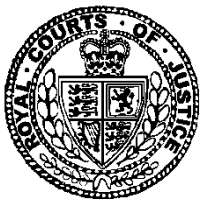

[2021] EWCA Crim 424

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO

202000116/B1-202000127/B1-20200066/B1-202000693/B1-202000696/B1-202000712/B1

Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 9 March 2021

and Thursday 11 March 2021

Before:

LORD JUSTICE BEAN

MRS JUSTICE WHIPPLE DBE

MR JUSTICE CALVER

REGINA

V

OJAY HAMILTON

SHANE LYONS

TYRELL GRAHAM

JAYDEN O'NEILL-CRICHLOW

_____

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MR T MOLONEY QC & MR D JAMESON appeared on behalf of the Applicant Hamilton

MR M ALDEIRI appeared on behalf of the Applicant Lyons

MR D BENTLEY QC appeared on behalf of the Applicant Graham

MR M BROMLEY-MARTIN QC appeared on behalf of the Applicant O'Neill-Crichlow

MR O GLASGOW QC & MR P JARVIS appeared on behalf of the Crown.

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J U D G M E N T

(Approved)

Tuesday 9 March 2021:

LORD JUSTICE BEAN:

This case arises out of the killing of Kamali Gabbidon-Lynck and the wounding of Jason Fraser on 22 February 2019. The two victims were members of a gang known as the "Wood Green Mob". The defendants were members of a rival gang called the "Northumberland Park Killers". The rivalry had been a violent one, with each gang carrying out attacks on the other and then boasting about them online.

In the autumn of 2019, at the Central Criminal Court before HHJ Foster and a jury, five defendants were tried for the murder of Mr Gabbidon-Lynck and the attempted murder of Mr Fraser. Sheareem Cookhorn was convicted of murder, attempted murder and possession of a firearm with intent to endanger life. He was sentenced to life imprisonment with a minimum of 28 years. He has not sought to appeal against conviction or sentence.

Ojay Hamilton was convicted of murder, wounding with intent to cause grievous bodily harm and possession of a bladed article. He was sentenced to be detained at Her Majesty's Pleasure for a minimum term of 21 years. He applies for permission to appeal against conviction and appeals against sentence with leave of the single judge (Andrews J, as she then was).

Shane Lyons was convicted of the same offences as Hamilton and received the same sentence of detention at Her Majesty’s Pleasure with a minimum term of 21 years. He likewise seeks leave to appeal against conviction, though not on the same grounds as Hamilton, and also appeals against sentence with leave of the single judge.

Jayden O'Neill-Crichlow was also convicted of the same offences as Hamilton and Lyons and does not seek leave to appeal against conviction. He likewise was sentenced to detention

at Her Majesty Pleasure, with a minimum term of 21 years and appeals against sentence with leave of the single judge.

Tyrell Graham was convicted of murder and attempted murder. He was sentenced to detention at Her Majesty's Pleasure for a minimum of 25 years. He does not seek permission to appeal against conviction but renews an application for leave to appeal against sentence following refusal by the single judge.

The case was listed for the two applications for permission to appeal against conviction and the four cases (three appeals and one application) relating to sentence. Difficulties arose with the Cloud Video Platform at a stage when we had heard argument on the conviction applications but before we were able to hear counsel in support of the sentence appeals and application. This therefore is our judgment on the applications for permission to appeal against conviction by Hamilton and Lyons.

On the night of 22 February 2019 Kamali Gabbidon-Lynck was stabbed to death in a hair salon in the Wood Green area of London. Moments earlier his associate, Jason Fraser, had been subject to a similar assault during which he sustained eight stab wounds as well as gunshot injuries but which he survived.

Graham and Hamilton as well as the co-accused, Cookhorn, all accepted links to the Northumberland Park Killers. Hamilton and Lyons had Instagram accounts that included the initials "NPK" in the account names. The two victims were both linked to the Wood Green Mob. Two days after the killing a music video featuring Graham and others was uploaded to YouTube. In this video the rappers referenced an earlier killing and other previous stabbings committed against other members of the Wood Green Mob.

In May 2019 O'Neill-Crichlow, along with two others, appeared in another video in which they

rapped about gang related activity and the possession of knives and firearms. On the night before the incident O'Neill-Crichlow, Lyons and Hamilton were captured together on CCTV on the Broadwater Farm estate in Tottenham using a Peugeot car which apparently belonged to O'Neill-Crichlow's mother.

On Friday 22 February, at around 7.00 pm, O'Neill-Crichlow and Hamilton, together with three other unidentified males, were caught on CCTV cycling towards the same estate. O'Neill-Crichlow could be seen going to the Peugeot car and changing his clothes. The prosecution alleged that the CCTV showed that Lyons was also in their company; he disputed that identification and his presence during the events of that evening. It is apparent from the jury's verdict in the case that they accepted that the man alleged to be Lyons (who was given a code name "Partridge" during the trial for ease of reference) was in fact Lyons.

About an hour later a group of cyclists rode from the estate towards Wood Green. The group contained Graham, O'Neill-Crichlow, Lyons, Hamilton, Cookhorn and two others. Each member of the group had their face covered. Upon reaching Wood Green they stopped outside a branch of McDonald's and Graham, Hamilton, Lyons and one of the unidentified males who was given the code name "Buzzard" entered the restaurant. They walked up to one of the tables at which two young females and a young male were sitting. Graham grabbed the young male by the throat while Buzzard attempted unsuccessfully to take his mobile phone. Fortunately that incident came to an end without violence.

Around the same time as that group had been making its way to McDonald's Kamali Gabbidon-Lynck, Jason Fraser and two associates arrived in Wood Green only a short distance away. On spotting the group of four the defendants immediately dropped their bicycles, at least some of them drew weapons and they ran towards the group of four.

Cookhorn drew a handgun which he fired. The cartridge casing was later recovered and was consistent with the firearm being a semi-automatic handgun. O'Neill-Crichlow and Lyons both brandished large silver knives. Although the precise number of shots fired from Cookhorn's handgun was not known, witnesses recalled hearing two or three rounds being discharged. One of the discharged rounds went across the pedestrian area and in through the open doors of a shop in which several customers and security guards were present, ultimately striking a display stand but without causing any injuries. As the defendants came into view of another CCTV camera, Graham could be seen with a large black knife in his hand, Lyons was still brandishing his knife, while Hamilton had his right hand inside his clothing; the prosecution alleged that this was indicative of him holding a concealed weapon.

The three fleeing males were pursued by the two unidentified males from the defendant's group. Diners in a Nando's restaurant captured part of the events on mobile phone cameras. The defendants appeared to be chasing the fleeing group. Graham, Lyons and Hamilton all ran past the restaurant, the former two with knives in hand and the latter with his hand still inside his clothing.

A little later Gabbidon-Lynck and Fraser ran east along Lordship Lane. Fraser was carrying a knife. The defendants and associates group of seven (now all once again on their bicycles) followed about 20 seconds later. Gabbidon-Lynck and Fraser took different routes as they ran back towards a parked car. Fraser became cornered by his pursuers in two groups in what was described as a pincer movement. He was assaulted by at least some members of the group and was stabbed eight times in his shoulder, arms, legs and also sustained a wound to the buttocks from shotgun pellets.

The assault on Fraser was interrupted by the arrival of Gabbidon-Lynck who was now driving a

Corsa car. He aimed his car for some bicycles belonging to the defendants' group lying on the ground. He drove over the top of Graham's bike rendering it unusable. He now became the target for the group's attack. As he backed the car away one of the identified men chased him and tried to strike the driver's window. Graham paused to look at his damaged bike before running towards the Corsa. A couple of seconds later Cookhorn raised his right arm in the direction of the Corsa, just as he had done when firing his gun previously. O'Neill-Crichlow dropped his bicycle to the ground and ran towards the Corsa. Thirteen seconds later Partridge and Hamilton ran across the road towards the Corsa. O'Neill-Crichlow and Graham came back into view and collected their bicycles. Lyons and Hamilton came back into view with Lyons picking up his bicycles and Hamilton appearing to place something into his trousers, which had possibly been passed to him by Patridge/Lyons.

Mr Moloney QC, for Hamilton, has emphasised to us, and we accept, that the CCTV did not show Hamilton holding a knife. The cameras did not capture the fatal attack on Mr Gabbidon-Lynck. As he tried to escape he managed to get his car stuck between parked cars on either side of the road. His car was immediately attacked by members of the group. Across the road from where his car came to a stop was a hairdresser salon called Koffee An' Kreem. There were stylists and customers inside. One of the customers waiting her turn to be served had a baby. There was also an 8-year-old girl and a 4-year-old girl in the salon. These people were witnesses to the car being surrounded by masked figures. One man fired shots at the window of the car before jumping onto the bonnet and smashing the gun down on the windscreen. A second man also jumped onto the bonnet and struck the windscreen with what appeared to be a machete. Mr Gabbidon-Lynck got out of the car, ran to the salon chased by several men who swung

their weapons at him. He ran into the salon but was unable to keep the door closed. The attackers gained entry to the shop. Everyone inside began screaming and rushed to the rear of the salon as the deceased cowered in a corner trying to fend off the attack. He was set upon by more than one attacker who stabbed and slashed at him with their knives, eventually turning away leaving him fatally wounded. He died in hospital from his injuries. The attacking group made their way back to the car park on the Broadwater Farm estate where O'Neill-Crichlow had parked the Peugeot and where they appeared to change their clothing.

Police arrived on the estate shortly thereafter. The defendants sought to make themselves scarce. Graham was stopped by the police and provided false details. He was searched for weapons and as none were found he was allowed to go, saying to officers as he walked away, "I hope you lot cut down on knife violence, and all that".

It is right to record that when police searched the Corsa which Mr Gabbidon-Lynck had been driving they recovered a shotgun and ammunition from the boot, a machete and an axe from the front passenger footwell and a knife in the rear door.

The defendants were identified by police from the Broadwater Farm CCTV footage.

We turn to the applications for leave to appeal against conviction. Hamilton had a previous conviction for possession of a bladed article in June 2017, 20 months before the incident in the present case. He was 14 years old at the time of that previous conviction and 16 at the time of the instant trial. His ground of appeal against conviction is that the judge was wrong to accede to the prosecution application to admit the previous conviction as evidence of misconduct and that its admission was unfairly prejudicial to Hamilton's defence.

It is instructive to note the basis of plea which Hamilton sought to tender in a document dated 8 October 2019 to the count of possession of a bladed article in a public place. It reads:

> "i. I was in possession of the bladed article for a short period of time.
>
> ii. At no time while in possession of the bladed article (or before or afterwards) did I have any intention to use it to do harm to others, or to threaten or cause fear.
>
> iii. On 22 February 2019, after hearing a loud bang as a car collided with another, I was in a state of shock. I saw a commotion taking place in a nearby shop and I wanted to get out of the area quickly. As I cycled off, someone stopped me and passed me a bladed article which I put down the waistband of my trousers before I cycled away."

This basis was not acceptable to the prosecution.

In his written ruling on various applications relating to evidence Judge Foster said this of the prosecution application to admit the previous conviction:

> "The jury will have to consider his [Hamilton's] explanation for the possession of the knife in the light of all the evidence in the case – not just the few seconds of CCTV when any exchange of knives might have taken place. Furthermore his young age at the time of the previous conviction must be considered alongside his guilty plea for knife possession on the night in question.
>
> I am satisfied that the previous conviction is properly admissible not just because it is capable of showing a propensity to carry knives but also as rebuttal of how he says he came to be in possession of a knife on 22 February, 2019."

Mr Moloney emphasises that the previous conviction was recorded when the defendant was only 14 and related to very different circumstances. It was, he argued, just a case of a school boy carrying a kitchen knife in his bag. There was no suggestion that it was used to commit any act of violence. The penalty imposed was a referral order. He argued that this was a single incident, nearly 2 years before the index charges, and could not be a sufficient

basis to admit the previous conviction as evidencing a propensity to carry a knife. The conviction could not, independently of propensity, rebut the applicant's account of his possession of the knife on the night in question. It was also submitted to us, as it was to the judge, that the legitimate public concern surrounding possession and use of knives in London could lead to unwarranted prejudice on the part of the jury. It was unfair for the conviction to have been admitted when it went to such a fundamental aspect of Hamilton's defence.

Mr Moloney accepted that if the jury were satisfied that Hamilton brought a knife to the scene, his defence, as crisply summarised in paragraph iii of the basis of plea, would be in some difficulty.

Mr Glasgow contends that whether Hamilton was armed with a knife throughout the attacks on Mr Gabbidon-Lynck and Mr Fraser was an important matter in issue between the prosecution and the defendant, although it was not the fundamental question in the case. The fundamental question was whether the prosecution could satisfy the jury that Hamilton was part of the group who carried out either or both of the attacks, in the sense that he assisted or encouraged those who actually inflicted the wounds on either or both of the victims.

The judge's ruling was made in the context of a case where Hamilton accepted that he was linked to the Northumberland Park Killers who had a bloody rivalry with the Wood Green Mob, where Hamilton had set off by bicycle that evening in the company of a group that contained the other defendants in the case, and where the CCTV footage showed that all of his co-defendants had been armed either with a firearm (in the case of Cookhorn) or with large knives. Hamilton was standing next to his friends when they were holding their knives and, at one point on the CCTV as we have noted, his arm can be seen going to the

waistband of his trousers which the prosecution say suggested he too had a knife; he had followed some of his co-defendants down an alleyway that led to a gate where Fraser was attacked; he then dismounted from his cycle and ran with it towards the salon where Mr Gabbidon-Lynck was being stabbed to death; finally, on returning to the car park he and the others changed out of their clothes and evaded detection by the police before taking a minicab home.

Mr Moloney referred us to the very well-known passage in the judgment of this court delivered by the then Vice-President (Rose LJ) in *Hanson* [2005] 1 WLR 3169 at paragraph 9:

> "There is no minimum number of events necessary to demonstrate such a propensity. The fewer the number of convictions the weaker is likely to be the evidence of propensity. A single previous conviction for an offence of the same description or category will often not show propensity. But it may do so where, for example, it shows a tendency to unusual behaviour or where its circumstances demonstrate probative force in relation to the offence charged (compare *DPP v P* [1991] 2 AC 447 at 460E to 461A). Child sexual abuse or fire setting are comparatively clear examples of such unusual behaviour but we attempt no exhaustive list. Circumstances demonstrating probative force are not confined to those sharing striking similarity. So, a single conviction for shoplifting, will not, without more, be admissible to show propensity to steal. But if the *modus operandi* has significant features shared by the offence charged it may show propensity."

The possession of a bladed article in a public place is, sadly, not unusual behaviour. But the circumstances of this previous conviction, in our view, demonstrate probative force in relation to the offence charged.

It was an important aspect of Hamilton's defence that while he had no real choice but to admit having been in possession of a knife on the night in question, since it was visible on CCTV at the very end of the events which were the subject of the charges, it was, according to him, handed to him at a very late stage, possibly after the fatal stabbing of Mr Gabbidon-Lynck, rather than having been brought by him to the scene. The fact of the

previous conviction for the identical offence in law only 20 months earlier went directly to this important matter in issue between him and the prosecution and did so irrespective of the details of the facts underlying the previous conviction, such as the precise size and type of the bladed article which he had in his possession on that occasion.

It was for the jury to decide what weight to attach to the previous conviction. We see no reason why it should have been kept secret from them. Accordingly, we refuse Hamilton's renewed application for permission to appeal against conviction.

Lyons applies for permission to appeal against conviction on an entirely different ground. The judge held a ground rules hearing at which he directed that cross-examination should on the whole not be repeated as between co-defendants and the prosecution, although that could be reviewed once a defendant had given evidence-in-chief. Questions should be asked in a logical order without jumping around from topic to topic. Questioning should be slowed down to give the witness ample time to respond. Questions should be as simple as possible, avoid legal jargon, use age appropriate words and should not be tagged and there should be regular breaks with sessions lasting no longer than 1 hour.

No complaint is made on behalf of Lyons about these directions, nor could it be. The argument is rather than the directions were not adhered to, or not sufficiently adhered to, by Mr Glasgow QC for the prosecution during his cross-examination of Lyons. Mr Aldeiri, who has appeared in this Court, submits, adopting the written submissions of Mr John Cooper QC who led the defence of Lyons at trial, that the appellant was exhausted following intense cross-examination that was beyond the scope of the ground rules. It is submitted that the judge's control of that situation was inadequate with him merely commenting that it was simply Mr Glasgow's style of advocacy.

We have read the transcript of the cross-examination of Mr Lyons. There were four sessions timed as follows: from 11.35 to 12.11; from 12.37 to 13.02; from 14.11 to 14.59 and 15.38 to 16.15. In our view, Mr Glasgow conducted the cross-examination with proper courtesy and care.

In the first session the most pointed question he asks Lyons is: "Why Ojay Hamilton should lie about you being there"? In the second session there is a point at which Mr Glasgow is questioning the defendant about whether he is the person shown in particular CCTV footage. There is an objection raised by Mr Cooper and when the objection is repeated a little later the judge tells Mr Glasgow to move on to another topic, which he does. Later, just before the lunch break, Mr Cooper accuses Mr Glasgow of hectoring the witness but, in our opinion, the transcript does not support that proposition. In the third session at page Y189 the defendant says that he got a minicab from his home that evening. Mr Glasgow asks: "If there is no record of a cab going to your address on that evening does that mean you are lying?" Mr Cooper objects to the question. Mr Glasgow then puts it to the witness in a slightly different form: "If you are telling the truth and they keep their records there will be a record?" At this point Mr Cooper asks for the jury to be sent out. The transcript unhelpfully does not record the discussion in the absence of the jury but what it does show is that nine minutes later they are brought back into court and from that point on there is no reference by Mr Glasgow to lying.

Although the days of counsel haranguing witnesses with repeated accusations that they are lying should be over, we do not think that the questioning on this (or any other) point was at all inappropriate even when put to a 16-year-old witness. It was perfectly fair to put to the defendant that, if what he was saying about having got a minicab from home to the scene was true, that fact should be confirmed by the records which all minicab companies keep.

In the final session at page Y207 of the transcript it seems that someone's mobile phone goes off. Mr Cooper asks Mr Glasgow to stop questioning and he does so with an apology. Then at page Y211 Mr Cooper asks Mr Glasgow to slow down the questioning a bit and the judge agrees. Mr Glasgow asks the witness whether he needs a break, the witness says "no". At page Y228 Mr Cooper, not the witness, says that the witness is looking tired, Mr Glasgow offers to break off until Monday, the defendant says, "No, carry on". The judge tell Mr Glasgow to try to finish the topic in 5 minutes, which he does, and the court rises for the day. We consider that this questioning comes nowhere near being oppressive or unfair. Lyons' renewed application for permission to appeal against conviction is therefore refused.

Thursday 11 March 2021:

LORD JUSTICE BEAN:

We are now announcing our decision on sentence in this case, in which we gave judgment on Tuesday refusing two applications for permission to appeal against conviction.

We begin by dealing with two technical points raised by the ever-vigilant staff of the Criminal Appeal Office. The first is that the judge imposed concurrent sentences of detention for 8 years on each of these defendants on the charge of wounding Jason Fraser with intent to cause grievous bodily harm. The judge did not expressly refer to section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, but that was plainly what he had in mind. The court record should be amended to reflect the fact that these concurrent sentences were imposed pursuant to that provision.

The second technical point is that the judge erred in imposing concurrent sentences on the charge of possession of a bladed article of 15 months on Hamilton and 12 months on

O'Neill-Crichlow and Lyons. These were unlawful because section 91 of the 2000 Act is not available for this offence. A concurrent detention and training order would plainly have been inappropriate. We quash the three sentences in respect of the bladed article charges and substitute an order that there will be no separate penalty. Neither of these technical points alters by so much as a day the time which any of the defendants will spend in custody, but it is right to put the record straight.

We turn to matters of substance. It is important to bear in mind in a case of this kind where a defendant has been convicted of murder and also of a separate serious offence, that the correct practice is to fix a minimum term of imprisonment or detention for the murder which is the appropriate penalty for the offences as a whole (see section 269 of the Criminal Justice Act 2003) and then to impose concurrent sentences for the other offence or offences. This was the course followed by the judge in the present case and no complaint is or could be made of it.

It is common ground that the statutory starting point for the murder alone was 12 years in the case of each of these appellants and applicant, but that a very significant increase from that figure was inevitable. There were numerous aggravating features of these offences. These were aptly summarised by the judge in his sentencing remarks at page 7C-G:

> "The most serious extra aggravating feature is the gang-related background to this case. The tragedy of that background is as futile as it is evil. The pointless gang rivalry has resulted in the loss of one young man's life, the serious injury to another and five young men who will spend at the very least the best years of their lives in custody. You were all linked to one gang, the North London Park Killers and this was a planned and premeditated mission to find and attack members of a rival gang. The message must be understood that young people who involve themselves in this sort of conduct can expect little mercy from the Courts. That is why I have lifted all reporting restrictions not withstanding your ages so that other young people and their families can know of the consequences of such conduct.

> Your actions terrified innocent members of the public going about their business on a Friday evening, first of all in the Hollywood Green area of Wood Green and then in and around the hair salon on Temple Terrace. The murder was witnessed by a four year old child and the owner of the salon was so traumatised by what she saw that she was too ill to give live evidence at your trial, some nine months later. The victim personal statements from a grieving family makes sad reading."

The judge began by considering the appropriate starting point in sentencing Cookhorn. He said:

> "By paragraph 5.1 of schedule 21 of the Criminal Justice Act 2003 for an offender who commits murder when over 18 and where the seriousness of the offence or the combination of the offence and one-on-one offences associated with it is particularly high the starting point is a minimum term of 30 years. Paragraph 5.2 provides that a murder involved in the use of a firearm will normally fall within this category. I am satisfied that for you, Sheareem Cookhorn, that this is the appropriate starting point and is the factual basis on which I set the minimum term for the remainder of you."

It is submitted that when the judge said "and is the factual basis on which I set the minimum term for the remainder of you" he meant that he was holding that the minimum term that would have been appropriate in each of the cases before us (that is to say all the defendants except Cookhorn) would have been 30 years. It is submitted that this case was not, at least as regards the defendants other than Cookhorn, a murder involving the use of a firearm.

It is unnecessary for us to decide whether, as a matter of law, a murder in which a firearm is brought to the scene and fired but does not cause injury and in which the victim is then stabbed to death is "a murder involving the use of a firearm". Even if were not, a notional starting point of a minimum term of 30 years for all of these defendants, if they had been over 18 years of age, would have been justified. As the judge noted, paragraph 5(1) of Schedule 21 provides that, if the seriousness of the offence or the combination of the offence of murder and one or more offences associated with it is particularly high (not exceptionally high as it has to be for a whole life order), the appropriate starting point is 30 years. The starting point for murder by an adult, with a weapon taken to the scene with

the intent to use it to commit an offence or to have it available for such use, is 25 years by virtue of paragraph 5A of Schedule 21. Here there was a murder by stabbing, using one or more knives taken to the scene, and in addition (a) the discharge of a firearm by Cookhorn and (b) the ferocious attack on Jason Fraser, who was lucky to escape with his life. Had the defendants been adults, therefore, a statutory starting point of 30 years would certainly have been justified in the case of Graham and possibly also in the case of the other defendants.

On behalf of Graham, who was only two months short of his 18th birthday at the time of the murder, it is submitted that a minimum term of 25 years in his case was excessive because (a) the judge was wrong to conclude that the applicant was a principal offender in relation to the murder, (b) the judge was wrong to find that there was sufficient evidence of significant premeditation or planning as an aggravating factor and (c) he failed to take sufficient account of the applicant's age and level of maturity at the time of the offending.

In refusing permission to appeal on the papers the single judge said:

> "Your pursuit of the victim into the hairdressers and repeated stabbing of him in front of terrified customers including a 4 year old girl, was enough to mark this murder out as justifying a significant uplift from the starting point of 12 years by reason of your age. Given that you continued to associate with Cookhorn after he first discharged the gun the judge was also entitled to take into account when sentencing you your knowledge of his having a gun and his willingness to use it without regard to the danger posed to innocent passers-by. Moreover, having tried you and all your co-defendants, the judge was best placed to evaluate your role in the offences and your culpability for it and he was satisfied that you were one of the ringleaders and one of the two responsible for inflicting the violence on the victims. Despite your age I do not consider it is reasonably arguable that either the minimum tariff of 25 years for the murder or the 20-year sentence for the attempted murder in your case was manifestly excessive."

We agree, and the renewed application by Graham is refused.

We turn to the other three defendants, each of whom appeals by leave of the single judge. In each case counsel can point to the judge's express findings in his sentencing remarks that they did not have an intention to kill Mr Gabbidon-Lynck (nor of course Mr Fraser, given that they were acquitted of attempted murder); that each of them was a secondary party to both offences; and to the fact that each of them was aged only 16 at the time of the offences.

The additional points made in the individual cases are as follows.

O'Neill-Crichlow was not involved in the McDonald's incident. It is argued that even after that his role was less than that of Hamilton or Lyons. But in the absence of any finding to that effect by the sentencing judge, who had heard all the evidence in the case, we are not prepared to make a distinction on those grounds. It must also be said against him that the gang made use of his mother's car, not, it seems, as a prospective getaway vehicle but as a repository for clothing so that they could change clothes before and after the violent encounter in the hope of avoiding detection. O'Neill-Crichlow had no previous convictions, but one previous reprimand for possession of a bladed article.

Hamilton was diagnosed with attention deficit hyperactivity disorder and had an IQ of only 80. Although the judge had seen him give evidence, it may be that to say that his maturity was only "slightly less than his biological age" was understating this point a little. On the other hand, his previous conviction for possession of a bladed article was a point against him.

Lyons was the youngest defendant, being 4 months younger than Hamilton. A pre-sentence report expressed the opinion that he was immature and easily led. He had no previous

convictions at all, although the judge took a poor view of the fact that a knife was found in his bedroom carefully wrapped in a sock.

We will follow the judge's lead in this respect. We do not consider there is any basis for distinguishing between these three defendants.

An important recent decision to which we were referred was *Davies* [2020] EWCA Crim 921, delivered on 29 April 2020 (that is to say after the judge passed sentence in the present case). The judgment of this court was delivered by Lord Burnett of Maldon CJ. Davies had been convicted of a murder committed when he was 16-year-old 2 months old. There were many similarities between the Davies case and the present one. A number of members of one gang set upon a member of another gang, and between them stabbed him fifteen times. The victim died shortly afterwards. The court set out the factual conclusions of the sentencing judge at paragraph 10:

> "(i) The appellant had been responsible for corralling the group which proceeded to kill the deceased. Despite his age, the appellant was influential in the gang.
>
> (ii) The attack was a premeditated, targeted revenge attack.
>
> (iii) The appellant – and indeed the others convicted of murder – had an intention to kill the deceased.
>
> (iv) The appellant and [his co-accused] Yenge took the two knives used in the attack to the scene, but all knew that knives were there and to be used.
>
> (v) Overall, the appellant had a prominent, leading role in what occurred.
>
> (vi) The killing was the result of a long-standing hostility between the gangs.
>
> (vii) All the co-accused had taken care to turn off their telephones to avoid the possibility of their movements being traced. After the attack, they not only disposed of their weapons, but also washed their bodies and clothes in an attempt to eliminate forensic traces."

The Lord Chief Justice said at paragraph 22:

> "The aggravating features identified by the judge in his sentencing remarks are unimpeachable, but we find ourselves in respectful disagreement with the judge's conclusion that, despite the appellant's youth and background, the starting point should be as high as 21 years. The appellant was a good deal younger than the others. That is itself a factor which carries significant weight. Moreover, a striking feature of this case is the appellant's circumstances, which we have summarised. They led him to be a drug user at 11, an addict by 13, and by the same age a professional drug dealer. By then he had been swept up into gang violence. Violence had been a constant background of his life from a very early age."

The minimum term of 21 years imposed on Davies was reduced by this Court to one of 16 years. No two cases are identical, and of course Davies was only being sentenced for a single murder.

> On the other hand, unlike the three appellants whose cases we are now considering, he was the principal offender and leader of the group which attacked the victim. The decision in *Davies*, which was not available to Judge Foster, does suggest to us that if the present case had involved the single murder alone, the appropriate minimum terms for these three appellants would have been no higher than 16 years and possibly a little less.

Putting these factors together, we have come to the conclusion that the minimum terms of

> 21 years did not make adequate allowance for the youth and immaturity of these three defendants. We will in each case quash the minimum term of 21 years and substitute a term of 19 years. Time spent in custody prior to sentencing will count towards the minimum term in the usual way. The result is that the earliest time when these three appellants will be eligible for release will be in 2038, by which time they will be 35 years old. Even then, each of them will only be released if the Parole Board is satisfied that it is safe to do so. These remain severe sentences for defendants who were aged only 16 when the offences were committed, but they are appropriate ones in such a serious case.

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

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