Ground 3. Miss Wass submits that the approach of the judge in summing-up the evidence to the jury lent itself to excluding parts of the evidence that were unfavourable to the prosecution. We have read the summing-up in full. It fairly sets out the principal parts of the evidence from the witnesses as to what they said they saw near the nursery where of course there was no CCTV. It reminded the jury of the CCTV evidence, it gave appropriate directions as to matters of law, it reminded the jury repeatedly of what the issues were and what they were to do which is to decide the matters in dispute. The particular grounds that Miss Wass relied upon concerned comments which were said to undermine the CCTV footage. We do not think there is any substance in that argument. The judge reminded the jury of the CCTV footage, reminded them of the difference between CCTV footage and visual evidence and told the jury it was for them to decide what they made of the CCTV footage. In relation to the evidence of Kelly Seguss she submitted that the judge effectively excused for the prosecution the fact that Miss Seguss had identified the wrong car or a different car from that which was at the heart of this incident. The fact of the matter is the judge made it quite clear that Miss Seguss had identified a car which was not the car in which the four individuals involved arrived at the roundabout. She made it clear it was up to the jury to decide whether that meant the whole of her evidence was unreliable or whether parts of the evidence was reliable. We have already referred to those parts of the evidence where she described a confrontation at the roundabout between four men and two other people. We see no merit in the

criticisms of the summing-up on this part of the case.

26. Miss Wass also criticised the summing-up in relation to witness C. Witness C had given a description of a person. The judge had already given the relevant direction about identification and she said to the jury: "Is this Jack Davies?" i.e. she was drawing to their attention one of the very matters they might have to decide, namely had Jack Davies hit witness C in Lionel Road. Leaving that matter to one side, there was still her other evidence about there being four present around Bartosz. We see no justification in the criticism of the summing-up.
27. Ground 4 was ultimately withdrawn. We should also mention that Miss Wass very helpfully drew our attention in relation to the summing-up to the decision of this court in R v Buckley and Williams. All cases depend on their facts. That is a case where there was very different evidence and nothing to show that the defendant, Williams, in that case was aware that the stabber had a knife and there was limited evidence to show anything more than presence. Here the facts are different and for the reasons we have given the judge was entitled to find that there was evidence which could go before a jury so they could decide whether or not Davies was guilty of murder or manslaughter and they ultimately found he was guilty of manslaughter.
28. We see nothing to suggest that the conviction is unsafe and we therefore refuse leave to appeal against conviction.
29. We turn next to the application for leave to appeal against sentence. Miss Wass submits that the judge erred in placing the offence into Category B, higher culpability. First, she submitted that there was no evidence of any intention on the part of Davies to cause injury falling just short of grievous bodily harm. Secondly, she said there was no evidence that Davies knew that Annan had a knife and therefore it could not have been

obvious to him that the attack involved a risk of death or grievous bodily harm.

Miss Wass also submitted that the judge was wrong to treat the fact that Davies took them to a safe house as an aggravating factor and it was inappropriate to mention the fact that he was not allowed to drive the car when he drove it from the roundabout to the side of the road.

30. In this regard we bear in mind that the judge had conducted a lengthy trial and had heard evidence and was well able to evaluate the role that Davies played, his knowledge at the time and to reach inferences as to his intention in the light of that evidence. She was entitled to infer that Davies knew that Annan had a knife and she was entitled to find that Davies participated in a group attack with the intention of encouraging Annan to attack and cause harm to the victim. In those circumstances, it either was or should have been obvious to Davies that encouraging an attack by Annan when Annan was armed with a machete-type knife, of the sort used in this case, carried a high risk of grievous bodily harm being caused. That is sufficient in itself to justify placing the offence in Category B.

31. Further, we consider that the judge was entitled to infer from Davies' initial participation in the confrontation at the roundabout and then running up Lionel Road to rejoin the group in their attack on Bartosz and doing so when he knew that Annan had a machete-type knife did mean that he intended harm to be caused to the victim which fell just short of grievous bodily harm.

32. The starting point for Category B2 manslaughter is 12 years and the sentencing range is eight to 16 years. The judge was correct to describe the fact that this was group activity and that it occurred near a nursery where parents were collecting their children as aggravating factors. We do not consider that it was appropriate to treat Davies as

providing a safe house for the offenders. The fact is all four people had connections with that house and it was the house they were planning to go to that day. It was not a house that Davies arranged in order to enable them to hide in order to try and evade justice.

However we do not regard that factor as having a material inference on the sentence. Nor do we see the fact that the judge referred to the fact that Davies was not allowed to drive was a factor that influenced in any way the sentence for the manslaughter of Bartosz.

33. The first two aggravating factors, the group activity and the location, would have required an upward adjustment from the 12-year starting point. Notwithstanding those aggravating factors the judge made a significant downward adjustment after taking those factors into account as the sentence she imposed was 11 years, that is one year below the starting point. In reaching that sentence the judge was well placed to evaluate the role played by the appellant.

34. In all the circumstances we consider that the sentence, even leaving out of account the reference to the safe house, was not manifestly excessive for the offending in this case. We therefore refuse leave to appeal against sentence.

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

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