

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation No. [2022] EWCA Crim 381

CASE Nos 202101135/B1 & 202103024/B1

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 9 March 2022

Before:

LORD JUSTICE WARBY
MR JUSTICE JEREMY BAKER
THE RECORDER OF RICHMOND UPON THAMES
HIS HONOUR JUDGE LODDER QC
(Sitting as a Judge of the CACD)

REGINA
V
ADIQANI MAHAMUD

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR S GARDINER appeared on behalf of the Applicant

APPROVED JUDGMENT

MR JUSTICE JEREMY BAKER:

1. On 23 March 2021 in the Crown Court at Harrow, Abdiqani Mahamud was convicted of two counts of possessing a firearm with intent to endanger life, contrary to section 16 of the Firearms Act 1968, two counts of possessing ammunition with intent to endanger life, one count of possessing a bladed article and a count alleging a conspiracy to rob.
2. On 26 August 2021 the trial judge sentenced Abdiqani Mahamud to concurrent terms of imprisonment of 17 years for the firearms offences, 12 years for the ammunition offences, 16 months for the bladed article and 15 years for the conspiracy to rob. He had previously been convicted on another indictment of two offences of possessing articles for use in fraud in respect of which he was sentenced to concurrent terms of imprisonment of 20 months. He had also pleaded guilty to two conspiracies to supply drugs, one in respect of class A drugs (heroin and cocaine) and the other in respect of class B drugs, in respect of which he was sentenced to terms of imprisonment of five years and four years respectively. Whilst the latter term was ordered to run concurrently, the former term was ordered to run consecutively, resulting in a total sentence for the three indictments of 22 years' imprisonment.
3. There were four co-accused who were also convicted of the same counts on the firearms indictment and who received sentences in respect of those offences totalling 16 years' imprisonment in the case of Abubakar Mohamed, 16 years' imprisonment in the case of Mohammed Abooke, 16 years imprisonment in the case of Mohammed Ali and 11 years' imprisonment in the case of Muthir Nuureyn.
4. Whilst Abubakar Mohamed's application to renew his application for permission to appeal against his sentence following refusal by the single judge has been adjourned, the applications by the remaining accused for permission to appeal against their sentences

have not been renewed following refusal by the single judge.

5. Abdiqani Mahamud seeks an extension of time (12 weeks) in which to renew his application for permission to appeal against conviction. He also seeks to renew his applications for permission to appeal against sentence, after refusal by the single judge.

The offences

6. The prosecution's case on the firearms indictment was that the applicant, together with his four co-accused, conspired to carry out an armed robbery at a block of flats in North London where it was believed a large stash of class A drugs and cash was located.
7. To this end, a series of reconnaissance trips were made by various members of the conspiracy, who were based in the East End of London, to the block of flats in North London situated at Arthur Court in Edgware. These trips being identified by the police as a result of a combination of ANPR cameras, cell site mapping and CCTV footage.
8. The first trip which was identified was on 31 March 2020 which showed that the applicant and two of his co-accused travel to Edgware where the applicant and one of his co-accused remained for a period of about two hours whilst the third accused Nuureyn (who had driven them) returned from whence they came.
9. On the following day, 1 April 2020, Nuureyn's vehicle was again tracked to Edgware, this in time in convoy with a second vehicle. The applicant was seen to gain entry to the block of flats by following one of the residents through the security doors. The applicant was seen to be wearing overalls, gloves, a hat and a facemask at the time. He remained inside for a period of about an hour and a half.
10. On the next day, 2 April 2020, Nuureyn's vehicle again travelled to Edgware and parked up outside a nearby row of shops. On this occasion all five accused, including the applicant, were present in the vehicle. The applicant together with one of his co-accused

alighted the vehicle and was seen to try to gain entry to the block of flats whilst dressed in facemasks, gloves and hooded tops. When their attempts proved unsuccessful, they returned to the waiting vehicle, following which another of the accused sought to gain entry to the flats. When this attempt also proved unsuccessful the vehicle was driven away from the area before being stopped by the police.

11. Inside the vehicle the police found secreted under the bonnet two firearms, namely a Skorpion semi-automatic pistol, and a Baikal self-loading pistol and silencer, together with ammunition compatible with being fired in these weapons and a large knife. Two rolls of duct tape and a Balaclava were also found within the vehicle, whilst all of the accused (including the applicant) were wearing masks and gloves.
12. Following their arrest, the accused were released under investigation and a few days later on 6 April 2020 the applicant was back in Edgware near the block of flats for a period of over an hour. Shortly after he left, a car pulled up outside the block of flats and a male was seen to emerge from the premises carrying a bag and getting into the vehicle which was driven off. However, when the police stopped the vehicle shortly afterwards it was found to contain two individuals, one of whom had recently paid the rent on one of the flats, together with 14 kilos of cocaine and about £191,000 in cash in a bag.
13. Following his re-arrest on 8 April 2020, whilst driving the other motor vehicle which had been seen travelling in convoy on 1 April, the applicant made no comment in the course of his interviews with the police.

The trial

14. Although the applicant did not give evidence at his trial, his defence amounted to a denial that there was any conspiracy to rob anyone at the block of flats and a denial of any knowledge of any weaponry in the vehicle in which he and his co-accused were travelling

on 2 April.

15. In the course of the trial the prosecution sought to admit evidence of the two conspiracies to supply drugs to which the applicant had previously pleaded guilty on a separate indictment. The prosecution submitted that the evidence was relevant to support the existence of the conspiracy to rob and the applicant's part in it, by reason of the fact that he had knowledge of and dealt in class A drugs, which was contended to be the target of the conspiracy to rob.
16. As such the prosecution submitted that the evidence was admissible either because it was relevant evidence which had to do with the facts of the conspiracy to rob and was therefore not bad character evidence under section 98(a) of the Criminal Justice Act 2003 or, in the alternative, that it was admissible as bad character evidence under section 101(1)(d) as it was relevant to an important matter in issue between the prosecution and the defence.
17. Those representing the applicant argued that the evidence of his pleas to the conspiracies to supply controlled drugs was bad character evidence and objected to its admissibility on the basis that it was not relevant to an important issue in the case. In that regard it was argued that the fact that the applicant had previously conspired to supply controlled drugs was not capable of supporting the allegation that he was involved in a conspiracy to commit an offence of a different nature, namely robbery. It was pointed out that the conspiracy to supply controlled drugs was at a completely different location and involved street dealing with no evidence of violence being deployed. It was submitted that the applicant had not denied being interested in drugs, a matter about which he had not been questioned by the police in his interviews. In any event, even if the evidence was sufficiently relevant, it was submitted that it should be excluded as being unfair under

section 101(3). In this regard it was pointed out that previous drug convictions relating to some of the other accused had not been sought to be admitted by the prosecution.

18. In the event, the judge ruled the evidence of the applicant's pleas to the drugs conspiracies to be admissible under section 101(1)(d) and that its admission before the jury was not unfair. Thereafter, in the course of his summing-up, he provided the jury with legal directions on this topic, in the following terms:

"Now why have you heard about these other things? Well regarding Mr Mohamud's drugs conviction, the Crown say it is potentially relevant to the current case because it shows an interest in Class A drugs recently before the events in this case because it went up to March 2012 and a familiarity with the world of Class A drugs dealing, which, together with the other circumstances in evidence, supports the inference that he was interested in Arthur Court because he wanted to steal Class A drugs, by force if necessary, which he believed to be at that address.

The Defence point out or will be pointing out, I suspect - because I have had an opportunity to discuss these directions with counsel - that he pleaded guilty to that drugs matter, whereas he contests these and the Defence say there is a substantial difference between drugs dealing and armed robbery. The Defence also point out that that previous case concerned street supply. You should consider those points too in weighing up the relevance of that conviction."

Grounds of appeal against conviction

19. The judge's decision to admit the evidence relating to the applicant's pleas of guilty to the conspiracies to supply controlled drugs is subject to criticism on behalf of the applicant, as are the terms of the consequent legal direction to the jury which forms the basis of the grounds of appeal against his conviction, the details of which largely rehearse the submissions made to the trial judge which sought its exclusion.

Discussion

20. It is correct that the circumstances giving rise to the applicant's involvement in the drugs

conspiracies did not involve violence, either on his or his co-conspirator's part, and that the type of drugs supply was street dealing in a different area of London, namely Walthamstow. Moreover, it was not in operation at the time when the events surrounding the property in Edgware took place. However, not only had the drugs conspiracies come to an end on 4 March 2020, only four weeks prior to the latter events taking place, but they clearly established that the applicant was not only familiar with controlled drugs but had until very recently been involved in the unlawful supply of class A drugs, which was the alleged target of the conspiracy to rob.

21. That being so, we are satisfied that given the nature of the applicant's defence, which involved a denial of the existence of any agreement to rob those within the block of flats of a large quantity of class A drugs, his recent involvement in a conspiracy to supply the same type of items was relevant and admissible evidence as it provided support for the prosecution's case that the applicant was not present at the block of flats for some innocent purpose but in order to rob those within the property of a large quantity of class A drugs, being the self-same type of items in which he had been dealing only shortly before his visit to the property whilst disguised and in a motor vehicle with firearms and ammunition. Indeed, in helpful oral arguments this morning Mr Gardiner conceded that an individual who had knowledge and experience of the class A drugs trade was more likely to be enabled to know how to dispose of 14 kilos of cocaine than someone without such knowledge and experience.
22. The potential relevance of this coincidence of occurrences is essentially what the judge directed the jury to consider, whilst at the same time pointing out the defence arguments in relation to this issue. In these circumstances, we are satisfied that the judge was correct to deal with the question of the admissibility of the evidence under section 101(1)

(d) of the 2003 Act and that not only was it relevant to an important matter between the applicant and the prosecution, namely the existence of the conspiracy and the applicant's involvement within the conspiracy, but that no unfairness arose from its admission in the trial. In this regard the fact that some of his co-accused also had previous convictions for drug offences which the prosecution did not seek to place before the jury was not to the point. Indeed, it has not been pursued this morning in oral argument and in any event it was explained by the fact that their previous convictions were of some comparative age.

Conclusion

23. In these circumstances, we agree with the views of the single judge that there are no arguable grounds of appeal affecting the safety of the applicant's convictions on the firearms indictment in relation to which we take the view that the prosecution had a strong evidential case against the applicant and his co-accused, and therefore refuse the extension of time.

Sentence

24. In so far as the applicant is concerned, he is 31 years of age, the father of a young child and has previous convictions for offences including assault, burglary and possession of an offensive weapon (albeit the latter offence was of some age).

25. At the conclusion of the trial, the judge determined that the offences of possession of a firearm with intent to endanger life were Category 2A offences within the relevant sentencing guidelines, such that the appropriate starting point was one of 14 years' custody with a category range of between 11 and 17 years. The judge stated that he would take these offences as the lead offences and incorporate within the sentences for these offences the culpability involved in the remaining offences on the firearms indictment, including conspiracy to rob, together with that involved in the fraud

indictment which involved the applicant travelling in convoy with another vehicle which contained a total of 195,000 counterfeit Euro bank notes on 8 April 2020.

26. In relation to the drugs conspiracies, the judge agreed with the defence submission that these were Category 2 offences in relation to which the applicant had a significant role such that the class A related offence had an appropriate starting point of eight years' custody with a category range of between six-and-a-half and 10 years. He stated that he would impose a consecutive sentence in relation to these offences but reduced the sentences in relation to them, in order to take into account both the principle of totality and the reduction of 25 per cent to reflect the timing of the applicant's pleas of guilty.

Grounds of appeal against sentence

27. On behalf of the applicant, it is submitted that not only is the overall sentence manifestly excessive but that the judge wrongly categorised the firearms offences within the sentencing guidelines and failed to sufficiently take into account the principle of totality in relation to the drugs indictment. Additionally, it is submitted the judge should have assessed the sentence for the conspiracy to rob in accordance with the sentencing guidelines for robberies of dwellings which would have reduced the concurrent sentences imposed in relation to that offence.

Discussion

28. In our view, the judge having had the benefit of hearing all the evidence in the trial was in the best position to determine the appropriate level of culpability and harm involved in the firearm offences. In any event, and having considered the position for ourselves, we agree with his determination that these were Category 2A offences; culpability A due to the significant planning which was involved, together with harm 2 due to the high risk of death of severe physical or psychological harm. Moreover, not only was there more than

one firearm involved, but as the judge pointed out these offences were clearly part of organised criminal gang activity. In our judgment, these features alone would have justified a period towards the upper end of the category range, to which it was necessary to take into account the additional culpability involved in the conspiracy to rob and the separate fraud offences.

29. To the extent that criticism is made of the judge's imposition of a concurrent term of 15 years in relation to conspiracy to rob, we consider that this is unfounded and remind ourselves that even under the guidelines for robbery in a dwelling this term was justified as this would have been a Category 1A offence with an appropriate starting point of 13 years with a category range of between 10 and 16 years; culpability A due to the intention to produce a firearm to threaten harm and harm 1 because of the very high value goods which were targeted.
30. Finally, in relation to the drugs indictment and despite the applicant's basis of plea which was to the effect that he had not been involved at the inception of the conspiracy and thereafter only played a limited managerial role, in our judgment the judge's determination that a consecutive term of five years' custody was justified in relation to the offence involving class A drugs. In this regard, even if, as submitted on behalf of the applicant, the judge had taken the appropriate starting point of eight years as the notional post-trial sentence for a Category 2A offence, in which the applicant had played a significant role, in our judgment reducing this by 25 per cent to reflect the timing of the applicant's pleas of guilty and still further to achieve a sentence of five years, adequately took into account the principle of totality.

Conclusion

31. In these circumstances, we agree with the single judge that there are no arguable grounds

that the sentence imposed on the applicant was either manifestly excessive or wrong in principle.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk