R v Naa'imur Zakariyah Rahman (sentenced 31 August 2018)

Facts

The offender was found guilty of one count contrary to s.5(1) (a) and (3) of the Terrorism Act 2006. The offender was arrested walking east along Crowthorne Road in North Kensington carrying a padlocked blue holdall bag containing (as he believed) a rucksack which had been fitted with a pressure cooker improvised explosive device, a puffa jacket which had been modified as an explosive suicide vest, a pepper spray device and a set of plastic gloves. His plan had involved blowing up the security gates of Downing Street; killing or disabling police officers posted at the security gates at the Whitehall end of Downing Street by explosion or knife wounds (or incapacitating them with pepper spray); and then entering No. 10 Downing Street itself and making a determined attack with a knife and explosives on those inside, with the ultimate target being the Prime Minister herself.

Unbeknown to Rahman, the devices were inert and simply made to look real and his 3 contacts that he believed to be members of IS were law enforcement operatives ("LEOs") all working for the security services.

Sentencing

I am sure that, at all material times, Rahman believed the devices to be real and capable of the most serious harm: (i) he was told and believed that the rucksack bomb would be capable of causing casualties on a scale comparable to those caused at the Manchester Arena bombing, to police officers, bystanders and tourists in and around the entrance to Downing Street; (ii) he was told and believed that the suicide vest within his jacket would be capable of creating a lethal area of 10 metres to his front, with some degree of lethality to his rear; and (iii) both devices were expertly constructed to be indistinguishable from the real thing. (3) In light of the capabilities of the improvised explosive devices, any attack on Downing Street would have been very likely to have caused multiple deaths. It was a viable operation.

Mr Bajwa QC submitted that there was little or no risk of what he called 'actual' harm and accordingly this was a Category 3 case. He relied upon the wording in the Guideline that: "Harm is assessed based on the type of harm risked and the likelihood of that harm being caused" and "When considering the likelihood of harm, the court should consider the viability of any plan." He submitted that the Guideline is directed only to the actual risk and likelihood of the contemplated or intended harm being realised; and, in the present case, notwithstanding Rahman's beliefs and plans at the time, there was no actual likelihood of

any harm being caused and the plan was not viable given (i) his only accomplices were LEOs, (ii) the provision to the defendant of a dummy explosive device in his jacket and rucksack and (iii) the security precautions taken throughout the investigation, in particular on the day of the defendant's arrest; and, accordingly, there was no risk to the public from the conduct of Rahman in relation to Count 1. He submitted that this case falls within harm category 3 on the basis that it fits the description of: "Any death risked but not very likely to be caused" or "Any other cases".

I reject Mr Bajwa QC's submissions and his narrow construction of the Guideline. His reference to "actual" risk represents a gloss on the Guideline. The fact that Rahman was supplied with dummy improvised explosive devices and pepper spray which were inert is irrelevant to the legal analysis of the level of 'harm'. It is the harm intended by the offender that is relevant, i.e. the level of harm that the defendant intended to cause judged from his perspective as to what he knew or believed at the time. If Mr Bajwa QC's narrow construction is correct, it would logically disentitle the courts from imposing appropriate sentences in cases where covert operations by the security services interdict terrorist operations before harm was caused (which, by definition, is every s.5 case). This cannot be correct and, in my view, was plainly not the intention of the authors of the Guideline.

R v Boular (Safaa) [2019] EWCA Crim 798 (Appeal heard 16 April 2019)

In 2016, SB (then aged 16) began to communicate with persons seeking to recruit her to the cause of ISIS. She formed a plan to travel to Syria and marry one of the recruiters, X. That plan was thwarted when SB was stopped at a UK airport. SB continued to communicate with her intended husband, engaging with him and others in the online planning of a terrorist attack in the UK. Unbeknown to her and her intended husband, others who purported to be planning this attack with them were, in fact, members of the Security Services.

It was decided that SB (together with her accomplices) would carry out an attack using semi-automatic firearms and/or grenades at the British Museum in London.

The judge placed both SB's offences within Category 2B, finding that SB had played a leading role where multiple deaths were risked but not very likely to be caused. On appeal against sentence, SB challenged the guideline categorisation of the offences:

Sentencing

The culpability factors reflect how determined the offender was to carry out that intention and how close the offender came to doing so. The inclusion in the guideline of the phrase "but for

apprehension" confirms that approach. The fact that Security Services were monitoring the activities of the offender and aimed to prevent the commission of the offence does not reduce the culpability of the offender. The involvement of the Security Services may, however, be relevant to harm.

We do not accept the submission of […] the prosecution, that in circumstances such as the present case, the participation of the Security Service in planning the attack comes within the phrase "but for apprehension". We do, however, accept the submission as to the proper approach to the harm factors which, we observe, are preceded in the guideline by the words: "When considering the likelihood of harm, the court should consider the viability of any plan." In our view, the reference to "risk" focuses on what was intended: that is, the consequences if the plan had succeeded. The reference to "likelihood of occurrence" requires the court to consider how likely it was that the plan would actually succeed. The answer to that question will depend, of course, on all the facts and circumstances of the case.

Here, the judge was entitled to find that multiple deaths were risked. That, after all, is what the applicant planned and intended. But, as the judge found, it was not a plan which was very likely to succeed. The judge, therefore, rightly assessed the harm as falling within Category 2. We do not accept Mr Bennathan's submission that, in the circumstances of this case, the involvement of the Security Services made it necessary for the sentencing judge to put the offence into Category 3. That would equate a plan to cause multiple deaths (properly falling within Category 2 in the circumstances of this case) with a plan to cause a single death, for which (amongst other things) Category 3 provides.

R v Fatah Abdullah (sentenced 26 June 2020)

Facts

The offender pleaded guilty to two offences; Count 1, engaging in conduct in preparation for giving effect to an intention to assist others to commit terrorist acts in that with the intention of assisting Omar Babek and Ahmed Hussein to commit acts of terrorism in the Federal Republic of Germany, in that you 1. Purchased 8,000 plus matches, explosive precursors, fireworks, a one metre electric ignitor fuse, miscellaneous fuses, saltpetre powder, digital scales and a remote-controlled detonator. 2. Searched the internet for guides on how to make explosives, how to operate a remote detonation system and for components for making an improvised explosive device. 3. Tested a remote detonation system. Count two, inciting terrorism overseas in that you incited others to commit acts of terrorism in Germany which, if committed

in England and Wales would have constituted the offence of murder, namely, to drive a car into a crowd, to attack people with a meat clever and to cause an explosion.

Sentencing

The prosecution suggests category 1B because multiple deaths were intended and were very likely to be caused, and yours was a significant role, where preparations were so close to completion that but for apprehension the activity was likely to be carried out and or because you co-ordinated others to take part in the terrorist activity.

On your behalf it is suggested that the correct category is 2C because, although multiple deaths were intended, they were not very likely to be caused. Preparations were not so close to completion that but for apprehension the activity was likely to be carried out. And you carried out acts of significant assistance and encouragement of others, rather than conducting yourself by way of co-ordinating others.

Applying the guideline in accordance with recent authority, I have no doubt, in your case, that harm falls into category two because it is relevant in relation to harm, to take into account that the German authorities had Hussein and Babek under active surveillance and that thus, multiple deaths were not very likely to be caused by Hussein and Babek.

R v Safiyya Amira Shaikh (sentenced 3 July 2020)

The offender pleaded guilty to preparing to commit acts of terrorism in that she made contact with a person she believed to be able to assist in preparing explosives (this person was in fact an Undercover Officer – UCO), researched methods and decided on a plan to carry out a terrorist act. The offender travelled to Central London and stayed at a hotel in order to conduct reconnaissance. She selected the hotel as a target for an explosive device and attended St Pauls cathedral to scope it for security and for the best place to plant a second explosive device. The offender met a person (another UCO) and supplied her with two bags with the intention and belief that explosive devices would be fitted into the two bags, she prepared the words of a pledge of allegiance to Daesh, also known as the Islamic State.

Sentencing

The first issue …is as to the correct categorization of the offence. The prosecution submitted that yours was a Category B1 offence with a starting point of life imprisonment, and a minimum term of 25 years' imprisonment. Whereas it was submitted on your behalf, by reliance on your claim in interview, that you had had doubts, that was why you had not attended the second meeting with the UCO and that you would not have gone through with any attack and it was

thus a Category C2 offence with a starting point of 15 years' imprisonment.

However, in your case, I had already reached the sure conclusion on all the original evidence that your claim of doubts to the police and others was a lie, that your intention had been and remained throughout strong, and that the correct categorisation of the offence in count one was B2 given that it involved, as to culpability, you acting in a leading role in terrorist activities where preparations were advanced, and, but for apprehension, the activity was likely to have been carried out and, as to harm, multiple deaths were risked, but because of the nature of the involvement of the authorities, and their consequent ability to prevent you from doing anything, were not likely to be caused. Thus, as already touched on, the starting point is one of life imprisonment at a minimum term of 15 years.

R v Mohiussunnath Chowdhury (sentenced 9 Jul 2020)

Facts

On 10 February 2020, Mohiussunnath Chowdhury was convicted of engaging in preparations for acts of terrorism over a six-month period in 2019, contrary to section 5 of the Terrorism Act 2006 (count 1).

Sentencing

In respect of harm, the section 5 offence falls within category 1: multiple deaths risked and very likely to be caused if your intention to commit the terrorist acts you planned had been carried out.

In the sentencing remarks, the Judge referred to law enforcement operatives, noting the defendant's 'indoctrination or encouragement of others, including the UCOs' and 'communication with other extremists (i.e. communications with the UCOs, whom you believed to be of a similar mindset)' as aggravating factors.

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