

IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA CRIM 1181



No. 202101954 B3
202203333 B3

Royal Courts of Justice

Tuesday, 25 July 2023

Before:

LADY JUSTICE SIMLER
MR JUSTICE GOOSE
SIR ROBIN SPENCER

REX
V
SHAMADUL ISLAM
MOHAMMED ALI

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Mr T. E. Clark KC appeared on behalf of the Applicants Islam and Ali.
The Crown were not represented.

J U D G M E N T

LADY JUSTICE SIMLER:

Introduction

- 1 On 6 May 2021, in the Crown Court at Luton before His Honour Judge Evans, the applicant Shamadul Islam, then aged 21, pleaded guilty to two counts of conspiracy to supply class A drugs. Those were counts 2 and 3. There followed a trial before the same judge and a jury. On 28 May 2021, Islam was convicted of blackmail (count 1), two counts of false imprisonment (counts 4 and 5), possession of an imitation firearm with intent (count 7), two counts of assault (counts 8 and 9) and criminal damage (count 11).
- 2 At the same trial, and also on 28 May 2021, the applicant Mohammed Ali, then aged 20, was convicted on counts 2 and 3 of conspiracy to supply class A drugs, false imprisonment (counts 4 and 5), assault (counts 8 and 9), criminal damage (count 10) and possession of a bladed article (count 13). He, like Islam, was acquitted of false imprisonment (count 6).
- 3 On 10 February 2023, His Honour Judge Evans passed a total sentence of eight years and eight months' imprisonment in respect of Islam and in respect of Ali, an extended determinate sentence of 10 years, comprising a seven-year custodial term and an extended licence period of three years to run consecutively to a two-year sentence of immediate imprisonment. Ancillary orders were made.
- 4 There were other co-accused who were convicted and sentenced at the same time. They were Naimour Ahmed who was convicted of conspiracy to supply class A drugs (counts 2 and 3) and received a sentence of four years' imprisonment. Amiral Hussain pleaded guilty to the counts 2 and 3 conspiracy to supply class A drugs, criminal damage and to two other offences not on the trial indictment, and he, too, received a sentence of four years' imprisonment. Reece Thandi pleaded guilty to the same conspiracy to supply class A drugs (counts 2 and 3) and to criminal damage and was sentenced to a 12-month community order with various requirements. Daniel Kight pleaded guilty to the same class A drug conspiracy,

criminal damage, and was sentenced to a 12 month community order with requirements.

- 5 Both applicants now seek leave to appeal their convictions.
- 6 Islam applies for an extension of 379 days in which to renew his application for leave, following refusal by the single judge. He pursued a timely appeal but on different grounds. The single judge's decision refusing leave was sent to him on 17 November 2021 with the usual indication that unless the application was renewed within 14 days no extension of time would be granted unless the circumstances were wholly exceptional. His renewed application out of time does not rely on any of the original grounds but seeks permission to vary, as we shall discuss below.
- 7 Ali seeks an extension of time of 510 days in which to seek leave to appeal against conviction. His draft ground of appeal is dated 10 October 2022, and his application has been referred by the Registrar to be considered on the papers at the same time as Islam's application is considered because they raise the same point and should properly be considered together.
- 8 In both cases, leave pursuant to section 23 of the Criminal Appeal Act 1968 is sought to rely on purported fresh evidence from Tamie Cormack who was not a witness at trial but who was present during the alleged incident. The applicants contend that the evidence casts doubt on the credibility of the evidence given by the complainants at trial and should be admitted in support of this appeal. New counsel, Mr Clark KC, and solicitors Alexander Bennett have been instructed to represent them. We have had the benefit of detailed submissions, both written and oral, from Mr Clark and are grateful also for the assistance from prosecution in the form of a series of respondent's notices with addenda that deal helpfully with the issues now raised.
- 9 In *R v James* [2018] EWCA Crim 285, [2018] 1 Cr App R 33, this court gave clear guidance that on any renewed application following refusal of permission by the single judge, leave

will not be given out of time unless the applicant can persuade the court that very good reason exists. If the application to renew out of time is accompanied by an application to vary the grounds, the hurdle is higher. The court will take into account the extent of and reasons for the delay in advancing the new grounds, whether the issues or facts giving rise to the new grounds were known to the applicant's representatives when they were advised regarding their original grounds, the overriding objective referred to in CrimPR r.1.1, namely acquitting the innocent and convicting the guilty, and dealing with cases efficiently and expeditiously. Naturally, the interests of justice must be considered.

10 Mr Clark first advised in writing on 12 August 2022. He has submitted, both in writing and orally, that neither the failure to contact Tamie Cormack, nor the delay in this case is the fault of the applicants. Once he was instructed, he had to review the grounds on which leave had been refused. Having concluded that there could be no criticism of the failure to apply for leave to renew, he had to contact trial counsel and obtain the Cooke responses from them. In any event, he submitted that the evidence of Tamie Cormack meets the criteria in section 23 of the Act and gives rise to an arguable ground of appeal. There would be significant injustice were the evidence of Tamie Cormack considered worthy of belief, if both applicants were deprived of the opportunity to rely on that evidence.

11 Notwithstanding these submissions, we consider there has been unacceptable delay in applying for leave to advance fresh grounds in this case, and we are not persuaded that the delay has been satisfactorily explained, both in relation to the time taken for instructing a new legal team, obtaining the relevant material and fulfilling all necessary requirements. Nevertheless, as will become clear, we have considered all the material, including the evidence of Tamie Cormack and the new ground of appeal on the merits before reaching a final conclusion on disposal.

The Facts

12 There were four tenants staying in a flat at 4 De Parys Avenue (Flat 10). They were Tamie

Cormack, Jodie Cooke, Claire Bennett and Shaun Burrows. All, apart from Tamie Cormack, were complainants in the case and subsequently gave evidence at trial. The guilty pleas to which we have already referred of Islam, Hussain, Thandi and Kight were evidence that there had been a drugs operation running from Flat 10 on or before 11 March 2020.

- 13 The prosecution's case at trial was that Islam (who was known as "S") was the leader of the Ginger Line drugs network. Thandi (also known as "Chunks") and Kight did the bagging up and acted as couriers. Other older men attended Flat 10 less often to keep an eye on what was going on and had more senior roles. The flat was, on the prosecution's case, "cuckooed" earlier in the year and all occupants were part of the drugs operation.
- 14 On 13 February 2020 reports were received by police regarding incidents both at 4 De Parys Avenue and at Chandos Court. CCTV images captured five men going into Chandos Court, the home address of Jodie Cooke's mother. Some appeared to be carrying weapons. Ultimately, Hussain, Thandi and Kight pleaded guilty to the criminal damage which occurred that evening. The police attended at around 9 pm that evening and arrested Islam, Ali, Ahmed, Hussain and Thandi. Kight was arrested a month later.
- 15 The prosecution's case was that a quantity of drugs had gone missing and when this was discovered, Islam ordered that the complainants be detained at Flat 10 until the drugs (which were presumed stolen) were returned. He took the lead in what happened next. He punched and slapped Burrows and threatened him with a firearm. Ali (who was also known as "Reckless" or "Rakz") was present and joined in with threats with the weapon and with assaults. Ahmed was part of that gang. Islam demanded money from Burrows. The men later went to Cooke's mother's flat in Chandos Court, damaging the door as they tried to force entry there.
- 16 Claire Bennett later gave a report of an account of what she said happened and she confirmed that account in evidence at trial. She said Burrows and Cooke were slapped several times and were accused of stealing a drugs package. She saw this happen. The men

would not let Burrows leave the living room. She was scared because she knew they had weapons and had pointed a gun at her head and at Burrows's head. The gun had been in the flat for a few days. She also saw a man with a spoon. She heard Burrows being told to take down his trousers and heard him complaining of pain. She said she did not know the names of the men but there were four or five of them, all Asian apart from one (a man called Thandi). Thandi and another had been at the flat for about a month. The men said no one could leave the house until they got their money. Burrows transferred some money into her account, and she had to take it out for him on 12 February but did not know what he had done with it.

17 In cross-examination she agreed Burrows often gave money to her as he did not have a bank card and she said that they used that money, among other things, to purchase drugs. She accepted in cross-examination that she did not remember a great deal about what had happened but said that the three complainants had not talked to one another about the events since. She denied telling police that she was just saying what Burrows wanted her to say, insisting that she had witnessed the events reported.

18 Shaun Burrows's account, which he too confirmed in evidence at trial, was that an Asian man, known to him as S or Ginge, accused him of stealing drugs. He was called into the front room at the flat, strip searched, slapped and punched before they hit Cooke. Cooke fell from her chair and had a seizure. At that point the man threatened to kill him. The assault continued in the kitchen and at one point he had a gun pointed at his head. He was then made to sit in the front room in front of the other men. He described the man Reckless, who had a long knife and messed around with a BB gun, and was about five-foot-six/seven, medium build, short hair, had tattoos, was wearing a long-sleeved coat, a grey puffa-type jacket, dark track suit bottoms and Nike trainers. A man called Chunks was present, as was a man with a name beginning with N, holding an axe. The men, four or five of them, continued the assault.

19 Having been instructed to go to the toilet and discharge the drugs he was thought to have ingested, Reckless got a spoon and inserted it into Burrows' anus. This was very painful. After 10 or 15 minutes in the front room, he and Bennett were sent to the bedroom and told not to leave. He, Burrows, started having withdrawal symptoms. He was only allowed to leave once they found out who had the drugs, but since he was homeless he had nowhere to go. He said the incident lasted a couple of hours. He said Claire Bennett had to go to the bank the next day to get the money to give to them on his behalf. All involved were arrested by police, and he later identified both Ali and Islam in an identification parade.

20 In cross-examination he did not accept that he had been mistaken, and that not all the five men arrested at de Parys Avenue had been involved in the assault and false imprisonment. He did accept that he had been a drug addict since the age of 15 and that he had stolen money and used benefit payments to fund his addiction. Notwithstanding this, he maintained his memory was fairly good. He had not become paranoid as a result of his drug withdrawal symptoms. He had not been lying about the incident. He agreed that he had seen Ali several times at the flat before but denied identifying the wrong man.

21 Jodie Cooke's account, also confirmed in evidence, was that she had been living in the living room of the flat with Tamie Cormack since February 2020. Tamie allowed drug dealing from the flat for a good month. She said a man known as S, described in his early 30s, dark skin, Asian man, scruffy beard, gold teeth, had taken over the Ginger Line. He had been to the flat four times. Rakz, in his early 30s, Asian, with a pencil-line beard, had only been to the flat on the night of the incident and he had control of the gun. A couple of other men had not really been involved. She said S blamed her and Burrows for the missing drugs. They were sat down opposite each other and each had been slapped in turn until she had fallen off the chair and had a seizure. Both S and Rakz had continued to assault Burrows.

22 Burrows, Rakz, Reece, Daniel, Tamie and Nino and another man were in the living room.

Tamie Cormack and Bennett had been in the bedroom. S had ordered Rakz and Chunks to strip Bennett. She was only allowed to get dressed after a gun had been put to her head and she had reached her mother on the phone because the men thought rival drug dealers were at her mother's house. Burrows had taken his own clothes off. She heard him screaming in the toilet when he had been taken there. There had been too many boys with weapons. The weapons included a gun, mallet, axe and machete. S and Rakz had told her that she could not leave. She said Rakz had shown her graphic videos and all had been drinking. Tamie Cormack had been sent to get drinks for them. With the drink they became more and more aggressive. After the men left, she ran into town to alert the police. Statements from probation officers read to the jury at trial confirmed that she attended the probation office in a distressed state, reporting the incident that had occurred at Tamie Cormack's flat and describing what she saw. At an identification parade, she picked out Ali as Rakz, Islam as S and Ahmed.

- 23 In cross-examination, she, too, accepted that she had been a drug addict since the age of 15 and had funded her habit through crime and borrowing. She accepted that her drug addiction affected her memory of events, but denied telling lies about what had happened, and denied wrongly identifying Ali.
- 24 Ali exercised his right to silence when interviewed by the police on two occasions. Islam exercised his right to silence in the first interview with police but provided a prepared statement at the second interview, thereafter exercising his right to silence.
- 25 At trial, the prosecution relied on the evidence of Bennett, Burrows and Cooke about the events at Flat 10 that evening. There was also the phone video footage from 12 and 13 February at De Parys Avenue which showed Kight, Hussain, Ahmed, Islam and another man present and a machete and an axe on the floor. The evidence of the officer in the case, DC Cook, was that although the last man referred to was unidentified, someone could be heard on the audio footage saying "Turn it up, Rakz." There was also evidence from other

phones found in the kitchen at Flat 10 that contained the adverts for drugs for sale to potential customers. There was phone attribution and other evidence linking the accused to one another and to drug dealing. There was evidence of conversations between the conspirators about drugs which had gone missing matching the accounts given by Burrows, Cooke and Bennett. Evidence from the phones also pointed to a conflict with another drug gang, again matching the evidence given by Burrows as to the reasons for the weapons being in the flat. A search of the flat yielded phones, a mallet, a black BB gun, a machete and an axe.

26 There was also CCTV footage of Chandos Court which captured five men coming downstairs. One appeared to be carrying an axe and a knife. Property taken from Ali on arrest included a coat with a ripped bottom which looked like the coat worn by the man with the axe and later the knife. Evidence of a neighbour who had been in bed at Chandos Court with Cooke's mother was read. He said there had been a bang on the door. He thought the door had been kicked in, and the damage appeared to have been caused by an axe.

27 The defence cases were, in general terms, that the offences had not occurred at all and that the complainants were unreliable. The defence relied on previous convictions for dishonesty of Burrows and Cooke, their drug-taking and on discrepancies in their accounts to discredit their accounts.

28 Neither applicant gave evidence at trial. Islam said in his second defence statement that he had been present at De Parys Avenue but denied that any of the incidents described by Burrows, Cooke and Bennett had happened. He did accept that he had not been truthful in his prepared statement given to police and that his first defence statement had not been truthful. He said he had been present at Chandos Court but had nothing to do with any criminal damage there.

29 Ali denied involvement in any of the incidents at De Parys Avenue. He denied being a drugs conspirator or carrying an axe or knife at Chandos Court. His case was that he had been

mistakenly identified by Burrows and Cooke. He knew Cooke from an earlier time in the Bedford area. He, too, did not give evidence at trial.

The Appeal

30 There is one ground of appeal that is wholly reliant on the admission of the so-called fresh evidence.

31 Until Friday 21 July, there were two unsigned statements purporting to be made by Tamie Cormack. A third statement was produced and served that day. Mr Clark explained that inquiry agents had been instructed to find her and had done so, and that he, Mr Clark, had instructed Tamie Cormack to attend court on Friday 21 July having been to solicitors' offices in Luton where she produced and signed a further statement.

32 There is also a Form W and a *Gogana* affidavit from Damien Sabino explaining how he was contacted by Ali on 4 March 2022, who told him Tamie Cormack was prepared to make a statement to say that the false imprisonment was a lie. Mr Sabino checked whether he could talk to Tamie Cormack and subsequently told Ali that he could give Tamie Cormack his contact details. Mr Sabino explained that a person identifying herself as Tamie Cormack contacted him on 5 March, saying she had seen the convictions on the news and that led her to make contact.

33 There is also a longer affidavit from Mr Sabino. He had in fact been provided with contact details for Tamie Cormack in February 2021, that is to say three months before trial. He tried to make arrangements to have a telephone attendance with her in order to obtain a witness statement from her.

34 Trial counsel have been contacted in the usual way. Rodney James, counsel for Ali, confirmed that Tamie Cormack was discussed in conference with Ali. The brief references to her indicated she was believed to be loyal to Jodie Cooke and, by inference, was thought unlikely to assist Ali as a witness. Mr James states that it was unlikely Ali would have been

interested in calling Tamie Cormack because his defence was that he was elsewhere at the time of the alleged offences. In this regard we note that Ali's own statement reads:

"I am unclear as to where Tamie Cormack could have been located after the police intervention. No contact was made from Tamie Cormack to me prior to the trial and there appeared not to be a good reason to ask representatives to attempt to contact Ms Cormack owing to her connection to Jodie Cooke."

35 Mr Bentwood, trial counsel for Islam, confirms there was no discussion at all about Tamie Cormack as a witness with his client. There is a statement from Islam which states he did not have an address for Tamie Cormack after his arrest. He did not instruct his solicitors to contact her because he believed then that she would not assist, either due to her chaotic lifestyle or because of her connections to Jodie Cooke.

36 The first statement of Tamie Cormack confirms she was a tenant of Flat 10. She was removed from the property after the arrests of the various defendants. She confirms that she was the partner of Jodie Cooke at the time and that various individuals involved in this case either visited or lived at the address at the relevant time. She also confirms she and the prosecution witnesses were class A drug users and consumed those drugs at the address. She learned that the defendants had been accused and convicted of false imprisonment and assaulting Cooke and Burrows and the statement says this did not occur. The allegations are untrue. She was present at the address at all times. Drugs were not sold from her address; various people present there were on licence and were keeping out of trouble. The police in the case were "dead set" on the case theory that she and her address were being "cuckooed" despite her explaining that this was not the case and signing a statement to that effect. Jodie Cooke told her that she provided the account she did to police under threat of otherwise being prosecuted.

37 The statement purporting to be Tamie Cormack's second statement deals again with events of the evening concerned. It denied that firearms were present at the address other than the BB gun. Jodie Cooke and Shaun Burrows had an argument which became physical. Others present attempted to break it up before Shaun and Jodie left the address. The prosecution

evidence was all lies, and Cooke may have made up the allegations at the instigation of some unknown rival drug dealer to remove the group from competition. She, again, denied being a victim of "cuckooing".

38 The third and only signed witness statement dated 21 July repeats what was said previously.

Cormack says:

"These allegations are all lies. I have known Jodie for a very, very long time. There's something behind it such as may be another dealer gave her money or drugs to get the boys out of the game. I know Shaun as well. This is all lies. There was never a gun or any violence that took place in my flat with the boys. They respect and look after me so much. Also I have heard from other addicts on the road that Jodie and Shaun never wanted to give evidence. They were scared because of perverting the course of justice and got threatened to be thrown into jail. There never was any kind of assault that took place in my flat. I would never let that happen. Reece is my nephew. Him and his friends are such good sweet boys. I just hate the fact that they are in prison when they are deadly innocent. The boys never saw Jodie or Shaun there in the flat because they were always in the bedroom and the boys stayed in the living room at the times they came ... "

39 Cormack says she was spoken to by police when the arrests were made on the evening concerned. She felt the police were putting words into her mouth and told them that their suggestion of "cuckooing" was completely false. She told them she was willing to give a statement and was told that they would follow it up a couple of days later. The officer in the case came back to her address to collect belongings from the tenants, and, once again, she reminded the officer in the case that she was prepared to give a statement and was told the officer would be back in touch but he never was. She was in hospital from time to time and had been discharged from hospital in August 2021, at which point she came forward to give evidence, going straight to the police station asking why a statement had not previously been taken and that she had just been passed from person to person while the officer in the case refused to speak to her. The result of all that was that she texted Damien Sabino as the police were not listening to her and were not interested in her version of events. She was forced to contact the defence solicitors who were the only ones "who actually listened to

me".

40 Mr Clark submits that the evidence meets the criteria in section 23: it is capable of belief. Tamie Cormack was present throughout the events at Flat 10 on 13 February. Her account is cogent and makes clear that no crimes were committed on that evening. The fact that she is a drug addict puts her in the same position as the other witnesses in the case and should not be held against her or thought to undermine her evidence in those circumstances. Secondly, if true, her evidence blows a hole in the credibility of the prosecution witnesses in the case. Thirdly, as a witness who was present throughout, her evidence would have been admissible.

41 Finally, and he accepts this is a contentious point, he submits there is a reasonable explanation for her not having given this evidence earlier. He relies on the fact that she was not known to the applicants. She was a partner of Cooke. Previous defence counsel make clear that there were very limited discussions about her and it was not thought she could or would assist. There were also difficulties finding her. She was sleeping rough, and, as is now clear, it appears she was in hospital for some time prior to August 2021, possibly in the period of the trial. To the extent that it could be said that the applicants were at fault in not seeking her out, this should be rejected. The fault lies with their solicitors and not the applicants, who were in prison and could not have done very much. Moreover, defence solicitors cannot chase every possible lead and so ought not to be criticised either.

42 As to the conflict in evidence as between Tamie Cormack and DC Cook, he submitted that there is no reason why the court should favour the officer's evidence. He invited the court to accept that this is a case where there is credible fresh evidence that should be admitted.

Discussion and analysis

43 Having considered the new material and the submissions made, we are in no doubt that both applications are unarguable and fall to be refused for the reasons that follow.

- 44 First, to advance this proposed ground of appeal both applicants require lengthy extensions of time. The delay is a fundamental obstacle to them, having regard to the principles in *R v James* which we have highlighted. Having considered all the material, we are not satisfied that there is any good reason to extend time in this case.
- 45 Secondly, we have concluded that the fresh evidence application fails to meet the criteria in section 23 of the Act. First, the two original statements of Tamie Cormack are not capable of belief. Neither is signed. Their provenance is wholly unclear and unreliable and has not been confirmed by any sworn statement from a solicitor who has had direct face-to-face contact with Tamie Cormack. Such contact as there has been, has been through obscure email and other addresses.
- 46 The third statement dated 21 July 2023 is signed but no photographic ID was produced by its author to support her identification despite a direction we made requiring that to be done. Nor is there any sworn evidence from the solicitor, Mr Ali Shah, who took the statement, confirming that proper ID for Tamie Cormack was shown to him. Tamie Cormack has not engaged with or begun to explain the lengthy delays between statements and the period after the trial in August 2021 when she came forward on her own account, and the signed statement of July 2023.
- 47 From the witness statement of DC Cook, the officer in the case, it is abundantly clear that the police have bent over backwards to assist. Neither the Crown nor the police were asked by either defence team in this case to assist in tracing Tamie Cormack in the months leading up to the trial or at any time afterwards. Inquiry agents were only recently instructed and there is no explanation why they could not have been instructed earlier. Nor has Tamie Cormack explained why attempts by Damien Sabino or others in the defence team in February 2021 to liaise with her or take a written statement from her, were unsuccessful. The fact that this contact was attempted wholly undermines her own suggestion that she was deliberately kept away from the trial by police knowing her evidence to be unhelpful to

them.

48 In any event, her evidence is flatly disputed and in conflict with that of DC Cook whose own evidence is consistent with other evidence and, on the face of it, much more reliable. For example, when Tamie Cormack was spoken to after the incident in February 2020, she made clear that she would not help police as to what had happened in her presence at the flat, and she signed the statement to which we have referred. She remained hostile to police thereafter. None of her statements make any reference to the meeting that did take place between her and DC Cook or to attempts made by the officer to contact her post-conviction. As we have said, there is no explanation for the long delay between August 2021 when Tamie Cormack says she was discharged from hospital and March 2022 when she was, apparently, in contact with Ali. Nor is there any explanation for the delay between March 2022 and 21 July 2023. There is no reason why Tamie Cormack could not have contacted Ali herself at any point in either period.

49 So far as the substance of her evidence is concerned, she purports to give assertion evidence that is directly contradicted by a great deal of other evidence in the case. First, her assertion that there were no drugs being sold at her home address is demonstrably untrue and wholly undermined by the guilty pleas of Islam, Hussain, Thandi and Kight, all of whom entered guilty pleas in relation to conspiracy to supply class A drugs. Further, the three prosecution witnesses who were falsely imprisoned and assaulted gave live evidence at trial. We have summarised their accounts. Those accounts were thoroughly tested in cross-examination. While the witness statements from Tamie Cormack say she did not witness any violence or threats of violence during the event, that is contradicted by their evidence and by video footage which shows her present when a machete was being waved around. Further, she was the partner of Cooke for many years and it might, therefore, be thought that Cooke had little reason or motivation to lie. Nonetheless, Cooke gave an account immediately after the events in question, maintained at trial, that Tamie Cormack was present at the time of the assaults and the other offences. At one point Cooke asked her to intervene to stop the

violence but Tamie Cormack said words to the effect "it's out of my hands". We also note Tamie Cormack's established history of offending and class A drug use. She has 30 convictions for 122 offences, 98 of which are for fraud or dishonesty offences dating from 1998 to 2019.

50 For all of these reasons we are not persuaded that Tamie Cormack's evidence stands up to any scrutiny at all. In the circumstances, we have come to the conclusion that the evidence is not capable of affording a ground for allowing the appeal since it is neither capable of belief nor so material as to undermine the totality of the evidence the jury heard on the prosecution case. This was, we consider, a strong prosecution case and it must be remembered that neither Ali nor Islam gave evidence in his own defence.

51 The final and overwhelming consideration is whether there is a good reason why the evidence could not have been called at trial. In our judgment there is no good reason at all. The reality is that Tamie Cormack was a witness known to the applicants and able to be called as a defence witness in May 2021 as defence counsel have made clear. It is apparent that no effort at all was made to trace Tamie Cormack either before or after trial. If there were difficulties tracing her and either defence team wished to interview or call her or give evidence, they could have asked police to assist. They could have raised the matter with the judge at the plea and trial preparation hearing or at the initial hearing. In reality, we are sure that a tactical decision was made by both applicants not to call her. As their own statements suggest, she was thought by the applicants likely to be loyal to one of the complainants, Jodie Cooke, who was then her partner, and it was for that reason no effort was made to find her. There is plainly and obviously no good reason why her evidence could not have been called at trial.

52 In all these circumstances neither applicant has any good, still less exceptional, reason that would justify permitting them to advance this evidence now. The interests of justice test is not met, and in our judgment the so-called fresh evidence does not begin to render the

convictions even arguably unsafe.

53 For all these reasons, the renewed application by Islam is refused. The application for an extension of time in Ali's case is also refused and we refuse his renewed application too.

CERTIFICATE

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