



JUDICIARY OF
ENGLAND AND WALES

R v Anis Sardar

Woolwich Crown Court

Sentencing Remarks of Mr Justice Globe

22nd May 2015

Yesterday, the jury convicted you, on count one, of the murder of Sergeant First Class Randy Johnson on 27 September 2007 and, on count two, of conspiracy to murder between 1 January 2007 and 22 November 2007.

The offences were committed in Iraq at a time when American troops were present as part of the 2007 “Surge” Operation and, in the relevant area that concerns this case, were doing no more than route security and reconnaissance.

The offences relate to your participation in constructing Intrusive Explosive Devices (IEDs) that were thereafter buried in the ground within the sector being patrolled by the Americans in a confined area of North West Baghdad.

One of the IEDs exploded on 27 September 2007 under an American armoured patrol vehicle killing Sergeant First Class Johnson. It was a vehicle that had been engaging in no hostile action against anyone. Three more unexploded IEDs were recovered from within the sector on 19 March, 20 March and 14 October.

Sergeant First Class Randy Johnson was a married man with two young children. He was a Platoon Sergeant in K Company in the 2nd Stryker Cavalry Regiment. His commanding officer, Major Eric Adams, described him as “the father of the Platoon” who was responsible for running the Platoon on a day-by-day basis. He was “the critical leader” who worked closely with the Platoon Lieutenant in synchronising the operations of the Platoon. The Platoon was told about its mission in Iraq in the Spring of 2007 at a time when they were operational in Germany. Sergeant First Class Johnson was instrumental in training the members of the Platoon so as to create a cohesive team when the Platoon was eventually deployed to Iraq. Major Adams says Sergeant First Class Johnson was “pivotal” in that transitional period. He led

his Platoon in such a way that the other soldiers in the Platoon showed him more loyalty and affection than Major Adams has ever seen in any other Platoon. "He deeply cared" about all welfare matters and "showed great compassion" to all members of the team. As a direct result of his leadership, the Platoon outperformed all other platoons. In Iraq, before every mission, he was known personally to spend many hours preparing so his troops stood the best chance of returning uninjured. It is therefore the saddest irony that, when the eight wheel armoured Stryker containing five American soldiers ran over and exploded an IED, it was Sergeant First Class Johnson who was killed. He was buried at Arlington cemetery. His family can be proud that he was awarded the Purple Heart and Bronze Star for distinguished Service. However, his loss is one of the sad tragedies of what was ongoing in Iraq in 2007. By the jury's verdict, it is a loss for which you are directly responsible.

It is necessary to put the jury's verdict into perspective for the purposes of passing sentence upon you.

There has been no special verdict, nor should there have been any special verdict. The facts upon which you therefore need to be sentenced need to be determined by me in accordance with the directions the jury received.

During the trial, evidence was received from two Americans who, at the relevant time, were the two leaders of the Explosive Ordnance Disposal Team – "EODs"; "the bomb disposal squad". Each was stationed at Camp Liberty. Each had a tour of duty that lasted just over a year. Each tour fully covered the dates stated in the indictment.

One of the "EODs" gave evidence that, during his tour of duty, he dealt with about 120 IEDs. He could only remember between 3 or 4 that were constructed in the way the IEDs were constructed in this case.

The other "EOD" gave evidence that, during his tour of duty, he dealt with 325 IEDs. He only encountered 6 to 12 that were constructed like the ones constructed in this case. All of the other IEDs were completely different types of devices. They were flimsy devices with pressure plates made out of hacksaw blades.

The ones recovered in this case were far from flimsy. They were professionally made. They had sturdy pressure plates with corrosion filed off one end and notches inserted to accommodate the wiring. The pressure plates had wooden blocks placed between them and rubber hosing placed around them. They were then taped together with various types of adhesive tape. The wiring led to a battery and timer providing detonation to explosives if the pressure plates were pressed together by a heavy vehicle travelling over them. The type of main explosives used varied, IED to IED. The explosives used in the IED that killed Sergeant First Class Johnson was the equivalent of an artillery mortar round. It tore away the underneath of the armed vehicle with deadly effect. It also caused a major leg injury to Staff Sergeant Mark Aggers and minor injuries to others in the vehicle. The explosive used in the other IEDs ranged from TNT, PETN and a home made explosive called UREA NITRATE. A controlled explosion of one of the bombs containing UREA NITRATE caused echoes and reverberations and there was a blast cloud of 150 to 200 feet. The EOD described it as an "enormous explosion".

These are the bombs you were making. Your fingerprints were found on the adhesive tape of two of the IEDs. By the jury's verdict on count one, they were sure you were also participating in making more.

Sajjad Adnan was also involved in constructing the IEDs. His fingerprints were found on all four IEDs that were recovered.

Who else, if anyone, was involved in the construction is unknown because you have not revealed their identity.

Your evidence was that there were 4 or 5 people in total who were involved. However, the verdicts of the jury discredit your evidence generally. I do not accept your account that you merely went to an unknown house one afternoon and helped to put a bit of sticky tape onto a couple of objects. The jury haven't accepted that and neither do I.

The fingerprint evidence establishes that there were a number of unidentified fingerprints found on the IEDs. How many people were involved is unknown.

However, what is beyond doubt is that you were involved in a group activity, which the jury have found to have been unlawful.

No one, including the prosecution, has disputed the difficult sectarian issues that were plaguing Iraq in 2007 and which were a dominant reason for the American "Surge". In the course of my summing-up, I commenced my review of the evidence by reading out to the jury some admitted facts. By summarising them in a few sentences now, I do not intend to minimise their importance.

From at least 2005, the elections in Iraq following the downfall of Saddam Hussain had led to the country being run by Shia Muslims, which in turn resulted in serious sectarian conflict between Shias and Sunnis. So bad was the conflict that local communities were known to form watch groups within their areas and to patrol defence lines in key locations.

Your defence was that the IEDs were being made solely to protect and defend Sunni villages from imminent attack by Shi'ite militia and that such action was both necessary and reasonable.

The jury have rejected that defence.

One possibility is that they rejected the proposition that what you were doing was reasonable in that it was not proportionate action to defend the villages. In other words, there is a distinction, even in the midst of sectarian violence, between shooting at advancing militia from a defensive position in or around the villages and blowing up vehicles and their occupants by use of what can only be described as land mines. If that was what was rejected, it still means that you were unlawfully intending to cause explosions with the intention of killing Shias. However, that finding was not the prosecution's prime case.

The prosecution presented the case throughout upon the proposition that, together with others, you were either wholly or partly targeting the American troops or, if not targeting

them, you were prepared to place the IEDs in places where it did not matter who was going to be blown up, Shias or Americans, because, effectively, in your minds, they were as bad as each other.

I am satisfied so as to be sure that your actions were not solely focussed on the Shi'ite militia. Your focus was either wholly or partly the Americans. I reach that conclusion from the following facts.

First, there were not hundreds of bombs scattered all around areas that the Shi'ite militia travelled. There were only a few bombs strategically placed. Their placement could not possibly have kept out the Shi'ite militia from all the villages on the West of the canal and were not even placed on the approach routes to the crossing areas of the canal. By way of contrast, those that were recovered were within the midst of the sector being patrolled by the Americans. It was a sector that was being patrolled day and night, week after week by numerous vehicles and Platoons. The Americans had a major presence at Camp Liberty in the South of the sector and at Taji in the North. Their presence was highly visible. It was meant to be. There is evidence that the patrols were engaging with locals in order to try and obtain information about insurgents. That engagement was being done openly in an attempt to gain trust. It is inconceivable that such action went unnoticed and without comment within the villages. I reject your evidence that you rarely saw such patrols and knew little or nothing about their existence.

Second, there is evidence from which one can draw the conclusion that the deployment of the double pressure plates was such that they were designed to be activated by heavy wide tracked vehicles such as those used by the American army rather than lighter narrower vehicles.

Third, the inescapable fact is that, when you returned to this country in November 2007 from Damascus, you brought with you a collection of CDs within which there was not only an explosives manual, which included a formula to make TNT, but also material of a violently anti-American nature. It may be that since your return you have sought to hide from your past and have not looked at that material on any computer examined by the police. That doesn't mean you were not looking at it on computers when not in this country. In that it may be said that there is no evidence to that effect, I have had the opportunity of observing you in court and listening to you while you gave evidence. When pressed in cross-examination by Mr Hill, you let down your guard. In your attempt to protest your innocence, it was illuminating to watch and listen to what the prosecution described as your "fury" at the Americans' intervention into Iraq. I am satisfied that at the material time, you had the mind-set that made the Americans every bit as much the enemy as the Shi'ite militia. Both were in your contemplation at all times.

Fourth, good evidence of the fact that it was the Americans who were targeted comes from the IED that was recovered on 20th March 2007. When the Americans found it and were about to report their findings they came under attack from sniper fire. Three American soldiers were hit. Two received serious injuries. The Americans were in the area ostensibly supporting the Shias. Shias had little reason to fire on the Americans. The much more likely explanation was that it was a concerted Sunni attack. That in itself is indicative of the Sunni attitude generally

towards the Americans at the time, despite their peace-keeping role at the time. It mirrored what I find to be your own personal views.

Fifth, your explanation for saying nothing to anybody about having gone to Iraq, still less saying anything to anyone about what you did in Iraq defies logic and belief. If your evidence was true, you had been providing defensive humanitarian aid to people who could not defend themselves. All that you did was necessary, reasonable and proportionate. Why would you hide those facts from everyone, including those close to you such as your wife, your extended family and the two people who are so close to you, who you called to give evidence on your behalf - your cousin and good friend? This is not the same as making no comment to the police upon legal advice because you have a right to remain silent. These were your family and friends. Why hide your humanitarian actions from them? I am driven to conclude that you said nothing to any of them, not because you simply wanted to forget, but because the truth of what you did would have revealed the offences in respect of which you have now been convicted.

Sentence

And so, it is against that factual background that I now have to pass sentence.

There is only one sentence that can be passed for an offence of murder and that is a sentence of life imprisonment.

However, the provisions of schedule 21 of the Criminal Justice Act 2003 require me to set out in court any minimum term of that life sentence that you must serve as the punitive and deterrent term of your sentence before consideration can be given to your release within the ambit of the statutory early release provisions. It is important to understand that the expression minimum term in this context is not to be confused with the pronouncement of a determinate sentence of imprisonment in respect of which a defendant will only serve half of that sentence before being released on licence.

If a minimum term is imposed, it means the term that must be served before your case may be referred to the Parole Board for a consideration of your release upon licence. It means the actual term that you must stay in prison before that process may take place. Whether or not you will be released after the minimum term has been served will be a matter entirely for the Parole Board to consider at that time. They will not do so unless satisfied that you are not a risk to the public and are ready for release into society. If you are released at that time, or any later time, you will be released on licence with specific conditions attached to it. You may be recalled to continue serving your life sentence if you breach any licence conditions that are set for you.

Pursuant to these provisions, I first of all have to consider what is the term of the life sentence that you must serve.

Paragraph 4(1) states that, if the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, the appropriate starting point is a whole life order. Relevant cases that would normally fall

within that sub-paragraph are murders done for the purpose of advancing a political, religious, racial or ideological cause.

Paragraph 5(1) states that, if the case does not fall within paragraph 4(1), but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, the appropriate starting point in determining the minimum term is 30 years. Relevant cases that would normally fall within that sub-paragraph are murders involving the use of explosives and murders that are racially or religiously aggravated.

I bear in mind the observations of the Lord Chief Justice in the case of Reynolds & Rossiter [2015] 1 Cr.App.R.(S.)24; [2014] EWCA Crim 2205. He emphasised four points in relation to the imposition of whole life orders:

1. The judge must have regard to the guidance provided in schedule 21, but each case will depend critically on its own particular facts.
2. Where a whole life order is called for, often, perhaps usually, the case will not be on the borderline. The facts will leave the judge in no doubt that the defendant must be kept in prison for the rest of his life.
3. One should always bear in mind a guilty plea if one is tendered.
4. A whole life order is reserved for the few exceptionally serious offences where, after reflecting on all of the features of aggravation and mitigation, the judge is satisfied that the element of just punishment requires the imposition of a whole life order.

I have reviewed various sentencing cases in relation to terrorism sentences, including Barot [2008] 1 Cr.App.R.(S.) 31; Khan & Ots [2013] EWCA Crim 468, most notably at paragraphs 74-76; and Dart & Ots [2014] EWCA Crim 2158.

I have reached the following conclusions.

First, in deciding whether the case is exceptionally or particularly high, I must have regard not only to the murder of Sergeant First Class Johnson on count one but to the wider conspiracy to murder on count two. The appropriate sentence on count one must therefore be adjusted to reflect this additional feature of the case. The approach is consistent with the terminology within the sub-paragraphs.

Second, the introduction of the word racial in paragraph 4(1) was introduced by the Counter Terrorism Act 2008 for murders committed on or after 16 February 2009. The definition of a racial group for the purposes of the schedule means a group of persons by reference amongst other things to nationality. That would apply to the targeting of Americans. However, your offending was in 2007. That limitation does not apply under paragraph 5(1) where the full expression of racially or religiously aggravated was in force in 2007.

Third, notwithstanding the absence of the word racial in paragraph 4(1), I am satisfied, for the reasons already given, that the rationale for making the bombs was at least in part for the purpose of advancing a political, religious or ideological cause.

Fourth, I emphasise the expression “at least in part” because I am prepared to accept that, amidst the turmoil of Iraq in 2007, the sectarian problem was so great that there is some

limited mitigation born out of provocative and offensive actions of the Shi'ite militia that did justify some defensive action on the part of the Sunni population. Factors of provocation and self defence not amounting to defences are legitimate aspects of mitigation specifically referred to in paragraph 11 of schedule 21. I further emphasise that such mitigation only applies to your actions against the Shi'ite militia and not in relation to your actions against the Americans.

Fifth, the mitigation I have just referred to must also be set alongside two specific aggravating factors identified in paragraph 10, namely, under paragraph 10(a), significant planning and premeditation and, under paragraph 10(f), in the case of the American forces and Sergeant First Class Johnson in particular, at least some of the intended victims and the victim in count one were performing National Service as part of the American "Surge" operation.

Sixth, I take into account the fact that you did not travel to Iraq direct from London, but went from Syria where I am prepared to accept you found yourself after travelling there for the original legitimate purpose of studying.

Seventh, I take into account your age, previous good character, the evidence of your two character witnesses and the fact that, for about eight years since your return to England, there is no evidence of you holding any extremist views or participating in any actions of an aggressive nature against anyone. Nonetheless, I am satisfied that, despite the lack of such evidence, there remains an underlying concern about your ideology. The closest possible attention will have to be given by the Parole Board in due course to the risks to public safety that you might pose in the future. That fact flows through into the element of risk justifying an indeterminate sentence for any discretionary life sentence.

Putting all of that together, I am entirely satisfied that you must be detained for an extremely long time as part of the life sentence that must be imposed upon you.

However, on the totality of the facts, in my judgment, yours is not one of the cases where the element of just punishment requires me to impose a whole life order.

The minimum term I am about to pronounce will be reduced to take the time you have so far spent in custody into account, which I am informed is 204 days.

The sentence on count one, murder, is life imprisonment with a minimum term that you must actually serve, prior to any consideration of whether you may be released on licence, of 38 years.

The sentence on count two, conspiracy to murder, where no one was actually killed, is a concurrent life sentence with a concurrent minimum term of 25 years.

-ENDS-