

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.

Neutral Citation Number: [2024] EWCA Crim 292

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/00540/B5



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 7th March 2024

B e f o r e:

LORD JUSTICE LEWIS

MRS JUSTICE CHEEMA-GRUBB DBE

THE RECORDER OF NORWICH
(HER HONOUR JUDGE ROBINSON
SITTING AS JUDGE OF THE COURT OF APPEAL (CRIMINAL DIVISION)

R E X

- v -

MOHAMMED RIASAT MALIK

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Non-Counsel Application

JUDGMENT

Thursday 7th March 2024

LORD JUSTICE LEWIS:

1. On 23rd January 2023, following a trial in the Crown Court at Bradford, the applicant, Mohammed Riasat Malik (now aged 49) was convicted of two offences: one of unlawful wounding, and one of having an offensive weapon in a public place. He was sentenced to three years' imprisonment for the first offence and two years imprisonment, to be served concurrently, for the second. 2. The applicant renews his application for leave to appeal against conviction after refusal by the single judge.

3. The facts can be stated shortly. The victim, Raza Ali, and the applicant had known each other since about 1996 as they lived at the same property. On 10th August 2022, Ali confronted the applicant on the street outside the property as he believed that the applicant had stolen a Hugo Boss watch from him. Ali said that the applicant produced a kitchen knife and stabbed him. Ali was taken to hospital and treated for a stab wound.

4. At trial the prosecution relied upon the following, amongst other evidence:

(1) The fact that Ali had sustained a stab wound to his abdomen, the knife having gone through his T-shirt and into his stomach.

(2) The evidence of Ali, who said that the applicant had stabbed him.

(3) The evidence of Liam Pemberton, who also lived at the building and who said that the two men were always arguing. He heard a loud argument on the street on 10th August 2022 and he looked out. He heard Ali say, "He's stabbed me", and he saw the wound. Mr Pemberton said that Ali immediately told him

that it was the applicant who had stabbed him.

(4) The prosecution invited the jury to draw adverse inferences from the fact that the applicant had failed to mention matters in interview which he later relied upon in court. In particular, at trial he said that there had been an altercation between him and Ali inside his flat, and that Ali was the aggressor. The applicant said that he left the house but was confronted by Ali on the street. Ali then shouted, "He's stabbed me", even though he (the applicant) had not stabbed Ali. The applicant accepted that Ali had suffered a stab wound, but he said that he did not inflict it and that he did not have possession of a knife on the street.

5. The judge directed the jury that they had to be sure that the applicant unlawfully caused a wound to the victim. The judge noted that it was agreed that Ali had been unlawfully wounded. The real question for the jury was whether the prosecution had made the jury sure that it was the applicant who wounded Ali. The jury convicted.

6. In written submissions on behalf of the applicant, Miss Dean-White had sought leave to appeal on two grounds. First, she submitted that the judge invited the jury to speculate about the sale of the watch. The background to the dispute, according to Ali, was that he believed that the applicant had stolen a Hugo Boss watch from him. Miss Dean-White had asked Ali in cross-examination if he had in fact sold the watch to Cash Converters. She then produced a receipt, dated 25th July 2022, some weeks before the incident, from Cash Converters in Ali's name. Ali said in evidence that that was a different watch, as he had a number of Hugo Boss watches and he had pawned another watch and other items at Cash Converters.

7. In her written proposed grounds of appeal, Miss Dean-White submitted that in summing

up the judge invited the jury to speculate as to whether the applicant had sold the watch, pretending to be Ali.

8. Secondly, in the written proposed grounds of appeal, Miss Dean-White submitted that the judge invited the jury to speculate about one of the agreed facts. That was that a kitchen knife was found next to the applicant's bed, but that tests had shown that there was no DNA on it from Ali. Miss Dean-White submitted that the judge invited the jury to speculate that the applicant might have used another knife and thrown it away.

9. Dealing with the Cash Converter evidence first, the evidence was that Ali approached the applicant because he thought that the applicant had stolen his watch. Counsel had produced evidence in the form of a receipt dated 25th July 2022 in the name of Ali, showing that a Hugo Boss watch had been sold to Cash Converters. There was also evidence given by a police officer that no evidence of identification was required by a person pawning an item at Cash Converters. No one would have had to produce a passport or a driving licence, or any other form of identification in order to be able to pawn an item.

10. Against that background the judge directed the jury on how to approach the question of the evidence of the receipt. He said that when assessing the truthfulness or otherwise in relation to the watch, the jury would need to have regard to the receipt. The judge said that the logical explanations for Ali's name being on the receipt were: Ali said that it related to a different watch, and the receipt did relate to a different watch; or, as it was the same watch that he said that the applicant had stolen, either he (Ali) was lying because he (Ali) had pawned it, or the applicant must have pawned it using Ali's name. The judge was not there inviting the jury to speculate. He was pointing out the logical possibilities relating to the receipt against the background of the evidence that had been given. We see nothing wrong in the way the judge directed the jury in relation to the receipt.

11. We turn to the knife. It was an agreed fact that a black handled knife was found next to a bed in the applicant's flat. The prosecution said that it was likely that that was the weapon used to stab Ali. However, another agreed fact was that that analysis showed that there was no DNA from Ali on the knife. The judge said that there were a number of logical possibilities. One was that the knife was not used to stab Ali. If so, of course, the presence of the knife in the applicant's flat would not be evidence that he stabbed Ali. Another possibility was that the knife was used to stab Ali, but was cleaned afterwards to remove any DNA. The judge said that a third possibility was that the knife had nothing to do with the attack. If so, and if the applicant had stabbed Ali, then the applicant would have had to have used another knife and discarded that other knife after the wounding and before he went back to the house. The judge said, thinking critically and without encouraging the jury to one conclusion or the other, that it was necessary for them to look at the possible logical conclusion before they came to any firm conclusion about how the evidence dealing with the absence of DNA on the knife in the bedroom affected their analysis of the evidence in the case.

12. We do not consider that it was helpful for the judge to introduce reference to the possibility of the applicant having used a different knife which he then disposed of before he returned to the house. That was not part of the prosecution case. However, we do not consider that that matter affects the safety of this conviction. The judge made it clear to the jury that they were free to disagree with anything he said about the evidence. He also repeatedly told them that they should examine the evidence critically; it was entirely a matter for them to determine what conclusions they could reach from the evidence. Further, we note that no objection was raised at the end of the summing up to the way in which this matter had been dealt with by the trial judge.

13. We do not consider, therefore, that any criticisms of the way the judge dealt with these two matters could conceivably affect the safety of the conviction. That is particularly the case when the totality of the evidence is considered, including the direct evidence given by Ali, the evidence of the immediate statement by Ali that the applicant had stabbed him, and the applicant's failure to mention the matters upon which he relied at trial.

14. Overall, therefore, we are satisfied that the applicant's conviction is safe. The jury had evidence from which they could properly conclude that the applicant was the man who stabbed Ali in the stomach with a knife and that he had for that purpose a knife in his possession in a public place, namely the street outside the building where he lived.

15. Accordingly we refuse the renewed application for leave to appeal against conviction.

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

Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk