Neutral Citation Number: [2019] EWCA Crim 1326

Case No: 201704424 B3 / 201705253 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT
HIS HONOUR JUDGE BEVAN QC

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/07/2019

Before :

LORD JUSTICE DAVIS
MR JUSTICE EDIS
and
HIS HONOUR JUDGE POTTER (SITTING AS A JUDGE OF THE CACD)

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Between :

R	**Respondent**
- and -	
L	**Applicant**

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- -

Kirsty Brimelow QC for the **Applicant**
Sally O'Neill QC for the **Respondent**

Hearing date : 12th July 2019

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Approved Judgment

Lord Justice Davis :

Introduction

1. In the afternoon of 23 January 2017 Quamari Serunjuma-Barnes, aged 15, was chased by a male wearing dark clothing and stabbed with a knife outside the gates of his school in North-West London. One of the three stab wounds inflicted on him passed through a rib and cut an artery. He died that evening in hospital.

2. Following a trial at the Central Criminal Court before HHJ John Bevan QC and a jury the applicant, aged 15, was on 30 June 2017 convicted by a majority verdict of murder. He had not given evidence at the trial; but his case was that he was not the stabber and was not at the scene at the time.

3. On the day that he was ultimately due to be sentenced, 6 September 2017, he made a witness statement. It was presented to the judge. The applicant now admitted that he had been present and was indeed the person in dark clothing who had stabbed Quamari. The judge, in directing that he be detained during at Her Majesty's pleasure and in setting a minimum term of 14 years detention, gave credit to the applicant for, as the judge said, admitting the murder after conviction. He expressly reduced by two years the minimum term which he said he otherwise would have set in order to reflect that admission.

4. Now the applicant seeks to challenge his conviction for murder. He relies for this purpose on fresh evidence, which he seeks leave to adduce. That fresh evidence consists of the same statement made by the applicant on 6 September 2017 in which he made his admission; a psychiatric (pre-sentence) report of Dr Richard Church dated 27 July 2017; and the report of Dr Sinead Marriott, a consultant clinical psychologist, dated 21 March 2019. It is said that this evidence, if permitted to be adduced, would undermine the safety of the conviction for murder.

5. The application has been referred to the Full Court by the Single Judge: this court granting the necessary extension of time. At the hearing, the court considered the proposed fresh evidence (including also that of an expert clinical and forensic psychologist, Professor Susan Young, lodged by the Crown), in the first instance de bene esse. The applicant was represented by Ms Brimelow QC; the Crown was represented by Ms O'Neill QC. Both also had appeared at the trial below.

Background of the Applicant

6. The applicant was born on 13 November 2001.

7. The various reports before us indicate a very troubled upbringing and background. His mother has had three children by three different men. His own father was deported to Jamaica for drug offences when the applicant was only around 9 years old, albeit he had retained a degree of contact with him (a point to which we will revert). His relationship with his mother was very difficult. Further, on various occasions he was excluded from the educational establishments he had attended, on grounds of violence and disruptive behaviour. There were many issues. There came a time when he was taken into care by the Brent local authority in April 2015.

8. He had also, prior to the events in question, already acquired significant criminal antecedents. He was in October 2015 sentenced to a Referral Order on three counts of (street) robbery to which he had pleaded guilty. During 2016 he was variously sentenced on counts of battery and criminal damage, being made subject to a Youth Rehabilitation Order. On 1 November 2016 he pleaded guilty to a count of inflicting grievous bodily harm: that had involved him punching a female student at the educational institution he then attended and breaking her jaw in two places. None of this background was, in the circumstances, placed in front of the jury.

Facts of the killing

9. Quamari Serunjuma-Barnes left his school in Doyle Gardens, Willesden at around 3:20pm on Monday 23 January 2017. A number of other students were also leaving at that time. Some were to give evidence as to what then happened.

10. A male person dressed in dark clothing and with a scarf or mask over the lower part of his face had been waiting at the corner of the road near to the school gates. That person then was seen by Quamari, who immediately ran off. He was heard to shout "help me" and "I'm getting stabbed." The person in dark clothing had run after him, holding a knife. He was, according to some eye-witnesses, seen to stab Quamari several times (Quamari had at various stages been heard to shout words to the effect "I'm sorry" to the attacker.). One of the child witnesses described the attacker kneeling over Quamari stabbing with three or four hard stabs. Others described Quamari being stabbed before he fell to the ground. (The pathology evidence in fact was that there was one stab wound to the back and two to the front.) The attacker was according to at least one witness heard then to say "Oh shit". He then ran away. The various descriptions of what actually happened and of the appearance of the attacker to an extent varied: but the overall effect was broadly the same. A Mr Rollins, who was passing by in his car, heard Quamari shout for help: he, alone of the witnesses, also said that he saw the two rolling on the ground, with the assailant on top.

11. Part of the incident had also been captured on CCTV. That showed the figure in dark clothing earlier walking past the school and waiting several minutes: as also had been observed by a witness. The CCTV would suggest that Quamari, when he saw the figure, immediately turned to run and was pursued by the figure. The CCTV did not capture the actual stabbing but did capture the figure running back in the direction from which he had come and passing an entrance to a block of flats called Ellerslie Gardens. Some four minutes later, a figure was seen emerging from Ellerslie Gardens, wearing dark clothing but with a top and tracksuit bottoms different from those previously seen on the person who had stabbed Quamari.

12. Subsequent cell site analysis of the applicant's mobile phone placed him in the area of Doyle Gardens at the time. Further, some of those present considered that they recognised the applicant as the assailant. Rumours to this effect spread very quickly on social media. One girl, who had been at the scene and who thought she had recognized the applicant, rang him around three minutes after the stabbing in order to challenge him. He seemed to her to be out of breath. It was not disputed that he told her that he was at home – home being Norbury in South London. That was in due course accepted by the defence at trial to have been a lie.

13. Yet further, when taken to hospital, Quamari told a staff nurse, who had asked for details of what happened, that the applicant (giving his first name, which is not a common one) had been the attacker, saying "[L] did it" and indicating that he knew his face. She then informed a police officer, spelling out the name for the police officer. She made a note of her discussions with Quamari. At that time, it was also said, Quamari was conscious and coherent. Indeed it seems that the Accident and Emergency Department had not initially regarded the stab wounds as serious or life-threatening: it was, unfortunately, only some time later that it was realised that there was internal bleeding and the matter was urgent and life-threatening. In the event, Quamari's life could not then be saved.

14. When interviewed, the applicant (accompanied by a solicitor and appropriate adult) made no comment to questions asked of him.

15. There was undisputed pathological evidence before the jury. This was to the effect that there were three stab wounds (with no evidence of "defensive" injuries to hands or arms). The fatal wound was assessed to have involved "severe force": the knife having penetrated from the back into the left chest through the eighth rib into a lung and nicking an artery. The total depth of penetration was assessed as 13 cms, involving a left to right downwards direction of travel, with a width of 3.5 cms. There was a further stab wound, described as "superficial", to the front of his right shoulder, 8 cms in depth, administered horizontally and which ended in the muscle of the chest wall and did no significant damage. The third wound was to the right hip, with a track 7 cms in length. There was no associated major injury for that wound. The fatal wound was thus the stab wound through the rib into the lung. It was said by the pathologist in evidence that it was unusual to die from an intercostal injury such as that; but there had been an unlucky outcome in that an artery had been nicked and then the position had not been immediately identified at the hospital.

The course of proceedings in the Crown Court

16. No doubt because of the ages of virtually all concerned, not least the applicant, the case came on for trial very quickly. The applicant had the benefit of being represented by leading counsel (Ms Brimelow), junior counsel and solicitors.

17. A detailed Defence Case Statement, signed by the applicant and dated 4 May 2017, was served (and was then relied on in cross-examination). By it, the applicant among other things had denied that he was the masked figure who had stabbed Quamari. Presence in the general area was admitted (it being stated that he was on his way to see his grandmother who lived in Willesden, although in the event she was said to be out); but presence in Doyle Gardens was denied.

18. There had, rightly, been consideration given as to any special measures that might be appropriate for the applicant, given his age and situation. An Intermediary Report dated 31 May 2017 concluded that he did not require the support of an intermediary at trial: but various recommendations as to use of short and clear language, frequent breaks and the like were made. No doubt there was a Ground Rules hearing before trial.

19. Further, Ms Brimelow in advance of trial had advised on the need for a psychiatric report. Ms Brimelow by this time had an amount of detail available to her about the

applicant's very troubled background. She had also seen (as this court has now seen) various reports, including a detailed psychiatric report previously obtained in the care proceedings and dated 30 September 2016. This among other things, having noted that in educational terms the applicant had been described as academically able, had concluded that the applicant did not present as having a formal or specific mental illness or disorder. It was indicated in that report that he could be described as having a "severe unsocialised conduct disorder": but that was not an inherent medical condition.

20. The applicant was then, pursuant to Ms Brimelow's advice, assessed by Dr Richard Church on 26 April 2017 (and again, we add, by Dr Church, following the trial, on 12 July 2017). Dr Church has particular expertise in mental and behavioural disorders in children and young persons who come into conflict with the law. Dr Church had access to a great detail of background material relating to the applicant. He provided a report dated 17 May 2017 to the defence legal team. The applicant was assessed by Dr Church as fit to participate in the trial process. There was, Dr Church concluded, no evidence of confusion in mental state and no evidence of any cognitive impairment: although, descriptively, the applicant's presentation was consistent with a severe conduct disorder. Diminished Responsibility was not considered available (were the applicant the stabber). In his report, it may be added, Dr Church had noted some traits of ADHD or PTSD that might be present, without concluding with such a diagnosis. He in fact subsequently said at paragraph 114 of his final report dated 12 July 2017 that, overall, the applicant did not meet the criteria for a clinical diagnosis of ADHD or of PTSD.

21. The trial proceeded, commencing on 5 June 2017 and concluding on 30 June 2017. No objection is raised as to any of the judge's rulings or as to the fairness and accuracy of the summing-up.

22. It may be noted that, in the course of his summing-up and after discussion with counsel, the judge specifically left to the jury the issue of manslaughter on the basis of lack of intent to kill or cause really serious injury. He in fact directed the jury that the first issue was whether they could be sure that the dark figure was the applicant; the second issue was, if he was that figure, whether he was guilty of murder or manslaughter. The judge summed up fully on the second issue (as on the first issue): referring, among other things, to the pathological evidence (the pathologist being unable to say how the force of the fatal wound occurred), the evidence of Mr Rollins and the overheard utterance "oh shit".

Events following trial

23. Following the trial, a number of events relevant to the present application occurred.

24. The prosecution had before trial sought a forensic report on items of the clothing of the applicant seized from his home following the killing. Because of delays in that regard, and because the trial had come on quickly, no such report had materialised by the time of trial. But such a report was received shortly after the trial had concluded. That indicated the presence of DNA attributable to Quamari on a pair of tracksuit trousers belonging to the applicant found at his house. The defence were notified of this report accordingly.

25. Further, a pre-sentence report was obtained, dated 24 July 2017. The applicant was recorded as presenting as "defensive… and extremely guarded". He was noted as continuing to maintain his innocence, as continuing to say that he had only been in the area to visit his grandmother and as lacking any genuine remorse. A high risk of reoffending with a very high risk of serious harm to others was identified. The updated report of Dr Church dated 27 July 2017 also had recorded the applicant, in his further assessment interview on 12 July 2017, maintaining his innocence. It was again confirmed by Dr Church in that report that the applicant did not present with a mental disorder.

26. At a meeting at court on a day initially intended for sentence, being 28 July 2017, the applicant then made an admission to the police, in the presence of his lawyers, of being present at the scene of the stabbing. But he still denied responsibility for the stabbing. He in fact named a friend of his as the person responsible and also said that he could indicate where the knife had been hidden. A subsequent investigation, as we were told, established conclusively that the named friend could not have been at the scene at the time, as he was shown to be at his school. In addition, searches at the identified location discovered no knife.

27. On 23 August 2017 the applicant's solicitor, Ms Crump, met the applicant at the detention centre where he was remanded. Her attendance note was produced before us. That records a discussion about whether he wanted to pursue an appeal against conviction, assessed, as he was told, as not to have a high likelihood of success (it also being pointed out that the new DNA evidence would have to be answered at any retrial), balanced against "whether he would like to add to his mitigation and possible reduction in tariff sentence." The note then records what the applicant said to Ms Crump about events preceding the day of the stabbing and the stabbing incident itself and what he did thereafter. Among other things, he said that he took with him a knife he kept under his bed at home and which he said had been given to him by his friend. He said that it was a small knife with a blade of about 6 inches. As to the stabbing incident itself, the applicant is noted as stating as follows:

> "… I went to Ellerslie Gardens and left my MK jacket behind a wall and put on my ski mask. I heard QB singing when he came out of the school. QB said he was sorry but I was raging with fury. I touched QB 1st with the knife and he started running. The 1st and 2nd touches were light but I buckled and tripped on the 3rd touch so I believe the knife went deeper than I meant it to and that's why it was more force."

The applicant then described disposing of the knife, changing or disposing of his clothes and burning the ski-mask and latex gloves which he had worn. He concluded, according to the note, in this way:

> "Even though I intended to stab QB, I did not intend to kill him or mean for him to die."

28. Ms Brimelow was notified. On the day listed for sentence, 6 September 2017, the hearing was put back to later in the day so that Ms Brimelow and the solicitors could obtain further instructions from the applicant. Ms Brimelow herself drafted the

ensuing statement, based on the applicant's instructions. It was then placed before the judge in the afternoon.

29. The contents of the statement were, in broad terms, similar to what he had been recorded as saying to his solicitor on 23 August 2017. His account continued to give scarcely any reason as to why he should have a grudge against Quamari: to the contrary, he again said that he had gone to Willesden to confront another, different, boy (whom he named), who was asserted to be part of the 365 gang with which, he said, albeit the prosecution did not accept, Quamari was also connected. He then said this:

> "I heard Quamari singing when he came out the school. Quamari said he was sorry, but I was really angry. I saw 365. I chased him. I only stabbed him lightly. I touched him twice but then I buckled and tripped. I had been running very fast and fell hard. I think the knife must have gone in deeper than I meant it to. I didn't mean to really hurt Quamari. I did not want to kill him for him to die. I just wanted to touch him with the knife."

30. The statement went on to give some details of disposing of clothing and the knife. He also said that he then met up with his friend and others; and told that friend's mother what had happened. He gave certain other details. His statement concluded as follows:

> "I want to say that I am really sorry for what I did. I don't know why I did it. I didn't mean to do it. I wanted to talk to someone. I was angry. I am telling the truth now for Quamari's mum and dad. I am sorry. I didn't mean Quamari to get so hurt. I'm not a murderer. I am not a wasteman. I didn't want him to die. I wish I'd told the truth before. I listened to someone close to me I shouldn't have listened to. I don't trust anyone. They always let me down. I want to have a different life but I don't know how."

Sentencing remarks

31. The situation arising, with regard to this very late admission, was unprecedented in the experience of this (very experienced) judge. He stated in his sentencing remarks that he did not know whether the whole truth was being told. But it was an admission of guilt, which had been lacking before "and I intend to give credit for that change".

32. The judge then reviewed the aggravating factors, of which there were a number. The stabbing was clearly planned; it involved taking a knife to the scene; it involved preparing a means of escape; it took place in public outside a school; and the applicant had a bad record. However, the judge, applying the criminal standard, did not find an intent to kill. He said in this regard: "Three deep stabs signify at least an intent to cause grievous bodily harm at the top end of the scale, if not actually an intent to kill."

33. The judge nevertheless gave prominence to the very late admission. He said that it showed a sign of potential remorse, and "it had taken courage to tell the truth … and to admit a murder after conviction." The judge noted that a starting point of 25 years imprisonment appropriate to an adult under the relevant statutory provisions did not

apply to the applicant because of his age. But it was a bad case "because Quamari can have done nothing to merit an attack of this severity". He indicated that he had had in mind a minimum term of 16 years detention: but "I have reflected in the light of what you now today have done and I take the view that it is appropriate to reduce that to 14 years."

The fresh evidence

34. In addition to seeking to rely on the evidence of the applicant in his statement of 6 September 2017 and of Dr Church contained in his reports, the applicant also seeks to rely on the report of Dr Marriott. She met the applicant on 7 March 2019. The applicant was by now 17.

35. She assessed him (as had others before) as of sound cognitive function: "a bright young man with the potential to do well academically." Further, his overall suggestibility was assessed as "extremely low." It was, however, said that he presented with some symptoms of depression and PTSD.

36. In paragraph 11.1 of her report Dr Marriott felt able to express this conclusion:

> "In summary it is my opinion that [L's] provision of the new account prior to sentencing was not driven by an attempt to receive a reduced sentence but is a reflection of the fact that over time he was able to face the reality of his actions and listen to the advice of people other than his father. He has ceased all contact with his father. [L's] cognitive functioning and suggestibility levels are within the average range; however, his traumatic history, harsh parenting, PTSD, fear and shock resulting from the killing, lack of trust in others, including professionals, and reliance on his father for advice and support, provide a reasonable explanation as to [L's] denial of stabbing Quamari and a reasonable explanation as to why it took longer to give the account his now relies upon."

The reference to the father is explained by the applicant having told her that it was his father with whom he had had a close relationship and who had advised him, by phone contact while he was on remand, not to tell anyone what had happened. (Ms Brimelow said that that accorded with his prior statement that "I listened to someone close to me I shouldn't have listened to.")

37. Professor Young did not significantly depart from Dr Marriott in many respects, although not agreeing with the conclusion set out above. It would appear that in her meeting with the applicant (on 15 April 2019) the applicant had placed much weight on his relationship with his father who he said he had always looked up to and who, he said, he "trusted a lot". Professor Young said she had no reason to doubt his sincerity on this. At one stage, her report records the following:

> "[L] said that the person he had referred to was his father who had told him to plead not guilty. He said "My solicitors gave me a choice, to go for manslaughter or to deny everything. I spoke to my dad and he told me to say not guilty and because

> he was my dad and I did look up to him, I didn't question what he was saying to me. I believed in what he said."
>
> [L] said he was in regular contact with his father while on remand and throughout the trial. He said that he had wanted to tell the truth during the trial but didn't because his father had advised him to plead not guilty. [L] was emphatic that the influence of his father was the only reason that he pleaded not guilty; there was no other contributory factor."

38. Professor Young further expressed, it may be observed, the conclusion that it was "clear that PTSD symptoms were not relevant to his decision (or reluctance) to admit his guilt".

39. In their subsequent joint report, both experts indicated that, if it was correct that the applicant's father had provided him with advice not to make admissions, he "would have been highly motivated to follow this advice as he wished to please his father and not disappoint him." It was agreed there were no cognitive factors affecting his ability to participate in the court process. It was also agreed that there was no evidence of PTSD developing as a result of the index offence: although Dr Marriott (but not Professor Young) felt that it was likely that there may have been a traumatic response to what happened.

40. We should further add that both experts had been referred to a range of academic and research articles relating to children and young adults in the criminal justice system: as were we by Ms Brimelow. Whilst these are of general background interest, we consider that, for the purposes of the present case, they add little; and indeed neither expert was disposed to make overmuch of them. None of such research or articles directly related to the issue here arising (an initial false denial followed by an admission on the part of a 15 year old). Further, Professor Young warned of the risks in approaching matters in a generic or broad-brush way in this field. As she said, surely rightly: "individual differences need to be considered".

41. The courts (as, indeed, are most parents) are well aware that the brain develops, and responsibility grows, as children grow into adulthood. Put broadly, it can be accepted that children and adolescents generally are less capable decision makers than adults and that the workings of a child's brain may be different to those of an adult. It is known that teenagers are much more likely to make reckless, anti-social and irresponsible decisions without thought of the consequences. The accompanying lack of maturity is thus reflected in the Sentencing Guideline relating to young offenders. Indeed, as the courts in recent times have stressed, even reaching the age of 18 (the legal age of adulthood) does not represent some kind of "cliff edge" whereby full maturity is to be assumed. These sentiments find reflection in the various papers which Ms Brimelow produced to us. But they lend no real support to some general proposition that, assuming no cognitive deficit, teenagers are in all cases not to be considered responsible for their actions or not to be considered responsible for using knives or not to be considered responsible for their decisions during the court process. Indeed Ms Brimelow disclaimed arguing for so generalised a proposition.

Disposal

42. In considering this application we must direct ourselves by reference to the provisions of s.23 of the Criminal Appeal Act 1968: which are too familiar to require setting out here. Whilst the court is required to have regard to the matters specified in s.23(2), the core requirement is by reference to what is considered expedient in the interests of justice. We also have borne in mind the principles articulated in *Pendleton* [2001] UKHL 66, [2002] 1 WLR 72 and other such cases.

43. There is, at first sight, one rather disconcerting feature of this present application. The applicant belatedly, after conviction, made his admission. That admission was taken by the judge as an admission to the murder. The statement was at all events consciously deployed with a view to obtaining a reduction in the prospective sentence. It succeeded in that purpose: for the minimum term was reduced by two years specifically by reason of the admission. It is hardly attractive that, having, as it were, succeeded in that and having "banked" a reduction in sentence, the applicant should seek to use the self-same statement in order then to deny liability for murder.

44. It may in this regard be noted that the statement of the applicant is in respects somewhat equivocal. Indeed it possibly even alluded to some defence of accident: which, if so, potentially would be an entire defence. In fact, at a previous directions hearing before the Full Court, Ms Brimelow had not disclaimed that. However, it is fair to record that at the hearing before us she did disclaim it. She said that she did not dispute that, on the applicant's latest account, this was at least a case of manslaughter. But she submitted that, in the light of this fresh evidence, there are serious doubts as to whether the applicant intended to cause really serious injury and therefore, as she said, doubts as to the safety of the conviction for murder.

45. We are entirely unable to accept this.

46. There is in fact no direct evidence, either from the applicant or his father, about the contact between the two after the applicant was remanded in custody. Nevertheless, we are prepared for present purposes to accept- as were the two expert psychologists – that there had been such contact and that the applicant had followed his father's advice to deny the offence. We are prepared to accept, too, that he looked up to his father and would have wished to please him.

47. But there are these considerations. The applicant was by now 15. He was of sound cognitive function, as assessed at the time of trial. There were no mental health issues identified. He had a QC and a junior and solicitors. He had familiarity with the criminal justice system (even if not of murder trials in the Crown Court). As he told Professor Young, he made the decision to tell his father what had happened. He then made the decision to follow his father's advice and deny all culpability. He did so when, as is to be gathered from what he told Professor Young, he knew from his solicitors that he had a choice: to go for manslaughter or to deny everything. He made his choice: presumably calculating, following his father's advice, that that was in his best interests: and certainly if that case succeeded he would avoid a custodial sentence altogether. In short, he could have given evidence at trial to the effect that – as was the truth - he had stabbed Quamari. He decided not to. He may have been motivated to follow his father's advice; but it was his decision. He chose both to dispute it and not to give evidence. It may have been a bad decision: but, we repeat, it was his decision. Further, to the extent that Ms Brimelow suggested to us that the applicant might subconsciously have suppressed within himself acceptance of what he had

done, that is not borne out by the reports and is inconsistent not only with his (as he says) telling his friend's mother shortly after but also with his then telling his father. So the upshot is that he knew what he had done; he knew the options open to him; he told his father; and then elected, following his father's advice, to deny everything. In those circumstances, it is not acceptable that, having been able to give evidence at trial admitting the stabbing but saying he had no intent to kill or to cause really serious injury, and having decided not to, he should then, after conviction, seek to revert back to this other option which he had decided not to put forward at trial.

48. Furthermore, the sequence of events after conviction (and of which Dr Marriott may well have been unaware) strongly suggests that the timing of his subsequent admission was indeed tactical and so as to gain advantage: which is consistent with the proposition that his previous denial was likewise calculated to gain advantage. It is, for example, a striking feature that even immediately after his conviction the applicant was still (falsely) maintaining his entire innocence (for example, to Dr Church and to the Probation Officer); and at one stage even was, wholly cynically, trying falsely to implicate an innocent friend. It was only when he was advised of the lack of prospects of a successful appeal against conviction (and of the potential impact of the new DNA evidence) that, belatedly, he then made his admission: an admission clearly designed to be used, as it was used, to gain sentencing advantage.

49. Those matters alone would incline us against giving leave to adduce this fresh evidence. It is a general principle that it is the responsibility of a defendant to put forward his whole case at trial: and that ordinarily an appeal cannot be used simply as a means for having a "second go" in the aftermath of a conviction. That general principle applies as much to those under the age of 18 as those over it. Ms Brimelow did seek to raise the issue of depression, ADHD and PTSD and background as further explaining the applicant's conduct in denying responsibility and then admitting it. She maintained her suggestion that such factors, and his general background, may indicate that his initial denial of culpability for Quamari's death was a form of internal suppression, representing (in her words) "the coping mechanisms of a scared child." But not only does that hypothesis gain no real support from the reports of Dr Marriott or Professor Young but also it is not consistent with the reports obtained, at the time of the trial, of Dr Church and of the Intermediary or with the clear indications that he had consciously elected to follow his father's advice to deny responsibility.

50. In any event, what entirely concludes the matter is that the latest statement of the applicant is, in our judgment, in the relevant respects not capable of belief and would not afford a ground for allowing the appeal. Given the level of planning involved (including also, as the judge found, the plan to change clothes afterwards) and given the pursuit of the fleeing Quamari it is simply not credible that the applicant only intended to stab "lightly". Further, to say that he only initially "touched" Quamari with the knife is absurd. All this is in this respect wholly contrary to all the other eye-witness evidence in terms of them describing the nature and severity of the attack. The suggestion that the applicant fell and the deep stab wound went in deeper than he meant it to is also not supported by any other evidence (including, pace Ms Brimelow, that of Mr Rollins). No one, in fact, had seen the attacker "buckling and tripping." This account is also inconsistent with the pathological evidence. There were, it must not be forgotten, three stab wounds. All of them penetrated several centimetres and the one to the back penetrated 13 cms, administered with such force as to pass through

a rib. As the judge found when sentencing: "Three deep stabs signify at least an intent to cause grievous bodily harm, at the top of the scale". The degree of planning involved only reinforces that. As the judge further said, this was "a bad case of its kind"; and Quamari had done nothing to merit "an attack of this severity."

51. The statement of the applicant is at least clear, we can agree, in its saying that the applicant did not intend Quamari to die. That can be accepted: as, indeed, the judge was prepared to accept. But the statement is, in our judgment, incapable of acceptance in so far as it is now relied on as suggesting that there was no intent to cause grievous bodily harm. At all events, the jury found at trial, having been properly and fully directed on this issue, that there was an intent at least to cause grievous bodily harm. In our judgment, the proposed fresh evidence does not even arguably displace that.

Conclusion on conviction

52. For these reasons, and having regard to the provisions of s.23 of the Criminal Appeal Act 1968, it is not in the interests of justice to permit this proposed evidence to be adduced and we decline to give leave to adduce it. In consequence, we also refuse the application for leave to appeal. It is not arguable that this conviction is unsafe. To the contrary: it is safe.

53. Ms Brimelow speculated that had only this evidence gone before the jury they may have convicted of manslaughter. In part she at one stage had sought to rely on what she said were the reactions, as she herself perceived them, of some of the jurors when the verdict was announced and later on the part of those jurors who chose to attend the sentence hearing. But the aftermath of a murder trial is frequently emotive, especially when young persons are involved. In reaching a verdict, however, a jury is invariably instructed – as in the present case – to approach matters dispassionately and without resort to emotion. Further, as Lord Bingham said at paragraph 19 of *Pendleton*, the Court of Appeal in fresh evidence cases, in asking whether a conviction is safe, may usefully test their provisional view by asking whether the evidence if given at trial might *reasonably* have affected the decision of the trial jury to convict. The word "reasonably" is to be emphasised. In the present case, for the reasons given above, we consider that the proposed fresh evidence could not have affected the decision of the jury, acting rationally.

Sentence

54. Ms Brimelow also sought leave to appeal against sentence. She acknowledged the numerous aggravating factors here present and acknowledged that the judge properly moved up from the statutory starting point of 12 years applicable to a young offender to one of 16 years to reflect those factors. Her sole point before us was that there should then have been a greater deduction than two years to reflect the late admission.,

55. We do not agree. We can well understand, given the whole context and given the degree of vagueness and equivocation in aspects of the applicant's statement, the judge's reservations as to whether, even now, he was being told the whole truth. But be that as it may, we conclude that he gave amply sufficient credit for this very late admission. (It may also in fact be borne in mind that there is a cap on the appropriate deduction even when there is an early plea of guilt to murder.) He noted that it was a

big thing for an applicant this age to admit to murder. The judge, we conclude, had proper regard to the late admission. It is, overall, not arguable that a minimum term of 14 years detention is excessive in the circumstances of this case.

56. We therefore also dismiss the application with regard to sentence.

Permission for this judgment to be cited is given.