

Neutral Citation Number: [2019] EWCA Crim 2415

2019/00189/C2 & 2019/00192/C2

**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

**Royal Courts of Justice**

The Strand

London

WC2A 2LL

Tuesday 10<sup>th</sup> December 2019

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE GARNHAM

and

MRS JUSTICE STEYN DBE

**R E G I N A**

- v -

**JONATHAN WILLIAM SNAPE**

Computer Aided Transcript of Epiq Europe Ltd,

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400; Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk) (Official Shorthand Writers to the Court)

*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.*

*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.*

---

**Mr M S Heslop QC and Mr R Vardon** appeared on behalf of the Applicant

**Mr A Webster QC** appeared on behalf of the Crown

**J U D G M E N T**

Tuesday 10<sup>th</sup> December 2019

**LADY JUSTICE RAFFERTY:**

1. Jonathan William Snape (now 31) on 18<sup>th</sup> December 2018, in the Crown Court at Manchester, Minshull Street, was convicted of murder (count 1) and of attempted murder (count 2). During the trial he pleaded guilty to manslaughter (count 1A). He had earlier pleaded guilty to inflicting grievous bodily harm (count 4), to assault occasioning actual bodily harm (count 6), and to dangerous driving (count 8).

2. On the same day, he was sentenced for the murder of Nathan Marshall to imprisonment for life, with a minimum term of 24 years; for manslaughter (count 1A), no separate penalty; for the attempted murder of Aaron Baker (count 2), twelve years' imprisonment; for inflicting grievous bodily harm (count 4), to fifteen months' imprisonment; for assault occasioning actual bodily harm to Samantha Parker (count 6), to four months' imprisonment; and for dangerous driving (count 8) no separate penalty, but disqualified from driving for 26 years. The total sentence, therefore, was life imprisonment, the minimum term to be served before application for parole could be entertained, 24 years.

3. By leave of the single judge, he challenges the length of his sentence and, after her refusal, renews his application for leave to challenge the safety of the conviction.

4. On Sunday 27<sup>th</sup> May 2018 the Applicant with friends including Nathan Marshall and Daniel Robinson, at the end of an evening's drinking ended up at The Salisbury Club in Stockport. The Applicant drove Daniel Robinson's Audi. They drank and socialised with, inter alia, Aaron Baker and Daniel Rothwell, previously unknown to the Applicant. An argument between them turned into a brawl. The Applicant punched Rothwell, breaking his jaw (count 4, inflicting grievous bodily harm), and punched Samantha Parker, leaving her unconscious (count 6, assault occasioning actual bodily harm).

5. The Applicant, Marshall and Robinson left in the Audi, the Applicant driving. Gaynor Ashton the landlady came out to remonstrate but soon returned inside. The Applicant drove back to The Salisbury, stopped immediately outside and went towards the pub carrying either a glass or a bottle. The landlady had locked the doors and he could not get in. He threw the object at the door, breaking a window, and kicked the door. As the door was unlocked, a number of people emerged and a fight broke out. Aaron Baker and the Applicant were fighting each other. The Applicant broke away, got into the Audi and

accelerated at the group, striking Baker, who hit his head on the windscreen and fell to the ground (count 2, attempted murder).

6. The car also hit Marshall, who ended up underneath it. It veered out of control and crashed into a parked car. The Applicant reversed, running over Marshall on the ground. He was crushed, dragged along underneath, and he died from his injuries (count 1, murder).

7. The Applicant drove to the end of the road but returned moments later and tried, but failed, to put Marshall into the car. He drove away, dangerously, eventually crashing on the M60 (count 8, dangerous driving, to which he had pleaded guilty), left the scene and, a few hours later, gave himself up. He declined to comment in response to questions in interview.

8. The Crown's case was that by driving at speed towards a group he attempted to murder Baker and did murder Marshall. He intended to kill Baker. It relied on: eyewitnesses from The Salisbury, who saw him fighting Baker, coming off worse, deliberately driving at him, reversing, and driving away with Marshall caught underneath; on expert collision science from Police Constable Poole that the car was driven in an arc at some speed, aiming at Baker and others in the road; on closed-circuit television footage of events both inside and outside The Salisbury, that from inside providing more information; and on police officers and medical practitioners at the scene and at hospital.

9. The defence was accident. The Applicant told the jury he had not intended to kill or to cause serious harm. He accepted he had behaved violently. When fighting Baker outside, he had been pinned to the bonnet of the Audi and struck by Baker to the head, and with a baseball bat by another. He broke free of Baker and got into the driver's seat. Fearing further attack, he panicked and, as he tried to escape by driving away accidentally struck Baker and Marshall. He accepted reversing, then driving forward, but claimed he did not realise someone was trapped beneath. The eyewitnesses to his driving, he said, were contradictory and the accident reconstruction evidence might support his acting in haste to flee.

10. The issue for the jury was his intention. Had he intended to kill or to cause serious harm to Baker (count 2)? If yes, by operation of the doctrine of transferred malice, he would be guilty of the murder of Marshall (count 1)

11. The Court read, as have we, the harrowing Victim Personal Statement of Mrs Marie Marshall, Nathan's mother.

12. Sentencing the Applicant, the Judge fixed the starting point for the minimum term as at fifteen years – not in issue. Aggravating the matter, he identified: Whilst the Applicant did not bring the vehicle to the scene with the intention of using it as a weapon, he did so use it: One person was killed and he intended to kill another, using the car as a weapon in a series of manoeuvres: He was in drink and on drugs: He fled the scene and made no attempt to summon help: This was a series of violent offences: He had a significant history of offending, including violent offences which led to custodial sentences, and of driving offences.

13. The Judge accepted that mitigating the position was that there had been neither planning, nor premeditation; that to a limited extent the Applicant acted in panic; he and those close to him as a consequence of what he had done had suffered. The Judge had in mind totality.

14. Aged 30 at sentence, born on 15<sup>th</sup> December 1987, the Applicant had 19 convictions comprising 43 offences between 2005 and 2016. Those relevant included assault occasioning actual bodily harm in 2008 and in 2009, and numerous driving offences.

15. In Grounds of Appeal against conviction the complaints are that in summing-up the Judge failed to identify significant and material inconsistencies between the oral evidence and previous statements to the police of seventeen eyewitnesses who formed a major part of the prosecution case. Their various accounts not only conflicted the one with the other but also with the agreed science from Police Constable Poole. The Judge failed to highlight or contrast the differences. Each witness was cross-examined about previous inconsistent statements under the provisions of S119 Criminal Justice Act 2003. The Judge failed to make any reference to such cross-examination. He simply agreed to list the names of the witnesses whose previous inconsistent statements had been put.

16. As to sentence, for which the Appellant has leave, the argument is that the minimum term of 24 years is manifestly excessive when regard is had to his personal circumstances. The evidence suggested he was initially the peacemaker and had driven in panic once hit with a baseball bat and fearing that the attack was ongoing. He was a family man with an 18 month old. The appropriate minimum term would have been between eighteen to twenty years. Mr Heslop QC today refined that to twenty years.

17. In short, his suggestion is that the general directions which the Judge gave were insufficient. Polite and professional criticism to the Judge of what was seen as an inadequate direction was recorded, the Judge expressing disappointment that such criticism had not earlier been voiced when routes to verdicts and written directions had been canvassed with counsel. Mr Heslop's answer, politely but firmly, was that though he should have raised what he was criticising, he and his junior had assumed that in summing-up the Judge would follow the guidance set out in the Crown Court Compendium.

18. Mr Heslop gave us examples of the deficiencies. He had suggested that Gaynor Ashton (the landlady) perhaps was disguising what had happened in and around her pub as the Applicant was not a local whereas other locals were involved and her loyalties might have been misplaced. Mr Heslop distilled the effect of what she said into seven submissions. We refer to three, but of each we took a careful note:

1. The summing-up is silent as to the content of her previous inconsistent statements, to which Mr Heslop had cross-examined. To oblige a jury to align the agreed facts with the summing-up asks too much of it. Gaynor Ashton, on 29<sup>th</sup> May, had made the witness statement in which Mr Heslop was, understandably, most interested. He put to her a variety of things, as to which in each instance she either had no answer or an answer which was in contradistinction to her evidence. She had said that the baseball bat "never went outside" the pub, whereas the evidence established that it did. Her demeanour in the witness box and and Mr Heslop would describe as "calm". Compare and contrast her behaviour whilst making her 29<sup>th</sup> May witness statement when she was distraught and panicky. In our view the first two of those points are more cogent than the third.

Ricky Flaherty (Gaynor Ashton's partner), Kelly Cowley, Paul Hazledene; and Daniel Rothwell, whose witness statement was read, attracts criticism of the summing-up as deficient.

21. The Single Judge, having at considerable length rehearsed the founding facts and set out the Grounds, wrote:

"...

4. The jury was provided with an agreed route to verdict and directions were agreed with counsel. The summing-up was thorough and from the outset the judge made plain the defence case that the evidence

was contradictory, and that it was an accident which occurred when you were attempting to flee a scene where you were under attack, specifically referring to your case that onlookers' evidence was contradictory and unreliable. The judge reminded the jury of the eye-witness evidence in some detail with reference to the CCTV footage which was seen during their evidence. Some of the witnesses had been drinking and/or taking drugs and accepted that they had and that it may have affected their recollection of events.

5. During the summing-up, after the judge had gone through much of the witnesses' evidence, having previously declined to add to agreed directions, your counsel drew the judge's attention to the need to draw the jury's attention to previous inconsistent statements; the judge dealt with that by giving an additional direction to the jury with reference to the defence speech. It is argued on your behalf that [that] did not adequately deal with deficiencies in the summing-up regarding the inconsistencies in witness statements.

6. The judge fully rehearsed the witnesses' evidence in his summing-up and while it may not have complied with the guidance in the Crown Court Compendium the repeated references to the inconsistencies set out and relied on by the defence before and during his review of the witnesses' evidence provided the context for the jury's deliberations. The jury were able to consider the witnesses' evidence, knowing that the defence case was that the witnesses' evidence was unreliable and that the defence relied on any and all inconsistencies in that evidence in support of their case that the evidence could not be relied on.

7. While it is unfortunate that counsel for the defence did not see fit to discuss with the judge prior to his summing-up the way he would deal with the witnesses' evidence, the summing-up was adequate, and, as is submitted in the Respondent's Notice, the evidence of the CCTV was both objective and reliable. The gravamen of the offending was your use of the car as a weapon and the way that you drove it, the evidence of what you did while behind the driving wheel of the [Audi] came in large part from PC Poole whose evidence was only challenged to a limited degree.

8. The conviction cannot be considered unsafe and the application is refused."

22. As to sentence, the complaint is simply that the minimum period of 24 years is too long.

23. The reference to the Crown Court Compendium is to the work of the Judicial College for the assistance of the profession and not prescriptive. Mr Heslop complains that, in the section headed "Hearsay – Previous inconsistent statement – s.119", paragraphs 3 and 6 bite on the issue:

*"3. The Court of Appeal has repeatedly stated that if evidence is admitted under s.119, the jury must be given a proper warning as to how to approach the material: Bennett and another [2008] EWCA Crim 248...."*

...

### ***Directions***

*6. The inconsistency and W's final position (either agreement or disagreement with the statement) should be identified in the course of the review of the evidence."*

24. In our view, the jury was perfectly able to assess the reliability of the eyewitness evidence, which had been cross-examined in detail and with conspicuous ability. Closed-circuit television evidence footage made clear what had happened inside The Salisbury and gave a good deal of information about what had happened outside, when concentration was on the Applicant at the wheel of the Audi. His hostile and aggressive actions were very plain. It is not the function of the judge to rehearse every argument advanced by counsel. Brevity and conciseness of presentation are to be welcomed, providing the case for each party is put with balance, major issues highlighted and their founding evidence dealt with fairly and adequately. Here, whilst there was extensive cross-examination on discrepancies, the majority went to events inside The Salisbury. These were well captured on closed-circuit television which, unlike the evidence of eyewitnesses, was not vulnerable to criticisms of subjectivity. It was plain and objective.

25. The Judge summed up the evidence of those seventeen eyewitnesses – indeed, of every witness – at very considerable length. In his summary he reminded the jury of a good many points which showed

inconsistency. The jury could not have failed to grasp that discrepancy was the primary point, and, crucially, that it was incumbent upon it to bear it in mind. Once invited by Mr Heslop to revisit his direction, he said:

*"Now, during the course of cross-examination and during the course of his submissions yesterday, Mr Heslop drew your attention to various statements made by witnesses which were said to be inconsistent with the evidence they gave in chief, that is what was recorded in their earlier statements was different from the evidence which they gave in a material particular. I have referred in part to this evidence during the course of my summing up of the facts and my directions.*

*It is appropriate I give you a direction as to how to treat those previous statements. One: if there is an inconsistency it is something which you are entitled to take into account in assessing the witness' evidence. Does the inconsistency render his evidence less reliable? Is it explicable by a lapse of memory? Does it affect the whole of the witness' evidence? Do you accept the explanation, if any, given by the witness? Two: did the witness accept the previous account is more reliable than the present account? Three: the present account becomes part of the evidence – I beg your pardon – three: the previous account becomes part of the evidence. You can decide to accept it or to act upon the later version or you may discount both of them.*

*Parts of previous statements were put to the following witnesses: Gaynor Ashton, Ricky Flaherty, Paul Hazledene, David Holt, Kelly Cowley, Keeley Hague, John and Richard McDonald, Aaron Baker, Anthony Harding, Louise Owen, Nicole Keeley and Louise Firth. As I have indicated, Mr Heslop dealt with them in detail and at length yesterday and they will be fresh in your mind. It is a matter for you to consider those points carefully, please. I am not going to repeat these matters further to you at this stage beyond how I have already made reference to them in my summing-up.*

*Right, there we are."*

26. Reported only days ago, *R v Reynolds* [2019] EWCA Crim 2145, whose factual basis was vastly different from the index case, under the heading "The Purpose and Nature of the Summing-up", reminds



the reader that general observations on the purpose and nature of the summing-up can be useful. It has and has always had two purposes: first, to the extent necessary it reminds the jury of the salient facts and the Crown and the defence cases on them; and second, because a jury's verdict is not reasoned, it provides an assurance that the verdict is founded on the facts described, albeit it is not necessary for a summing-up fully to rehearse all the facts and arguments. Counsel's closing speeches are no substitute for a judge's impartial view. On the other hand, a summing-up need not rehearse all the evidence and arguments. As Lord Morris of Borth-y-Gest said in *McGreevy v DPP* (1973) HL (NI) 2 Cr App R 424, at 431:

"The particular form and style of a summing-up, provided it contains what must on any view be certain essential elements, must depend not only upon the particular features of a particular case, but also on the view formed by a Judge as to the form and style that would be fair and reasonable and helpful."

What is helpful is case dependent. A recitation of all the evidence and all the points made on each side is unlikely to help. Finally, a succinct and a concise summing-up is particularly important in a long and complex trial to assist a jury in its rational consideration of the evidence.

27. The direction to this jury after Mr Heslop's dialogue with the Judge the Crown described as adequate.

The Compendium is no more than a guide and goes to the general, not the particular. It is not prescriptive. Here, whilst the discrepant aspects of the evidence once challenged by Mr Heslop attracted great stress, the reality, reflected in the lengthy summing-up, was that many of the eyewitnesses had drunk a great deal and accepted the inevitable effect upon the accuracy of their evidence. None of that can be said of the closed-circuit television evidence.

28. What the Applicant did behind the wheel of the Audi cannot be seen in a silo. It found its context in what occurred within The Salisbury. It must be assessed alongside the expert evidence of Police Constable Poole. The Applicant went into the witness box and told the jury that he accepted he had acted violently and lost his temper. In the witness box he for the first time sought to explain his return to The Salisbury as to recover his phone. Challenged, he was obliged to change that account. He had first said that his hands were not on the wheel but confronted with the science told the jury he was steering with his legs. None of this would have commended him to the jury. All of it was of a piece from the moment he arrived at The Salisbury to the moment he finally sought to make his escape along the M60. He accelerated hard at what he knew to be a group of people. One of them, whom he struck with force (Baker), he had moments earlier been fighting aggressively. All this the jury was entitled to take into account when it asked itself the useful question: was what he did purposeful or, as he was to claim, accidental and born of panic?

29. It would have been preferable had the Judge in summing-up pulled together the contentions by Mr Heslop and, either starting with the evidence then returning to the prior inconsistent statements or the other way round, explaining to the jury why the defence was interested in the aspect he was addressing. It is disappointing that that did not.

30. All that said, this case turned on what happened once the Applicant reached the wheel of the Audi, and was founded on what happened inside. Consequently, the very length of the summing-up, going exhaustively through the eyewitness evidence and then explaining to the jury that discrepancy was to be borne in mind, protects it from any criticism that it is so inadequate as to render the conviction unsafe.

31. This renewed application is rejected.

32. As to sentence, this was a bad case of using a car as a weapon against a number of people, intending to kill. The murder was seriously aggravated by the Appellant's consumption of drink and drugs, by flight from the scene, and by his previous convictions, some of which were for violence. The minimum term of 24 years might have been deemed excessive had he been convicted only of the murder. That is far from the position. He answered an attempted murder, for which the determinate term of twelve years' imprisonment was justified, inflicting grievous bodily harm, assault occasioning actual bodily harm, and dangerous driving. Even taking into account the absence of premeditation or planning, even putting into the balance an element of panic, and even reminding ourselves of totality, 24 years comes nowhere near being manifestly excessive.

33. The appeal is dismissed.

---

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

Lower Ground, 18-22 Fumival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk)

---