Neutral Citation Number: [2018] EWCA Crim 2868

Case Nos: (1) 201705125 B4 (2) 201705132 B4 (3) 201802846 B4 (4) 201705616 B4 (5) 201705134 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT
HIS HONOUR JUDGE LUCRAFT QC

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2018

Before :

LORD JUSTICE BEAN
MRS JUSTICE MCGOWAN DBE
and
HIS HONOUR JUDGE DEAN QC (SITTING AS A JUDGE OF THE CACD)

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Between :

(1) "H"	**Appellants**
(2) SAMMI TESFAZGI	
(3) RILIND TAHIRI	
(4) ASHLEY MCFARLAND	
(5) KIM MCFARLAND	
- and -	
R	**Respondent**

- -
- -

T Allen QC and R Keene for H; **C Royle** for Tesfazgi**; I Henderson QC** for Tahiri; **N Fooks** for Ashley McFarland; **B Maguire** for Kim McFarland
B O'Neill QC and E Dummett for the Crown

Hearing dates : 13 December 2018

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Approved Judgment

Lord Justice Bean :

1. On the afternoon of 8 December 2016 a 21 year old man named Yasir Beshira was shot in a side street off Kilburn High Road, London NW6. He was pronounced dead at the scene an hour later. A post-mortem examination confirmed the cause of death to be a single gunshot wound to the abdomen.

2. H, Sammi Tesfazgi and Rilind Tahiri were charged with his murder. Ashley McFarland and Kim McFarland, respectively the father and grandmother of H, were charged with assisting him in the days after the shooting with intent to impede his apprehension and prosecution. Following a trial at the Central Criminal Court before HHJ Lucraft QC and a jury, H and Tesfazgi were convicted of murder and Tahiri of manslaughter. Ashley and Kim McFarland were convicted of assisting an offender. H and Ashley and Kim McFarland now appeal against conviction by leave of the single judge; Tesfazgi and Tahiri renew their applications for leave to appeal against conviction after refusal by the single judge.

3. The prosecution case was that H, then aged 15, confronted and shot Mr Beshira. The incident may have been connected to drug-dealing. Tezsfazgi and Tahiri provided intentional support and assistance to H. They had collected him from near his home and took him to and from the scene in a stolen Range Rover. The three men were shown on CCTV footage driving past a William Hill shop on Kilburn High Road 15 minutes prior to the shooting. This shop was known to be used by the deceased as a base for drug supply. Tesfazgi and Tahiri waited nearby while H carried out the shooting. They then drove him back to his home address.

4. The Range Rover was recovered the following day. It had been destroyed by fire. Cell site evidence and mobile phone records suggested that Tesfazgi and Tahiri had been involved in the theft of the Range Rover on 21 November 2016 and that Tahiri had set it alight on 9 December 2016.

5. The firearm used in the shooting was not recovered but casings were found at the scene. A firearms expert expressed the opinion that the weapon used to kill Mr Beshira had been used in a non-fatal shooting nine weeks previously to which Tesfazgi was linked by forensic evidence: his DNA was found on a knife recovered from that scene. The prosecution case was that either H was in possession of the firearm when he got into the Range Rover or he was given it by Tesfazgi or Tahiri once inside the car.

6. The prosecution case against Ashley and Kim McFarland was that they knowingly assisted H by making arrangements for him to leave London on the night of the shooting and made and assisted with a false report to the police as to his whereabouts. H lived with his grandmother Kim McFarland in London NW3; Ashley McFarland lived in Hertford. On the evening of the shooting, H left his grandmother's home at around 4:30pm. Mr Beshira was shot shortly before 5.20pm. Cell site evidence showed that H returned to his grandmother's home with Tesfazgi and Tahiri at 5.35pm. There was extensive telephone contact between H and his father and grandmother on the day. At around 9.18pm H' mobile phone was used in Barnet, shortly thereafter Ashley McFarland's mobile phone moved away from his phone in Hertford towards Barnet. The prosecution case was that Ashley McFarland met his son in Barnet and took him back to Hertford. There was no further activity recorded on H's mobile phone, which appears to have been disposed of when father and son met in Barnet.

7. Cell site evidence demonstrated that Kim McFarland was at home on the evening of the shooting. The next morning she reported to the police that her grandson was missing. She stated that she had not seen him since the previous afternoon. Mobile phone evidence showed that she had made a number of telephone calls to Ashley McFarland that same morning prior to making the report to the police. Over subsequent days she continued to tell police that she did not know where her grandson was. She gave them misleading information about his mobile phone and the clothes that he had been wearing on 8 December 2016.

The defence cases

8. By his defence case statement H denied any involvement in the murder. Shortly after it had taken place he heard that he was being blamed for it and so decided to leave London as he felt he was in grave danger. He accepted that he had gone to Hertford for a period of time but did not stay with his father. He alleged that he did not see his father when staying in Hertford and denied telling his grandmother anything about where he had gone. He did not give evidence at the trial.

9. By his defence case statement Tesfazgi denied any knowledge of or involvement in the shooting or its planning. He accepted that he had been the front seat passenger in the Range Rover on 8 December. His case was that he and Tahiri had given H a lift to Kilburn in order for H to buy some cannabis. Tesfazgi gave evidence in chief at trial and had been cross-examined for some 45 minutes before the case was adjourned for the day. He then refused to return from prison to court to be cross-examined further.

10. Tahiri denied any knowledge of or involvement in the shooting or its planning. He accepted that he was the driver of the Range Rover and that he knew it to be stolen. He denied any knowledge of the firearm used by H. He accepted that he had been involved in the burning of the Range Rover has he was aware of rumours concerning who was responsible for the shooting. He gave evidence at trial and was cross-examined.

11. By his defence case statement Ashley McFarland denied that his son had stayed with him in Hertford. He accepted that he had travelled to Barnet to meet his son on 8 December 2016 but alleged that it was for another purpose and that in fact he and his son had not met that day. Until 15 December 2016 he did not know that the police wanted to speak to his son in relation to a murder. He did not give evidence at trial.

12. Kim McFarland maintained that the report she made to the police was genuine. She denied that she had been aware that her grandson had been involved in a relevant offence. She gave evidence and was cross-examined at trial.

13. The judge gave leave for the prosecution to adduce certain evidence of bad character and evidence relating to the previous shooting to which Tesfazgi was said to be linked. We shall come to the details later.

14. In his detailed written directions of law and "route to verdict" guidance the judge directed the jury that the first issue was whether or not H had shot Yashir Beshira; and, if so, whether or not he was party to a joint enterprise to kill or cause serious harm to Mr Beshira and whether or not Tesfazgi and/or Tahiri were parties to that plan. He also gave appropriate directions in respect of the case against Ashley and Kim McFarland.

15. The jury returned the verdicts of guilty to which we have already referred, in each case by a majority of 11-1. The grounds of appeal against conviction as settled by counsel in each case, and in respect of which the single judge gave leave, all relate to bad character.

The bad character evidence and rulings

16. In a ruling on bad character and admissibility given orally in the course of the trial and confirmed in writing on 26 September 2017 the judge dealt with a number of applications by the prosecution. The ruling is careful and comprehensive and runs to 83 paragraphs. We will do no more than to summarise it.

17. One issue related to the evidence of events on 6 January 2017. The prosecution submitted that Tesfazgi was linked through forensic evidence to a large kitchen knife found in a high value stolen vehicle near his home address. The judge refused this application,

18. The next issue concerned the events of 17 January 2017 and related to both Tesfazgi and Tahiri. A more significant application concerned a series of events relating to Tesfazgi and to some extent Tahiri. On 21 September 2016 Tesfazgi was shot and injured in London NW3. Following that shooting Tesfazgi was treated in hospital. When the police visited him the next day he refused to assist them in any way.

19. Eight days later another non-fatal shooting occurred in London NW5. The same firearm and similarly marked ammunition were used on that occasion as in the killing of Mr Beshira on 8 December 2016. A knife bearing Tesfazgi's DNA was found in the area close to where a car was seen waiting to drive the gunman away. The defence submitted that there was no evidence that the knife found in the street on 29 September 2016 had been left at the time of or was linked to the shooting on that day. There was no evidence linking the victim of that shooting, a Mr Sadiq Ahmed, to either the defendant or the deceased in the instant case.

20. The judge ruled that the evidence relating to the shooting of Tesfazgi on 21 September 2016 was clearly admissible as being evidence which was highly relevant to the events that took place on 8 December 2016 and that the evidence relating to the recovery of the knife on 29 September 2016 was also admissible: the latter was "evidence of bad characters as it may show that Tesfazgi has been involved in another shooting incident". He held that the evidence of both events was relevant to the issue of motive in relation to Tesfazgi.

21. We consider that the 21 and 29 September 2016 evidence was not bad character evidence at all. Plainly it was relevant and probative; and because of the prosecution expert evidence that the same firearm was used on 29 September 2016 as had been used to kill Mr Beshira we consider that it fell within section 98(a) of the 2003 Act in that it had to do with the alleged facts of the offence with which the defendant was charged: the judge noted this point at paragraph 40 of his ruling. It was therefore admissible on general principles subject to the discretion under s 78 of PACE to exclude it. We do not regard it as even arguable that the judge ought to have excluded it. It was of course open to counsel for Tesfazgi to seek to persuade the jury that the fact of the knife being found in the street so close to the scene of the shooting of that day was no more than an unfortunate coincidence. But that was a decision for the jury, not for the judge, to make.

22. The next application concerned both Tesfazgi and Tahiri. On 17 January 2017 the two men were stopped by the police in a stolen car. The car was found to contain two large knives (one on the driver's side of the car and one on the front passenger side), a sawn-off shotgun and compatible ammunition. Both defendants were convicted in the Crown Court at St Albans in June 2017 of various offences arising out of these events: possession of a prohibited firearm, possession of the two bladed articles and aggravated vehicle taking. (Tesfazgi applied for leave to appeal against conviction; this was refused by the single judge and subsequently by this court, differently constituted, on 17 April 2018 ([2018] EWCA Crim 881)). Their sentencing was postponed until the trial of the present charges had concluded.

23. Counsel for Tesfazgi and Tahiri sought to exclude each element of the bad character evidence save for an acceptance of their involvement in the use of stolen cars. Mr Allen QC for H also submitted that all the evidence (including that of the shooting of Tesfazgi) should be excluded pursuant to section 101(3) of the 2003 Act on the grounds that it would have such an adverse effect on the fairness of the proceedings as against his client that the court ought not to admit it. There were also points taken about late service of notices which have not been pursued in this court.

24. The judge ruled that the evidence of the convictions at St Albans in respect of the incident in January 2017 was admissible as against both Tesfazgi and Tahiri. The circumstances were of relevance when the jury was considering the events of 8 December 2016. Having referred to section 101(3) of the 2003 Act as well as to section 78 of the 1994 Act he held that the evidence, albeit prejudicial to the defendants, would not have such an adverse effect on the fairness of the proceedings that it should not be admitted.

25. The evidence that Tezfazgi and Tahiri had been convicted of travelling in a stolen car in possession of a sawn off shotgun and two large knives was relevant to propensity and to the issue of whether they were aware, when giving H a lift in the car, that he had a gun with him. The judge was right to admit it as against those two defendants. He correctly directed the jury that it was not evidence against H.

26. The final pair of bad character applications by the prosecution related to Ashley and Kim McFarland and to convictions recorded against each of them in 2014. In 2013 Ashley McFarland had been serving a ten year sentence of imprisonment for three offences of armed robbery imposed on 2 September 2010. He absconded on 16 November 2013. On 7 February 2014 police officers went to Kim McFarland's home in London NW3. One of the officers could see Ashley McFarland through a front window. When questioned about her son, she replied "Who? I don't know what you are talking about?" She told the police that there was no-one present apart from herself and a young boy who was with her. A short while later armed officers carried out a forced entry and eventually Ashley McFarland was apprehended. On 17 March 2014 she was convicted of harbouring an escaped prisoner, namely her son.

27. The prosecution did not seek to place before the jury that fact that Ashley McFarland had been convicted of armed robbery, but did seek to adduce that he had been convicted of serious offences of violence.

28. Counsel for both the McFarlands opposed the prosecution application. Mr Corsellis, on behalf of Kim McFarland, supported by Mr Fooks on behalf of Ashley McFarland,

submitted that although the prosecution did not put the application on the basis of propensity that was in fact the reality of the basis for the application. He submitted that as regards the previous conviction of Ashley McFarland the prosecution's wish to tell the jury that he had been in custody for serious offences of violence was highly prejudicial and might also have led the jury to speculate about the nature and gravity of the previous conviction. If, contrary to his primary submission, anything was to be said about the offence for which Ashley McFarland had been sent to prison the jury should be told the truth, namely that the offence had been armed robbery.

29. It was suggested by Mr Allen QC for H that the evidence of Ashley and Kim McFarland's conduct in 2014 risked unfair prejudice to his client in the form of an illegitimate line of reasoning that he was more likely to be guilty of murder because of the profoundly criminal family to which he had been born. The judge held that this could be dealt with by a careful direction to the jury warning against any such line of reasoning.

30. The judge held that the evidence of bad character concerning Ashley and Kim McFarland was admissible and that it would not have such an adverse effect on the fairness of proceedings (in particular in its impact on the first defendant) that he ought not to admit it. When summing up he gave appropriate directions as to how the jury should approach that evidence.

31. The prosecution had applied to introduce the evidence that Kim McFarland had harboured Ashley McFarland when the latter was wanted by the police as an escaped prisoner on the basis that it was relevant to an issue in the case. But in our view it could equally well have been admitted as evidence of propensity of either or both of the McFarlands to do what they could to prevent the apprehension of a family member wanted by the police or to assist him to avoid apprehension.

32. Before us Mr Maguire (appearing in this court on behalf of Kim McFarland) submitted that the judge's direction to the jury was akin to a propensity direction and that this was unfair to his client. We disagree. The distinction in the present case between treating this evidence as going to an issue in the case and treating it as evidence of propensity is such a fine one that it was scarcely worth making. The judge circulated his legal directions in draft, invited suggestions for amendments and, so far as we have been made aware, accepted all of them. No one suggested at the time that this direction was inadequate in law and in our view it was not. The ruling as to admissibility was also clearly right.

33. We do not think it was relevant for the jury to know that the offence for which Ashley McFarland had been sent to prison (whether expressed as "armed robbery" or as "a serious offence of violence") but in the overall picture of the case this was a very minor point. Certainly it does not call into question the safety of Ashley McFarland's conviction, let alone that of any of the other defendants.

Tesfazgi: the false impression issue

34. On 21 September the judge was asked to make a separate ruling on bad character on an issue which concerned Tesfazgi alone. Tesfazgi was asked by his counsel (Mr Clark QC) in chief what he was doing for a living as of December 2016. He said that he was buying and selling stolen cars and that was something which he did together with the

third defendant, Tahiri. As we have already noted, Tesfazgi gave his evidence in chief. He was then cross-examined on behalf of those co-defendants who wished to ask questions and his cross-examination by the prosecution had begun. Thereafter he refused to return to court. The prosecution application was dealt with in his absence, quite rightly without objection. Mr O'Neill QC sought to adduce evidence of Tesfazgi's previous convictions pursuant to Section 101(1)(f) of the Criminal Justice Act 2003 to correct a false impression. The prosecution submission was that the impression given by the defendant's evidence is that he was a handler of stolen vehicles and no more. He submitted that character is not divisible and that all the appellant's previous convictions should be admitted. The appellant, who was 21 years old, had a total of 18 convictions spanning some 30 offences. The most recent (which were the ones which the judge allowed to be adduced in evidence), were in the Crown Court for affray, wounding, assault on a custody officer and two offences of the possession of a knife or bladed article.

35. The defence submitted in response that character is divisible and that in any event what Tesfazgi had said in evidence did not give a false impression. He had merely adopted the prosecution case that he was in a car which he knew to have been stolen. He has not made any statement to the effect that such activity was the only criminality in which he had engaged. He reminded the judge that Section 105(6) of the 2003 Act lays down that evidence is admissible under Section 101(1)(f) only if it goes no further than is necessary to correct the false impression. He also referred to a paper on bad character evidence by Professor David Ormerod and to the case of *Weir* [2005] EWCA Crim 2866 where this court saw no reason to doubt that section 78 of the Police and Criminal Evidence Act 1984 should be considered where section 101(1)(f) applies (though section 101(3) of the 2003 Act does not apply).

36. Mr Henderson QC on behalf of Tahiri supported the arguments made on behalf of Tesfazgi and said that his client might be in a similar position as his case also involved him buying and selling stolen cars. The judge said that impression given by the relevant question and answer in Tesfazgi's evidence had been that in December 2016 he either handled stolen cars or was involved in the theft of cars for a living. Had Tesfazgi simply accepted that he had been in the Range Rover and that the vehicle had been stolen, this would not have given a false impression. However, after referring to section 105(6) of the 2003 Act he limited the evidence to offences committed from January 2014 onwards. He considered section 78 of the 1984 Act but ruled that the admission of the evidence would not have such an adverse effect on the fairness of the proceedings that it ought not be admitted. He said that he would (and in due course he did) give careful directions about the way in which the jury could use the evidence.

37. We consider that the judge was right to allow this evidence to be admitted under s 101(1)(f). The purpose of Tezfazgi telling the jury that he was a dealer in stolen cars was clearly to give the jury the impression that that was the reason he happened to be in one while giving H a lift, rather than that the car had been stolen to order with a view to it being the vehicle used to convey H to and from the scene of the killing of Mr Beshira.

38. It follows that none of the points raised in this court in the various defendants' grounds of appeal succeed.

The fresh evidence

39. By notice of 2 December 2018 the prosecution applied to adduce as fresh evidence a statement of Hayley Mullen, the case manager for H working at the Camden Youth Offending Service. She has been his case manager since October 2016. She states that the boundaries of confidentiality with young people interviewed by the youth offending service are that information is confidential "apart from child protection issues, when someone's life is at risk, when medical treatment is needed, and when criminal activity is involved".

40. On 13 February 2018 Ms Mullen met H at Feltham YOI for a welfare visit following his conviction and sentence for murder. No other people were present. H told her that he was only appealing his sentence. According to her notes:-

> "He said I didn't mean to kill him. I said "so you did do it" and he said he didn't mean to kill him. I said you got a gun and he was shot. He said the gun was pointed down and when it went off it moved up."

41. He then went on to give some details of drug transactions between himself and Mr Beshira. Ms Mullen noted that "H was really remorseful and said he wished he had taken the stand but he couldn't let certain people down".

42. Ms Mullen saw H again on 4 May 2018 when he said that he was seeking to appeal against conviction. On being told this, Ms Mullen said that she did not attempt to explore the offence further with him and on 2 July 2018 told him not to discuss the offence with her, but with his solicitor.

43. On 26 June a multi-agency lifer assessment panel took place to consider H' case. DS Rob Upham attended as a representative of the investigation team. Ms Mullen was not present but attended by telephone. She summarised what H had said to her at the February meeting. DS Upham made notes of those comments and the prosecution have lodged a statement from him dated 16 October 2018 containing them. Ms Mullen was asked to make a statement. By an email of 2 August 2018 she stated that she was not sure that it was her role to assist in preventing H from appealing his conviction. DS Upham replied the next day. He informed her that "this case had moved back into investigation. I stated that she was now a potential witness and I had to manage any risk as we do with all witnesses".

44. Later that day, DS Upham telephoned Ms Mullen. He explained to her that "on her own account" she had heard a confession from H and was now a critical witness. Ms Mullen asked whether she had to make a statement. DS Upham said he did not want at this stage to discuss whether or not at this stage she could be compelled to provide one. She replied later, stating that she had consulted her managers and wanted to clarify why the matter had "moved from offender management to re-investigation". DS Upham replied that he was obliged to pursue all lines of enquiry. There were further email and telephone exchanges. Ms Mullen's manager at Camden Social Services, Julia Simmons, became involved and expressed the view that DS Upham was pressurising and harassing Hayley Mullen into providing a statement.

45. On 8 November 2018 an application was made by Mr O'Neill QC on behalf of the prosecution to a circuit judge in the Crown Court at Harrow for an order that Ms Mullen should disclose her notes of her conversation with H in which he made disclosures to

her. The application was supported by a witness statement from DS Upham which made it clear that the material was being sought in relation to a pending appeal to this court.

46. The hearing took the form of a telephone conference call involving the judge, Mr O'Neill, Mr Allen QC for H and a member of Camden Social Services' legal staff representing the interests of Ms Mullen. We were told that all were agreed that the material was not covered by Ms Mullen's confidentiality obligations. The judge made an order for disclosure and the notes were duly produced.

47. We are very surprised that it was thought appropriate to ask a judge of the Crown Court to make an order in relation to pending proceedings in this court. Mr O'Neill's explanation was that it was "part of the investigation". We are in no doubt that if it is sought in the course of a fresh evidence application to this court to make an ancillary application such as a production order then directions should be sought from this court as to how the matter is to be handled.

48. Turning from the production order to the admissibility of the evidence of Ms Mullen (whether in the form of her witness statement or her original notes). Mr O'Neill submitted that it was in the interests of justice for this evidence to be before this court. It is correct to say that the power to receive fresh evidence under Section 23 of the Criminal Appeal Act 1968 extends to fresh evidence adduced by the prosecution whether or not in rebuttal of fresh evidence adduced by the defence: *R v Hanratty* [2002] 2 All ER 534. Such applications, however, are extremely rare. We asked Mr O'Neill whether he was aware of any case other than *Hanratty* in which such evidence has been admitted and he told us that he was not.

49. Mr O'Neill's application was not merely unopposed by Mr Allen for H but positively supported. Mr Allen submitted that what his client had said to Ms Mullen was "an unusual and frank confession", clearly capable of belief. He submitted (rightly) that if the evidence was admitted for one purpose at the instance of the prosecution it could be relied on by his client as well. It was somewhat ambiguous, although clearly not a confession to murder.

50. We asked Mr Allen whether, if Mr O'Neill had withdrawn the application, he (Mr Allen) would have sought to make it himself on behalf of his client. He said that he would, although he accepted that it would have been a difficult application if made solely on behalf of the defence.

51. We consider that any application to admit this evidence on behalf of the Appellant would have been not merely difficult but hopeless. H did not give evidence at trial. It would be entirely wrong to give him the opportunity of doing so now in this court. This evidence was available at trial and does not relate to anything which came to light for the first time after the trial. There is no reasonable explanation for the failure to adduce the evidence before the jury.

52. We return to the prosecution application. This evidence was of course not available to the prosecution at the trial. Nevertheless, we refused to admit it for several reasons.

53. Firstly, it would in our view be contrary to public policy to breach the confidentiality of discussions of the kind save for very good reason. Such discussions are not subject to privilege in the sense that something a defendant or appellant tells his lawyers would

be; and the internal rules of Camden Social Services (or of any other local authority's officers) are not binding in the courts; but we regard them as well drafted, sensible and worthy of respect. There is a distinction between disclosure necessary to avoid imminent future criminality (in particular a threat to someone's life or safety) and the obtaining of admissions to past offences. It would be extremely unfortunate if convicted defendants (whether young or adult) were deterred from speaking to those charged with their supervision or rehabilitation until any appeal against conviction had been dealt with.

54. Mr O'Neill submitted that what happened in this case was no different in principle from what frequently occurs when a defendant is interviewed for the purpose of the preparation of a pre-sentence report in the Crown Court: if he makes an admission it may be used against him in in opposition to an appeal. We do not accept that the two situations are analogous. Any defendant interviewed for the purposes of a pre-sentence report will be told, and would be advised by any competent legal representative, that what he says will be placed before the judge.

55. Quite apart from this consideration of public policy we do not consider that the fresh evidence is relevant to the grounds of appeal in the present case. None of these defendants' appeals or applications for permission to appeal against conviction are based on (for example) a submission that the verdict of the jury was against the weight of the evidence or that a submission of no case to answer was made and should have succeeded. As will be seen from this judgment the grounds of appeal related entirely to the judge's rulings on the admissibility of evidence of reprehensible behaviour (and the evidence relating to Tesfazgi and the events of 21 and 29 September 2016). Mr O'Neill's attempt to rely on the fresh evidence seems to us to amount to a submission that we should not worry about any error made by the judge in admitting evidence because H, at least, has now admitted that he was the gunman.

56. Consequently, we heard and determined this case on the basis of the grounds of appeal as originally drafted. For the reasons we have given the appeals against conviction by H, Ashley McFarland and Kim McFarland are dismissed and the applications for leave to appeal against conviction by Tesfazgi and Tahiri are refused.

Sentence

57. H and Tahiri appeal against sentence with the leave of the single judge; Ashley McFarland seeks leave to appeal against his sentence of 5 years imprisonment after refusal by the single judge.

58. Tesfazgi and Kim McFarland have not sought to challenge their sentences. Tesfazgi was sentenced to life imprisonment with a minimum term of 27 years taking into account the St Albans offences for which concurrent determinate terms totalling 6 years were imposed. Kim McFarland was sentenced to 3 years' imprisonment.

59. H was sentenced to detention at Her Majesty's pleasure for life with a minimum term of 20 years. Since he was only 15 years, 11 months of age at the time of the murder the statutory starting point was 12 years. It would have been 30 years had he been over 18.

60. On his behalf, Mr Allen QC accepts that the use of a firearm by a young defendant convicted of murder must inevitably result in an increase in the minimum term, though he submits that the court should not simply double the minimum term which would otherwise have applied. He also accepts that the element of pre-meditation in the case is another aggravating feature. He submits, however, that there are substantial mitigating factors in is client's case: firstly that he was not yet 16 years old when he committed the offence; secondly, that he had what Mr Allen described as "an appalling and turbulent upbringing" with his father serving several years in prison beginning when H was a child of four and his mother addicted to drugs. Mr Allen also submitted that the judge, having made a finding that H intended only to cause grievous bodily harm to the victim rather than to kill him, failed to give sufficient weight to that factor.

61. In our view, the most significant of these factors is the defendant's age at the time of the shooting. There is force in the submission that taking this and the other points in mitigation into account the minimum term of 20 years was excessive. We allow H' appeal against sentence to the extent that we quash the minimum term of 20 years and substitute a minimum term of 18 years.

62. Tahiri was convicted in the present case of manslaughter only. However, he also had to be sentenced in respect of the convictions at St Albans in June 2017 for possession of a sawn-off shotgun and two "Rambo" knives, and aggravated vehicle taking. The judge found that Tahiri was a dangerous offender and that a sentence of life imprisonment for the offence of manslaughter was necessary to protect the public. He imposed a minimum term of 14 years. This took into account the St Albans offences, for which he imposed concurrent determinate sentences amounting to 6 years imprisonment.

63. Mr Henderson QC on behalf of Tahiri submits that the judge was wrong to make a finding of dangerousness and that a long determinate custodial sentence for his client, who was only 20 at the time of the shooting, would itself have been sufficient for public protection; alternatively he submitted that an extended sentence would have been sufficient for that purpose.

64. We disagree. Tahiri, like Tesfazgi, had been closely involved with a planned and targeted shooting, albeit that the jury accepted that it had not been shown that his intention was that Mr Beshira should suffer really serious harm. He had also been found in the St Albans incident to be in possession of a sawn-off shotgun and two "Rambo" knives. The judge was clearly entitled to find that there was a significant risk to the public of serious harm occasioned by the commission of further serious offences of violence by him and that only a life sentence would sufficiently protect the public.

65. As to the length of the minimum term, the judge referred to and bore in mind (there being at that stage no guidelines from the Sentencing Council in force for manslaughter) the guidance given by this court in the cases of *Attorney General's Reference nos. 60, 62, and 63 of 2009 (Appleby)* [2009] EWCA Crim 2693 and *Attorney General's Reference no. 16 of 2014 (Gill)* [2014] EWCA Crim 956. In the present case a loaded firearm had been taken to the scene and discharged. There was a significant degree of planning and premeditation. The Range Rover which had been used was destroyed together with Tahiri's mobile phone. Tahiri had relevant previous convictions for violence and the use of weapons. The St Albans offences had to be taken into account as well. In the light of all these factors we do not consider that the minimum term of 14 years imposed on Tahiri was excessive and his appeal against sentence is dismissed.

66. Turning to the sentence of 5 years on Ashley McFarland: he had a very bad record including sentences of 6 years for firearms offences imposed in 2005, a total of 10 years for four robberies and four offences of possession of an imitation firearm imposed in 2010 and 6 months in 2014 for the escape from lawful custody to which we have referred. He contested the present case but was convicted by the jury. Mr Fooks submits that since his release in 2014 he had gone some way to turning his life around and this had been an unfortunate relapse for which a five-year sentence was excessive. We consider that, as the single judge observed, this was a severe sentence, but a deserved one. The judge undertook a careful sentencing exercise and the sentence was neither excessive nor manifestly wrong in principle. The renewed application is dismissed.

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