IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CENTRAL CRIMINAL COURT
(HIS HONOUR JUDGE KATZ) [T20217221]
[2024] EWCA Crim 1506
Case No 2023/04174/B2 & 2023/04481/B2

Tuesday 19 November 2024

B e f o r e:

LADY JUSTICE WHIPPLE DBE

MR JUSTICE HILLIARD

HER HONOUR JUDGE SHANT KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R EX

- v -

EMMANUEL TAMWESIGIRE

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)

Mr J Higgs KC and **Mr A Power** appeared on behalf of the Appellant

Mr D Robinson KC and Mr J Brown appeared on behalf of the Crown

---

J U D G M E N T

LADY JUSTICE WHIPPLE:

Introduction

1. On 1 November 2023, following a trial in the Central Criminal Court before His Honour Judge Katz and a jury, the appellant was convicted of murder. Following a slip rule hearing on 22 November 2023, the appellant was sentenced to life imprisonment, with a minimum term of 24 years, less 12 days served on remand.

2. The appellant now appeals against conviction with the leave of the single judge, and he renews his application for leave to appeal against sentence following refusal by the single judge.

The Facts

3. In the early hours of 7 March 2020, Ricardo Fuller ("the deceased") attended a party at the Discoteca No Problem nightclub ("the Club"). The Club is on Ilford High Road, East London. The appellant was present with four associates ("the appellant's group"). The appellant's group had arrived at 04.56 hours and had engaged in a verbal confrontation with the deceased on the dancefloor. The appellant and one other beckoned for him to come outside. The appellant's group left the Club and waited for the deceased. When he emerged, the deceased was armed with a bottle. The deceased was chased up and down Ilford High Road by members of the appellant's group in what the judge described as "two loops" back and forth across the road. The appellant was attacked, suffering three stab wounds, one to the neck and two to his back. He was pronounced dead at 11.41 hours on 7 March 2020.

4. The appellant and his associates accepted being present when the deceased was stabbed, but they denied stabbing him.

The Trial

5. It was the prosecution's case at trial that the appellant, as part of a group, chased and attacked the deceased, stabbing him with a knife with the intention of causing him at least really serious harm. To prove its case, the prosecution relied on the following strands of evidence:

(1) CCTV Footage: CCTV footage from outside the Club captured much of the incident. Once the deceased emerged, the appellant's group could be seen circling around him and when the deceased tried to run away from them, they gave chase. Just prior to the appellant joining the chase, CCTV showed him reaching under the back of his long coat and adjusting his waistband. It was the prosecution's case that he was reaching for a knife. At one point the appellant ran up to the deceased and struck him twice. It was the prosecution's case that the appellant had used a knife to strike the deceased at this point. That was something that the appellant denied. Further, the appellant, at one point, was captured gesturing at the deceased and making a gun sign towards him with two fingers.

(2) The Deceased's Injuries: A post-mortem examination was carried out on 11 March 2020 by Dr Robert Chapman, a Forensic Pathologist. Dr Chapman found three stab wounds: a wound to the neck which severed the left carotid artery and damaged the jugular vein, and two further wounds to the deceased's back. Dr Chapman gave the cause of death as a stab wound to the neck. Dr Chapman said that it was not possible to say how many weapons had been used to cause the wounds.

(3) Phone Evidence: The appellant's group were all in telephone contact with each other at various times during the early hours of 7 March 2020, particularly between 01.30 and 02.30 hours.

(4) Eyewitness Evidence: Rochelle Daniels, whose party it was, approached the appellant's group, none of whom she knew. She heard them talking to each other, and heard one of them – she could not say which one – say, "Pass me da ting". She took this to mean that one of them was carrying a knife or gun. Natalie Parris, who was one of the security team working on the door of the Club that night, recalled seeing the group of five standing in a huddle outside the door of the Club whilst she was in the smoking area. They were a metre or two in front of her. She heard them speaking aggressively and in terms we shall outline in more detail below, suggesting that the appellant was involved in the stabbing.

(5) Evidence Following the Incident: Two of the appellant's group drove from the scene in a Vauxhall Insignia. Phone data revealed that one of them at least went first to Leyton and then to the appellant's home in Chingford. All of the appellant's group left the country in the following days. The appellant caught a ferry from Dover on 7 March 2020, having been driven there by an associate. He subsequently returned to the United Kingdom on 12 July 2021.

6. In his Defence Case Statement, the appellant denied stabbing the deceased. He accepted that he crossed the road and punched the deceased twice, but said that he did so without any intention to cause the deceased any really serious harm. He said that he was wholly unaware that the deceased must already have been stabbed, or that any of the other members of the appellant's group were or may have been in possession of any knife or any other weapon, or that the deceased may have been fatally wounded. The appellant said that he fled the jurisdiction in the erroneous belief that he would be wrongly accused of being involved in the deceased's death. He panicked. Having had time to reflect, he then, of his own volition, contacted his instructing solicitor with a

view to returning to the UK. The appellant gave evidence at trial.

The Judge's Ruling

7. The Crown sought leave to adduce the witness statement of Natalie Parris, dated 8 March 2020, pursuant to section 116(2)(b) of the Criminal Justice Act 2003. It did so on the basis that Ms Parris was suffering from Post Traumatic Stress Disorder and severe anxiety, and that to give live evidence would endanger her mental health. In support of the application, the prosecution relied on various pieces of additional evidence, to which we shall shortly come.

8. The defence opposed the application. They submitted that the prosecution had not established to the required criminal standard that Ms Parris was unfit to be a witness. The required threshold was that she was unfit, not merely that coming to court would cause her difficulty. On the material available, it was submitted that the test had not been met. The defence submitted that the court was further required to consider whether, if it determined that she was unfit to give evidence, it would nonetheless be unfair to admit her evidence. In her statement, Ms Parris described overhearing various aspects of a conversation outside the Club after the five defendants had left, and whilst remaining in the vicinity. She did not attribute the various comments to particular identifiable persons. No other witness gave evidence in relation to that part of the case, and there was thus, so it was submitted, no material available to test the accuracy of this evidence so that it would be unfair to admit it. Reliance was placed on *R v Riat* [2012] EWCA Crim 1509, at [19] in particular.

9. The judge ruled that the statement was admissible. He considered Ms Parris' fitness. He addressed the various factors listed in section 114 of the Criminal Justice Act 2013, and addressed in terms the test stated at section 116(2)(b). He said that there

was no basis to exclude the statement as a matter of fairness, whether under section 78 of the Police and Criminal Evidence Act 1984, section 126 of the Criminal Justice Act 2003, or any other provision. He indicated that he would give the jury a legal direction about the evidence of Natalie Parris. Before this court it is accepted that if Natalie Parris' statement was admissible, the judge's direction to the jury about that statement was sufficient.

10. This appeal against conviction, therefore, turns on the judge's ruling that the evidence of Natalie Parris was admissible.

The Sentence

11. The judge sentenced the appellant and one other co-accused, Edmund Tucker, at a hearing on 9 November 2023. He said that he was satisfied that the appellant was in joint possession of at least one knife, and that he intended that at least one knife was to be taken outside to the scene to be used in an attack on the deceased.

12. Based on the CCTV footage and the evidence of Rochelle Daniels, the judge was sure that the appellant was "in it from the start". The jury were sure that the appellant intended that the deceased would be caused at least really serious harm. The absence of an intention to kill provided some limited mitigation in so far as the appellant's culpability was concerned.

13. The appellant was 28 years of age at the time of the murder. He had previous convictions for drugs and public order offences, and also for possession of an offensive weapon. Most significantly, he was on licence for drugs and firearms offences committed in May 2015, for which he had been sentenced to a term of six years' imprisonment, from which he had been released on 1 February 2019. The

judge said that on the material before him there was no real reason to treat the appellant and Tucker differently. He set the starting point for the minimum term for both at 25 years by reference to Schedule 21 to the Sentencing Act 2020.

14. The judge recorded a number of aggravating factors: that it was a group attack in which at least three knives were used; that it was committed in a busy street in full view of many members of the public; that the knife wounds were inflicted after a sustained chase; that on the appellant's own admission, he had taken alcohol and cannabis; and that, following the murder, evidence was disposed of and the whole group fled the country.

15. The judge said that in the appellant's case, those aggravating factors balanced out the lack of intent to kill and the fact that the appellant had to his credit voluntarily returned to the UK to face justice after initially fleeing abroad. The judge imposed the life sentence for murder, with a minimum term of 25 years, less 851 days that the appellant had served "on remand". The judge noted that this might bring some undue benefit to the appellant if he had been recalled under his licence for earlier offending for a large part of that remand period. At the end of the sentencing exercise, the appellant's counsel, Mr Power asked this:

> "When my Lord says 851 days, if that turns out not to be on remand, does my Lord mean actually on remand or licence?"

16. The judge replied: "Yes". The judge invited the parties to return to court under the slip rule if the calculation turned out to be incorrect.

17. Subsequently, the judge was invited to vary his sentence. That took place at a slip

rule hearing on 22 November 2023. It had by then become apparent that the maximum number of days that could be credited against the minimum term was 12 days when the appellant was actually held on remand, because for the rest of the time the appellant had been recalled on licence. This was the effect of section 240ZA(6) of the Criminal Justice Act 2003, which precluded time spent on licence recall counting towards a determinate sentence, and section 322(1)(b) of the Sentencing Act 2020, which precluded time spent on licence recall counting towards the minimum term of a life sentence. The judge acknowledged that he had made a mistake in pronouncing what now turned out to be an unlawful sentence by giving credit for the whole period of recall. On reflection, he altered the minimum term imposed on the appellant to 24 years (one year less than originally imposed), less the 12 days that the appellant had indeed spent on remand in custody.

The Grounds of Appeal and Respondent's Notices

18. By grounds of appeal dated 19 December 2023, the appellant advances the following grounds acting through his counsel, Mr Higgs KC and Mr Power.

19. There is one ground of appeal against conviction, and that is that the witness statement of Natalie Parris was inadmissible hearsay and that the judge was wrong to rule that she was unavailable to give evidence. It is said that the judge failed to give adequate reasons for concluding that Miss Parris was unfit to be a witness. The appellant has leave to argue this ground.

20. Mr Robinson KC and Mr Power for the Crown lodged a Respondent's Notice dated 23 April 2024 disputing the conviction appeal ground. They argued that the judge was right to admit Natalie Parris' witness statement into evidence and that in any event the strength of the evidence against the appellant was such that even if the evidence was

wrongly admitted, the conviction for murder was safe.

21. On sentence the appellant advances three grounds of appeal going to the overarching submission that the minimum term of 24 years with credit for 12 days on remand was manifestly excessive. It is said: (i) that the appellant did not take a knife to the scene and that the judge was wrong to find that the appellant's case came within paragraph 4 of Schedule 21 to the Sentencing Act 2020; (ii) alternatively, that if he did take a knife to the scene, the judge failed to reduce the appellant's sentence to reflect sufficiently the short period between him coming into joint possession of a knife and the fatal stabbing, and / or to take account of other mitigating factors in this case; and (iii) that the judge sentenced on the basis that the appellant would have credit for the 851 days he spent in custody awaiting trial, only to change his mind at the time of the slip rule hearing to give him credit for one year and 12 days, such that the result was unfair. Leave to appeal on these grounds was refused and the appellant renews his application.

22. A separate Respondent's Notice dated 23 April 2024 disputes the appellant's proposed grounds of appeal against sentence, arguing that the sentence was fully justified for the reasons given by the judge; and that there was no unfairness in the judge's adjustment under the slip rule which was necessitated to cure what was, without adjustment, an unlawful sentence.

23. We thank all Counsel for the assistance that we have been given.

The Conviction Appeal

24. As we have said, the focus of this appeal is on the judge's conclusion that Ms Parris was unfit to be a witness. Natalie Parris had given a witness statement dated 8 March

2020, the day after the deceased was attacked and died. In that statement she said that she had been assisting with security on the door of the Club. In an important part of her witness statement, she said that she could remember a gang of five black males arriving together on foot just before 5 am. She saw them go into the Club and then come out again shortly afterwards. They stood around talking to each other. They then walked past her and she could hear them speaking aggressively. She said this:

> "I remember one of them who was the shortest male in the group shouting 'Fuck it man let's go. Opps ain't on nothing'. The same male said words to the effect of 'I'm going to fuck him up'. The other males were talking as well. One of them said something like 'allow it, allow it. Leave it. Let's go'. I can't remember which male was saying that. Two of the other males were quieter and one other male seemed to be encouraging the shorter male by agreeing with what he was saying to go and do something to someone. More people were coming out of the club by this point and I was trying to keep an eye on the crowd as a whole, to keep everyone safe, including myself."

25. It is not in dispute that the appellant is the shortest of the appellant's group. This passage of Ms Parris' statement was unhelpful to the appellant's defence.

26. Section 116 of the Criminal Justice Act 2003, so far as relevant, provides as follows:

> "**Cases where a witness is unavailable**
>
> (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if —
>
> (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter,
>
> (b) the person who made the statement (the relevant person) is identified to the court's satisfaction, and

(c) any of the five conditions mentioned in subsection (2) is satisfied.

(2) The conditions are —

…

(b) that the relevant person is unfit to be a witness because of his bodily or mental condition; …"

27. Section 116 was considered in *R v Riat* [2012] EWCA Crim 1509. In this case, and in accordance with *Riat*, the police carried out enhanced credibility tests to see if there was anything known about Ms Parris that would have impacted her credibility. Nothing was found.

28. On 4 September 2003, the Crown applied to adduce Ms Parris' witness statement as hearsay evidence. They provided a skeleton argument in support of the application. It was asserted in the application that Ms Parris was suffering from PTSD and severe anxiety and that giving live evidence would jeopardise her health. A number of pieces of evidence were served by the Crown. We have reviewed all of them with care. They can be summarised into three strands as follows:

a. The first strand contained evidence from Ms Parris herself. In addition to her original witness statement from which we have already quoted, she provided two further witness statements. The first was dated 25 August 2023. She said that she was going through a lot of stress and had not worked since the incident. She had been diagnosed with PTSD, anxiety and depression, for which she was receiving intense therapy. In addition, she was a diabetic and needed her life to have as little stress as possible. Her mental health was very fragile and giving evidence would be too much. She had had a panic attack

when she went to the Family Court earlier that year. She did not do well in such environments because her blood pressure "goes sky high". Ms Parris' second statement was dated 18 September 2023. In it she said that she had considered whether special measures would assist her in giving evidence to the jury. She suffered from anxiety and PTSD. She said that these conditions were causing her issues, even just in providing this statement at the request of the police. She said that she was still traumatised by what had happened that night; that she had to care for her autistic son and had no one to help with childcare. She said that everything that she had said to DC Newman in a statement to which we will shortly come remained true.

b. The second strand of evidence is medical material. This comprised, first of all, redacted medical records for Ms Parris which showed that she did have a diagnosis going back to 2019 of depression, anxiety and PTSD. There was also a letter from her GP, Dr Mohammed Abdullah, dated 13 September 2023, stating that Ms Parris had an established diagnosis of depression and PTSD, and that there were social issues for her, including caring for an autistic son. The letter stated that she was struggling in her private life; that she had insulin-dependent diabetes; that there was concern about her blood sugar levels; and that her anxiety was acute. Dr Abdullah requested that Ms Parris be exempted from court hearings, if appropriate, because that would be in her best interests. In a subsequent email from Dr Abdullah dated 20 September 2023, he confirmed that he had written his earlier letter based only on Ms Parris' medical records, because he had no personal knowledge of her and he offered no view on her fitness to give evidence. It is clear from these materials that the medical picture before the judge was up to date.

c. The third strand related to police statements. The first of those was the statement of DC Jennifer Newman, dated 12 September 2023, recording her contact with Ms Parris. Ms Parris had said to DC Newman that the incident occurred long ago and that her memory was not as clear as when she had given her statement; that she had a four year old autistic son to care for, as well as three other children; that she was having counselling; that she had depression, anxiety and PTSD; that she was not in a "good place"; and that special measures, as they had been explained to her, would not help her, as she would be "triggered" by the formal courtroom setting which would be a problem, she thought, even if there was live link in place. She said that it would be too much for her to cope with. There were two witness statements from PC Darren Keeler, one dated 14 September 2023 and the other dated 18 September 2023, in which he reported meeting Ms Parris who was able to identify herself from stills from the CCTV.

29. The defence served a skeleton argument indicating that the Crown had failed to establish that the witness was unfit and inviting the court, in the alternative, to exclude Ms Parris' evidence as unfair.

30. When the matter first came before him, the judge asked the Crown to investigate the possibility of Ms Parris giving evidence via live link from her home. That question was answered by the further police witness statement, namely the statement of DC Hunt, which was written on 22 September 2023 (although it was wrongly dated 29 September 2023), which statement we have also reviewed with care. Ms Parris reported to DC Hunt that she did not want to give evidence in that way; that she found the incident that she had witnessed too distressing; and that the attempts to get her to give evidence were making her PTSD worse. When she was asked the question

directly by DC Hunt, she said that she refused to engage in a remote appearance from her home, from a police station or from the court. The judge heard evidence from DC Hunt on a voir dire as part of the application.

31. It is against this background that we are invited to conclude that the judge was in error. In assessing the appellant's submissions, we make three preliminary observations. First of all, fitness to give evidence is an issue for the trial judge. It requires the judge to reach a judgment on fitness based on all the evidence that is before him or her. Secondly, in this case there was medical evidence available to the judge, albeit not in the form of a psychiatric report, but still giving an up to date view of the witness' state of physical and mental health. Thirdly, the question, therefore, for this court is whether it was open to the judge on the material before him to conclude that Ms Parris was not fit to give evidence. Our role in this appeal is one of review, not to substitute our own judgment for that of the trial judge.

32. We are satisfied that the judge was entitled to conclude, so that he was sure, that Ms Parris was unfit by reason of her mental condition to give evidence. He had plentiful evidence to support that conclusion. He put his conclusions on her fitness shortly. He referred to his "holistic" view on the available evidence and to the availability of inferences on the basis of that evidence. His conclusion could be stated shortly. He noted in particular what Ms Parris said about her own conditions as they impacted her fitness to give evidence. The evidence revealed that Ms Parris had significant mental health issues, which issues were being exacerbated by the mere process of engagement with the trial. There was evidence that the stress of a court hearing would be physically and psychologically damaging to her and would impinge on her ability to give evidence.

33. The judge had to reach his own view on her fitness. There was no requirement that he should have an expert medical report focussed on that specific point. It is of some relevance that Ms Parris had co-operated with police in seeking to explain her conditions and to convey her concerns and there was no reason to doubt the genuineness of all that she was saying. This was not a witness who was seeking to play the system or to avoid giving evidence without good reason. We therefore reject the appellant's ground of appeal against conviction.

34. We further note that Ms Parris' evidence was only one part of the Crown's case against the appellant. There was plenty of other evidence to undermine his defence, in the form of the CCTV evidence and the evidence of Rochelle Daniels, to give but two examples. We take the view that this was a very strong prosecution case.

35. We dismiss the appeal against conviction.

The Renewed Application for Leave to Appeal against Sentence

36. Give that this is a renewed application, we take matters more shortly. In refusing leave to appeal against sentence, the single judge gave the following reasons which are well known to the appellant:

> "The judge was right to find that a knife had (to the appellant's knowledge) been taken to the scene – he knew a knife had been taken, the knife from inside the nightclub to the street outside. This did not involve going behind the jury's verdict – the different verdicts for the appellant and Ahenkorah [a co-defendant convicted of manslaughter] are explicable by the difference in evidence as to their actions outside the nightclub.
>
> The judge took account of all relevant aggravating and mitigating features. Given the chase up and down the street this is not a case where the judge was required to make a discrete reduction because of the de minimis distance/time for which the knife had been carried.

> The judge initially (and wrongly) reduced the minimum term by 851 days for time spent on remand. This time had not been spent on remand. It had, save for 12 days, resulted from the appellant being recalled on licence. The judge was therefore right to adjust the sentence to correct this error. In doing so, he made an adjustment in the appellant's favour (by reducing the minimum term by a year to 24 days, before allowing for the 12 days on remand) to reflect that he had regarded the fact that the offence had been committed on licence as an aggravating factor.
>
> It is not arguable that the minimum term was manifestly excessive or wrong in principle."

37. We respectfully agree with the single judge. The judge was right to treat this as a case of taking a knife to the scene, even if the episode was short-lived. We are satisfied that the judge took into account all relevant aggravating and mitigating features. As we have recounted, the judge concluded that the mitigating features, such as they were, were to be balanced against the significant aggravating features that he listed. We are therefore not persuaded that there was a failure to give sufficient credit for the appellant's mitigation. In relation to the judge's adjustment of sentence at the slip rule hearing, we consider that some of the arguments advanced, at least on paper, seem to fly in the face of the judge's own very frank acknowledgement in the course of the slip rule hearing that he had made a mistake in assuming that the 851 days would and could be credited as time spent on remand. It is regrettable that that mistake was not corrected by any counsel who was present at the original sentencing hearing and that an unlawful sentence was initially imposed. That having been revealed, the judge was bound to correct the sentence. This is not a case where the judge simply changed his mind. The correction to the sentence was appropriate. The judge respected the statutory provisions precluding him from taking account of time spent on recall. Once those provisions were properly in view, the sentencing landscape was changed and that meant that parity of starting point alongside Tucker was no longer realistic.

38. We reject the proposition that there was any double counting in the way the judge approached the revised sentence. The time spent on recall attached to the earlier offending and was not, by operation of statute, to be counted as time spent on remand for the index offence.

39. In summary, the resulting sentence was, in our judgment, correct in law. It was not manifestly excessive and there was no unfairness to the appellant in correcting his sentence in the way that he did.

40. Accordingly, we refuse the renewed application for leave to appeal against sentence.
