Neutral Citation Number: [2024] EWHC 1665 (KB)

Case No: KA-2024-000059

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/06/2024

Before :

MR JUSTICE JULIAN KNOWLES

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Between :

RICHARD D HALL	**Appellant/ Defendant**
- and –	
(1) MARTIN HIBBERT **(2) EVE HIBBERT (BY HER MOTHER AND LITIGATION FRIEND SARAH GILBARD)**	**Respondents/ Claimants**

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Paul Oakley (instructed on a Direct Access basis) for the **Appellant**
The Respondents did not appear and were not represented

Hearing date: **21 June 2024**

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Approved Judgment

This judgment was handed down remotely at 14:00 on 28 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. This is a renewed application for permission to appeal by Richard D Hall, the Appellant, following refusal on the papers by Steyn J. At the conclusion of the hearing I announced that the application would be dismissed for reasons to be given later. These are my reasons.

2. The application is brought in respect of the judgment of Master Davison who gave summary judgment for the Respondents on four issues arising in their claim against the Appellant.

Background

3. The claim arises out of the Manchester Arena Bombing on 22 May 2017. At 22:31 that night, a suicide bomber, Salman Abedi, exploded a bomb at one of the access points to the Arena at the end of an Ariana Grande concert, just as the crowd was beginning to leave. Twenty-two people died and hundreds were injured, including the Respondents to this application.

4. Both of the Respondents were terribly injured. Mr Hibbert is now paralysed from the waist down. The bomb was surrounded by shrapnel to maximise injuries, and his daughter Eve suffered a catastrophic brain injury when a bolt penetrated her skull. She was so badly injured that the emergency services at first thought she was dead or beyond help. It was only through the most skilled medical treatment that she and her father survived.

5. Following a trial at the Old Bailey in 2020, Salman Abedi's brother Hashem Abedi was convicted of the murders and of attempted murders (including of the Respondents) and sentenced to multiple terms of life imprisonment, with a minimum term for the murders of 55 years. He was convicted on the basis that he had been part of a joint enterprise with his brother to carry out the bombing.

6. There was a lengthy public inquiry into the Bombing held under s 26 of the Inquiries Act 2005. It was chaired by Sir John Saunders, and reported from 2021 onwards. The Inquiry's Report is a multi-volume, meticulously detailed analysis of what happened that night, as well as many other matters touching upon the Bombing.

7. The Appellant describes himself as a journalist (among other things). He has written a (self-published) book called 'Manchester: The Night of the Bang'. There is also a film of the same name. He formerly had a YouTube channel, until YouTube shut it down for violating its terms of service.

8. The Appellant does not believe the Bombing happened, although he accepts some sort of pyrotechnic device exploded, or that there was a 'low impact bang' as he puts it (Defence, [4]). In summary, as pleaded in his Defence, he thinks the events that night were staged by the UK Government, and that those involved were actors of some type ('crisis actors' as they have become known). He disputes virtually every aspect of the Bombing, including that which was proved during the Saunders Inquiry. He does not accept that Salman Abedi blew himself up, but believes he was taken away from the

Arena by the police and is now being protected as a UK Government agent. I asked why the Government would have done this, and was given some vague answer about an Abedi family connection, Libya and MI6 which, I confess, I did not really understand.

9. It follows the Appellant does not believe people were murdered and seriously injured in the Bombing. The Appellant's numerous assertions about what he says happened at the Arena are summarised in [17] of the Particulars of Claim (PoC). I do not need to repeat them.

10. As to why the UK Government would have staged this event, the Appellant's case in [90] of his witness statement is that:

> "Multiple motives underpin this orchestrated event. It served to tighten public control and facilitated the passing of legislation like Martyn's Law. Furthermore, it bolstered security service budgets and justified heightened military actions in Libya. The incident also played into President Trump's efforts to impose travel bans, particularly on Muslim-majority countries, bolstered by the narrative surrounding the Manchester incident."

11. Specifically in relation to the Respondents, the Appellant does not accept they were injured as they said they were, or were even at the concert, despite Mr Hibbert having given a witness statement to that effect and produced corroborating evidence, and despite there being much evidence given at the Inquiry about their presence and what happened to them. Mr Hibbert gave evidence to the Inquiry.

12. The Respondents have sued the Claimant in harassment, misuse of private information and in data protection. Put shortly, their case is that the Appellant has, in various publications and by various means, conducted a campaign of harassment against them. For example, his book includes: his assertions denying the Hibberts were at the concert and accusing them of lying; photos of Mr Hibbert, including x-rays which he says were 'PhotoShopped', with the statement, 'Should we suspect that [Martin] never lost the use of his legs ?'. Also, the Appellant attended unannounced and uninvited at the house where Eve lives with her mother, knocked on the door with a view to carrying out an 'interview', and then set up a camera which secretly recorded Eve, her carer, and her mother coming and going from the house.

13. The Respondents say in their PoC ([22]) that the Appellant has sought to profit from the Bombing through his book, film, and lectures.

14. Paragraph 5 of the Appellant's Defence requires Mr Hibbert to prove that he is paralysed and wheelchair bound. Paragraph 6 denies that Eve suffered a catastrophic brain injury. Initially the Appellant denied the Respondents were father and daughter (Defence, [3]), although he now accepts that they are.

The summary judgment application

15. Paragraphs 3 – 6 of the PoC say, amongst other things, that:

a. on 22 May 2017, 22 innocent people were murdered in a bomb explosion carried out by a terrorist at the Manchester Arena at the conclusion of a concert performed by Ariana Grande;

b. the Respondents were present at the Manchester Arena at the time of the bombing;

c. they were severely injured rendering Martin Hibbert paralysed from the waist down and Eve Hibbert brain damaged; and

d. The cause of these injuries was the explosion of the bomb.

16. As I have said, all of these allegations are either denied or not admitted by the Appellant. I will refer to these as 'the Issues' and number them (1)-(4).

17. On 9 November 2023, the Respondents applied for summary judgment on the Issues (and also on whether they are father and daughter; this has been conceded.)

18. The application was supported by witness statements from Martin Hibbert and Eve's mother and litigation friend, Sarah Gillbard, both dated 16 November 2023.

19. The Appellant served a witness statement in opposition dated 27 December 2023.

20. Two further witness statements followed in response to that from the Appellant: a witness statement from Mr Terry Wilcox, a solicitor who was instructed in the Inquiry for the families of two of the deceased, dated 5 January 2024 and a second statement from Martin Hibbert dated 9 January 2024. There was also other evidence, including from Greater Manchester Police.

21. The application was listed before Master Davison for half a day on 29 January 2024. The Respondents were represented by counsel. The Appellant represented himself with the aid of a *Mackenzie* friend.

22. In his judgment, the Master addressed the following topics:

a. the law, including the test for summary judgment in CPR Part 24 and the principles in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] and approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098 at [24];

b. in particular, subject to s 11 of the Civil Evidence Act 1968, the legal burden of proof rests on the Respondents throughout. But once they have adduced credible evidence in support of the application the defendant comes under an evidential burden to prove some real prospect of success or other reason for having a trial on those issues; *see Korea National Insurance Corp v Allianz Global Corporate & Speciality AG* (formerly *Allianz Marine & Aviation Vershicherungs AG*) [2007] EWCA Civ 1066; [2007] 2 CLC 748, as cited in Volume 1 of the White Book at 24.2.4 (p676);

c. section 11 of the Civil Evidence Act 1968 (which I will set out later). In summary, this makes a criminal conviction admissible where it is relevant to an issue in civil

proceedings. He said that it was held in *CXX v DXX* [2012] EWHC 1535 (QB) that the effect of s 11 was that a criminal conviction is a weighty piece of evidence';

d. next, he considered whether the Issues were suitable for summary determination under CPR Part 24, and held that they were.

23. On Issue 1 he held as follows (at [24]-[25]):

> "24. Issue 1 is whether on 22 May 2017 22 innocent people were murdered in a bomb explosion carried out by a terrorist at the Manchester Arena at the conclusion of a concert performed by Ariana Grande.
>
> 25. This Issue is obviously made out by the fact that Hashem Abedi was (as the defendant accepts) convicted of 22 counts of murder in respect of the bombing. His conviction followed a six week trial at the Central Criminal Court which concluded on 17 March 2020. Following *CXX v DXX* (which resolved a longstanding controversy about the evidential effect of a conviction) Abedi's conviction is a "weighty piece of evidence" in its own right. It falls to the defendant to prove the contrary, which is a burden I find he has no "real prospect" of discharging. I do not propose to engage with the detail of the defendant's evidence. Suffice it to say that, although his beliefs may be genuinely held, his theory that the Manchester bombing was an operation staged by government agencies in which no one was genuinely killed or injured is absurd and fantastical and it provides no basis to rebut the conviction."

24. He addressed issues (2), (3) and (4) at [30] onwards of his judgment. He said that the Respondents' evidence more than satisfied the burden on them to produce credible evidence in support of their application for summary judgment on those Issues. The Appellant therefore came under an evidential burden to demonstrate that he nevertheless had a 'real prospect' of contesting these Issues.

25. At [34] he summarised the Appellant's submissions, including that: that there was no 'reliable, verifiable evidence/ of the Respondents' attendance at the concert; that Mr Hibbert was not injured as he says he was; that Salman Abedi was not killed but escaped; and there was likely to be further evidence at trial (for example the evidence he was seeking in his third party disclosure applications) which might put a different complexion on the case and materially affect the outcome. This last point was one which was also pressed upon me by Mr Oakley.

26. At [37] the Master said:

> "I have already referred to the inherent implausibility of the defendant's 'staged attack' hypothesis. Whilst acknowledging that issues as to the claimants' presence at the attack and the attack itself are separate and distinct, once the defendant's general hypothesis has been rejected (as I have rejected it) it is unrealistic to maintain that the claimants were not there and were either not severely injured at all or acquired their injuries earlier and by a different

> mechanism than the bombing. Indeed, the latter points are simply preposterous."

27. The Master then went on to consider in detail each of the Appellant's submissions, and rejected them. He concluded at [39]:

> "He has no real prospect, indeed no prospect at all, of success on the Issues and I will resolve them in the claimants' favour."

The decision of Steyn J

28. Steyn J considered the Appellant's application for permission to appeal against Master Davison's judgment on the papers. She refused permission, and gave detailed reasons in her order of 15 April 2024. These were, in summary:

    a. The Appellant had put forward 11 grounds of appeal which all came down to the allegations that the Master failed to address or to address sufficiently the Appellant's evidence, failed to give adequate or sufficient reasons, erred in applying s 11(2) of the Civil Evidence Act 1968 ('the CEA'), and that the grant of summary judgment on the identified issues has deprived the Appellant of a fair trial by preventing him bringing evidence and explaining his full case at trial.

    b. There was no real prospect of the appeal court concluding that Master Davison erred in his approach to s 11 of the Civil Evidence Act 1968. Hashem Abedi, the surviving brother of Salman Abedi, was convicted of the murder of 22 people on 22 May 2017, by the use of an improvised explosive device detonated by Salman Abedi, conspiracy to cause an explosion likely to endanger life and attempted murder of (among others) the Respondents. The constituent elements of those offences have been proved to the satisfaction of a jury, to the criminal standard. That encompasses at least Issues 1 and 2, as the Respondents' presence at the time of bombing would have been essential to the conviction of attempted murder.

    c. The Master directed himself correctly as to the summary judgment test and his conclusion on Issue 1 that the Appellant's belief was 'absurd and fantastical' was not arguably wrong, and the appeal has no real prospect of success.

    d. As regards Issues 2, 3 and 4, the Appellant's evidence asserts a lack of concrete evidence that the Respondents were at the Manchester Arena on 22 May 2017, speculates that they might not have attended the concert, and (while accepting their injuries) hypothesises that those injuries might have been suffered on an earlier date. He does not have any positive evidence that they were not there, or that their injuries were not suffered at the Manchester Arena. Against this, in addition to the fact of the conviction of Hashem Abedi for their attempted murder, the First Respondent has given evidence but also that there are photographs contained in his 'Sequence of Events' put together by Greater Manchester Police for the Inquiry that show them entering the City Room at 20.03 and re-entering the City Room against at 22.30.53 after the concert, just before the explosion. The First Respondent was shown those photographs by Greater Manchester Police but not given copies. He has also provided the invoice for their tickets to the concert. She concluded at [11]-[13]:

> "11. The Appellant has no real prospect of persuading the appeal court that Master Davison was wrong to conclude that he had not raised anything other than a fanciful case that the First Respondent, and the Second Respondent's mother, were lying about the circumstances in which the First Respondent and their daughter had suffered their (admitted) injuries.
>
> 12. Giving summary judgment on the identified issues was not unfair, and the Master made no error in concluding that it accorded with the overriding objective of dealing with cases justly and at proportionate cost, bearing in mind that it was likely to reduce the trial time estimate from 10 days to 4 days. The Appellant had fair notice of the hearing, an opportunity to adduce evidence in response, which he took by adducing a lengthy statement and exhibits, and a fair opportunity to make submissions in writing and orally. It is plain that he was given as much time as he needed to make his oral submissions. The principles applicable in determining a summary judgment application, which the Master applied, take into account that if the matter were to go to trial there would be more evidence. It is only when, as here, the answer is nonetheless so clear that the Appellant has no real prospect of success, even allowing for further evidence, that the test is met.
>
> 13. In my judgment, there is no real prospect of the appeal court concluding that Master Davison's reasons were inadequate, or that his conclusions were wrong."

The application before me and my reasons

29. The essential point made by Mr Oakley in his renewed application before me on behalf of the Appellant was that Master Davison and Steyn J had misapplied or not explained properly the application of s 11 of the Civil Evidence Act 1968 on the facts of this case. He said that the burden of proof had not been shifted to the Appellant as a consequence of Hashem Abedi's conviction. He said that Master had not applied the summary judgment test properly, and the Appellant had been denied a fair trial. His client's evidence had not been considered. The Issues should have been dealt with as preliminary issues rather than on a summary judgment application.

30. I was satisfied, having given Mr Oakley the full opportunity to advance his client's case, that the application was without merit and that an appeal would have no prospects of success.

31. I agree with the Master's analysis and Steyn J's analysis and do not need to add much. The following are my additional reasons.

32. I do not dispute that the Appellant has the right to a fair trial. That right is aided by the CPR and in particular Part 24, which enables summary judgment to be given in relation to issues on which the relevant party has no prospects of success, so that the parties' attention, and the trial, can focus on the matters which are properly in issue. The Master rightly identified the Issues as proper ones for summary determination under CPR Part 24 and applied the summary judgment test correctly

33. Section 11 was properly applied by the Master and by Steyn J. Its application here is so obvious as to require little explanation and I reject the suggestion it was not properly applied or explained. Section 11 provides:

> "(1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom or of a service offence (anywhere shall (subject to subsection (3) below) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.
>
> (2) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in the United Kingdom or of a service offence -
>
> (a) he shall be taken to have committed that offence unless the contrary is proved; and
>
> (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted, shall be admissible in evidence for that purpose."

34. In this case a relevant issue is whether persons were murdered and there was an attempt to murder others (including the Respondents). The conviction of Hashem Abedi on a joint enterprise basis with his brother of murder and attempted murder is therefore relevant and, according to *CXX v DXX* [2012] EWHC 1535 (QB) (cited by the Master and analysed by Mr Oakley), a weighty piece of evidence that Salman Abedi *did* carry out the Bombing and that the Respondents *were* injured by it, as they said they were. The Master directed himself correctly that the burden was therefore on the Appellant to show he had a realistic prospect of success on the Issues.

35. The Appellant put forward a witness statement and exhibits, including his book. His book is said to express his 'opinions' only and, as I observed at the hearing, if that is right, then what he says in it is likely not admissible. His witness statement consists of his own commentary and 'analysis' of publicly available material, and his commentary and opinions are also of questionable admissibility. It also contains his own views on medical evidence concerning the Respondents and their injuries, which are certainly not admissible because he is not medically qualified. The report he has adduced from a retired orthopaedic surgeon says nothing of relevance.

36. In all, the Appellant's evidence does not come close to establishing any sort of case whatsoever. The suggestion that third party disclosure might yield something which

would lead to the conclusion that the Bombing was all a hoax can be dismissed out of hand as beyond far-fetched.

37. The Master was therefore right not to engage with the detail of the Appellant's evidence. I quote [85]-[89] of the Appellant's witness statement (under the heading 'Summary of What I Think Happened'), whose ridiculous absurdity I think I can let speak for itself:

> *"A Staged Operation using an Intelligence Asset as an Alleged Perpetrator*
>
> 85. Based on extensive research and investigation, I hold firm to the belief that the Manchester Arena incident was a meticulously planned operation involving various public sector agencies. I contest the narrative surrounding the alleged perpetrator, asserting that he was a controlled intelligence asset observed on CCTV prior to the attack, obtaining materials for a device. I do not subscribe to the notion that he perished in the incident but rather evaded the scene in a grey Audi vehicle, later being apprehended by regular police and subsequently cleared.
>
> *The Recruitment of Participants and the Simulation of a 'Terrorist Attack'*
>
> 86. My investigations indicate the involvement of numerous recruited members of the public, potentially a hundred or more, in a simulated terrorist attack. Some participants were tasked with portraying fake injuries intending to relay fabricated experiences to the media and the public.
>
> *Co-ordination by a Central Government Agency*
>
> 87. I suspect that a national government agency orchestrated and coordinated this operation, facilitated at a local level by the counter-terror department situated at Greater Manchester Police Headquarters. The department's liaison officer is presumed to have played a key role in organizing the event and recruiting arena staff to participate.
>
> *Limited Insight and Knowledge within the Emergency Services*
>
> 88. While I suspect that a select few within the emergency service teams were probably briefed and were aware of the staged nature of the event, I suspect the majority of personnel, including those in control rooms, operated under the assumption of a genuine emergency. Chains of command potentially hindered normal response protocols. The use of a loud pyrotechnic device contributed to the perceived realism, deceiving witnesses in the City Room.
>
> *Faked Deaths and Serious Injuries from the Event*

> 89. Individuals such as Martin and Eve Hibbert, visibly injured, were likely harmed before the attack and recruited but did not attend the concert. Moreover, I suspect that approximately three individuals may have perished before the concert due to accidents or natural causes, their deaths exploited to fabricate genuine grief among families. I hold the belief that others purported to have died might have started new lives abroad, an aspect that might seem implausible but, I believe, was part of extensive planning."

38. It is for these reasons that I dismissed the renewed application for permission to appeal.