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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 11 March 2020

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE FRASER

and

MR JUSTICE HILLIARD

R E G I N A

- v -

LEON EATON

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Mr T Maloney QC appeared on behalf of the Applicant

J U D G M E N T

LORD JUSTICE SIMON:

1. On 21 December 2018, following a trial in the Crown Court at Bristol before Warby J and a jury, the applicant, Leon Eaton, was convicted of murder (count 1) and wounding with intent (counts 2 and 3), and was sentenced to a term of life imprisonment.

2. There were three co-defendants: Korie Hassan, Yonis Diblawe and Jordan Parker (who figured in an issue that arose during the trial). Each was also convicted on counts 1, 2 and 3, and each was sentenced to a term of life imprisonment.

3. By Mr Maloney QC, the applicant renews an application for leave to appeal against his conviction, following refusal by the single judge.

4. At about 1.10am on 25 June 2018, an incident occurred in a flat in Redcliffe in Bristol. A group of men burst into the flat. They were wearing dark clothing and balaclavas, and were armed with at least six weapons, which included a TASER, a machete, a zombie knife with a 17 inch blade, two or three sharp kitchen knives, and a padlock on a dog lead. Four men inside the flat had been using it to deal Class A drugs for several weeks. They were unarmed and were taken entirely by surprise. In the ensuing struggle one of the men, Yasin Ahmed, was killed from stab wounds to the chest which punctured his heart. Two others, Ayub Dirie and Ahmed Jama, were seriously injured. They left the country before the trial, without providing statements. A fourth man, David Campbell, was uninjured, but said that he had been unable to see much of what had happened as he was underneath one of the other men during the attack.

5. The prosecution case was that the applicant and his co-accused were involved in a joint attack on the three victims, with the intention of causing them at least grievous bodily harm. The reason for the attack was said to be that the four men in the flat were carrying on business in the

drugs territory of what was known as the "Joey" line. This was a county lines drugs supply operated from London by the applicant's cousin, Omar Eaton (known as Joey). The territory in Redcliffe had been claimed on behalf of the "Joey" line by Parker and Diblawe. Hassan and the applicant had been sent from London to Bristol to meet Parker and Diblawe. The prosecution said that the attack had been arranged in order to claim or recover the "Joey" line.

6. It is unnecessary for present purposes to describe in detail the various strands of evidence which the prosecution relied on to link the four defendants to the violence in the flat. In summary, there was the finding of drugs and paraphernalia of drug dealing; telephone evidence linking the applicant and the co-defendants to each other and to the "Joey" line; the arrest of the applicant and Hassan close to the scene of the attack; and scientific evidence showing that the applicant had the blood of Yasin Ahmed on his clothing when arrested.

7. The applicant's case was that he went to the flat to burgle it. He denied that he had been part of a joint enterprise to attack and injure the men in the flat. He had been told that the flat was unoccupied. He had gone with others to break in and burgle it. However, the door had opened as they approached and one of the drug dealers threw a punch at him. He responded by using the TASER that he was carrying. All his actions had been in lawful self-defence. He had seen neither knives nor anyone being stabbed; and was unaware that the co-defendants had been carrying knives.

8. Of the co-accused, Hassan supported the applicant's case, except, he said, he had been offered a machete at a time when the applicant was not present and which he had refused to accept. He had entered the flat and had seen Diblawe stabbing someone. He denied that he had taken part.

9. Diblawe did not give evidence. His case was that he was not present.

10. Parker said that he had remained outside the flat and was not involved in what had happened inside. He had seen the applicant with a large zombie knife at the time when the other men had entered the flat. Parker's evidence was, therefore, in conflict with, and potentially damaging to, the applicant's defence.

11. After the applicant had given his evidence in chief, a successful bad character application was made on behalf of Parker, under sections 101(1)(f) and 104 of the Criminal Justice Act 2003, to adduce the applicant's previous conviction for an armed robbery, where guns and machetes were used. He was then cross-examined by Parker's counsel on the basis that he had entered the flat with a zombie knife, as Parker had contended.

12. At the conclusion of the evidence and speeches, and as the judge began to embark upon his summing-up, the court was told that Hassan had been told by someone that one of the jurors may have known Parker. Following a police investigation, it was discovered that there was a potential connection between Parker and one of the jurors. Police intelligence indicated that this juror had a partner (or ex-partner), "MH", with whom she may have had a child. MH was, or may have been, involved in supplying drugs for a man, "DT", and the juror was a friend of DT on Facebook. DT had an uncle, "MT", who had been in a recent relationship with Jordan Parker's sister. DT was also a criminal associate of Parker in drug dealing. However, there was no information to indicate that the juror was aware of the link between DT and Parker, or that she had herself any connection or communication with Parker or his family.

13. It was the unanimous view of counsel and the judge that the juror in question should be discharged, since there was a risk of bias. The juror was discharged. The judge explained her absence in terms to which we will later come.

14. However, counsel for the applicant, supported by counsel for Hassan, made a further submission that the entire jury should be discharged. That was opposed by the prosecution and by counsel for Parker and Diblawe.

15. Following argument in private, but in the presence of the parties, the judge ruled that the case should continue with the 11 remaining jurors. He recorded the defence submission that the discharged juror had heard all the evidence and had no doubt been involved in discussions, voicing opinions, including about the starkly different accounts of the applicant and his co-accused Parker. Since it was agreed that there was a real risk that she was biased to the extent that called for her removal from the jury, there must be a risk that her involvement in hearing and discussing all of the evidence had infected the whole jury and therefore the entire jury should be discharged.

16. The judge noted that there had been no evidence or suggestion that the juror had transgressed; nor any evidence or suggestion of actual bias. The issue was whether justice would be seen to be done if the trial continued. The test was whether the fair-minded and informed observer knowing the facts could conclude that there was a real possibility or a real danger that the tribunal (the jury) was biased: see *Porter v. Magill* [2002] 2 AC 357. In the circumstances of the case, the fair-minded observer knowing the facts would see a real possibility or danger of bias in favour of Parker, the potential prejudice to the other defendants, and a bias against the prosecution. Accordingly, the juror had been discharged.

17. That left the remaining relevant question: whether the known facts had an impact on the ability of the rest of the jury fairly to try the defendants. The decision should not be driven by a consideration of cost or convenience. It was a question of justice. If justice could not be done and be seen to be done, with this jury in the circumstances, then, however inconvenient or

expensive it might be, the jury must be discharged. However, a court should not be too ready to see risks of injustice and discharge a jury on the strength of them. There had been no evidence of actual bias on the part of the discharged juror, nor any evidence of misconduct on her part. Nor was there any sound or proper basis for an inference that she had in fact exercised some improper or undue influence over any of the remaining jurors. It remained in the realms of speculation. Even if she had made comments to other jurors about the veracity of individual defendants, there was no basis for concluding that she had acted out of actual bias in order to sway those jury members. There was no basis for an inference that the remaining jury members would be influenced in their deliberations by things said earlier on by the discharged juror. The jury could be directed that she was no longer one of their members and that they should put anything that she had said out of their minds. The relevant test was an objective one. Here, in the judge's view, a fair minded and informed observer would not jump from a conclusion that because the individual juror may have stood in a particular relationship to Parker and might be partially in favour of him and in his case, to the much bigger conclusion that she may somehow have infected the remainder of the jury with biased urgings, suggestions, reflections or other prejudicial input that might poison their deliberations. That was, in the judge's view, an inference too far. It was extravagant and unreasonable to characterise the role of this juror as that of a representative of a cut-throat defendant. A reasonable and fair-minded observer would not see this as a real danger. As a precaution, the juror would be discharged, and the remaining members would be directed not to communicate with each other until the trial was over.

18. On this application, Mr Maloney criticised parts of the judge's ruling. He argued that the continuing of the trial in these circumstances was unsatisfactory and therefore the convictions are unsafe. In summary, he submitted that the nexus between the juror and Parker was "not one of a benign nature" and that the circumstances gave rise to a strong suspicion of impropriety. A proper inference could be drawn that Parker was aware of the juror’s identity and had not

disclosed this. DT must have been aware of Parker's trial; and, if MH were dealing drugs for him, he too must have been aware of the trial. It was a matter of notoriety in Bristol at the time. If MH was still in a relationship with the juror, he would have known that she was on the jury. In any event, MH would have known that Parker was facing a trial. Given the personalities involved and the criminality of the connections, it was a realistic suspicion that the situation might be used to attempt to pervert the course of justice in some way. The starting point for any consideration of the issue was the observation of Lord Parker CJ in *R v Box* (1964) to the effect that the failure of a juror to disqualify him or herself if he or she knows the accused was "quite improper". That of course, we note, cuts both ways.

19. Mr Maloney went on to argue that the circumstances here were sufficiently serious that the judge could not safely rule on the applicant's submission without, at the very least, asking the juror whether she knew Parker. Accordingly, the judge's decision in respect of the test in *Porter v. Magill* was premature. If he never asked that question, it throws doubt on the safety of the conviction. He relied on certain observations of this court in *R v Blackwell* [1995] 2 Cr App R 625 at 633G to 634C, concerning a judge's duty to investigate what was described as "a realistic suspicion" that the jury, or one or more members of it, may have been approached or tampered with or pressurised". If a judge fails to carry out the necessary investigation so as to enable him to make an informed decision as to whether or not the trial should continue, then it will not be the proper exercise of the discretion.

20. Despite the characteristic cogency of Mr Maloney's submission, we are not persuaded that these points found arguable grounds of appeal. There was no basis for suggesting actual bias in the sense of a predisposition in favour of Parker by the juror. The realistic possibility identified by the judge was that a fair minded observer in possession of the known facts, such as they were, would consider that there was a real risk, based on a possible connection through

intermediaries, that the juror would have had a disposition in favour of Parker and his defence.

21. The judge followed the practice set out in the Criminal Practice Direction VI at paragraph 26M.5 to 26M.18. In summary, and so far as relevant here, he isolated the juror; he consulted the advocates; he sought to establish the facts, such as they were; he further consulted the advocates; and he made a decision about the further conduct of the trial. We agree that he might have asked the juror about her knowledge of Parker, but that would not have added anything significant to the information available, since it was agreed that on the basis of apparent basis she should be discharged from the jury service. The judge addressed this point at page 6F of his ruling. He said:

> As everyone has acknowledged, it is impractical to explore in more detail these various relationships, the knowledge held by the juror, the extent of any contact between the various parties and the attitudes of the participants in these relationships. The question is whether the juror on that factual basis stands in a relationship to Parker which calls her impartiality into question. In my judgment, the clear answer is yes.

22. It is apparent from this that the very question that Mr Maloney says should have been asked was agreed as something that could not be asked; and the judge could not have asked the juror what she might have discussed with her fellow jury members by reason of the provision of section 20 of the Juries Act 1974, as amended.

23. Mr Maloney pursued his criticism of the judge's view that it was impractical to investigate whether the juror knew, or knew of, Parker. He submitted that if she had known him and had not revealed this to the court, then it could found a realistic suspicion that she was not properly approaching her task as a juror. However, once the judge had decided to discharge her, we do not see that this point adds significantly to the argument.

24. Mr Maloney's concluding submission was that there was a real risk that the juror had "infected" the jury with, in the words of the judge when describing the submission, "biased urgings", or with "prejudicial input that might poison" the jury's deliberations. He argued that a reasonable and fair-minded observer would have concluded that further enquiries should have been made and that the failure to do so meant that the judge exercised his discretion without the necessary evidence to do so.

25. We are doubtful whether the reasonable and fair-minded observer would be concerned with an analysis of this sort, but it is the same or at least a similar point: how far should the court go once it has discharged a juror on the basis of apparent bias? Must the court go on to consider the basis of the bias? If so, for what purpose? At one point in his skeleton argument, Mr Maloney appeared to be saying that the purpose of the enquiry might lead to Parker being exposed for failing to reveal what he knew about the juror, if indeed he, rather than one of the intermediary parties, knew about her.

26. The judge directed the jury about the juror's departure. He said:

> We have had to have a discussion about the juror who is not sitting with you. I have come to the conclusion that she needs to be discharged. It is not that she had done anything wrong. It is that information has come to light indicating that she may know someone, directly or indirectly, who features in this case and therefore I have made a decision that she should not continue as a member of the jury. So, you are going to continue as a jury of 11. She will no longer be part of the jury and for that reason it is important – and I have told her this too – that you do not communicate with one another at all until after the end of this case, and that means not in person, or in any social media, or in any other way. And can I please tell you this also? Do not pay attention to anything she may have said to you. When you are coming to your decisions in this case, you are the jury now – 11 of you – and not her. So, make your decisions as a group of 11, without regard to anything she may have said, and I am not enquiring into what she has or has not said.

27. Although Mr Maloney was critical of this direction, in our view it was a properly balanced and conventional direction that was appropriate to the circumstances.

28. This was in stark contrast to *Blackwell* [1995] 2 Cr App R. 625, where nothing at all had been said about a departing juror. At page 636B in *Blackwell*, in respect of what it described there as "the fact of contamination", the court said this:

> The fact of the contamination of a juror does not always have the consequence of the real danger in the sense of the real possibility of jury bias. There may be no danger of injustice, especially if the judge gives clear and firm warnings and directions to the jury as soon as he is alerted…

29. The judge in the present case was well placed to weight the competing arguments in the context of the trial as a whole, including the interests of all the defendants, the degree of risk and the appearance of bias. In the event, all the defendants, including Parker, were convicted of murder.

30. In our view, the applicant's conviction can properly be regarded as safe. Accordingly, the renewed application must be refused.