



Neutral Citation Number: [2024] EWCA Crim 313

Case No: 202300732 A5 AND 202300795 A5

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM CROYDON CROWN COURT**  
**HER HONOUR JUDGE SMALLER**  
**T20217180 and T20227019**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27/03/2024

Before :

**LORD JUSTICE WARBY**  
**MRS JUSTICE MCGOWAN DBE**  
and  
**HIS HONOUR JUDGE FLEWITT KC**

Between :

**UMUT ALPERGIN**

**First**  
**Appellant**

**ALEX FINDLAY**

**Second**  
**Appellant**

**- and -**

**REX**

**Respondent**

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**The Crown** was not represented  
**Graeme Wilson** for the **First Appellant**  
**Rabbah Kherbane** for the **Second Appellant**

Hearing date: 24<sup>th</sup> May 2023  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 27 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

**Mrs Justice McGowan :**

1. Umut Alpergin and Alex Findlay appeal against sentence by leave of the Single Judge, who also granted a representation order for junior counsel for Umut Alpergin, Mr Wilson. Alex Findlay is represented by privately instructed junior counsel, Mr Kherbane, who did not appear below. We are grateful to both counsel for their well-presented and focussed submissions.

History of Proceedings

2. Following his conviction on two counts after a trial, Umut Alpergin was sentenced on 1 June 2022 in the Crown Court sitting in Croydon to a total of 9 years imprisonment as set out below.

12	Possessing a Firearm with Intent to Endanger Life, contrary to s.16 of the Firearms Act 1968	9 years imprisonment
15	Possessing Ammunition without a Firearm Certificate, contrary to s.1(1)(b) of the Firearms Act 1968	4 years imprisonment concurrent

3. On indictments 20217180 and 20217128, Alex Findlay was sentenced to a total term of 22 years as set out below and was also made the subject of a Serious Crime Prevention Order imposed to begin on his release for a period of 5 years.

1, 2	Possessing a Firearm with Intent to Endanger Life, contrary to s.16 of the Firearms Act 1968	An extended determinate sentence. 18 years plus 4 years extended licence.
5	Possessing Ammunition without a Firearm Certificate, s.1(1)(b) of the Firearms Act 1968	3 years 6 months imprisonment
6, 7	Conspiracy to Supply a Controlled Drug of Class A, s.1(1) of the Criminal Law Act 1977	5 years 10 months imprisonment
9	Possessing a Controlled Drug of Class A with Intent, s.5(3) of the Misuse of Drugs Act 1971	5 years imprisonment
10	Having Custody or Control of a Counterfeit Note with Intent, s.16(1) of the Forgery and Counterfeiting Act 1981	2 years 6 months imprisonment

4. Also on 1 June 2022 Alex Findlay was sentenced on a single count indictment, jointly charged with Abdul Kamara, as follows.

Conspiracy to Supply Class A Drugs to another, s.1(1) of the Criminal Law Act 1977	7 years imprisonment concurrent
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## Facts

5. The prosecution case was that Alex Findlay played a significant part in an Organised Criminal Network, (“OCN”): he was involved in conspiracies to supply Class A drugs, the possession of two firearms and ammunition and the possession of counterfeit currency. Umut Alpergin was involved in the movement of a gun and ammunition connected to Alex Findlay’s activities.
6. We take the position of Alex Findlay first. On 25 January 2021 Alex Findlay moved the firearms and ammunition to an address in Thornton Heath. Darren Lewis lived at that address and at Alex Findlay’s direction, he stored the guns and ammunition in a locked shed at the premises. The following day the police searched the premises and found two 0.32 calibre automatic self-loading pistols and 34 rounds of live ammunition. All the items were in a locked tin in a drawer in the garden shed.
7. When the items and their packaging were examined DNA matching Umut Alpergin was found on the slide mechanism of one of the guns and on the wrapping of some of the ammunition. He was arrested on 4 June 2021.
8. Alex Findlay’s fingerprints were also found on the wrapping of the firearms. He was arrested on 28 July 2021. When his address was searched police found £5,790 in counterfeit notes. A bag was found on a desk which contained 14 wraps of cocaine weighing a total of 6.54 grammes, police also found a separate amount of 3.39 grammes of cocaine. He also had £7,790 in legitimate currency and a watch valued at £11,450. There was no record of Alex Findlay having any legitimate source of income.
9. A telephone attributed to Darren Lewis was analysed and messages showing Alex Findlay advertising the sale of Class A drugs, including cocaine and MDMA, going back to 2019 were found. Abdul Kamara was involved in an “OCN” distributing heroin, cocaine and cannabis. Alex Findlay was described as his trusted ally. Recorded conversations in late April and early May 2021 showed that Alex Findlay took orders from Abdul Kamara relating to the distribution of kilograms of cocaine.
10. Alex Findlay was born on 11 December 1994. On 16 February 2016 he was convicted of conspiracy to rob and attempted robbery and sentenced to a total of 6 years and 8 months. By virtue of the current offences he was in breach of licence. The robberies involved sex workers who were threatened with knives.
11. Umut Alpergin was born on 20 March 1998. He had limited previous convictions. A sentence of 16 weeks suspended for 18 months had been imposed on 4 November 2020 for an offence of the possession of a bladed article.

## Sentence

12. The learned judge found that Alex Findlay was operating “a significant and organised criminal life-style”. She found that his drug dealing was persistent throughout 2021 and that whilst he acted below Abdul Kamara in the hierarchy, he played a leading role in relation to Darren Lewis. He had an operational function and acted in the

expectation of significant financial reward. She placed his drug dealing activity at the higher end of Category 3 and described his role as significant.

13. In assessing his offending in relation to the firearms she categorised that as 2A, towards the top of the range, as he played a leading role in the organised group activity. She found that he presented a significant risk of serious harm to the public through the commission of further similar offences and that he would continue to present such a risk “for some years to come”. She did not find it necessary to impose a life sentence but did conclude that an extended term was appropriate. She took into account the nature and facts of his previous offending and the fact that he had been on licence for those offences.
14. In identifying the appropriate total term the learned judge passed a sentence on the firearms count to reflect all matters. There is no criticism of that approach, nor are any of the terms imposed on the drugs or counterfeit offences challenged.
15. Having placed the firearm offences in Category 2A, the starting point for one offence after trial was 14 years with a range of 11 to 17 years. The learned judge assessed the firearms offences alone as meriting a sentence in the order of 16 years. Her categorisation of the drug offending as Category 3, playing a significant role, would lead to a starting point for one offence after trial of 3 years and 6 months in a range extending up to 7 years. By that route she reached a total determinate sentence of 18 years on the two firearm offences and all the other sentences were ordered to run concurrently. In addition she imposed an extended licence period of 4 years.
16. In sentencing Umut Alpergin the learned judge assessed his role as being in category 2B, with a starting point of 10 years in a range of 8 to 12 years. She placed his offending as further towards the bottom of that range. She considered the future risk but did not find that established so as to require an extended sentence. She set a sentence of 9 years for the possession of the gun and imposed a concurrent term on the possession of ammunition offence.

### Grounds of Appeal

17. In his written grounds Mr Kherbane argues on behalf of Alex Findlay, firstly, that the categorisation of the firearms offences was incorrect and that led to a starting point that was too high, secondly that there had been double counting of aggravating factors and that mitigating factors had been undervalued and thirdly that it was wrong to impose the extended licence period. The second ground is no longer pursued.
18. As set out above no issue is taken with the learned judge’s approach of setting the core sentence on the firearms offences and adjusting it to reflect the fact of imposing all other sentences to run concurrently. The judge assessed the possession of the two firearms as falling into category 2A. She placed his role as “leading” in the drugs and firearms as between him and Darren Lewis but there were undoubtedly others above him, as she acknowledged.
19. We accept the force of Mr. Kherbane’s submission that to categorise his role as leading in the overall group is to place his culpability too high in the organisation. He directed Darren Lewis but was below others, as was reflected in his playing the role of “trusted deputy to the defendant Kamara” in the allied drugs offending. The whole

thrust of the Crown's case was that the firearms and drugs were linked and accordingly, whilst above Darren Lewis in the order, this appellant was not the leading force in the group.

20. In our view it is more appropriate to categorise his position as playing a "significant role where offending is part of a group activity". Accordingly his culpability would be category B.
21. In terms of harm, Mr. Kherbane submits that the learned judge was in error in finding that the harm was category 2 because she found that there was a high risk of death or severe physical harm. He submits that Alex Findlay was only responsible for receiving and moving the guns and ammunition which were stored and there was no risk of such harm because there was no sufficient connection to any likely use. We accept that the ingredients of the offence include an intent to endanger life and therefore there must additionally be some likely connection to use in circumstances where the risk of death or serious harm is high. As the guideline makes clear, relevant features may include the location of the weapon and the ability of users to have access. In this case, the guns were kept in a garden shed, locked but under the control of the key-holder, Darren Lewis.
22. The two men were involved in significant drug dealing together and it was entirely open to the judge who heard the trial to find that the possession of the guns, in working condition and with suitable ammunition, was connected to that drug dealing. There is no evidential basis for the suggestion that the guns might only have been another commodity in which Alex Findlay was dealing.
23. Mr Kherbane invites the court to follow the approach to harm taken in *Regina v Nurden, Nurden and Flynn [2022] EWCA Crim 913*. In that case the court accepted the submission that harm had been miscategorised by the sentencing judge. The evidence was that the appellants had been the couriers of the weapons; they had moved them by car and handed them on to others. The court observed that there was nothing more to demonstrate any "elevated " risk of their being used. That is not the same position as in this appellant's case. Alex Findlay was the recipient of the guns and ammunition. That must have happened on more than one occasion, as the gun Mr Alpergin transported was added to the other one. He stored them away from his own address at the home of his deputy, both men were involved in a number of different drug dealing arrangements and, as we have said, there was no evidential basis for suggesting that Alex Findlay was dealing in guns and ammunition as a commodity. All he had to do was make a telephone call and the guns and ammunition were available to him, his group or others. It was open to the judge to conclude that the weapons and the ammunition were held as part of, and in connection with, the overall criminality and in the world of drug dealing gangs there was a high risk that severe injury or death would be caused.
24. It is further submitted by Mr. Kherbane that the learned judge erred in finding both that Alex Findlay presented a significant risk of serious harm through the commission of further similar offences, continuing his involvement in organised crime, including the use of firearms, and that an extended sentence was necessary to protect the public from the future commission of such offences.

25. In reaching that conclusion the learned judge had made reference not simply to the facts of the index offending but also to Mr Findlay's record of offending. He played a pivotal role in the various drug dealing conspiracies which were before the court and had received two guns and ammunition, the gun transported by Mr Alpergin arriving to be added or rejoined to the other and both being stored by Darren Lewis.
26. In 2015 he had been convicted of offences of attempted robbery and conspiracy to rob. That offending involved the knife point robberies of sex workers. Appointments were made at brothels, the robberies were carried out, knives were carried and the use of firearms was threatened.
27. Having heard the evidence in all this linked offending that was a conclusion open to the judge. She found that the appellant was a member of an organised criminal gang who enjoyed the products and life style associated with that level of criminality. Notwithstanding the persuasive submissions made by Mr Kherbane we cannot find any failing in the judge's reasoning nor any error in her conclusion.
28. Umüt Alpergin was sentenced on the basis that his role fell into category 2B, towards the lower end of the range. He had clearly been responsible for the movement of one gun and compatible ammunition, his DNA proved that he had handled the gun directly and the wrapping around the ammunition. The learned judge found that the harm fell into category 2. She said, "*It is not possible for me to reach conclusions on the facts available to me about why you had possession of that firearm except that it must have been to do with serious criminality as the possession of a semi-automatic handgun can only inevitably be.*" That assessment of culpability as B was correct, he had moved a firearm with compatible ammunition.
29. In assessing harm the judge was correct to find that that was inevitably to do with serious criminality but as elucidated in *R v Nurden & ors*, there needs to be some basis for finding an "elevated risk" above that intrinsically carried by the possession of firearms and ammunition with intent to endanger life. Mr Alpergin's case is closer to the position in *R v Nurden & ors*. Not all offences of possession of firearms with intent to endanger life carry the high risk of death or severe harm covered by category 2. The guideline caters for those who are further removed from the use of such a weapon so as to create that high risk. If that were not the position then the guideline would not demonstrate the different levels of harm and risk.
30. We accept the submission that Mr Alpergin moved the gun but not in circumstances giving rise to the "elevated risk". Therefore his offending is more appropriately categorised as 3B.

## Conclusion

31. Accordingly, dealing with Alex Findlay, placing the firearms offending in category 2B leads to a starting point for a single offence of 10 years in a range of 8 to 12 years. Reflecting that there were two firearms offences and that the total for those offences has to be adjusted to reflect the drugs and counterfeit offending, we reach the conclusion that the appropriate total determinate term should be 15 years. We can find no error of reasoning in the judge's conclusion that an extended term is necessary for the protection of the public and can see no flaw in her assessment that a 4 year period of extended licence is the correct and necessary term. For these reasons we quash the

sentences on counts 1 and 2 of indictment 20217180 and substitute on each count an extended determinate sentence of 19 years comprising a custodial portion of 15 years and an extended licence period of 4 years concurrent. The other concurrent sentences remain unaffected.

32. Turning to Umut Alpergin and reflecting this court's assessment of his role as falling into category 3B, the guideline sets a starting point of 7 years in a range of 5 to 9 years for one offence after trial. Given that he had handled the weapon and must therefore have known its quality and given that he drove it across London we can find no features to mitigate that term. The aggravating factor of the presence of compatible ammunition has already been considered in the assessment and so we do not move from the given starting point. In the result we quash the sentence of 9 years on count 12 and substitute a sentence of 7 years imprisonment. The concurrent sentence of 4 years imprisonment on count 15 stands.
33. To that extent these appeals are allowed.