IN THE CROWN COURT AT MANCHESTER, MINSHULL STREET

THE KING

— v —

(1) BOY C

(2) BOY D

(3) SAIMA HABIB

RULING BY THE HONOURABLE MRS JUSTICE ELLENBOGEN DBE
ON AN APPLICATION FOR AN EXCEPTING DIRECTION

[For the reasons which follow, on 19 December 2024, I gave an excepting direction in relation to 'Boy C' and 'Boy D', subject to a stay. At a hearing at 10:00am on 15 January 2025, I confirmed that that stay had been lifted, enabling this ruling and my sentencing remarks in this case to be published. 'Boy C' is Alkhader Qasem. 'Boy D' is Ishaaq Mia.]

1. For reasons which will become clear, in this ruling I shall refer to the first defendant in this case as 'Boy C', and to the second defendant as 'Boy D'.

2. On 6 November 2024, both boys were convicted by a jury of the murder of Prince Walker-Ayeni, then aged 17. Boy D and the third defendant were each convicted of doing an act tending and intended to pervert the course of public justice. At the date of those offences, each was 16 years old. Boy C will turn 17 at the beginning of next week and Boy D in March 2025. On that day, I adjourned sentencing until today, for the purpose of obtaining reports and counsel's notes on sentence. On 8 November, a member of the Press applied, *'on behalf of Reach North West and North Wales, publishers of many news websites and newspapers, including the Manchester Evening News'*, to lift the reporting restrictions which had been imposed in relation to Boys C and D, pursuant to section 45 of the Youth Justice and Criminal Evidence Act 1999 ('the 1999 Act'), by order dated 12 April 2024. That order had also been made in relation to a third former defendant, later acquitted on my direction. I gave directions that counsel for each party should respond to

the application; entitling the Press to reply, if so advised; and that the application would be considered today. Thereafter, I received substantive submissions on behalf of Boys C and D, resisting the application; counsel for Ms Habib indicated that the matter did not concern her; and the Press submitted a brief reply. This afternoon, I gave all those who had made substantive submissions the opportunity to make brief supplementary oral submissions.

The Law

3. Section 45 of the 1999 Act provides (so far as material):

> ***'*45.— Power to restrict reporting of criminal proceedings involving persons under 18.**
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> ...
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> (3) The court may direct that no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.
>
> (4) The court or an appellate court may by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (3) if it is satisfied that it is necessary in the interests of justice to do so.
>
> (5) The court or an appellate court may also by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (3) if it is satisfied —
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> (a) that their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
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> (b) that it is in the public interest to remove or relax that restriction;
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> but no excepting direction shall be given under this subsection by reason only of the fact that the proceedings have been determined in any way or have been abandoned.
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> (6) When deciding whether to make—
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> (a) a direction under subsection (3) in relation to a person, or
>
> (b) an excepting direction under subsection (4) or (5) by virtue of which the restrictions imposed by a direction under subsection (3) would be dispensed with (to any extent) in relation to a person,
>
> the court or (as the case may be) the appellate court shall have regard to the welfare of that person.

(7) For the purposes of subsection (3) any reference to a person concerned in the proceedings is to a person—

(a) against or in respect of whom the proceedings are taken, or

(b) who is a witness in the proceedings.

(8) The matters relating to a person in relation to which the restrictions imposed by a direction under subsection (3) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—

(a) his name,

(b) his address,

(c) the identity of any school or other educational establishment attended by him,

(d) the identity of any place of work, and

(e) any still or moving picture of him.

(9) A direction under subsection (3) may be revoked by the court or an appellate court.

(10) An excepting direction—

(a) may be given at the time the direction under subsection (3) is given or subsequently; and

(b) may be varied or revoked by the court or an appellate court.

..."

4. The principles applicable to applications for an excepting direction were summarised in *R v KL* [2021] EWCA Crim 200 ([66] and [67]), cited below:

'66. As to the legal principles, these were comprehensively considered in *Markham*[1] at para 73 to 90 and in *Aziz*[2] at para 30 to 40 and are now well-established. They have been developed taking full account of Convention case law and other international law obligations of the United Kingdom. The international dimension relating to the protection of children is given significant weight in the domestic law balancing exercise and there is no need to recite the international law materials in every case where this issue arises: *Markham* at para 80.

67. Drawing upon those two decisions, the relevant principles may be summarised as follows:

(1) The general approach to be taken is that reports of proceedings in open court should not be restricted unless there are reasons to do so which outweigh the legitimate interests of the public in receiving fair and accurate reports of criminal proceedings and in knowing the

[1] *R v Markham* [2017] EWCA Crim 739; [2017] 2 Cr. App. R. (S.)

[2] *R v Aziz (Ayman)* [2019] EWCA Crim 1568

identity of those in the community who have been guilty of criminal conduct.

(2) The fact that the person before the court is a child or young person will normally be a good reason for restricting reports of the proceedings in the way permitted by the legislation; and it will only be in rare cases that a direction under section 45(3) of the 1999 Act will not be given or, having been given, will be discharged.

(3) The reason why removal of a restriction will be rare is the very great weight that the court must give to the welfare of a child or young person. In practical terms, this means that the power to dispense with anonymity must be exercised with "very great care, caution and circumspection". See the guidance given by Lord Bingham CJ in the context of the 1933 Act in *McKerry v. Teesdale and Wear Valley Justice* (2000) 164 JP 355; [2001] EMLR 5 at para 19.

(4) However, the welfare of the child or young person will not always trump other considerations. Even in the Youth Court, where the regime requires that proceedings should be held in private, with the public excluded, the court has power to lift restrictions. When a juvenile is tried on indictment in the Crown Court there is a strong presumption that justice takes place in open court and the Press may report the proceedings.

(5) The decision for the trial judge is a case specific and discretionary assessment where, guided by the above considerations, a balance falls to be struck between the interests of the child and the wider public interest in open justice and unrestricted reporting.

(6) When considering a challenge to an excepting direction made by the Crown Court by way of judicial review, the Divisional Court will "respect the trial judge's assessment of the weight to be given to particular factors, interfering only where an error of principle is identified, or the decision is plainly wrong": see *Markham* at para 36.

(7) To this standard public law approach must be added the conventional public law requirements that: (i) a fair process should be adopted by the judge in considering an application [to] remove a restriction; and (ii) the judge should give reasons sufficient to explain why the balance has come down in favour of removal of the restriction. This latter point is particularly important because the judge's reasons are the only indicator that the parties (and a reviewing court) will have to satisfy themselves that the judge has indeed performed a lawful balancing exercise.'

The application

5. For the Press, it is said that the case for naming Boys C and D is strong, given the grave, shocking and tragic nature of the case, involving the fatal stabbing of a young boy, in a public place. It is said that knife crime is an issue of great concern to the wider public, and that the naming of both boys will assist in the debate of that serious societal issue. It is argued that both defendants ought to be named, having been jointly charged and given that each is nearing the age of 18, when the section 45 order would expire in any event. It is further said that it will allow full reporting of the circumstances of Ms Habib's offending, which, to date, has been impeded by the section 45 orders. The Press contends that section 45 of the 1999 Act enables the making of an excepting direction if the Court is satisfied that it is in the public interest to remove or relax the restriction imposed. Pursuant to section 52 of the same Act, in considering the public interest the Court must have regard, in particular and as relevant, to the interest in, amongst other matters, the open reporting of crime. Reliance is also placed upon the forward to the Judicial College document entitled *Reporting Restrictions in the Criminal Courts*, which stresses the need for the Court to be satisfied that there is good reason for a departure from the strong public interest in open justice, which must be outweighed by the welfare of the child. Generic reference is made to the case law, including that relating to section 39 of the Children and Young Persons Act 1933 (being the predecessor provision to section 45 of the 1999 Act), emphasising the distinction to be preserved between juveniles in Youth Courts, who are automatically entitled to anonymity, and juveniles in the adult criminal courts, who are not so entitled and must apply for a discretionary reporting restriction. It draws attention to guidance issued in 2015 by the Crown Prosecution Service, whereby an application for a section 45 order should be made only if the public interest and rights under Article 10 of the European Convention on Human Rights to receive and impart information are outweighed by the rights of the juvenile defendant. It observes that that guidance acknowledges that, in some cases, allowing the Media to identify a juvenile can help to deter others from committing crime. In summary, it is argued that the welfare of Boys C and D is outweighed by the public interest in these proceedings being openly reported.

Boy C's response

6. On behalf of Boy C, Mr Ford KC and Mr Nolan submit that the 1999 Act plainly requires that there be good reason for the continued imposition of the restriction, rather than good reason for it to be lifted. They 'concede' that the open justice

principle creates a presumption in favour of lifting the restriction, unless the defendant can establish a basis for departing from it, requiring the Court to conduct a balancing exercise with the competing interests of the child. It is said that the reporting of Boy C's name would be inimical to his rehabilitation and that, as matters stand, the Press is able to report the facts of the case, including the ages of both young defendants, to which the addition of their names will add little. Thus, maintaining the restriction will not impose a substantial and unreasonable restriction on the reporting of proceedings and the public interest will be satisfied by a report of the salient facts. The gang affiliations of the deceased mean that identifying Boy C might increase the possibility of reprisal against his family and compromise his own safety in custody. On instructions, Mr Ford observes that one person associated with the deceased has arrived in the unit in which Boy C is being held, though it is not known whether he is aware of Boy C's involvement in Prince's death. It is submitted that it would be wrong to accede to the application absent a proper risk assessment by the Police and that the Court cannot derogate from the right to life protected by Article 2 ECHR.

Boy D's response

7. On behalf of Boy D, Mr Karu KC and Mr Barton adopt the submissions made on behalf of Boy C. They observe that, in the Spring of next year, Boy D faces a further trial, with two co-defendants (one of whom also a child) with whom he is alleged to have engaged in a joint enterprise. It is said that publication of his name in connection with the instant conviction in advance of that trial is likely to cause him and his co-defendants prejudice and potential injustice. It is further submitted to create a real danger that his 11 siblings, some of whom themselves children, will be identified and face prejudice and damaging scrutiny in consequence. The resentment towards Boy D which they are likely to feel as a result will have an impact upon him, as well as upon them. It is further submitted that, following each young defendant's application for permission to appeal against conviction, any appeal for which permission is granted would be likely to be heard within a year and that, if an excepting direction were to be granted today, '*the genie would be out of the bottle'*. Whilst the public interest in reporting on the third defendant's case is acknowledged to be a factor to be weighed in the balance, in all the circumstances it is submitted to lack the weight which it would otherwise have. Conceding that Boy D's crimes are grave, with inevitable substantial public

interest in their being reported, Mr Karu and Mr Barton submit that, in all the circumstances, an excepting direction ought not to be made at this stage.

For the Crown

8. Properly, on behalf of the Crown, Mr Hayton KC and Ms Emsley-Smith adopt a neutral position on the application, observing that no risk assessment has been carried out by the Police and that the Crown has been informed that no such assessment would ordinarily be carried out post-conviction, but that it is, on occasion, undertaken by the prison authorities. Mr Ford tells me that, having been so informed, his instructing solicitor had contacted the author of Boy C's pre-sentence report, who had informed him that she had not been asked to cover risk assessment, specifically, but that, *'there were ongoing safeguarding issues [in relation to Boy C], whereby Wetherby struggled to maintain his safety.'*

The Press in reply

9. In so far as the submissions in reply extend beyond repetition of those set out in its application, the Press contends that Boy D's forthcoming unrelated trial affords an insufficient basis for the existing reporting restrictions in this case to remain in place. Any knowledge of Boy D on the part of a prospective juror would preclude his or her selection, and those who are selected will receive the standard direction that they must not conduct independent research. It is said that the time which will elapse between now and that trial will provide a 'fade factor' sufficient to enable the case to leave the public consciousness. No reply is made to the asserted potential adverse effect of an excepting direction upon Boy D's siblings. It is noted that, were the young defendants' details to be published at this stage and any permitted appeal against conviction later to succeed, that latter fact would also be reported.

Discussion and conclusions

10. In considering the circumstances of this case, I have had regard to the principles summarised in *KL,* to the earlier caselaw and materials from which they in part derive, and to the principles in the European Convention on Human Rights ('ECHR') which that caselaw reflects.

11. As I have noted, boys C and D are currently 16 years old. Boy C will very shortly turn 17, the age which Boy D will reach in March 2025. As each defendant will have been advised, his conviction for murder requires that he be sentenced to detention during His Majesty's pleasure, with a specified minimum term. Each will be an adult at the earliest date on which he may be released. Subject to my ruling on this application, each will lose the protection of the section 45 order, at the latest when Boy D turns 18, in March 2026.

12. Recognising the very great weight which must be given to the welfare of a child or young person and the very great care, caution and circumspection to be applied, I begin by considering the welfare of each defendant individually. In so doing, I have had regard to the pre-sentence reports which I have received, albeit that no specific reference was made to them by counsel for either defendant in connection with this application.

Boy C

13. In her report on Boy C, the Youth Justice Officer assesses his emotional health to be particularly fragile at present, stating that he is fearful of what his future in custody will entail and that he suggests that he will be targeted by reason of the identity of the deceased and how well known he is amongst others in custody. She notes Boy C's feeling that he will *'forever be a target'* for those seeking revenge. She records his growing fears and anxiety at the prospect of his name and photograph being released, be that at this stage or when he turns 18, considering those to stem as much from his fear of reprisals as from the shame which he feels. Boy C's safety and well-being needs are assessed to be high.

14. Informing the Court's judgment as to whether the making of an excepting direction is in the public interest is all available material relating to its prospective effect upon Boy C's welfare. In this case, neither the pre-sentence report, nor any other material independently assesses the extent to which Boy C's fears are well-founded, in the secure environment in which he is being held. Whilst counsel note the absence of a Police risk assessment (and I note Mr Hayton's instructions on that point), they acknowledge that it is for the defendant to satisfy the Court of the merit in the position which they adopt, albeit submitting that risk to be a fair inference and relying upon the limited information recently provided by the Youth Justice Officer. Their suggestion that identification of Boy C will result in reprisal

is speculative and, in any event, it is clear from the pre-sentence report that the identity of his victim is already known to others in custody. Absent an excepting direction, he will benefit from anonymity until December 2025 (a relevant consideration, per *Markham* [89]), but will have a further lengthy period in custody after that time. It is not clear, and the submissions made on his behalf do not address, how his rehabilitation will be inhibited in those circumstances.

Boy D

15. Absent an earlier excepting direction, Boy D will have a right to anonymity until March 2026. He faces a minimum term in detention which will extend into his adult life by some years.

16. From the Youth Justice Officer's report, it is apparent that, notwithstanding concerns expressed by Boy D and professionals, he was moved from the induction unit to one of the main units, whilst on remand, where he was the victim of a serious group assault, believed to have been carried out in retaliation for Prince's murder. She states that, *'due to the nature of the index offence, [he] is only too aware that risk of retaliation remains high; he has already been the victim of a serious assault whilst being on remand'*. Boy D is said to have several non-associates in custody owing to the risks posed to his safety and well-being, which, nevertheless, are considered to remain high. It is clear that his involvement in the murder of the deceased is already widely known to others in custody and that there are measures in place to minimise any risk posed. The assessed level of risk is said to encompass the risks created by the custodial environment itself and the typical nature and needs of those detained. Nothing in the report asserts that Boy D's rehabilitation would be inhibited by an excepting direction and, more recently, he has demonstrated a willingness to engage with professionals and with education.

17. I have considered the potential impact on the fairness of Boy D's next trial, in connection with an unrelated matter, currently scheduled to take place in April of next year. I accept the merit in the submissions made by the Press. Were Boy D to have been an adult, I would not have made an order preventing publicity. I do not minimise the concern raised in relation to Boy D's siblings, but it must be recognised that, as counsel for both defendants expressly acknowledged, it is not the purpose of section 45 to protect family members of a convicted defendant, and, when considering the position of his younger siblings, the identities of both

defendants' families will be known in the wider community and, realistically, will become known, at the latest, by the time that Boy D reaches the age of 18 and the section 45 restrictions relating to him expire. Any resentment towards him felt by his siblings is likely to be experienced in any event and neither it nor its impact is likely significantly to be ameliorated in the period prior to the date on which the section 45 order would lapse. Had these defendants been at, or closer to, the age of majority, their families would have been in the same position. The prospect that permission may be granted to one or both defendants to appeal against conviction; an appeal which, on counsel's estimate, would not be heard until one of them had turned 18 and the other would be three months away from doing so, does not itself carry much weight, in particular given the likelihood that the Press would report on the case again at that time.

18. Against that background, I turn to consider whether there is sufficient reason to depart from the general approach to which reference is made at [67(1)] of *KL*, that is which outweighs the legitimate interest of the public in receiving fair and accurate reports of criminal proceedings and in knowing the identity of those in the community who have been guilty of criminal conduct. Rare as the lifting of a reporting restriction may be, I bear in mind the strong presumption, when a juvenile is tried on indictment in the Crown Court, that justice takes place in open court and that the Press may report the proceedings. I bear in mind that, following conviction, the need to preserve the integrity of the trial process falls away as a consideration and that both defendants have been found guilty of murder and one of them of perverting the course of justice, whilst also bearing firmly in mind that an excepting direction granted under section 45(5) must not be granted by reason *only* of the fact that the proceedings have been determined in any way.

19. I accept that the Press has been and will be able to report on the trial and sentence without reference to the identity of the first and second defendants, though I note that it is not necessary in every case to demonstrate as some form of condition of removal of anonymity that the public needs to know the defendant's identity in order to understand the case: *KL* [86]. Nevertheless, this was a stabbing carried out by Boy C, in the afternoon, in a public place, with the encouragement or assistance of Boy D. The deceased was himself only 17 years old. Full reporting of the serious offence of perverting the course of justice, of which Boy D and the third defendant have each been convicted, cannot take place if the existing reporting

restrictions remain in place. The public will wish to know the identities of those who commit such serious offences, together with the context within which they have been committed, in seeking to understand how it is that children of the relevant age (and the third defendant) can do so. I am satisfied that knife crime and perverting the course of public justice in general; and the circumstances of this particular case, are matters of substantial public interest. Whilst, as recognised by section 58 of the Sentencing Act 2020, the principal aim of the youth justice system is to prevent offending or re-offending by persons under the age of 18, that is not to say that the deterrent effect on others who would commit such offences of the identification of these young defendants is of no relevance, or value.

20. Standing back, I am satisfied that the balance between the important competing interests in this case tips in favour of granting an excepting direction in relation to Boy C and Boy D under both sub-sections 45(4) and 45(5) of the 1999 Act. I am satisfied that it is in the interests of justice to do so, that the fact that the defendants are young is not a good reason for restricting reports of the proceedings, and that the effect of the existing directions is to impose a substantial and unreasonable restriction on the reporting of the proceedings, which it is in the public interest to remove.

21. Had I considered that the welfare of either boy outweighed the wider public interest in open justice and unrestricted reporting, I would have considered the prospective effect on his welfare of an excepting direction relating only to the other. In the event, that consideration does not arise.

22. Accordingly and in relation to each young defendant, I propose to grant an excepting direction, but that will be subject to a stay. Primarily, that stay will allow appropriate time in which the defendants and their families may be prepared for the prospective consequences of the reporting which is likely to follow and suitable, professional support and any necessary measures may be identified and put in place, if and as appropriate. Having regard to the defendants' welfare, it is right to allow that time, the duration of which I consider to be consistent with the public interests to which I have referred. That stay will expire at midday on Monday, 13 January 2025, unless, in the meantime, an application has been made, on behalf of **either** young defendant, to the Divisional Court for judicial review of my decision. Any such application should be notified to this court and

to my clerk as soon as reasonably practicable after it has been made. In the event of such an application, the stay which I have imposed shall continue until the application has been determined. As soon as reasonably practicable after any decision not to seek judicial review has been taken by each defendant, that fact is to be notified to this court and to my clerk.

23. **In any event, and even in the absence of any application for judicial review, there is to be no reporting of any matter which would constitute a breach of the existing restrictions until such time as I confirm in open court that the stay has been lifted. Any report in the meantime which is in breach of the existing restrictions will constitute a contempt of court.**

19 December 2024

15 January 2025