

IN THE CENTRAL CRIMINAL COURT

R v ABUBAKER DEGHAYES

SENTENCING REMARKS

HHJ Nigel Lickley QC

1. You have been convicted of Encouraging Terrorism contrary to S.1 Terrorism Act 2006. The facts relate to a speech you gave during a book reading session after evening prayers at the Brighton Mosque on 1<sup>st</sup> November 2020. The speech was video recorded. Save for a few words or phrases where the parties proposed alternative meanings the words used by you were agreed and not in dispute. The prosecution case was that you used phrases to intentionally or recklessly encourage a terrorist act. The phrases included '*Jihad, Jihad, Jihad, Jihad is compulsory. Jihad by fighting by sword means Jihad is compulsory obligation upon you*'. Those words were accompanied by, what you accepted, was a stabbing motion. There was an audience of about fifty people including children at the beginning of your speech. Some had left by the end.
2. It should be noted that in November 2020 the UK was experiencing unprecedented restrictions to mobility due to the pandemic. New lockdown restrictions came into force on 5/11/20. The new 'stay at home' rules had been announced on 31/10/20 the day before your speech. Communal worship was to be subject to restriction.
3. You are now 54 years of age. You were born in Libya and came to the UK in 1986. You are a family man however three of your sons have been killed. Two in Syria in 2014 having travelled there without your knowledge and permission to join, according to the Pre-sentence report Al-Qaeda. A third son was murdered in Brighton in 2019. A fourth son is reported to be a prisoner in Syria. You have been on conditional bail throughout without difficulty. I make it clear any conclusion I reach adverse to you I do because I am sure that is satisfied to the criminal standard of proof.

## The speech

4. A transcript is available with areas of dispute and alternative meanings indicated. I summarise the words spoken and the contentious topics addressed. I add a number of religious teachings that are not relied upon by the prosecution were referred to. A theme that runs through the speech was the pandemic.
  - (i) You began by reading from a document. You said in evidence *'I am reading from a book. There is terminology and science about the sayings of the prophet. I am saying there is only one god'*. There is no dispute or criticism made of you that were reading from religious texts and referencing religious stories during your speech.
  - (i) You later referred to Boris Johnson making a mockery of the niqab before he became Prime Minister and referred to him wearing a niqab by wearing a mask.
  - (ii) Later you turned to coronavirus and were critical of scientists who had been working to find vaccines.
  - (iii) You commented on the new restrictions to worship.
  - (iv) You referred to Belmarsh prison and implied that a practising Muslim might be taken there if regarded as strange.
  - (v) You then said that Jihad was compulsory and an obligation saying *'upon you until the Day of Resurrection, whatever the British government thinks, whatever Prevent thinks, whatever Israel thinks - send to the sea. They can go and drink from the sea Allah curse their fathers ok?'*
  - (vi) You ended by saying *'Jihad, Jihad, Jihad, Jihad is compulsory. Jihad by fighting by sword means Jihad is compulsory obligation upon you not Jihad by word of mouth this is...also but Jihad will remain compulsory until the day of*

*Resurrection and my livelihood is under the shadow of my spear. And who doesn't like that go fight Allah. Go fight Allah'.*

- (vii) The above was accompanied by a stabbing motion that you accepted was *'the dance of the blade'*. You said in evidence that *'The story carries out the act of jihad and it came to the speech it is not intended speech you read from and you encourage and to practice from the book. Mohammed was fighting an enemy. I was talking about different concepts. While I was talking I was rolling within the speech and things appear. It is all interconnected. It is like a chain. I had not intended to talk about jihad. I saw encouragement from the people there to hear more, there was the plague and I continued to talk one thing led to another'*.
5. You offered explanations in evidence for the words used. Those explanations did not feature in your speech. In your evidence you stressed that any such actions were, in your mind, defensive and not offensive. I note that you, in evidence, condemned terrorist acts and said that committing crime is a sin.
6. I have to decide if the words you used were spoken intending to or were reckless as to whether a member of the public would be directly or indirectly encouraged to commit an act of terrorism. There is no doubt you said the words however were they said intending that outcome or were you reckless? Reckless is defined as you being aware that there was a serious and obvious risk that members of the public would be directly or indirectly encouraged or otherwise induced by your statement to commit, prepare or instigate acts of terrorism and, in the circumstances known to you, it was unreasonable for you to take that risk. There was in fact no need for the prosecution to prove that any person was so encouraged.
7. I have considered *R v King [2017] 2 Cr App R (S)*. There is more than one interpretation of the jury's verdict available because they may have convicted you on either basis. In such a situation I must be sure to the criminal standard as to the factual basis upon which to pass sentence. If I am not sure then I must pass a sentence based on the facts most favourable to you.

8. Having considered this issue I am not sure you acted intentionally. I therefore sentence you on the basis that you were reckless. I have come to this conclusion for these reasons:
- (i) The comment that was the central aspect of the case against you '*Jihad by the sword*' came towards the very end of the speech.
  - (ii) The speech was not scripted, prepared or apparently rehearsed.
  - (iii) No specific target was identified.
  - (iv) You said at that point you were '*rolling within the speech*'. I take that to mean you got carried away in the moment being encouraged by the audience. I cannot therefore be sure you set out from the beginning to utter the words as part of a planned or scripted speech.
  - (v) Whatever you thought the topics you chose became connected and culminated in you talking about and demonstrating Jihad by the sword as an obligation.

To behave and speak in that way was clearly reckless.

9. Previous convictions. You have one earlier conviction. It concerned your behaviour towards your wife and you went to prison. It is not similar and is unrelated.
10. Pre-Sentence Report . The report of Cheryl Innes dated 23/2/22 is informative. You deny that you have committed an offence. You maintain you are well known in Brighton and are highly respected by many people and highly regarded by the Muslim community. You are described as having rigid thinking, attitudes, beliefs and entrenched views. The author of the report considered that you have an inflated sense of your own self-importance. You have stated that you will not sanitise speeches as that would be untruthful.
11. You have been assessed as posing a low risk of reconviction using the statistical evaluation tool however because you have stated that you intend to continue to make similar speeches representing a worrying aspect of your case in showing a lack of insight your risk of re-offending is assessed as high. Similarly the risk of serious offending is assessed as high. The risk you pose is described as being to those who are impressionable and who may interpret your words as supportive of terrorism and that could encourage them to commit terrorist acts. You completed a period of post-

conviction licence satisfactorily. I note you live with your mother in a privately owned property and are in self-employed work earning £800 per month. You have a good record of employment.

12. The offence and Guidelines: An offence of encouraging terrorism contrary to s.1 Terrorism Act 2006 carries a maximum sentence of 15 years' imprisonment. That maximum was increased to 15 years from 7 years on 12 April 2019. However, that increase has not yet been reflected in the Sentencing Guideline for the offence. I have considered the effect of that as set out in *R v Nugent* [2021] EWCA Crim 1535.
13. Extended sentences. I have to consider the issue of dangerousness because the offence is a specified offence for the purpose of section 279 (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code. To be considered a custodial term of at least four years would have to be the appropriate custodial term.
14. The offence is also listed in schedule 13 for the purposes of section 278 of the Sentencing Code a required special sentence for certain offenders of particular concern. Section 278 applies where the court does not impose an extended sentence and the offender is aged 21 or over at the date of conviction. It provides that the term of the sentence must be equal to the aggregate of the appropriate custodial term, and a further period of 1 year for which the offender is to be subject to a licence.

Offence Guideline – operative from 27/4/18 page 17.

15. I have considered the submissions made. In my judgement the offence falls within Culpability category B. There is no evidence that you were in a position of authority or influence within the Mosque and abused that position. You were taking part in a book reading session that was open to all. You had done it before. I cannot therefore conclude that you held a position of authority or influence. The case does fall however fall within category B in my judgement as your statement was made recklessly and was directed widely to an audience that might be considered large in the context of those attending that Mosque but in any event the audience was targeted in that your speech was directed at and to those attending at the Mosque.

16. I have concluded the case falls within Harm category 2 because your statement provided non-specific content encouraging support for terrorist activity endangering life. The encouraging of violence by the use of a blade clearly is an activity that could endanger life.
17. As a consequence the starting point set out in the guideline is one of 3 years custody and category range is from 2 to 4 years custody before any alteration is made for the increase in the maximum term that has more than doubled the original maximum from 7 years to 15 years custody. The prosecution submit that any sentence in the present case ought to be adjusted upwards to reflect this increase. I note however the guidance provided in *Nugent* and the reference to increases in sentence in the interests of justice and in the more serious cases to reflect the changes made.
18. Aggravating features: In my judgement the only statutory feature that arises is that some of the audience were young males attending with their fathers. Their precise ages are and whether they were listening and paying attention is difficult to determine from the CCTV however some are clearly of school age. As such they were vulnerable and / or impressionable. I find this factor aggravates the offence but to a limited degree.
19. I add your statement was directed at members of society in general and was not based on any hostility to any religious, racial or other minority group.
20. Mitigation. You have no relevant previous convictions. You live with your 84 year old mother who is, I am told assisted by you but independent and able to travel overseas. No caring issues therefore arise.
21. Personal mitigation.
  - (i) You made the speech a few days after the person who murdered your son was sentenced. It was, I accept, a difficult time for you.
  - (ii) Your imprisonment will mean your employment will cease. You work for your mother collecting rents from and managing properties she owns.
  - (iii) Character references. I have read the references submitted. The three witnesses speak of your campaigning work concerning your brother who was imprisoned in Guantanamo Bay, the way in which you conduct yourself, your non aggressive views and your opposition to your sons travel to Syria.

22. Dangerousness. I have considered this issue. There are concerning factors particularly your stated intention to continue to speak in the way that you did. I take into account your age and that this is your first offence of this type. Therefore there is no pattern of conduct established. Given the type of sentence that must be imposed your release will be monitored and determined by the Parole Board in any event and you will be subject to additional supervision on licence. Accordingly I am not satisfied you represent a significant risk for the purposes of S.279.
23. Sentence: I have had regard to and considered all that has been said on your behalf in writing and orally. The words you spoke were found to encourage whether directly or indirectly an act of terrorism. That is a matter of considerable concern. In my judgment the offence is so serious that only an immediate custodial sentence is appropriate.
24. You have refused to accept the jury's verdict and maintain you will continue to speak as you did. That represents a significant lack of insight and lack of reflection on your part. There is accordingly no remorse. It is fortunate that no subsequent specific terrorist act can be laid at your door. That said your comments were made at a time of great tension and uncertainty within our community. I have made the appropriate upward and downward adjustments for the aggravating and mitigating factors. I have taken into account the consequences of custody during the pandemic.
25. I have also taken into account the increase in the maximum sentence for this offence. In my judgement the starting point set out in the guideline should be moved upwards to reflect that but given the facts of this case to a limited degree.
26. The sentence I pass is one of 4 years imprisonment. Given the sentence the law requires me to add a further one year of licence period to the sentence. Accordingly the aggregate sentence is one of 5 years with a custodial element of 4 years.
27. You will serve one half of your custodial term in custody before your case is referred to the Parole Board for consideration of whether and on what terms it is safe for you to be released. You may be released at the direction of the Parole Board at some point not later than the end of the custodial term. You will then serve the remainder of the custodial term (if any) and an additional 12 months in the community on conditional

licence and subject to supervision. You must abide by the conditions of your release, or you will be liable to serve the full sentence in custody.

28. Serious Crime prevention order. I adjourn making this order. In particular the precise terms need to be reconsidered as the current wording is too wide and capable of misinterpretation. The wording may also inhibit or restrict lawful and proper religious worship. The compatibility of such an order and my finding as to dangerousness is also to be researched.
29. Ancillary orders. Part 4 of the Counter-Terrorism Act 2008 imposes notification requirements. The appropriate term in your case is one of 10 years by virtue s.52(1)(c).
30. The sentence is one of 5 years being a custodial term of 4 years plus a further one year period of licence.
31. The surcharge order will be drafted.

HHJ Nigel Lickley QC

21/4/22