

ENGLAND AND WALES / JUDGMENT

R v Junaid Ali

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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. IN THE COURT OF APPEAL CRIMINAL DIVISION ON APPEAL FROM THE CROWN COURT AT DERBY (HHJ JONATHAN BENNETT) [30DI1504624/30DI0861924] CASE NO 20250287/B1

[2026] EWCA Crim 559 Royal Courts of Justice Strand London WC2A 2LL Wednesday 22 April 2026 Before: LORD JUSTICE HOLGATE MR JUSTICE WALL RECORDER OF LEICESTER (HIS HONOUR JUDGE TIMOTHY SPENCER KC) (Sitting as a Judge of the CACD) REX V JUNAID ALI

Computer Aided Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR HUGHESTON-ROBERTS appeared on behalf of the Appellant. MS M WEBB appeared on behalf of the Crown.

J U D G M E N T LORD JUSTICE HOLGATE:

1. The appellant failed to surrender to two pre-trial reviews when he was bailed to do so. On 3 July 2025 a warrant, not backed for bail, was issued for the appellant's arrest. On 25 July 2025 in the Crown Court at Derby before HHJ Jonathan Bennett, the appellant (aged 26) was convicted in his absence of burglary (count 1) and theft (count 2). When later that day he was brought before the court the appellant admitted his offence of having failed to surrender.
2. On 27 August 2025 the appellant was sentenced by the same judge to imprisonment for a total term of 45 months, comprising 42 months on count 1, 10 months concurrent on count 2 and 3 months consecutive for the failure to surrender. By leave of the single judge the appellant appeals against conviction on counts 1 and 2 of the indictment. He raises no issue in relation to his failure to surrender.

3. The trial began on 22 July. It also involved two accused who were charged with the same offences on the same indictment: Anas Laamache pleaded guilty on the first day of the trial to the burglary and the theft and was sentenced to imprisonment for 43 months less 79 days spent on a qualifying curfew. Muhammed Khan was convicted of the burglary and the theft and was sentenced to imprisonment for 36 months.
4. On 8 December 2023, at around 2.30 am, a burglary took place at a dwelling in Derby. Access was gained through a rear door. The keys to the owner's BMW X5 were taken from the front hallway and the BMW was stolen from the driveway. CCTV showed a small silver hatchback Honda Jazz vehicle, with a broken nearside rear light in the vicinity of the house around the time of the offences. CCTV also showed three men appearing from the rear of the property at 2.34 am. Two of them got into the BMW and the BMW was driven off. Shortly before 3.00 am the BMW was captured on CCTV at a petrol station forecourt in Sutton Coldfield. Two people wearing dark clothing got out of the BMW, put fuel in the car and then left.
5. At around 4.00 pm the BMW was dropped off by two men in the St Andrew's area of Birmingham. The BMW (now displaying false plates) was recovered by the police at around 5.30 pm on 8 December. Laamache's fingerprint was found on the car.
6. On 9 December 2023, at around midnight, the police stopped a silver Honda Jazz car which had a broken nearside rear light in the Dewar Grove area of Rugby. The appellant was driving the vehicle. Laamache was the front seat passenger and Khan sat in the rear. In the driver's area of the car there was a red screwdriver, a red/black glove and a battery pack with jump leads. Mobile phones were also found. There was also a black coat in the car and a metal bar in the footwell. Khan had two black gloves and a mobile phone. The key to the stolen BMW was found in Laamache's pocket.
7. Data extracted from Khan's phone included relevant location searches, an image of the BMW on a petrol station forecourt, taken on 8 December at 2.54 am and a video created between 2.41 am and 2.43 am on the same day. That video showed the car being driven at excess speeds with a man wearing red gloves driving the vehicle. The camera filmed two men wearing balaclavas and gloves.
8. The police then found that the silver Honda Jazz had been captured by ANPR leaving Birmingham and travelling on the A38 towards Derby at around 10.30 pm on 8 December. At 2.45 am that night the silver Honda was captured travelling back along the A38 to Birmingham. The stolen BMW was also captured at the same position on the A38, 3 minutes earlier, in other words a short time ahead of the Honda. Cell site evidence established that both the appellants and Khan's mobile phones were in the vicinity of the burgled dwelling at the material time and connected with masts that followed the direction of travel of the vehicles.
9. The prosecution case was that the three co-accused committed the burglary in which the car keys to the BMW were stolen from the house and the theft of that car from the drive outside. The appellant and Khan were working with Laamache, who had admitted his role in the

offences. The three men had travelled from Birmingham to Derby in the silver Honda. By 2.10 am the Honda was near the dwelling. Having looked around the area, at least one of the men entered the dwelling and stole the keys to the BMW. Two of them then travelled in the BMW, in convoy, with the Honda, which was driven by the third man. Both cars ended up in Birmingham.

10. In summary, to prove its case, the prosecution relied first upon the guilty pleas of Laamache, second, CCTV evidence from the houses neighbouring the burgled dwelling which captured the silver Honda and the three men in the vicinity; third, the ANPR evidence; fourth, the cell site evidence; fifth, the search on Khan's phone for the petrol station, at about the time to when the BMW was in that petrol station 10 minutes after it had been stolen; sixth, the video on Khan's phone created minutes after the burglary of the BMW being driven at excess speed; seventh, the presence of the three accused in the Honda when stopped by the police within 24 hours of the burglary, suggesting that they had been acting together; eighth, the finding of items in the Honda that could have been used in the burglary; ninth, the key to the BMW in Laamache's pocket; and tenth, the appellant's "no comment" interview.
11. The defence case was that the telephone evidence only established which masts the phones for the appellant and Khan had connected to and not who was in possession of the phones at the time. The fact that the three co-accused were together the following night in Rugby did not prove that they committed the burglary in Derby the previous night. The appellant denied any involvement in the burglary or the theft and said that he had left his phone in the Honda Jazz earlier that day. There was no forensic evidence linking the appellant to the stolen BMW. Khan said that he was not in the silver Honda that travelled to Derby and that Laamache had his phone that night. He denied making the video that was found on the phone.
12. On 10 July 2025 the appellant submitted a Defence Statement denying the allegations against him and indicating that he would contest the prosecution at trial.
13. When the appellant's trial began on 22 July 2025, the bench warrant for his arrest issued on 3 July remained outstanding. When the appellant did not attend, the prosecution applied for the trial to proceed in his absence. Mr Hugheston-Roberts (the appellant's counsel) confirmed that he had received instructions from the appellant on the case and would defend his client on that basis. He did not oppose the prosecution's application. The judge ruled that the trial should proceed in the appellant's absence.
14. On 24 July 2025 at around 3.19 pm, shortly after the jury had retired to begin their deliberations in respect of the two remaining co-accused, including the appellant, the parties were made aware that the appellant had been arrested on the warrant at his home address in Birmingham at around 8.52 am that day. However, he had mistakenly been taken to Birmingham City Magistrates' Court instead of Derby Crown Court.

15. Mr Hugheston-Roberts asked the judge to discharge the jury in relation to the appellant and to direct them to carry on with their deliberations in the case against Khan. He raised the possibility that the appellant might have wanted to come to his trial that day but had been prevented from doing so by his arrest. He then ventured that there might have been issues preventing his client from coming to court at all. However there was no suggestion that the appellant had been in touch with his solicitors, either just before the trial started or since then, and it was apparent that counsel had not had an opportunity to speak to his client. The judge said that he would not agree to the request to discharge the jury on the basis of what was purely speculation. He added that if there had been reasons for non-attendance such as ill-health the appellant would normally have contacted his solicitors, just as he had previously sent them his Defence Statement.
16. Counsel and the judge considered what action might be taken if the appellant appeared in court the following morning. Counsel said that he might apply to reopen the defence case but he then agreed with the judge that that would not be possible given that the jury had begun to deliberate. He also added that if the jury were to deliver a verdict before 4.30 pm that day (24 July) there was "no issue in that respect". Counsel said that he had been in touch with the appellant's solicitors in Birmingham and the case officer was in contact with the West Midlands Police Force.
17. At the beginning of the hearing on 25 July the judge said that he understood that the appellant was on the way to the Crown Court from Birmingham. Mr Hugheston-Roberts said that once the jury had gone back into retirement he would like to make further submissions on how the court should proceed. The jury then came into court and the judge asked them to carry on with their deliberations.
18. After the jury had left court Mr Hugheston-Roberts reiterated that it had been proper for the trial to proceed in the appellant's absence given that the appellant was represented, he had given counsel instructions to enable him to cross-examine witnesses and counsel had given a closing speech. He then said to the judge that he did not consider that it would be practical or lawful to ask the jury to "pause their deliberations" to enable the appellant to be present and called as a witness. Counsel said that he was asking the judge instead to discharge the jury at that stage from returning verdicts on the appellant. Part of the explanation for that renewed application then emerged. Counsel said that if the appellant had already been transferred to the Crown Court, he would have asked for the jury's deliberations to be suspended so that he could take instructions from him. However, he understood that the appellant would not be produced until midday, thus he felt obliged to ask then and there for the jury to be discharged, albeit without instructions to do so.
19. The judge refused that second application to discharge the jury. He said that it was premature because counsel still did not have any instructions. The position was that the appellant had voluntarily absented himself from the trial. There had been an application by the prosecution to proceed in his absence, with which the defence had agreed. The appellant had not attended on the first three days of the trial. On 24 July he had been

arrested. He had not gone to the police, nor, we would add, to the court or to his solicitors. It was wrong for the defence to say the jury should be discharged simply because the appellant was now "available". It was premature for the defence to ask for the jury to be discharged. This situation would have to be looked at again once counsel had instructions. He could then seek to renew the application at that point or the jury might have returned verdicts by then. The judge said he would not take any verdicts between 1.00 pm and 2.00 pm.

20. At 12.23 pm Mr Hugheston-Roberts told the judge that he had been informed that his client had not yet been collected from Birmingham. The judge had not previously received that information. No time estimate was given as to when he would arrive at the Crown Court. Two minutes later, the jury came back into court and returned their unanimous guilty verdicts on both counts against the appellant and Khan.
21. It appears that the appellant was produced in court at about 2.05 pm. The breach of bail was put and admitted. The appellant was then remanded in custody until sentence.
22. Counsel submitted to us that the judge erred by failing to re-exercise his judicial discretion as to whether the trial should continue on 25 July in the appellant's absence, despite being aware of his arrest pursuant to the outstanding bench warrant and therefore his availability. Once the circumstances changed materially in this way, the judge had an obligation to reassess the fairness of proceeding in the appellant's absence. When the appellant was arrested at 8.52 am on 24 July, his absence from the trial ceased to be voluntary or deliberate. He was taken to the wrong court, through no fault of his own.
23. It was clarified by both counsel that the Crown's case had in fact concluded at the end of 23 July. During the course of the morning of 24 July further Agreed Facts were put before the jury. We were told that at the request of the defence the appellant was called upon to present his defence, at which point he was not present in court. Mr Khan's case then followed, during the course of which he gave evidence and the judge began his summing-up to the jury at some time after midday.
24. Mr Hugheston-Roberts submits that had the appellant been produced at court, he could have chosen to exercise his right to give evidence on his own behalf, thereby allowing the jury to have the opportunity to hear directly from him and to assess his credibility. He submits that the judge rejected the reasonable alternative of discharging the jury solely in relation to the appellant. He also says that a short adjournment would have preserved procedural integrity.
25. We are grateful also to Ms Webb who appeared on behalf of the prosecution. She has produced a Respondent's Notice seeking to uphold the judge's decision. Discussion

26. In *R v Hayward* [2001] EWCA Crim 168; [2001] QB 862, the Court of Appeal set out principles which should be applied by trial judges when deciding whether to exercise the Court's discretion to hold or to continue a trial in the absence of the accused. In *R v Jones* [2002] UKHL 5; [2003] 1 AC 1, the House of Lords endorsed those principles subject to two observations with which we are not concerned. Mr Hugheston-Roberts also cited *R v Amrouchi* [2007] EWCA Crim 3019.
27. The discretion to proceed in the absence of a defendant is to be exercised with great caution and with close regard to the overall fairness of the proceedings. Fairness to the defence is of primary importance. But it is also necessary to consider fairness to any co-defendant as well as to the prosecution.
28. The appellant was present in court on 31 January 2025 when the Court fixed the trial to begin on 22 July 2025. He was granted bail and he received the standard warnings about the risk of the trial going ahead in his absence should he fail to attend. Counsel accepts that the appellant failed to attend two pre-trial reviews when bailed to do so. On 3 July 2025 a bench warrant was issued but that did not result in his arrest by the time the trial started.
29. Without any opposition from the defence, the judge ruled that the appellant's absence had been deliberate and voluntary. He had waived his right to appear. The defence did not suggest that they had received any communication from the appellant by the start of the trial regarding attendance, or that more time should be allowed to see whether the warrant could be executed. The position in this appeal is that the appellant makes no criticism of the judge's decision at the outset of the trial to proceed in his absence.
30. The appellant's criticism of the judge, as Mr Hugheston-Roberts confirmed this morning, relates solely to the way he handled the applications to discharge the jury from returning verdicts on the appellant from the time when it became known in the Crown Court on 24 July 2025 that the police had arrested the appellant that morning. But by that stage the jury had retired to begin their deliberations.
31. We reject the appellant's submission that the mere fact that the appellant had been arrested at 8.52 am on 24 July, meant that his absence from the trial had ceased to be voluntary and deliberate. The reason for the appellant's arrest was the fact that the bench warrant issued on 3 July was still outstanding. The appellant did not go to the Crown Court at any stage of his own volition. It was not suggested that he had contacted his legal team to say that he wished to appear at the trial. If he had found out about the warrant he did not present himself at a police station. Instead, he had to be arrested. Compulsion had to be used.

32. It is remarkable that the appellant has not provided any witness statement in support of his appeal to explain why he was absent from his trial and what happened when he was arrested. In particular, as Ms Webb pointed out in a Respondent's Notice, served as far back as 26 November 2025, it is not suggested that the appellant then said to the police that he wanted to attend the trial in Derby or that, for example, he wanted to contact his legal team, so that they could tell the Crown Court that he would attend.
33. Nevertheless, Mr Hugheston-Roberts submitted that the arrest on 25 July was a change of circumstance which made it necessary for the judge to review the fairness of continuing the trial in the absence of the appellant. But that is what the judge did do on the basis of the submissions made to him for the appellant.
34. Contrary to what is said in the Perfected Advice and Grounds of Appeal, counsel did not ask the judge to suspend the jury's deliberations for a period of time to enable instructions to be obtained from the appellant. Instead, he expressly said that he was not asking for that course to be taken because the appellant was not expected to arrive until midday on 25 July.
35. In discussion with counsel this morning it became clear that that was a logical stance for him to have taken because he said to the judge, and maintains before us today, that even if his client had said at that stage that he would like to give evidence, it would not have been practical, or indeed lawful, for the defence case to be re-opened to enable that to happen. Counsel accepts that the circumstances we are dealing with here would not have fallen within one of the exceptional situations in which further evidence may be received by the court once the jury has started its deliberations. We would add that this has never been a case, whether in the Crown Court or in this Court, where the appellant has provided any evidence that there was some good reason why he could not attend court at any stage from 22 July.
36. In these circumstances, counsel simply repeated his application to the judge for the jury to be discharged in relation to the appellant without having obtained any explanation or instructions from his client. Taking into account all the relevant circumstances, including how matters had proceeded to that point, we do not think that the judge exercised his discretion improperly or acted unfairly. At 12.23 pm the judge was told that the appellant was still in Birmingham without any indication as to when he would be expected to arrive in Derby. At that stage, again, counsel did not ask for jury deliberations to be suspended for a period of time.
37. Issues to do with the fairness of a trial are highly fact sensitive. In this case it is suggested in the grounds of appeal for the first time that, the judge ought of his own motion to have adjourned the proceedings contrary to what the appellant's counsel said to him at the time. This criticism is without merit, particularly in a case where there has been no witness statement from the appellant explaining why he did not attend his trial, that he was unable to do so, or that he made attempts to attend. We should also add that the appellant makes no criticism of the way in which his counsel conducted the trial and in particular the

procedural aspects related to his absence from the Crown Court.

38. We have reviewed the evidence before the judge and the judge's directions. No criticism is made of the summing-up or directions, and for our part we can see no error. This was a case where the circumstantial evidence against the appellant was powerful. In our judgment, it cannot be said that the conviction was unsafe. For all these reasons, the appeal is dismissed. LORD JUSTICE HOLGATE: I should add that the learned clerk has just confirmed that the signed waiver of the right to attend has been received. That addresses that particular point. MR HUGHESTON-ROBERTS: I am grateful for your assistance this morning and your courtesy. Thank you. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk 15

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