IN THE COURT OF APPEAL
CRIMINAL DIVISION
NCN: [2022] EWCA Crim 1238

CASE NO 202002898/B1-202103806/

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 11 August 2022

Before:

LORD JUSTICE WARBY

MRS JUSTICE O'FARRELL DBE

MRS JUSTICE CUTTS DBE

REGINA
V
SINAN OZGER

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MS S WASS QC appeared on behalf of the Appellant.
MR M SHAW appeared on behalf of the Crown.

J U D G M E N T

1. LORD JUSTICE WARBY: In August and September 2020 the appellant, Sinan Ozger, was tried in the Crown Court at Snaresbrook on one count of conspiracy to

cause grievous bodily harm with intent (count 1) and two counts of possessing a firearm with intent to endanger life, contrary to section 16 of the Firearms Act 1968 (counts 2 and 3). On 16 September 2020 the jury convicted Ozger and his co-defendant, Shearine Thompson, on all counts. The third defendant, Jacob Ekwiburi, had earlier pleaded guilty to count 2.

2. Ozger now appeals against conviction pursuant to limited leave granted by the Full Court. There is one ground of appeal which relates to identification. This was ground 7 of the revised grounds submitted by Ms Wass QC who took over the matter for the purposes of appeal. Leave to pursue the six other grounds was refused by the single judge and by the Full Court.
3. On 5 November 2021 the appellant was sentenced by the trial judge, HHJ Pounder. On each count the judge imposed an extended determinate sentence of 24 years comprising a custodial term of 21 years and an extended licence period of 3 years. The appellant also renews his application for leave to appeal against sentence after refusal by the single judge and that matter was adjourned to this Court by the Full Court in March 2022.

The facts

4. The charges arose from events at a private 40th birthday party that was held in Leyton, East London, on the night of 27/28 October 2017. It was held in a rented hall at the end of a road known as "Riggs Approach". At around 5 o'clock in the morning on 28 October the gathering was interrupted by a gunfight, which involved 34 rounds being fired from six firearms in Riggs Approach. Two innocent bystanders who were guests at the party received gunshot wounds as a result. One was hit by a ricochet of a bullet and was wounded in her left breast and the other was shot in his upper thigh.
5. The prosecution case was that the injuries to the bystanders were collateral damage arising from an organised gunfight between two rival gangs. The appellant and his two co-defendants were alleged to be members of one of the gangs, referred to as "Team A". The other group or gang of alleged participants, referred to as "Team B", was led by a former friend of Ekwiburi called Kamal Parrish.
6. The prosecution case was that these two had fallen out and that there was an ongoing dispute between them. That was said to explain why the appellant and the others had attended at Riggs Approach with Ekwiburi and Thompson as part of Team A to attack Team B. Some 2 months earlier Ekwiburi had been shot in the leg, near his home on Broadwater Farm Estate. The prosecution suggested that Team A's behaviour might have been intended as retaliation for that.
7. The case under count 1 was that the three defendants conspired with others unknown to cause grievous bodily harm to members of Team B with intent to do so. It was said that the attack had been in preparation between August and October 2017 and that it involved three defendants and others arming themselves with Soviet era firearms, using a stolen white Peugeot 208 car with false registration plates to drive to the party venue, getting out of the car and firing live ammunition from the two handguns before making off in the car. The appellant was said to have been the front seat passenger.
8. The members of Team B had arrived at Riggs Approach between 2.00 and 2.30 am armed with a micro-Uzi and an Uzi submachine pistol and attended the party. Team A arrived shortly before 5.00 am.
9. Counts 2 and 3 related to the Soviet era firearms: two self-loading pistols (SLPs): a Makarov (count 2) and a Tokarev (count 3). The prosecution case was that the appellant was in physical possession of the Tokarev, which had an LED sight mounted on the barrel, and in joint possession of both weapons in furtherance of the

conspiracy and as part of a joint enterprise to possess the guns with intent to endanger life. Ekwiburi admitted joint possession of the Makarov.

10. The case advanced by the prosecution was that on leaving the car Ekwiburi and the appellant had covered their faces with balaclavas and scarves and entered the party. The appellant had used the Tokarev to rob people outside the party, shoot at members of Team B and threaten other drivers so they would move out of the way to allow the Peugeot to escape the scene.
11. To prove this case the prosecution relied on a number of strands of evidence. These included a substantial analysis of the extensive CCTV recorded in and around Riggs Approach, evidence from the investigation of phones and cell site analysis, evidence of automatic number plate recognition (ANPR), firearms analysis, some eyewitness evidence, and other pieces of evidence which were said to place the appellant and co-defendants at the scene at the material time.
12. For the purposes of this appeal it is pertinent to note in particular the following 10 aspects of the evidence.

1. Analysis of the CCTV evidence highlighted an individual who came to be known as "Man 2" (or "Man A2") and who was alleged by the Crown to be the appellant. Man 2 was shown on the CCTV arriving at the scene in the Peugeot with others, then in possession of and firing the Tokarev SLP in Riggs Approach, and then getting back into the car before it left.
2. There were photographs of the appellant taken upon his arrest in May 2018.
3. A Converse satchel was found during a police search of the appellant's home address in May 2018. It was said to be identical to one captured in the CCTV footage being worn by Man 2.
4. Five days after the shooting the white Peugeot 208 was found parked outside the home of the co-defendant Thompson.
5. A police search of Thompson's address yielded a mobile phone with a number ending 0795 which Thompson's own phone address book attributed to "Sinan 2". The appellant admitted this phone was in his possession on the night in question. There was other evidence linking him to it.
6. Cell site analysis showed the 0795 phone in use at or near Riggs Approach at the time of the shooting and beforehand.
7. Expert evidence from a telecommunications experts called Dominic Kirsten identified very regular interactions between this phone and those of the appellant's co-defendants, and close physical proximity between them at relevant times. The 0795 phone and that of Thompson appeared to have come together in the Wood Green area and to have travelled together in the Peugeot to collect Ekwiburi and another male from Ilford before retracing their route back west to Riggs Approach.
8. There were compilations of the key features of the case prepared by the prosecution, in the form of a composite table or schedule listing each item of relevant evidence, visual or otherwise over the relevant period, and there was a graphic package with maps, plans, photographs and CCTV extracts.
9. Ekwiburi's guilty plea shortly before the trial to joint possession of the firearm was relied on as a concession that the Crown had correctly identified him as one of the males shown on the CCTV exiting the Peugeot, and putting on face coverings before producing handguns and opening fire.
10. The appellant's bad character in the form of previous convictions for violence, and other non-conviction evidence, which was said to indicate a propensity to possess firearms, to involve himself in gun crime, and a propensity towards dishonesty. The convictions were in 2007, common assault; also in 2007, robbery and theft of a

bicycle; in 2008, burglary and theft from a dwelling; in 2009, a second robbery; in 2011, an attempted robbery; and in 2016, possession of drugs and driving offences. All of this would have gone before the jury anyway because of the appellant's attack on prosecution character. The non-conviction bad character was a 2015 acquittal, the charge being possession of a handgun, which had the appellant's DNA on the handle, and the fact that in 2016 the appellant's fingerprints had been found on the outside of a bag containing an antique firearm and ammunition seized in the course of a police raid on a block of flats in North London.

13. The appellant's defence was that he had not been present at Riggs Approach or involved in any conspiracy. The CCTV was said to be poor and incapable of supporting a finding that the appellant was Man 2 and involved in the shooting. In support of that proposition the appellant called a police officer called Clancy who had looked at a still from the CCTV and wrongly identified Man 2 as another male known to him, who turned out to have no links to the shooting. It was said that the bag found at the appellant's home was a commonplace item. The interpretations placed on the phone and cell site evidence were challenged as simplistic and flawed. As for the bad character evidence, the appellant suggested that the police had tried but failed to wrongly prosecute and convict him for other firearms offences. This was said to be a reason for unjustified hostility towards him. The appellant called a former girlfriend to give evidence of his whereabouts the previous evening, albeit this did not provide an alibi for the time of the gun fight. He did not give evidence himself.

The Judge's ruling and summing-up

14. Consistently with the stance adopted in relation to the CCTV evidence, counsel who then appeared for the appellant submitted that the judge should direct the jury to have no regard to the CCTV for the purposes of identifying anyone as being one of those portrayed on the CCTV. The judge declined to do so. He considered the decision of this Court in Attorney General's Reference No 2 of 2002 [2003] 1 Cr App R 21, where Rose LJ, giving judgment of the Court said this:

> "There are, as it seems to us (at least four circumstances in which, subject to the judicial discretion to exclude, evidence is admissible to show and, subject to appropriate directions in the summing-up) a jury can be invited to conclude, that the defendant committed the offence on the basis of a photographic image from the scene of the crime."

15. The judge said that the only one of the four circumstances which applied in this case was the first: "where the photographic image is sufficiently clear, the jury can compare it with the defendant sitting in the dock" (see R v Dodson (1984) 79 Cr App R 220). The judge ruled that the provenance and collation of the CCTV compilation were not in question. Its quality, he said, was sufficient to allow the jury to reach their own conclusions guided by an appropriate direction to which he referred as a "quasi Turnbull direction" as to the risks of mistaken identification and the need to take care when making an identification from a two dimensional video recording. The judge further observed that identification did not rest on CCTV alone. There was

other material capable of supporting the prosecution case in this respect, including the cell site analysis, the connection with the Converse man bag and the connection with the car.

16. When he came to sum up to the jury the judge provided them with written directions of law which he rehearsed almost word for word in what he said to them. On the issue of identification, he emphasised that there was no eyewitness evidence. He told the jury, when comparing a defendant with the person shown in footage or a photograph, to look for features that were common and features which were different. He warned them that experience had shown that people could be mistaken in their identifications and that there had been an example of that in the case itself. That of course was a reference to officer Clancy.
17. The Judge pointed out to the jury that the quality of the footage and photographs might affect their ability to make a comparison. He said this:

> **"If you decide that the quality of the footage or photographs doesn't allow you safely to make any comparison of the defendants then you should not try to do so. However, if you're satisfied that the quality is good enough to allow you to make a comparison you can study the footage and the photographs for as long as you wish and will make arrangements for that."**

18. He made the point that this was only part of the evidence in the case and went on as follows:

> **"If you're sure, having considered all the evidence and taken on board what I've told you about the evidence and what you must bear in mind, that the person shown on the footage or photographs is the defendant, then you must decide whether the defendant is guilty of the offence of which he or she is charged. If you're not sure that the person on the footage or photographs is the defendant, well you must find that defendant not guilty."**

<u>The appeal against conviction</u>

19. The single ground of appeal for our consideration is that the conviction is unsafe because:

> "The judge erred in directing the jury that they could properly make a comparison between the CCTV from Riggs Approach and pictures of the appellant on his arrest."

20. In support of the revised ground of appeal it is asserted in writing that:

> "This was not a comparison which came within one of the four circumstances identified in Attorney General's Reference No 2 of 2002."

21. Those four circumstances are these:

1. As we have said, comparison by the jury between a sufficiently clear photographic image and the defendant sitting in the dock.
2. Comparison by a witness who knows the defendant sufficiently well to recognise him as the offender depicted in the photographic image.
3. Comparison between the photographic images and a reasonably contemporary photograph of the defendant, by a witness who did not know the defendant but had spent time viewing and analysing the photographic images from the scene, thereby acquiring special knowledge that the jury did not have.
4. Comparison of the same material by a suitably qualified expert witness in facial mapping provided the materials were available to the jury.

22. In oral argument today Ms Wass has made the following submissions. First, she has argued that the CCTV was of irredeemably poor quality incapable of supporting an identification of the appellant as Man 2. She submits that this was manifest from material before the court. She relies on the email exchange with a facial mapping expert who she says expressed the opinion that the CCTV was of insufficient quality to allow meaningful comparison. She relies also on the mistaken identification by PC Clancy, based on the internal FIMS record, which says makes essentially the same point.
23. In response to the prosecution case that there was other supporting evidence, Ms Wass submits that whatever that might be, it cannot make good the absence of any evidence capable of supporting a visual identification. She submits that, first of all, the ANPR does not help because there is no scientific phone or other evidence that the appellant was ever in the Peugeot and, further, that the plea of Ekwiburi cannot help as it does not implicate the appellant. She submits that there was no identifying evidence at all properly assessed. There was no eyewitness, there was no DNA, there were no fingerprints. She accepts that had there been some identification evidence of this or some other kind the Converse bag and the phone evidence might have supported it, but there is none. Even then she says the Converse bag was not found in Mr Ozger's room and there was no firearm residue in it when an expert witness examined it. It was said by the witness that he would have expected it to be present had the firearm been placed in the bag.
24. The high point of the phone evidence, says Ms Wass, was that the appellant's phone was using the same mast of that of Ekwiburi shortly before 5.00 am. Ms Wass further suggests that there is evidence pointing away from the appellant. Reliance is placed on the fact that in July 2019 the Tokarev pistol, identified by an expert as the one used on the occasion of this crime, was found at the home of someone else, (called Miftaraj) who was later convicted of possessing that weapon.
25. Ms Wass has analysed the judge's ruling, and submitted that the real point here was whether the CCTV was of sufficient quality to permit any form of comparison, whether it be with a photograph or with the man in the dock - it mattered not. The mischief lay in allowing any sort of comparison with such unsatisfactory footage. The test to be applied by the judge should be a freestanding test (what she called a “pure” test) concerned exclusively with the quality of the CCTV; it should not be contaminated with any other considerations. Ms Wass submitted further that the judge's legal directions were unclear as to what the jury were or were not permitted to do with the CCTV and that the directions were in any event wrong. This was not a case that engaged the Turnbull warnings. In the absence of any expert evidence in support of identification and in the presence of a negative expert opinion, the jury

should have been told that they could not rely on the CCTV for the purposes of identification at all.

26. Ms Wass referred us to the decision of this Court in R v Parrish [2021] EWCA Crim 1693, which was an appeal against conviction by members of Team B. She submitted that this showed that the judge was obliged to determine whether the CCTV met a minimum quality standard such that it could properly be used by the jury - a point that was accepted by the prosecution. Ms Wass sought to distinguish Parrish from the present case, on the basis that the CCTV that was in issue there contained a number of features that the jury were able to use by way of identification: not only facial appearance but also clothing, gait and other characteristics, most of which were not available to the jury in the present case.
27. For the prosecution, Mr Shaw accepted, as we have said, that there was a threshold requirement for admissibility but he submitted that it was clearly met by reliance on CCTV of high quality and the judge was right to leave the matter to the jury. He submitted that this was a very strong prosecution case. He made four main further points. First, that it is not the case that any expert ever cast doubt on the quality of the CCTV as such. All that was said was that it was unsuitable for facial mapping. He pointed out that a defence expert had accepted, in an unused report, that there were no inconsistencies between the CCTV and the appellant's appearance. That, of course, is a matter that the jury could assess for themselves. Secondly, PC Clancy's mistaken identification was said to be based on a single, not a series of moving images. Thirdly, it was submitted that the cell site evidence was overwhelming. It showed the phones reliably attributed to the three defendants travelling in the same directions up to a point of about a quarter of a mile from the scene of the crime some 5 minute before the Peugeot drove into the approach. Fourthly, the Converse bag was identical in shape, size and logo to that seen on the CCTV in the possession of Man A. The absence of gunshot residue when it was seized months later could have many explanations, one of them being that the weapon was never put in the bag. There was no evidence that it was. As to the fact that Miftaraj was in possession of the Tokarev in 2019, Mr Shaw submitted that this took the matter no further. It had never been the appellant's case that Miftaraj was a member of Team A.

Discussion

28. These arguments have bought out clearly what we see as the narrow scope of the single ground of appeal that it falls to us to confront. As we see it, the majority of the arguments advanced by Ms Wass, if not all of them, are matters on which leave to appeal was refused on the renewed application of March 2022. Ground 1, on which leave was refused, was that there was insufficient evidence against this appellant for the case to be left to the jury. Ground 2, for which leave was also refused, was that the case against the appellant depended solely on the correctness of the identification of him on the CCTV taken from cameras at the scene of Riggs Approach on 28 October and that there was no evidence capable of supporting the correctness of that identification and extraneous evidence that undermined it. That extraneous evidence listed under ground 2 was the opinion of the facial mapping expert, the mistaken identification by PC Clancy, and the matters about the Tokarev pistol that we have already mentioned.
29. If this analysis is right, the appellant is not entitled to argue today that there was no basis at all on which a jury could safely identify him as Man 2 on CCTV. The argument would have to be that although the CCTV could properly be used by the jury for the purposes of drawing conclusions as to identification, that process could

not legitimately include a comparison with the photographs taken of the appellant on his arrest.

30. That is not a point that was argued in the court below; indeed the prosecution did not put their case on the basis of a comparison between the custody photographs and the CCTV. These are doubtless reasons why this narrow point was not addressed by the judge in his ruling. His directions to the jury made reference to the appearance to the defendant in the dock and the lighting in court. In substance this would seem to be a new point, raised for the first time in the written grounds of appeal. This is not the way the appellant's case has been put in argument today.
31. We should say briefly however why we do not think it is a good point. First, the decision on the facts of Attorney General's Reference No 2 was that it was permissible for a witness who knew the defendant but was not present at the scene to give evidence of recognition, based on a film of the offence. The Court further held that such a witness did not require any special skills, abilities, experience or knowledge. We doubt the case is binding authority for any wider proposition.
32. Secondly, although Attorney General's Reference No 2 lists three other circumstances in which a jury may safely be allowed to draw conclusions about identification, based on film or photographic records of a crime, it does not purport to contain an exhaustive list. The language used by Rose LJ was non-exhaustive in its terms; he referred to "at least" four circumstances in which photographic evidence from the scene of a crime could be used for the purposes of identification. Before us today Ms Wass has accepted that this was not an exhaustive list.
33. The case is therefore not authority for the proposition that film or photographs from a crime scene cannot be used to support identification in any way other than the four which were expressly identified in the judgment.
34. Thirdly, we are unable to see any reason why a fact-finding tribunal should be debarred from ever concluding that a person shown on CCTV is the same individual as the person depicted in a still photograph. There may be circumstances in which it would be illegitimate, or in a criminal matter unsafe, to draw such a conclusion but we would not accept that there can be any rigid rule in the matter. It is common ground that in principle a jury may carry out a comparison between CCTV images and the defendant's appearance in court in front of the jury. We are unable to see any fundamental difference of principle between this and a comparison between moving CCTV and still images of the defendant captured outside court. It must surely depend on the facts.
35. A photograph, assuming it is agreed or proved to depict the defendant, may be so blurred, old or otherwise flawed that it provides no adequate basis for concluding that it shows the same person as shown in CCTV of a crime scene. Certainly, the use of such a photograph might be in no way comparable to a comparison between the CCTV and the defendant in the dock. But it is not difficult to imagine cases in which a good quality, high resolution still image of undoubted authenticity from around the time of the offence would provide a better comparator than studying the defendant in court, perhaps years later, when his appearance may have changed, whether deliberately or not.
36. All of this said, we do not propose to decide this appeal on the basis of our interpretation of the limited leave granted in March 2022. On the facts of this case, having studied with care the CCTV and the still images in question, we are satisfied that the trial judge was not wrong to allow the jury to use the CCTV for the purposes of identification and that the appellant's conviction is safe.
37. Some of the CCTV was black and white footage of only fair to moderate quality. If

the appeal turned on that footage we would see a great deal of force in it. But the key images were those captured in high-definition colour footage of good quality, with good lighting, at around 5 in the morning. In particular, there is a moment at 5.06.42 when Man 2's disguise was down and his facial features could be seen quite clearly. We have seen a still extracted from this footage and set side by side with the custody photographs. That, in our view, was a comparison which the judge legitimately allowed the jury to make. So too was a comparison with the defendant in the dock. The judge was right to approach the matter as one that called for a Turnbull direction of sorts. It is a common place that when deciding on the reliability of identification evidence account must be taken of other evidence that is capable of supporting it or undermining it. The Turnbull direction was appropriate as a matter of principle and in its terms.

38. It is legitimate in these circumstances to bear in mind a number of factors which we consider to be weighty. First, the main focus of the judge's directions on identification was on comparison between the CCTV and the appearance of the defendants in the dock. This means that the jury had three sources for comparison available to them: the CCTV, the still photographs, and the defendant's live appearance - which included, to some extent, his ways of moving. Secondly, the trial lasted a month and the judge observed in his directions that the light in court was good. Thirdly, the still images are of unquestioned provenance, relatively contemporaneous, clear and of good quality, sufficient to allow reasonable jury comparison. Fourthly, the jury were not being asked to reach a conclusion as to identification or as to guilt based exclusively on these comparisons; they were told to have regard to all the evidence. There were several other strands of evidence capable of supporting a conclusion that the defendant was the person shown in the CCTV. Fifth, as the appellant exercised his right to silence in interview and at trial, save for a prepared statement, there was no evidence to contradict the identification and the jury were given the standard direction they could draw adverse inferences from silence in support of the prosecution case. Sixth and finally, the jury were given a careful and proper direction about identification which expressly warned of the risks. They were expressly directed orally and in writing that if they were not sure that the person in the CCTV was the defendant they must acquit.
39. We wish particularly to underline the significance of the fourth of these points. Ekwiburi had recently confessed to participation in joint possession of one of the SLPs on the night, with intent to endanger life. His plea was on a full-facts basis. The phone evidence, cell site analysis and the ANPR evidence, if the jury accepted it, made the appellant an associate of Ekwiburi, who had travelled with him in the stolen Peugeot to the scene of the gunfight. Equally, that evidence made the appellant an associate of Thompson, against whom the prosecution case was strong. As Mr Shaw pointed out in argument, the appellant's phone was evidently in the car with Ekwiburi and Thompson until just before the shooting broke out, and there was no evidence or suggestion that the appellant had got out and made off in some other direction. The CCTV shows Man 2 wearing a man bag which, in our view, the jury could easily have concluded was distinctive and identical to the one found at the appellant's home. These are not the only relevant strands of evidence. In short, we accept the prosecution submission that there was a powerful circumstantial case against the appellant that strongly corroborated any identification the jury were not able to make. We do not consider that the jury directions on this issue were flawed so as to undermine the safety of the jury's conclusions. The jury cannot have been in any doubt that they could only convict if they were sure of identification. The evidence

was sufficient to enable them to reach that conclusion.

40. For those reasons we dismiss the appeal against conviction.

Sentence

41. We therefore turn to the renewed application for leave to appeal against sentence.
42. Sentencing for the offences we have so far been discussing, which we shall call the "Snaresbrook offences", was adjourned for over a year. In the meantime, three members of Team B were tried and convicted before HHJ Pounder and a jury. These were Kamal Parrish and two co-defendants, Lawrence and Mohammed.
43. The Team A and Team B defendants were all sentenced by Judge Pounder at the same time on 5 November 2021. Sentencing the appellant, the judge took the Snaresbrook offences in the round. He applied the Sentencing Council Guideline for Firearms Offences, treating the section 18 conspiracy as an aggravating factor. That, as is accepted, was an appropriate approach. The judge concluded that the offending fell within Guideline category 1A because of what was being fired. He took the category starting point of 18 years' imprisonment without any increase to reflect the appellant's previous convictions. He then brought that down to 16 years to account for the length of time the matter had been outstanding and the conditions in prison during the Covid pandemic. There was at this point in the original judgment a slip where the judge said "17 years" not 16, but that was later corrected after the defendant raised the matter from the dock.
44. Next the judge considered dangerousness. He concluded that the appellant was dangerous but that a life sentence was not required, an extended determinate sentence being sufficient.
45. When deciding on the length of that sentence there was a complicating factor. On 27 July 2021, between conviction and sentence for the Snaresbrook offences, the appellant had been convicted in the Crown Court at Woolwich of conspiracy to sell or transfer prohibited weapons between 1 April and 12 April 2019, that is to say subsequent to the Snaresbrook offences. For that offence, (which we shall call the "Woolwich offence") the appellant was sentenced on 25 October 2021 to 8 years' imprisonment (the "Woolwich sentence"). Accordingly, when sentencing the appellant for the Snaresbrook offences a week later, Judge Pounder had to take account of the Woolwich sentence. His approach was to impose a concurrent sentence that included an uplift to reflect the Woolwich offence and sentence. The uplift he applied, bearing in mind totality was one of 5 years. To reflect his finding of dangerousness he imposed an extended licence period of 3 years. In the result, the sentence was the one we have already identified: an extended sentence of imprisonment of 24 years comprising a custodial portion of 21 years and an extended licence of 3.
46. The grounds of appeal that are the subject of the renewed application are three in number:

1. The appellant should have been sentenced on the basis of having played a *significant role* in a group activity rather than a *leading role*, so that his culpability should have been categorised as B rather than A, leading to a corresponding reduction in the starting point.
2. The uplift of 5 years to reflect the Woolwich case was excessive, wrong in principle and offended against the principles of totality. An uplift in the region of 3 years would have been proportionate.
3. The overall sentence for the appellant involved disparity with the sentence for Mr Parrish, whose culpability is said to be greater. Parrish was sentenced to an extended

sentence of 19 years' comprising a custodial term of 16 and an extension period of 3 years.

47. We are grateful for Ms Wass's submissions, but we are not persuaded that it is arguable that the sentence in this case was manifestly excessive or wrong in principle. It is a common misconception that where offending is part of a group activity only one participant can have a leading role. So, while Ekwiburi clearly did play such a role, that by no means excludes the same conclusion in respect of this appellant. The trial judge was ideally placed to assess his role, having presided over the trial. His conclusion that it was a *leading role* cannot fairly be criticised. What is more, there were other features of high culpability. This was a sophisticated offence with significant planning. It was a prolonged incident, and a firearm was discharged. In our view, further, the appellant was fortunate to have escaped an increase from the starting point on account of his poor record which included the two convictions for robbery and one for attempted robbery that we have already mentioned.
48. Nor do we see any merit in the complaint about the 5-year uplift for the Woolwich offences. That offending was entirely separate and distinct from the Snaresbrook offending. The principle of totality does not mean that repeat offenders are entitled to a bulk discount. The cardinal principle is that the sentence should be no more than is just and proportionate. The judge's approach in this case resulted in a 3-year reduction compared to a simple addition of the two sentences. That, in our judgment, was sufficient to give effect to the underlying principle.
49. As for disparity, this is an argument often deployed in this Court but one that seldom succeeds (see R v Saliuka [2014] EWCA 1987, at paragraph 28). There are two main reasons for that. The first is that differences are not necessarily disparities; they can often be explained on the facts. Secondly, where there does appear to be a disparity one obvious answer is that the comparator sentence was too lenient. In cases governed by Sentencing Guidelines it will be rare for the Court to conclude that the Guidelines were faithfully applied but that comparison with the case of another defendant shows the sentence was nonetheless excessive. The Court is obliged by statute to follow the Guidelines unless it considers that that would result in an injustice. Here, as we have already said, the appellant's culpability was high and the judge was entitled to take the category 1A starting point. He could indeed have gone higher. We see no merit in the complaint of disparity.

Conclusions and disposal

50. Accordingly, for the reasons we have given, the appeal against conviction is dismissed and the renewed application for leave to appeal against sentence is refused.

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

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