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No: 201803053/A4

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 5 February 2019

**B e f o r e:**

**LORD JUSTICE HOLROYDE**

**MR JUSTICE MARTIN SPENCER**

**HIS HONOUR JUDGE WALL QC**  
**(Sitting as a Judge of the CACD)**

**R E G I N A**

**v**

**WAJID HUSSAIN**

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**Mr G Hussain QC** appeared on behalf of the **Applicant**

**J U D G M E N T**  
(Approved)

1. LORD JUSTICE HOLROYDE: On 17 April 2018, in the Crown Court at Preston, this appellant pleaded guilty to an offence of conspiracy to commit violent disorder. On 2 July 2018 he was sentenced to 30 months' imprisonment. With the leave of the single judge he now appeals against that sentence on the ground that the sentencing judge paid no or no sufficient regard to the written basis of the appellant's plea.
2. For present purposes the facts can be summarised quite briefly. The events which gave rise to the charge involved two groups of young men in the Blackburn area. Jibran Bashir was a prominent figure in one group, Usman Akhtar a prominent figure in the other. It is therefore convenient to refer to the two groups as the "Bashir group" and the "Akhtar group" respectively.
3. It appears that in about mid-July 2017 Jibran Bashir incurred the displeasure of a man called Tyman. Jibran Bashir later told the police that he had received telephone calls from Tyman accusing him of sleeping with a woman who was connected to Tyman. Bashir said he had been threatened that unless he paid £30,000 Tyman, Akhtar and others would come to Bashir's home.
4. On the night of 23 January 2017 a violent incident occurred near Bashir's home. A number of vehicles gathered at the scene. Bashir himself was present, so too were Akhtar and Tyman. Vehicles used by members of Akhtar's group included a black Range Rover. CCTV footage showed a significant number of men getting out of the vehicles and acting aggressively and violently towards one another. One of Akhtar's group brandished a handgun but did not discharge it. Another of Akhtar's group aimed a rifle at those in the other group and moved threateningly towards them but did not discharge the firearm. All those involved had dispersed before the police arrived a very

short time later. The only identified injury was a minor wound to Jibran Bashir's brother, who had been jabbed with a knife.

5. That incident was the catalyst for a further incident two days later on 25 January 2017. Shortly before 8.00 pm that evening a number of men connected to Akhtar drove to the Royal Blackburn Hospital in two vehicles, one of which was a black Range Rover. The driver of the black Range Rover was Lonsdale who was accompanied by Lewis Hannon. One of the men who went to hospital, Paul McCrory, had a facial injury. The circumstances in which he had sustained that injury are not known but the prosecution case was that it was part of the ongoing dispute between the two groups.
6. While McCrory and others remained at the hospital, Lonsdale and Lewis Hannon left in the Range Rover and went to premises of Village Car Sales which are connected to Akhtar. There they met up with another man. They then returned to the hospital before leaving the hospital for a second time just before 8.30.
7. At about 8.40 a convoy of six cars arrived at Village Car Sales. The appellant was the front seat passenger in a Mitsubishi driven by Abdul Kayum. Others who were in the convoy of cars included Jibran Bashir, Adeel Ahmad and Shahid Hussain. At Village Car Sales a number of the men who were in the vehicles got out. Many of them had their faces covered and were armed with bats or lengths of wood. Shop assistants in a nearby convenience store were terrified by what they saw and secured the premises including by lowering the shutters. The men from the six cars appeared to be looking for one or more persons but did not find them. They approached the office at Village Car Sales and smashed the windows and caused damage using their bats and sticks. There was no evidence that anybody was injured and after a short time the various men got back

into the vehicles and drove off again in convoy.

8. The prosecution accepted that neither the appellant nor Shahid Hussain had left their respective vehicles during this episode at Village Car Sales and that Shahid Hussain had then departed altogether. What followed, as far as others in the convoy were concerned including this appellant, was a search of the local area for the black Range Rover which had a distinctive number plate. The pursuing convoy found the Range Rover and chased after it. Parts of this chase were captured on CCTV footage. The footage showed the Range Rover being pursued by the Mitsubishi and other vehicles, sometimes at high speed. There came a point in the pursuit when the Range Rover had managed to increase the gap between it and the pursuing vehicles. Taking advantage of that, those in the Range Rover performed a U-turn and drove back towards the following convoy. As the Range Rover was drawing level with the driver's window of the Mitsubishi (which was driven by Kayam with the appellant as front seat passenger) someone in the Range Rover discharged a firearm in the direction of the Mitsubishi. The bullet missed the Mitsubishi but passed through the windscreen of a vehicle parked nearby, continued on its way and ended up in the front door of one of the nearby properties. The men in the Range Rover at that stage were Lonsdale and Lewis Hannon and, as we understand it, they subsequently pleaded guilty to an offence contrary to section 16A of the Firearms Act 1968.
9. So far as the appellant and others who had been with him were concerned, they were arrested. When interviewed under caution the appellant denied being present at any of the events which we have summarised. He made "no comment" when asked about relevant mobile phone call records and he made "no comment" when asked if the police

would find evidence linking him to the Mitsubishi. Such evidence was indeed subsequently found, in the form of a bottle in the front passenger seat footwell of the Mitsubishi, from which a DNA sample was recovered which partially matched the appellant's profile.

10. The appellant and others were sent for trial to the Crown Court. At a plea and trial preparation hearing Abdeel Ahmad pleaded guilty to the offence of conspiracy. Others, including the appellant, maintained their not guilty pleas and after a number of pre-trial hearings the case came on for trial on 16 April 2018. The jury were sworn and the case opened but no evidence called. On the following day, the second day of trial, the appellant pleaded guilty. Other accused then followed likewise.

11. The appellant's guilty plea was entered on a specific basis which was appropriately reduced to writing. Summarising it, the basis of plea contained the following assertions:

1. The appellant is not a member of an OCG;
2. He was not involved in the events of 23 January;
3. On 25 January he was the front seat passenger in the Mitsubishi. Initially the only other occupant of the Mitsubishi was the driver;
4. The driver later received a call asking him to go to Village Car Sales. Three other men were picked up en route who were not known to the appellant;
5. The appellant learned that a dispute between two men was to be settled. At that stage, it was asserted, the appellant thought that the most that was going to happen was a fair fight between two men and he had no intention of getting involved;

6. At Village Cars everyone except the appellant got out of the Mitsubishi;
7. This was the first time the appellant saw any weapons;
8. The appellant accepted that having seen the weapons and learned of the true intentions of the others he chose to remain with them in the car.
12. That basis of plea was not contested by the prosecution. Other accused who pleaded guilty also put forward bases of plea. They too were not contested. It does not appear that the judge felt it necessary to direct a Newton hearing.
13. The appellant is now aged 32. He has 12 previous convictions recorded at seven different court appearances. These included an offence contrary to section 5 of the Public Order Act 1986, committed when he was aged 16, an offence of affray, committed when he was aged 19 and a number of drugs offences, the last of which was committed in 2012 and was dealt with by a community order. The appellant had received a suspended sentence of custody but had not served any immediate sentence.
14. There was before the court a pre-sentence report on which counsel relied as providing a very positive report. It showed that the appellant neither held nor expressed any troubling views. He was aware of the nature and impact of his offending and was motivated to avoid further offending in future. He had been caused great anxiety by learning that a firearm had been discharged in the direction of the car in which he was travelling. He had subsequently stopped drinking alcohol and his wife was, at that stage, about to give birth to their first child.
15. In his sentencing remarks the judge summarised the circumstances of the offence. He

made it clear that none of those whom he had to sentence were to be held responsible for the events of 23 January 2017 but observed that incident was the catalyst for what happened on 25 January at Village Car Sales. In relation to that episode the judge indicated that he considered that the offence:

- i. "... was in some way borne out of revenge or retaliation in respect of the earlier incident, something which was likely to (and indeed did) escalate the seriousness of the rivalry between two groups and this, in my view, is an aggravating feature of your offending."

16. The judge went on to say that it was apparent that a good deal of organisation and coordination had taken place in order to gather together the many men who were involved in the incident on the night of the 25th, some of whom were equipped with baseball bats or lengths of wood.

17. The judge observed, in relation to the damage caused at Village Car Sales, that the CCTV footage showed:

- i. "... what was clearly an extremely intimidating situation developing on a public street shortly before 9.00 pm in the evening."

18. He referred to the alarm caused to those in the shop nearby. The judge then said, at page 4B of the transcript:

- i. "I repeat, that all defendants knew what the purpose of their visit there was, even if they themselves did not exit vehicles or did not equip themselves with weapons. It seems to me that all five of you were fully bound to the enterprise that was taking place."

19. The judge then went on to refer to the pursuit of the Range Rover by other vehicles. He rightly referred to the bad driving in the course of that pursuit, some of which was a close pursuit, at speed, in a built-up residential district. He referred to the fact that a firearm had been discharged by someone in the Range Rover and said that it was a measure of the seriousness of the incident as a whole that it had resulted in the discharge of a firearm in a public street.

20. The judge accurately summarised the basis of this appellant's guilty plea and the bases on which others had entered their respective pleas. He noted the differing records of previous convictions of those who were before him for sentence and he referred to the individual matters of mitigation. The judge then said at page 6A of the transcript:

- i. "...stepping back and looking at this offending as a piece, it is clear to me that this offence clearly passes the custody threshold for each and every one of you. This is a serious piece of offending, taking place in public with wanton disregard for the public and for good order. You are all well aware what you were doing and why you were doing it, even if others involved in it play a more serious part and so in my view only custodial sentences can be passed in this case."

21. The judge declined to allow any credit to those who had pleaded guilty after the commencement of the trial. He sentenced both this appellant and Jibrán Bashir to 30



months' imprisonment. He indicated that Adeel Ahmad would also have received 30 months' imprisonment after trial but, in view of the guilty plea entered at a comparatively early stage, that was reduced by 25% to a sentence of twenty-two-and-a-half months' imprisonment. The judge sentenced Shahid Hussain to 20 months' imprisonment, saying that he was entitled to a lesser sentence than others because he was of previous good character and had played a limited role, not involved in violence at Village Car Sales and thereafter driving away. He said that Abdul Kayum was also entitled to a lesser sentence by reason of his limited record of previous convictions. Kayum was sentenced to 24 months' imprisonment.

22. On behalf of the appellant Mr Gul Nawaz Hussain QC, who represents him in this court as he did below, submits that the judge failed to give due weight to the basis of plea. In his extremely helpful written submissions, upon which he has expanded in oral submissions this morning, Mr Hussain makes in particular the following points. First, Jibran Bashir was involved in more than the Village Cars incident and the subsequent pursuit and was clearly the most involved and the most culpable. Mr Hussain submits it cannot be right that this appellant should receive the same sentence as Bashir. Secondly, Abdul Kayum was more actively involved and more culpable than this appellant, because he was the driver of the Mitsubishi who picked up three further passengers with their weapons. He had exited from the Mitsubishi and armed himself with a weapon at Village Cars. Moreover, he had then driven the Mitsubishi during the pursuit. Yet, submits Mr Hussain, he received a sentence shorter than this appellant. Thirdly, Mr Hussain argues that Abdeel Ahmad was also more involved and more culpable than this appellant. Fourthly, he submits that the level of involvement of Shahid Hussain was similar to that of the appellant though he accepted that Shahid Hussain was able to rely

upon the fact that he had departed altogether after the Village Car Sales incident and had not been involved in the pursuit.

23. Drawing these various points together, Mr Hussain submits that the appellant's sentence should have been nearer to the 20 months which Shahid Hussain received; should not have been higher than the sentence which Abdul Kayum received; and should not have been as high as the sentence which Jibran Bashir received.
24. Mr Hussain realistically does not seek to argue that 30 months was too long even in the case of Jibran Bashir, nor does he seek to challenge the decision by the judge that those who pleaded on the second day of trial should receive no credit for those very late pleas. His submission, in essence, is that when due weight is given to the basis of plea, the appellant should have received a shorter sentence than at least some of his co-accused.
25. It is important to bear in mind that all five accused had pleaded guilty to a conspiracy to commit violent disorder. All by their pleas admitted a shared intention to use or threaten unlawful violence as a group, in circumstances which would cause a person of reasonable firmness, present at the scene, to fear for his or her personal safety. The seriousness of the offending of each of the accused therefore lay not just in their presence at and participation in acts of aggression, but in their shared intention to engage as a group in the use or threat of violence to the fear of others who might witness it. We do not think that the judge's approach to the overall sentencing process can be faulted and we can well understand why he felt it appropriate to distinguish Shahid Hussain and Abdul Kayum from other defendants in the way which he did. The real issue, as we see it, is whether the judge fell into error in treating this appellant in the same way as Jibran Bashir and in the same way as Adeel Ahmad would have been treated but for his earlier guilty plea.

26. We are persuaded by Mr Hussain's submissions that in one respect the judge did fall into error. As is clear from the passages which we have quoted from his sentencing remarks, the judge proceeded on the basis that all the accused knew the purpose of the visit to Village Car Sales and were "fully bound to the enterprise that was taking place" at that location. Moreover, when looking at the overall offending, the judge again said that all of the accused were well aware of what they were doing and why. But with respect to the judge, those statements go contrary to the accepted basis of plea that en route to Village Cars this appellant thought there was to be nothing more than a fair fight between two men and that he had not seen any weapons until others in the car left the vehicle at Village Car Sales. The appellant's plea was therefore tendered and accepted on the basis that his participation in the conspiracy only began at that stage. It is moreover implicit in the basis of plea that his participation from then on was limited to lending support and encouragement to others rather than actively taking part in the use or threat of violence.
27. The judge was faced with a difficult sentencing process and had to be true to the pleas of the several defendants. However, although for the most part successful in that regard, we take the view that when due weight is given to this appellant's basis of plea, the sentence in his case should have been shorter than that was appropriate for Jibran Bashir and, subject to credit for plea, Adeel Ahmad.
28. On that ground alone we accept the submission that there was a material error by the judge in the sentencing of this individual appellant. In our judgment, the appropriate sentence in this appellant's case was one of 24 months' imprisonment. We therefore allow this appeal. We quash the sentence of 30 months' imprisonment imposed below and substitute for it a sentence of 24 months' imprisonment.

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

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