



JUDICIARY OF
ENGLAND AND WALES

IN THE CROWN COURT AT DERBY

R -v- Ethan Austin

Sentencing remarks of The Honourable Mr Justice Holgate

1. Ethan Jack Austin the jury convicted you of the murder of Lee Cooper on 14 September 2019 and of having an offensive weapon.
2. This case exemplifies the extreme and mindless violence which comes about when young men like you carry knives with them in public on our streets. You set out from your home in the evening of 14 September carrying down your right trouser leg a half-sized Samurai sword. The blade was 18 to 20 inches in length, up to three inches wide and was very sharp. It was a formidable weapon.
3. It is necessary to explain a little of the background to this case. During 2019 you and someone called Anton Scott were in prison together. There was a continuing disagreement between the two of you arising from the breakup with your then partner who is Scott's sister and with whom you had a child, now aged 3. Violent threats were made by both of you involving the use of acid. You were released on 9 August and Scott on 6 September.
4. You were under supervision in the community. The object of the scheme was to help you stay out of trouble and to address your needs such as social benefits and accommodation. You were on the knife crime register and were warned on the 2nd and 8th September that you were at risk of being stopped and searched by the Police and so should not carry a knife. You said you were not doing this.
5. On 12 September you came across Scott and a friend of his Kieran Collingwood in the Old Market Square in the centre of Nottingham. There was an argument. He hit you on the head with a drink can. In your evidence you did not suggest that he had a knife with him or threatened to use a knife on you. Mr Collingwood on the other had said that you threatened that you would stab Scott. I accept what he said.

6. You bought the sword the next day, the day before the killing, so that you could carry it with you in public. You had no excuse for doing this. I am sure from the evidence that you were prepared to use this weapon on Scott. It was not purchased by you simply to scare off other people if you felt threatened.
7. On 14 September you went to visit friends in Nottingham using public transport. You had the sword with you during the day. You returned home. You left to go out again at 7.25pm using public transport, apparently to visit the same friends. You carried the sword with you again, concealed down your trousers.
8. As you were walking down a busy main road in the centre of Nottingham near the Victoria Shopping Centre you saw Scott and Collingwood with a group of other young men and one woman. At that point they appear to have been socialising. Although you were by yourself, you shouted across and looked aggressive. Insults were exchanged.
9. Instead of carrying on along the main road you went into a side street. As you did so you looked back and must have seen Scott and Collingwood running across the main road towards you. The CCTV shows no sign of you looking scared. That was because you had the sword with you.
10. You already had your hood up. Then facing the other two, you covered your forehead and from your nose downwards with your durag. You wished to avoid detection on CCTV cameras. You moved backwards as they advanced. You pulled up your shirt and revealed part of the sword. You called out threatening to stab Scott. Scott pulled up his own top and said come on then jug me. You say that you thought that Scott might have something under his waistband, but you did not know what it was. At all events you have not suggested that he has ever threatened you with a knife.
11. What then took place happened very quickly indeed. Lee Cooper, who had been part of the group of young men on the other side of the main road, ran across and pushed Scott and Collingwood who were on the pavement out of the way. You pulled out your sword. From the CCTV material, it can be seen that Mr Cooper stood with his back towards the wall or solid gates of the public house. You were in the roadway. You did not see him produce any weapon. You had not previously had any words with him. You did not know him. I do not think that Mr Cooper could have seen in time that you were wielding a sword. Nor did he have the time to take defensive action or to escape from what was about to happen to him.
12. If you had genuinely felt outnumbered and threatened, you could have run off. You can run very quickly and did just that only a few seconds later. But you did not do that. Nor did you brandish your weapon in an attempt to scare others away. Instead, you moved your whole body forward and lunged at Mr Cooper. The blade passed 20cm into his body through part of his heart and lung. There is no suggestion that he ran onto your

- blade. This was not an attempt by you to scare him off. You aimed the blade towards the centre of his chest and lunged. From the movement captured on the CCTV and the eye-witness accounts I am satisfied that you thrust forwards with substantial force.
13. You withdrew the blade and ran off. Lee Cooper was able to move to the other side of the road but then he collapsed. Despite emergency surgery by paramedics he could not be saved. He died shortly afterwards at the scene.
 14. You must have realised that you had pushed the sword a substantial way into Lee Cooper's body. Your claim that you did not appreciate that you had made contact with him and never saw any blood on the sword were among the blatant lies you told during your evidence.
 15. CCTV shows you running through the centre of Nottingham. You were in phone contact with your partner and father. About 45 minutes later you met up with your girlfriend at Sneinton Market. You told her that you had been stabbed, which was untrue and she jumped on a bus to bring you a change of clothing. You said in evidence that you told her this story to make sure that she came to you. You are manipulative. You walked together with your arm around her. Then you changed your clothing and got your girlfriend to carry your rucksack in order to alter your appearance and make detection more difficult. You must have known that you had at the very least seriously injured a man if not killed him. But you were calm and collected, even callous. You then went into hiding for nine days until arrested.
 16. The Court has heard very moving victim personal statements from Lee Cooper's father Roy and mother Mary. They described his good qualities and how important a member of the family Lee was. They explained the devastating effects which his death had had for the whole family but especially for those closest to him. The family has suffered greatly from the terrible way in which Lee Cooper met his death. The loss and traumatic experiences they have suffered will remain with them for the rest of their lives.
 17. The sentence for murder is set by law. I must pass a sentence of custody for life. I also have to set the minimum term which must expire before you can be considered for release. It is important to emphasise two features of a life sentence which deal with the dangerousness of any defendant and protect the public whatever the length of the minimum term. The first is that you will not automatically be released once you have completed the minimum term. A decision will have to be made at that stage as to whether it is safe to allow your release. The second is that even if and when you are released on licence, the life sentence will not then come to an end. If released on licence you will remain subject to the conditions of the life sentence for the rest of your life. If at any time you re-offend or give reasons to those supervising you to think that you are likely to reoffend, the Secretary of State may recall you to prison to continue serving the life

sentence for such a period as is necessary. For these reasons the protection of the public does not come into the setting of the minimum term. The Court must set the term which it considers appropriate taking into account, amongst other things, the seriousness of the offence of murder for which you have been convicted.

18. In Schedule 21 of the Criminal Justice Act 2003 Parliament has set out the framework for the Court to determine the length of the minimum term. It lays down starting points from which the Court may move up or down according to the circumstances of the case. In this case you took the sword to the scene of the murder. Accordingly, the starting point is 25 years.
19. None of the aggravating features in Schedule 21 apply.
20. I turn to the statutory mitigating factors.
21. The jury was sure that self-defence did not arise. When you saw Scott and Collingwood you shouted aggressively at them. You were trying to provoke a fight, knowing that you had a sword with you. So this was not truly a situation in which you could genuinely have thought that you needed to defend yourself. Even if a different view were to be taken, your reaction by thrusting this highly dangerous weapon into someone was grossly disproportionate, particularly where they showed no signs of being armed. You did not use the sword to scare others away, which was supposed to be your excuse for carrying it. You did not run away at great speed just as you did but a few seconds later. I am sure that you did not act in self-defence in any way which could materially reduce your culpability.
22. You accepted in evidence that you did not lose self-control.
23. Although you were diagnosed with ADHD eleven or so years ago, there is no evidence as to how serious the condition was then, how it has progressed since, or how it could have affected your behaviour during the attack on 14 September 2019 so as to provide mitigation.
24. On the other hand, I do accept that there was a lack of premeditation and that your intention was to cause Lee Cooper serious bodily harm rather than to kill him.
25. There are a number of aggravating features. You already have a bad record of previous offending. These include seven convictions for assault, one of which was a wounding, an affray and two convictions involving the possession of knives in a public place. But I accept that these did not involve really serious violence. The present offences were committed shortly after your release from prison when you were subject to licence. You committed these offences in a busy public place in the centre of Nottingham on a Saturday evening when there were many people present. They were scared and very shocked by what they saw.

26. However, in this case the passing of a concurrent sentence on count 2 is not an aggravating feature when setting the minimum term because I have already taken into account all aspects of that crime. There is no double-counting.
27. I recognise that you had a difficult, disadvantaged upbringing. However, for crimes as serious as these that provides only limited mitigation. It is also troubling that you have shown not a shred of remorse for killing someone, particularly someone you did not know and had no grudge against. You show no appreciation of the terrible suffering you have caused his family.
28. The main mitigation available to you is your relative youth. I have had regard to the principles in R v Peters [2005] 2 Cr App R (S) 101; R v Jones [2016] 2 Cr App R. (S) 1; and R v Clarke [2018] 1 Cr. App. R. (S) 52 . You were nearly 19 ½ when you killed Lee Cooper. However, there is nothing to suggest in the evidence that you were relatively immature for your age, or for that matter anything pointing the other way.
29. For the offence of murder the mitigating factors taken overall carry more weight than the aggravating factors.
30. The offence under count 2 falls within category 1A of the Definitive Guideline. It plainly crosses the custody threshold and only immediate custody will suffice.
31. You carried a bladed article. More than that, the sword was a highly dangerous weapon not least because of its size and sharpness. You were also willing to produce and use it. The harm caused by you is the greatest possible harm, the death of a person.
32. There are aggravating features: your previous convictions to which I have referred, the commission of the offence in a busy public place, the fact that you were on licence, your failure to heed warnings given to you by the police a few days before the offence, your attempt to conceal your identity, and your disposal of the sword.
33. Ethan Austin. The court's sentence on count 1 for the murder of Lee Cooper is custody for life, with a minimum term to be served of 21 years, less 190 days already served in custody on remand. I direct that any error in the computation of the number of days served in prison may be corrected administratively.
34. On Count 2 the sentence is detention in a young offenders' institution for 3 years to run concurrently with the sentence on count 1.

The Hon. Mr Justice Holgate

30 March 2020