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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 18<sup>th</sup> January 2019

Before:

LORD JUSTICE GROSS

MRS JUSTICE ELISABETH LAING DBE

and

MRS JUSTICE CHEEMA-GRUBB DBE

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**REGINA**

- v -

**NATHAN PAUL TOWSEY**

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Non-Counsel Application

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**JUDGMENT**  
**(Approved)**

Friday 18<sup>th</sup> January 2019

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**LORD JUSTICE GROSS:** I shall ask Mrs Justice Elisabeth Lang to give the judgment of the court.

**MRS JUSTICE ELISABETH LAING:**

1. This is a renewed application leave to appeal against conviction and sentence, and for an extension of time (eight days and three days respectively) in which to apply for leave to appeal against both conviction and sentence after refusal by the single judge.

2. On 3<sup>rd</sup> November 2017, following a trial in the Crown Court at Nottingham before His Honour Judge Godsmark and a jury, the applicant was convicted of murder (count 1) and having an article with a blade or a point (count 2).

3. On 7<sup>th</sup> November 2017 the trial judge sentenced him to life imprisonment, with a minimum term of 22 years on count 1, and to two years' imprisonment, to run concurrently, on count 2.

4. At 45 minutes past midnight on the morning of Friday 14<sup>th</sup> April 2017, the deceased, Matthew Rothery, was stabbed by the applicant while they were both in Rothery's flat in Woodborough Road, Nottingham, a flat which Rothery shared with a friend, Dillon Mann.

5. The incident took place in Mann's bedroom. Apart from the applicant and the deceased, there were two people in the flat at the time, Dillon Mann and Charlie Smith. The room was sparsely furnished, with little more than a double bed, a chair and a wardrobe.

6. The cause of death was blood loss after an artery behind Rothery's knee was cut. The pathologist agreed that this was an unusual place for such an injury. It was also accepted that death after a stab wound in that area was very unlikely. There was a separate "through and through" injury to the deceased's arm.

7. At the time the deceased was stabbed, there were two other knives in the room. One (a kitchen knife) was found in Rothery's jacket pocket. A second knife was found under Mann's pillow. This knife had been in Charlie Smith's possession; it was a bread knife, partly wrapped in a cloth, which was in turn held in place by a hair bobble.

8. After stabbing Mr Rothery, the applicant left. He gave the knife to Charlie Smith immediately outside the front door. He then ran away. The knife had been carried by the applicant when he was out that night.

9. The events which took place in the flat that night and the history of the relationship between the applicant and Rothery are described in more detail in the Criminal Appeal Office Summary, a copy of which the applicant has been provided.

10. It is necessary to say something about the previous history. A few weeks earlier, Rothery had bought some cannabis from the applicant. He had then taken a bicycle from Rothery, which had in turn been lent to Rothery by somebody else. The applicant rode away on that bicycle. There was evidence that after that Rothery had made phone calls and sent text messages to friends and associates indicating that he would "sort out" the applicant. It was alleged that the applicant, in turn, was not somebody who took kindly to people challenging him.

11. On the night of the murder, Smith and Mann had met the applicant to buy cannabis. They

had then all gone to the flat which Mann shared with Rothery. Mann said that once inside the flat everything seemed to be all right. They chatted about the bike which the applicant had taken from Rothery. Mann said that the applicant was not happy about Rothery telling other people about the fact that he had been "robbed" of the bike. They shared a spliff in Mann's bedroom. Mann went down to the kitchen. A short while later, Rothery joined them. Rothery told Mann that he (Rothery) had bought some cannabis from the applicant before the applicant had asked to borrow the bike, which he had not returned. However, he said that he and the applicant had sorted out their differences and all was "cool" between them. A little while later, the applicant and Rothery met in the flat while Smith and Mann were present and they spoke to each other. The applicant asked Rothery about a person called Kassa (or Kaiser) who had called him about the bike. The applicant asked Rothery for Kassa's number and Rothery started to look for it. Smith left the room and a short time later the applicant also left. Only Mann and Rothery remained.

12. Suddenly, and without warning, the applicant ran back into the room. His face was covered and he wore sunglasses. Rothery was sitting in a chair and looking at his phone. Mann saw the applicant stab Rothery in this right leg, around about the knee. Rothery had no time to react. Mann saw the blade of the knife, which was in the applicant's hand. Rothery jumped up and, as he did so, the applicant stabbed him again. Rothery tried to get away. He ended up scrunched up in a ball on the bed in the corner to protect himself. He was shouting at the applicant to stop. The applicant shouted "That's what you get, you fucking dick" and then threatened Mann by saying "none of you call the Feds". He then ran away.

13. The applicant was arrested on 16<sup>th</sup> April 2017. He gave a written statement to the police in which he said that he had no intention of keeping the bike. About two days before the incident he had received death threats from Kassa (or Kaiser). The rest of his statement foreshadowed

the evidence which he gave at trial.

14. The applicant's room was searched. Documents in his handwriting were found which suggested that he had ambitions to rise up through the criminal ranks.

15. The defence case was self-defence. The applicant had been in fear of his life and had reacted when Rothery had made a move towards him, which the applicant thought represented a threat to his life. Having been out with Mann and Smith, the applicant did not know that Rothery lived at the address when they went back to it. He believed that he had been lured there by Mann.

16. The applicant became aware of the threat to him when he was spoken to by Kassa (or Kaiser) on the telephone. He was threatened directly, without being seriously harmed. The calls between Kassa (or Kaiser) and the applicant were on 28<sup>th</sup> March 2017, at the same time when there were many text messages between Rothery and his friends, in which they discussed stabbing the applicant.

17. Because of the background about the theft of the bicycle, and in the light of the threats that had been made to him, and on hearing Rothery mention the name Kassa (or Kaiser), the applicant believed that he was about to be attacked when Rothery made to move from the chair in which he had been sitting. In order to defend himself, he had stabbed out at Rothery and had caught him in the leg and the arm. He had then run away. He had not intended seriously to hurt the deceased.

18. The issue for the jury was a simple question of whether or not the applicant had acted in self-defence when he had stabbed Rothery and whether he had intended to cause him serious

harm.

19. The judge gave a ruling in relation to an application by the prosecution to adduce evidence of the applicant's character. There were two types of evidence: first, the documents which had been found in the applicant's bedroom when it was searched, to which we have already referred; and second, the applicant's previous convictions for offences of violence. The judge admitted both categories of evidence. There is no challenge in the grounds of appeal to the judge's decision to admit the evidence of the applicant's previous convictions.

20. In his ruling, the judge referred to the fact that the issue in the case was self-defence. He then described the applicant's defence and evidence sought to be relied upon by the applicant to show the background. He said that the evidence relating to the applicant's attitude was as relevant as was the attitude of Rothery to the applicant. The documents found in the applicant's flat suggested that the applicant was somebody who wanted to move up the criminal ladder, and become a major player, and who was prepared to countenance buying a handgun in order to achieve that aim. It was also relevant to his state of mind, and in particular to how he might react to a challenge to his authority. It was relevant that there was evidence from Mann that, on leaving the scene, the applicant had said "This is what you get".

21. The judge ruled that the documents were highly relevant to two questions: who was the aggressor; and what was in the mind of the applicant when he stabbed Rothery? It was also capable of corroborating and explaining the comment "This is what you get".

22. The judge also admitted the evidence on the basis that there had been an attack on the character of a prosecution witness (Mann). The judge considered whether he should exercise his discretion to exclude the evidence and concluded, on balance, that the jury, properly directed,

could be trusted with the full picture. We note that in his summing-up he gave the jury appropriate directions about the uses to which they should put this evidence.

23. Sentencing the applicant, the judge said that the case showed the dangers and evils of knives in the hands of people who carried them and were prepared to use them. The judge considered that there was no doubt that this was an attempt by the applicant to make a statement to Rothery and to others who might have challenged him or to challenge the reputation of the applicant who wanted to be thought of as a serious player in the criminal world of drugs supply. The applicant had carried a hunting knife with which to intimidate, frighten and, if necessary, injure those who failed to see him as he saw himself.

24. The judge said that there was no doubt that the applicant had known where Rothery lived and that he went there with the intention of injuring and punishing him. He had come up behind Rothery when he was sitting down with his phone and, without warning, had stabbed him in the leg, having first lulled him into a false sense of security.

25. The judge accepted that the applicant might not have intended to kill and that his real intention was to cause really serious injury. Rothery had been unlucky that the knife had severed a major artery. This was a murder in which the applicant had killed a man by stabbing him with a knife which he had bought for that purpose. He was over the age of 18 when the offence was committed. The sentence therefore had to be life imprisonment, with the appropriate minimum term, that is 25 years.

26. The judge then referred to the aggravating features and to the mitigating features and decided that the minimum term should be reduced from 25 years to 22 years. He also passed the concurrent sentence to which we have referred.

27. The principal ground of appeal is that the judge erred in admitting bad character evidence (that is, the documents found in the applicant's flat to which we have referred). It is submitted that that evidence would have had a distorting effect on the jury's deliberations and would also have had a hugely prejudicial effect. The evidence in the case showed that the applicant was a low-level street dealer and nothing like the gangster, real or imagined, that the prosecution sought to portray him as.

28. So far as sentence is concerned, it is argued that the judge was wrong to find that there had been no element of provocation, falling short of a defence. It was also submitted that there was clear evidence that the applicant knew that he was under threat and that that ought to have been taken into account by the judge as a mitigating factor. The minimum term, it was therefore argued, was set too high.

29. After the refusal of the single judge, the applicant has lodged further grounds of his own composition in which he attacks the conduct of his legal team. He says that they failed to consider his instructions on his defence and in particular that they failed to put forward matters relating to his mental health, which would have had a strong impact on the fairness of the trial. The judge might have ruled that it was improper for the applicant to be cross-examined and he would not have given evidence in the way that he did. He refers to his diagnosis of Asperger's syndrome. He also submits that he was badly advised by his counsel, who failed to question Mann about his previous convictions.

30. The applicant was invited to and did waive legal professional privilege in the light of his criticisms of his trial counsel. Trial counsel has responded fully to those criticisms in a document dated 12<sup>th</sup> August 2018. The gist of counsel's response is that the applicant's defence

to the charge never changed. He claimed to have been lured to Rothery's home by Rothery's friends to be attacked and that his actions with the knife, which he carried for protection, were in self-defence.

31. Counsel makes eight further observations dealing with the criticisms made by the applicant. He points out, first, that both "diminished responsibility" and "loss of control" involve an acceptance of, or a finding of, the full ingredients for murder. Secondly, the applicant's mental health was never an issue in the trial, either on his instructions or on the facts. Thirdly, "loss of control" was explicitly excluded by the applicant in paragraph 19 of the Defence Case Statement. Fourthly, the applicant's mental health was not an issue in the trial. He fully understood the evidence, followed the proceedings and gave instructions throughout, including his decision to give evidence on his own behalf. Fifthly, the applicant was worried about being cross-examined and wanted to avoid it, but he was advised that if he were to give evidence, that was not an option. Sixthly, the applicant never suggested that, due to an abnormality of mind, he was unable to form a specific intent, nor that he had lost control. Seventhly, Mann's previous convictions were for minor matters and, with the applicant's agreement, it was decided to rely on the weight of his lies, rather than to distract attention with the convictions. Finally, eighthly, the applicant had been seen by his legal team before, during and after trial, and counsel was never aware of any communication difficulties or problems in his relationship with the applicant.

32. Refusing leave to appeal against conviction, the single judge said this:

"The admissibility of a propensity proved by evidence of previous convictions was conceded as being relevant to the issues which the jury had to determine. Bad character can be established by evidence of previous conduct, it can also be established by evidence of a stated future intent. Provided the jury was sure that the notes were approximately contemporaneous and representative of his state of mind, the material was admissible. The judge weighed the prejudicial

effect against the probative value and exercised his discretion properly. He conducted a careful exercise and gave a detailed analysis at 17D-H and 18G-19E.

The admission of the 'notes' was not unfair and does not undermine the safety of the conviction and time is not extended."

33. Refusing leave to appeal against sentence, the single judge said this:

"Parliament has set the starting point for a murder committed by someone carrying a knife to the scene at 25 years. The judge was entitled to discount provocation as a mitigating factor when the only material was the sending of texts to you before you even went to the scene.

Although the judge reduced the sentence for the absence of an intention to kill and age, this was a severe sentence but was within the appropriate range.

The minimum term imposed was not manifestly excessive and time is not extended."

34. We agree with those observations. We further consider that counsel's document, which we have summarised, is a complete answer to the further grounds of appeal lodged by the applicant after the refusal of leave.

35. For those reasons, we consider that the renewed applications for leave to appeal against both conviction and sentence are not arguable. That decision makes it unnecessary for us to consider the applications for extensions of time.

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

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