

Neutral Citation: [2019] EWCA Crim 1705

No. 2018/01500/C2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 9th October 2019

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(The Lord Burnett of Maldon)

MR JUSTICE SWEENEY

and

SIR RODERICK EVANS

REGINA

- v -

AM

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Mr R Menon QC appeared on behalf of the Applicant

JUDGMENT
(As Approved)

Wednesday 9th October 2019

THE LORD CHIEF JUSTICE:

1. On 2nd March 2018, following a trial at the Central Criminal Court, the applicant was convicted of engaging in conduct in preparation for terrorist acts, contrary to section 5(1)(a) of the Terrorism Act 2006.
2. He now renews his application for leave to appeal against conviction, following refusal by the single judge.
3. Although a number of grounds of appeal were advanced in the original application, Mr Menon QC, who appears on the applicant's behalf, seeks to renew only one ground, namely, that the learned trial judge erred in law in excluding evidence from two forensic psychologists. The evidence suggested that the applicant was unusually suggestible, abnormally compliant, lacking in assertiveness, had a fear of negative evaluation, lacked sophistication, and was thus vulnerable to manipulation.
4. The applicant was convicted of the offence along with Ahmed Haque. They were jointly charged. The prosecution case was that Haque researched methods of terrorist attack and planned a terrorist attack in the United Kingdom. The case against the applicant was that he assisted Haque in planning such an attack and raised money through trading options to finance such an attack. The evidence upon which the prosecution relied consisted of recorded conversations between the two co-accused in the spring and early summer of 2017. They were recorded discussing the type of vehicle they would need to "ram guys". In the same conversation, the applicant observed that "no disbelievers are innocent". A little later, the applicant told Haque that he had signed up to trade online in options and that he would use the proceeds to help finance Haque's plans. He also volunteered to carry out a reconnaissance trip to Westminster and later made it clear that he was aware that Haque had connections with Islamic State. They discussed filling a car with explosives and driving it over Westminster Bridge. A little later, the applicant discussed conducting explosive tests on Wanstead Flats.
5. Haque had involved a number of others in his plans and radicalised, amongst others, the applicant. The applicant was 18 years old at the time of the offending. The terror attack on Westminster Bridge on 22nd March 2017 appears to have been the inspiration for Haque.
6. The prosecution also relied upon a wide range of "mindset evidence" found in the applicant's possession, which showed his support for Islamist extremism.
7. Following his arrest, the applicant was interviewed on a number of occasions but, apart from answering basic questions about his family and home, made no comment. His Defence Statement identified his defence. He denied engaging in any preparatory act. He suggested that nothing he said, did or offered to do was intended to assist Haque to commit acts of terrorism. He accepted that he had the conversations relied upon, but he did not believe that Haque would actually commit an act of terrorism, or was capable of committing such an act. He thought that Haque was showing off and that "it was all talk". The Defence Statement averred that, when he was about 15, the applicant had met Haque and that over the three years that followed he had been groomed and radicalised.
8. In his evidence at trial, the applicant confirmed that he supported the aims of Islamic State. He said that he did not agree with Haque that terror attacks against male civilians of

countries who had attacked Muslims were permissible. He confirmed that whilst the conversations discussed the possible commission of terror attacks in the United Kingdom, he thought that it was just talk from Haque. He would never have done anything to assist Haque in planning a terrorist attack.

9. As regards the trading and options, he explained that he hoped to make money for his own use. In short, the applicant's case was that whilst to some extent he supported the aims of Islamic State, he would never have acted on those beliefs in any tangible way. It was not his case that he engaged in a preparatory act in some way under the overbearing influence of Haque. No defence of duress was or could have been advanced.

10. The application to admit psychological evidence was made on the eighteenth day of the trial. A report on the applicant, prepared by Dr Bett, had been served at the beginning of the trial. The prosecution had objected to its admissibility, but obtained its own report from Dr Egan. Whilst there were some differences between the opinions of the two psychologists, the thrust of their evidence was similar. The judge rejected the application on two different bases. First, applying a long line of authority culminating in *R v Jackson-Mason* [2014] EWCA Crim 1993, [2015] 1 Cr App R 6, he concluded that, as a matter of principle, such evidence was not admissible. In particular, the learned judge relied upon [17] of the judgment of the court, which was given by the President of the Queen's Bench Division. It says this:

"We are not satisfied that the principles in *Antar* can be extended to cases which do not involve the defence of duress or in circumstances where suggestibility might otherwise be in issue such as frequently used to occur in relation to confession evidence. ..."

11. Moreover, the judge concluded that the evidence was simply not relevant to any issue for the jury. He asked that there had been no suggestion that the applicant was subject to duress or had made any unreliable confession (an echo of [17] in *Jackson-Mason*). In addition, the case for the applicant was not that he did preparatory acts in some way for which he was not responsible or had been suggestible; it was that there were no preparatory acts at all on his part.

12. The submission on behalf of the applicant is encapsulated in a helpful skeleton argument prepared by Mr Menon, paragraph 13(a) of which reads as follows:

"The impact of the applicant's compliance, suggestibility and other psychological characteristics on his relationship and conversations with Mr Haque was very much in issue in this case. Although conceding that the applicant tended to be a follower, took his cue from Mr Haque and never murmured any dissent, the prosecution rejected the contention that what the applicant said during the covertly recorded conversations was just talk, as opposed to knowing participation in a terrorist plot. Consequently, the learned trial judge erred in law in finding that the psychological evidence was irrelevant to any justiciable issue in the applicant's case."

Mr Menon developed that submission in oral argument, but its essence remained the same.

13. Despite the eloquence of both the oral submissions and the written submissions, we are satisfied that the psychological evidence was, as the single judge observed, not relevant to any issue in the case. The applicant's defence was that he did not take the conversations seriously, because he thought that Haque was simply not in earnest; in other words, that Haque did not intend to commit any terrorist offence. The psychological evidence, in our judgment, has no bearing on the case for the prosecution. Nor did it have any bearing on the defence that was advanced at trial. The judge was careful to direct the jury that the prosecution case against the applicant was put on the basis that he assisted Haque and shared his intention. He reminded the jury that they could not convict the applicant unless they had already determined the guilt of Haque. He made it clear that, even if they convicted Haque, they could acquit the applicant. The jury was concerned to determine the factual position in relation to Haque and then look at the conduct of the applicant. As the judge observed in his route to verdict directions to the jury:

"This offence is committed where a person, with the intention of committing acts of terrorism or assisting another to commit acts of terrorism, engages in conduct in preparation for giving effect to that intention (i.e. planning for an event, an act of terrorism) that was to take place at some point in the future somewhere in the United Kingdom."

14. Like both the trial judge and the single judge, we consider that the psychological evidence was not material to the various questions which the jury had to determine in this case. The jury rejected the suggestion that Haque was not in earnest or that the applicant was not assisting him. Moreover, there was no question of duress; nor was there any reliance placed by the prosecution on any confession.

15. In those circumstances, we have concluded that this renewed application for leave to appeal against conviction must be refused.

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