

ENGLAND AND WALES / JUDGMENT

R v Riaz Mohammed

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MS J GREENHALGH appeared on behalf of the Appellant. MR R ATKINS KC & MR M CULLEN appeared on behalf of the Crown.

J U D G M E N T (Approved) Lord Justice Dingemans, Senior President of Tribunals:

1. On 21 January 2025 in the Crown Court at Birmingham, following a trial before HHJ Kershaw and a jury, the appellant, Mr Riaz Mohammed, who was then aged 39, was convicted of two counts of conspiring to supply a Class A controlled drug. Count 1 related to cocaine and count 2 heroin. On 12 March 2025, Mr Riaz Mohammed was sentenced to 7 years 5 months' imprisonment on count 2, with a sentence of 4 years concurrent on count 1. In fact Mr Riaz Mohammed appears before us today, represented by Ms Greenhalgh, because he was on qualifying curfew of over 1000 days after arrest and before his sentence.

2. The appellant appeals with limited leave of the Single Judge against conviction and the ground of the appeal is that the judge erred in his response to a jury question which asked if the jury could have a copy of the defence closing speech in their deliberations, and it is said that the judge's response made the convictions unsafe. The factual background
3. On 22 May 2021 there was a violent attack that took place at an address in Birmingham in Spark Hill. A gang of men entered the house and attacked with a machete a man named Mohammed Ishaq who was present at the property. Following the attack and the attendance of the police it became clear that a number of co-defendants for Mr Riaz Mohammed were captured on local CCTV footage either leaving the property or making their way to a local park, some seemingly carrying items that the prosecution said were taken from the house and were being used for the purpose of supplying drugs. When the police arrived it became obvious that the house was a house of multiple occupancy and that part of it was being used as a place where drugs were being received, adulterated and packaged for further onward supply.
4. The police commenced their investigation into the machete attack upon Mr Ishaq and the wider network of individuals who were seen on CCTV footage gathered from the area. That showed that they had frequented the house, in particular leaving the house shortly after the incident with the machete attack in May. In due course Mr Mohammed Ishaq, Mr Kaleem Ullah Khan and Mr Nowshad Mohammed all pleaded guilty to their part in the conspiracy to supply controlled drugs. The prosecution relied on those pleas to try to prove the conspiracy with which the defendant was tried.
5. As to the appellant Mr Riaz Mohammed, it was said that he had been identified on footage taken from local cameras driving to the property in a number of different vehicles, in the company of in particular Mr Kaleem Ullah Khan, and dropping him off before he entered the house. It was said by the prosecution that there was a reasonable inference that the bags that were being carried by Mr Kaleem Ullah Khan could be seen to be of a similar type to those found within the house containing drugs, bagged up and ready to be supplied as street deals.
6. Mr Riaz Mohammed was never seen to go into the house and it was said by the prosecution that he was a driver, driving individuals and drugs to the property for them to be prepared for further supply and/or to collect drugs for onward supply. In addition it was said by the prosecution that he was linked to a drugs line, as his personal phone appeared to co-locate with the number when the drugs line was in operation.
7. The prosecution case with respect to Mr Riaz Mohammed was that his role was integral to the conspiracies. Although he was not present at the time of the machete attack he was in contact with co-conspirators that day and went to the address minutes after the phone calls between co-conspirators.

8. Following Mr Riaz Mohammed's arrest there was a search of his property and cash was found. The prosecution case was that was proceeds of drug dealing despite some evidence from Mr Riaz Mohammed's bank accounts of him buying and selling cars for a living. In addition, the prosecution were able to identify that he hired and bought a number of cars, some of which appeared in the footage covering the property where the attack took place and the drug dealing paraphernalia was located.
9. Mr Riaz Mohammed's case was that he admitted driving near the address at various dates and times but that he was not part of any conspiracy to supply drugs and was there socialising. The case against him was entirely circumstantial. He gave a prepared statement to the police denying any involvement in the conspiracies and he relied upon that at trial and having given that statement, then mainly answered "no comment" to the questions asked. At the trial he did not give evidence.
10. It appears that the trial was delayed by a number of matters and was in fact the fourth attempted trial of this alleged conspiracy. The first trial had been delayed due to Covid. The second trial had been stopped because of comments made by prosecuting counsel which were found to be inappropriate. At the third trial, the trial jury could not agree. There had been then problems with jury availabilities and illnesses, appellants not being produced, counsel being professionally embarrassed and because of the delays, once control had been lost of the original timetable, delays for leave, Christmas and the like.
11. There was a complaint about the timing about the speeches which were timetabled before Christmas, with the balance of the summing-up after Christmas. The appellant was not granted leave to raise that issue because it was one simply of trial management, but it is relied on as important context for the ground of appeal for which permission was granted. The summing up
12. The judge summed up on 12 December 2024 with directions on law before the closing speeches took place and, as already indicated, they were concluded before Christmas. The judge then conducted his summing-up on the facts on 6 and 7 January when the jury retired.
13. When the judge summed-up the evidence he did give the jury a detailed summary of the evidence and he highlighted evidence specifically relating to Mr Riaz Mohammed. The learned judge's summing-up of the evidence included a detailed summary of Mr Riaz Mohammed's own case, based on his interview, cross-examination and counsel's speech. The judge summarised in detail the account Mr Riaz Mohammed gave in interview and the Agreed Facts and those parts of it which supported his account. Also the judge directly referred to points made on behalf of Mr Riaz Mohammed by Ms Greenhalgh, his counsel. The judge said: "The defence rely of course also on the point that there are no -- if he's helping in some way, there are no fingerprints found on any bags in respect of Riaz Mohammed and that's something that you should consider. Is he therefore just essentially dropping off, innocently, people even if they are involved but he doesn't know and therefore he's not involved in the conspiracies?" Again, later on the judge addressed another point

made on the appellant's behalf: "Let's have a look then, as far as he's concerned, at the events of May 22nd. That's the storyboard really. If we go back to the storyboard of May 22nd, remember what you are invited to consider is whether or not he's being placed into the conspiracy and being considered, essentially, just by association. That's what his barrister was saying to you. Consider that could be what's going on here. He's just associated and therefore he's guilty, and that's wrong. So, let's have a look at it. If he's just there and dropping people or things off with no idea, as I say, about what's going on, he's not part of it. So, you've got to look at it." The judge then went on to address the specific events on that day.

14. When concluding this part of the summing-up, the judge addressed both prosecution and defence cases saying: "I think the phrase being used was 'is the barrel being scraped'? Is that what's going on here so far as the prosecution are concerned, to try and manufacture a case against Riaz Mohammed? Are the prosecution essentially constructing that guilty narrative that Ms Greenhalgh spoke about? Or is it as Mr Atkins invites you to conclude, that the evidence shows he is involved, he's dropping people off to go work in room 4, delivering either men with drugs or drugs themselves and that was what his role was." This was a balanced summary of both the appellant's and the Crown's case.
15. The judge also summarised the other defendants' evidence about Ms Riaz Mohammed, which suggested he was not involved in any conspiracy. During the course of the summing-up counsel for all the co-defendants, including Ms Greenhalgh on behalf of the appellant, invited the learned judge to make a number of additions and clarifications and corrections and the judge did so. The jury note
16. The jury retired. There were a number of notes from the jury and the jury were not able to sit on some days. In the course of some of the notes request for reminders of particular bits of evidence, exhibits were asked for. On Monday 20 January 2025, which was, including the day of retirement, the seventh day of deliberation, a note was sent to the judge just before lunch. The judge said: "This is what the note says, 'Please could we hear and/or have copies of the closing statements from defence of Anwar Awais and Riaz Mohammed.' " The judge went on to say: "I think it's just 'no'."
17. Mr Femi-Ola said "Yes" and Mr Femi-Ola KC appeared on behalf of the defendant Mr Mohammed Imran Khan. Mr Cullen said "Yes" and Mr Cullen was junior counsel being led by Mr Atkins KC on behalf of the prosecution. The judge continued: "Because it's not evidence. I'll perhaps just be absolutely sure they mean the speeches but that's how it seems to be."
18. There was then the lunch break. Ms Greenhalgh had at that stage been released because the trial had overrun for the reasons we have already given and was appearing in a different matter. Ms Greenhalgh did manage to speak to counsel who was holding for her with the judge's permission, and we have a copy of the email then sent on to the judge. It was sent just after the lunchtime at 14.03 hours: "I've spoken with Ms Greenhalgh over lunch. Please can we invite you to say something along the lines of the following. You cannot have a copy

of the speeches in any event they're not evidence but rather counsel's comments on the evidence. If there's a particular topic that you need assistance with you could write me a note and if I can assist you further I will." The judge came back into court at 2.15. The jury was not present and Ms Crocker, who had sent the email on behalf of Ms Greenhalgh, continued: "Your Honour, we wanted to make submissions in relation to how your Honour answers the question that you received at 1 o'clock. JUDGE KERSHAW: Yes. I've seen your message about what Ms Greenhalgh wants. MS CROCKER: Yes, I just wondered whether Mr Riaz Mohammed should be in, bearing in mind it relates to him. I know Mr Awais isn't here but that's a medical appointment." Someone else noted that they were covering for Mr Mohammed and the judge asked who was in the building. There were various discussions in relation to that. The judge then said: "I'm just going to say, 'I can remind you about evidence. Speeches are not evidence. They are closing speeches, they are submissions to you by counsel and, so, the answer is 'no'. MR CULLEN: Thank you. JUDGE KERSHAW: And not say any more. I don't see why -- if someone wants to address me further and you want the defendants in, we'll have to wait. I don't think what else -- MS CROCKER: No, I think if your Honour says, 'I can only remind you about the evidence', then they know, should they wish to write another note, they can write another one." The conversation then continued for a short time before the judge then called the jury back into court, and said this: "Thank you very much. I've had this note from you which says, 'Please could we hear and/or have copies of the closing statements from the defence of Anwar Awais and Riaz Mohammed?' The answer is no. I can remind you about evidence but the closing speeches from the advocates are submissions, they are not evidence. So, for that reason the answer is no. Okay? I'm going to ask that the bailiffs are sworn back out, please, to look after you and I ask that you continue your deliberations." As it turned out there were in fact no further questions by the jury asking for evidence relating to Mr Riaz Mohammed.

19. The jury were given a majority direction after 23 hours' retirement, some 8 days after they had begun their deliberations but longer chronologically because there were various delays for the jury absences. In the event the jury returned unanimous verdicts of guilty against the appellant on both counts. The respective cases on appeal
20. Ms Greenhalgh, on behalf of the appellant, submits that there could be no complaint made in respect of the response that the jury could not have a copy of the speech itself. It was submitted, however, that once the judge had heard the question, the judge should have reminded the jury perhaps of the main topics or headlines on the speech on the basis that it was clear and quite possible that, due to the passage of time that had elapsed since it was made, through no fault of the defendant's, the jury may well simply have forgotten about any submissions made on his behalf. All of this amounted to a mishandling of the trial process resulting in a clear and discernible unfair consequence for the defendant Mr Riaz Mohammed so that his conviction is unsafe. Ms Greenhalgh described the judge's answer as slightly unclear and given in an abrupt way, and that having particular regard to the context that her speech had been delivered on 16 December, and this question was on 20 January, the convictions were unsafe.

21. Mr Atkins and Mr Cullen on behalf of the prosecution submit that the learned judge did not err in not reminding the jury about the relevant closing speeches. If the judge was going to remind the jury about some closing speeches, then he had to consider whether to remind the jury about all closing speeches, including the prosecution's closing speech. The matter had been ventilated before counsel and the judge had been correct to direct the jury that whilst he could not provide a copy of the closing speech, if there was any evidence they wanted to be reminded about, they could ask for it. We have very grateful to Ms Greenhalgh, Mr Atkins and Mr Cullen for their excellent written and oral

submissions.

The disposal of this appeal

22. We do not have a copy of the speech that was given by Ms Greenhalgh, but we were able to work out important points that were made on behalf of Mr Riaz Mohammed from the summing-up. We agree that the judge was right to tell the jury that they could not hear or have copies of the closing statements made on behalf of Mr Riaz Mohammed and on behalf of Mr Anwar Awais. This was because the speeches were not evidence and the jury were not entitled to have them. That much was common ground. The judge was also right to be alert to the need to remind the jury of relevant parts of the evidence, if they wanted to be so reminded, and the jury had asked for those reminders during the course of their retirement.
23. We consider that although some judges might have reminded the jury of a very brief summary of the essential points made on behalf of Mr Riaz Mohammed and Mr Anwar Awais in the light of the question from the jury, there was no duty on the judge to do so. Further, we consider that there is no basis to find that this verdict was unsafe. First, this was because the jury had asked questions when they needed to be reminded of evidence over the course of their deliberations. Secondly, in the course of the judge's answer he expressly told them "I can remind you about evidence", implicitly, albeit not expressly, identifying that if the jury wanted further evidence to be read to them they could ask for that. Thirdly, the judge had, in our judgment, summed up fairly to the jury and also importantly, reminded the jury of the points made by Ms Greenhalgh on Mr Riaz Mohammed's behalf.
24. For all these reasons, we dismiss the appeal against conviction. 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

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