

Neutral Citation Number: [2019] EWCA Crim 1274

2016/05500/C5
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 27th June 2019

B e f o r e:

LORD JUSTICE IRWIN

MR JUSTICE GOOSE

and

HIS HONOUR JUDGE POTTER

(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

ALISON MURPHY

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Non-Counsel Application

JUDGMENT
(Approved)

Thursday 27th June 2019

LORD JUSTICE IRWIN: I shall ask Mr Justice Goose to give the judgment of the court.

MR JUSTICE GOOSE:

1. On 3rd November 2016 in the Crown Court at Carlisle before His Honour Judge Davies and a jury, the applicant, Alison Murphy, was convicted of attempted murder and was subsequently sentenced to seventeen years' imprisonment. Her applications for leave to appeal out of time (4 days) and for leave to appeal against conviction were refused by the single judge. Those applications are now renewed before this court. Further, the applicant, who appears in person, applies for an extension of time (412 days) and for leave to appeal against sentence. Both of those applications have been referred to this court by the Registrar.

3. The applicant is now aged 53, but was aged 51 at the time of the events which took place on 15th April 2016. She has two sons: Anthony Murphy (the complainant), who was aged 26; and Gary Murphy (the applicant's co-accused), who was aged 22. The applicant lived in Whitehaven, Cumbria. Gary lived in Distington, also in Cumbria. Anthony lived separately in Milton Keynes. The evidence at trial confirmed that Anthony and his brother had a difficult relationship. Anthony had abused both drugs and alcohol from a young age. Gary suffered from Asperger's Syndrome, with suicidal ideation and a desire to harm or kill another person, which centred on his brother Anthony.

5. In April 2016, Anthony Murphy was staying temporarily in the applicant's home as he tried to avoid drink and drugs. On 15th April 2016, having returned from a trip to Ireland, the applicant visited Gary's home in Distington to collect one of her dogs. When she returned to her home, she discovered Anthony Murphy to have been drinking and smoking cannabis. This led to an

argument between them. Contact was made with Gary Murphy via phone calls and text messages. The contents of the text messages were included in a schedule used during the trial. Extracts from the schedule were relied on by the prosecution to demonstrate a clear agreement between the applicant and Gary Murphy to kill Anthony. The significant messages are as follows:

Item	Time	From	To	Message
44	22:30:41	07495052969 (applicant & complainant)	07884931544 (co-accused)	He is still being a total shit I definitely think he should be killed but not sure stabbings is the right method We should make him fall in the harbour or off a cliff
46	22:32:34	07495052969 (applicant & complainant)	07884931544 (co-accused)	If you're on the 10.40 bus you'll be at the harbour at 11
47	22:33:29	07495052969 (applicant & complainant)	07884931544 (co-accused)	Here at 11.30. I should make him walk towards you
48	22:49:41	07884931544 (co-accused)	07495052969 (applicant & complainant)	I'm on the bus. I'm fine with whatever as long as he dies
49	22:52:11	07495052969 (applicant & complainant)	07884931544 (co-accused)	I am charging my other phone This one has his sim card in so I will delete these And you delete them then he can play around with this phone like he keeps trying to
51	23:01:56	07341265638 (applicant)	07884931544 (co-accused)	Any further messages you should send to this phone as he has the other one
52	22:03:48	07341265638 (applicant)	07884931544 (co-accused)	Fucking baby in a mans body he is. I wish I'd never had him. He is a shit offspring and nothing but trouble all his life
53	22:14:24	07884931544 (co-accused)	07341265638 (applicant)	Be there in a few minutes
54	22:15:29	07341265638 (applicant)	07884931544 (co-accused)	Ok knock loud. He won't shut the fuck up
55	22:19:49	07341265638 (applicant)	07884931544 (co-accused)	The door is open so come in and then lock it

6. After the end of the messages, Gary Murphy arrived at the applicant's home with a knife, which he used to stab his brother in the neck, causing an 8.2 centimetre laceration which completely transected the right external jugular vein, causing profuse bleeding. After inflicting the injury, Gary Murphy left the property. The applicant rang the emergency services and, following their advice, staunched the flow of blood from Anthony's neck. That was likely to have saved his life.

8. The applicant and Gary Murphy were charged jointly with the attempted murder of Anthony Murphy. Gary Murphy pleaded guilty at the earliest opportunity. The applicant was convicted after a trial. In her Defence Case Statement and during her evidence, the applicant denied that she had sent the text messages to Gary. She asserted that they had been sent by Anthony himself to his brother in order to cause trouble. During the course of his cross-examination, Anthony Murphy was repeatedly asked whether he had sent the text messages. We have read the transcript of the evidence of Anthony Murphy, during which he repeatedly said that he did not remember sending any text messages because he had been drunk. Nevertheless, it was a clear issue for the jury to determine whether they were sure that the messages were sent by the applicant, rather than by her son Anthony.

10. The applicant's appeal against conviction is made upon a single ground, that fresh evidence, which was not available to the defence at trial, undermines the safety of the conviction. This is based on further statements and interviews of Anthony Murphy since the applicant's conviction. It is argued that if this evidence had been before the jury they would not have been able to reach the sure conclusion that the applicant was party to the attempted murder.

11. In the Respondent's Notice, it is argued that the evidence does not satisfy section 23 of the Criminal Appeal Act 1968 in that it is incapable of belief, such that it cannot establish a ground for appeal. In short, the respondent says that this further evidence does not undermine the safety of the conviction.

12. In refusing leave to appeal against conviction and the extension of time of four days, the single judge, in his succinct reasons, adopted the respondent's cogently outlined submissions that the evidence is not capable of belief.

13. We have considered carefully the representations made by the applicant in the course of a number of letters which she has submitted to the court, and also in her oral observations at court this morning via the video-link. Her primary argument is based upon the application to rely upon fresh evidence under section 23 of the 1968 Act. She argues also that the medical records of Anthony Murphy should be made available because they may demonstrate that the complainant behaved rationally and was not wholly incapable when he was seen by the medical practitioners during his treatment at hospital. However, for the reasons stated by the single judge, we are not persuaded that further evidence from Anthony Murphy, or his medical records, provide fresh evidence to establish any ground of appeal that the conviction of the applicant was or may have been unsafe. We have reached that decision for the following reasons:

i. The messages themselves do not appear, upon reading them, to be from one brother to another in the hope of causing trouble. The jury were, no doubt, satisfied that the messages were from the applicant and not her son.

ii. During his evidence at trial, Anthony Murphy did not assert that he had sent the messages, despite persistent cross-examination on behalf of the applicant.

iii. Anthony Murphy has given his account on a number of different occasions since the applicant's conviction. Most significantly, he was contacted by the applicant in a telephone call from prison on 27th November 2016 (Exhibit JY/1 of the Respondent's Notice), in which she asked Anthony to go to the police and tell them that he was not excessively drunk. The purpose of this was no doubt so that it might be more likely that he would have sent the messages himself.

iv. In his police interview on 12th December 2016, Anthony Murphy remained

vague in relation to the detail of any messages which he believed he may have sent. Further, in a witness statement dated 25th January 2017, Anthony Murphy, whilst saying that he sent "maybe 10 messages in total", was unable to describe the content of the messages.

15. Accordingly, whilst Anthony Murphy has provided further accounts, which, strictly, might be said to be fresh evidence on the basis that it was not available at trial, we are not persuaded that it is capable of belief. The jury were able to assess Anthony Murphy's evidence during the trial, during which he did not admit that he had sent the messages. Even when prompted by the applicant, he has remained vague in his account.

16. Further, we do not consider that his medical records, which may or may not suggest that he was capable of rational thought rather than being highly intoxicated, would assist on the issue as to who sent the text messages. In these circumstances, therefore, we are not persuaded that there is any merit in the appeal against conviction. We agree with the single judge that leave must be refused, together with the application for an extension of time.

18. We turn to the renewed application to extend time and for leave to appeal against sentence. The applicant seeks to argue that her sentence of seventeen years' imprisonment for attempted murder was manifestly excessive. Her remaining submissions upon sentence appear merely to repeat her arguments concerning her conviction.

19. The judge concluded that this offence was committed by the applicant and her son Gary, with a knife brought to the scene. The weapon was unlike any other knife in the home, and Gary admitted to the police that he had brought it with him. Although the applicant contended that she did not know that he had a knife, the text messages expressly refer to the possibility of killing the

complainant by stabbing him. In oral argument the applicant said that because she had been away from the house during the week before the offence, her co-accused could have taken the knife to the house when she was not there and she had no knowledge of it. However, this does not answer the discussion she had in the text messages, of the killing being carried out by stabbing. Nor does it deal with the admission by Gary that he had taken the knife with him. In these circumstances, we are satisfied that the judge was entirely justified, after hearing the evidence in the trial, in reaching the sure conclusion that he did.

22. Even allowing for such mitigation that there was, the sentence of seventeen years was at the bottom of the range of sentencing of 17 to 25 years, provided by the Attempted Murder Guideline, adjusted to reflect paragraph 5A of Schedule 21 to the 2003 Act - see *Attorney General's Reference No 63 of 2013* [2014] EWCA Crim 2763. In these circumstances, we find no merit in the appeal against sentence. Accordingly, we must refuse the application for an extension of time and refuse the renewed application for leave to appeal against sentence.

24. These applications are, therefore, refused.

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