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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 22 November 2016

B e f o r e:

LADY JUSTICE SHARP DBE

MR JUSTICE MORRIS

THE RECORDER OF WESTMINSTER - HIS HONOUR JUDGE McCREATH
(SITTING AS A JUDGE OF THE COURT OF APPEAL CRIMINAL DIVISION)

R E G I N A

v

VALODIA TARASOV
JURIUS TARASOV

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Mr T Siddle appeared on behalf of the **Appellant Valodia Tarasov**
Ms J Smart appeared on behalf of the **Appellant Jurius Tarasov**
Mr A Jafferjee QC and Mr J Brown appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

1. LADY JUSTICE SHARP: This is an appeal against conviction with the leave of the Full Court granted on 8 July 2016 on a single ground, which is that the judge should have acceded to a submission of no case to answer at the close of the prosecution case.

2. The two appellants are Jurius Tarasov ("JT") and Valodia Tarasov ("VT"). They are brothers and Lithuanian nationals. Together with a third brother, Viktoras Tarasov ("VKT"), they were charged with the manslaughter of a Polish man, Pawel Pacholak ("PP"), on 13 January 2013. The three brothers first stood trial before the Recorder of London and a jury at the Central Criminal Court between May and July 2014. On 24 July 2014, they were convicted of manslaughter. VT and VKT were also convicted of conspiracy to pervert the course of justice. The conspiracy charge arose out of attempts to clean up the scene of the killing.

3. On 26 June 2015, the Court of Appeal Criminal Division allowed the brothers' appeal against their conviction of manslaughter on the ground that there had been a misdirection on the issue of foreseeability, and directed a retrial. The brothers were retried on the manslaughter charge before His Honour Judge Worsley QC and a jury at the Central Criminal Court, and JT and VT were convicted of manslaughter on 16 December 2015. The jury failed to agree in respect of VKT, and a retrial was listed on 9 May 2016. VKT was convicted at the retrial and the brothers were each sentenced to 7 years' imprisonment for manslaughter on 25 May 2016.

4. VKT has an interest in this appeal, since the convictions of JT and VT were admitted into evidence at his retrial.

5. The prosecution case was that this was a case of manslaughter by flight (see DPP (Jamaica) v Daley [1980] AC 237 (PC)). The case against all three brothers was that they were party to a joint enterprise assault on PP late on the evening of Saturday, 12 January 2013 into the early hours of Sunday, 13 January 2013. This took place outside and inside 255 Streatham High Road ("255"). The initial assault had started outside 255 at 11.54 pm. PP sustained significant injuries in the assault and was bleeding heavily as a result. He fled into the first-floor toilet and tried to escape out of the window, unsuccessfully. He then made his way to the first-floor bathroom and locked himself inside. As a result of his fear of further assault, PP jumped out of the bathroom window to escape. The bathroom window was small (1 foot 8 by 2 foot) and 61 inches from the floor of the bathroom. PP fell head-first on the ground below and sustained further serious injuries. He succumbed to his injuries while stumbling around on the patio outside, as could be seen on CCTV footage at 1.26 am, and he was found dead later that morning by the police.

6. The locus in quo was a maisonette with a ground and first floor. The tenant was Denise Selmes. Ms Selmes was an alcoholic who allowed other alcoholics, usually eastern European men, to stay in return for alcohol. There was evidence that PP visited the maisonette from time to time. VT and VKT rented the downstairs living room as their bedroom. Upstairs there were three bedrooms occupied by seven people, including Pitor Sitak and Leszek Pelikant. There were admissions and other evidence that there

were constant fights and disturbances between the residents of the maisonette. JT did not live there; he rented a flat in Brixton with his partner, Beata Bykowska ("BB").

7. In Daley, this was said at page 45:

> "The law regarding manslaughter of the species with which this appeal is concerned was considered by the Court of Appeal (Criminal Division) in R v Mackie (1973) 57 Cr App R 453. It is unnecessary to recite the facts of the case or to quote any passages from the judgment of the court delivered by Stephenson LJ. It is sufficient to paraphrase what in their Lordships' view were there held to constitute the essential ingredients of the prosecution's proof of a charge of manslaughter, laid upon the basis that a person has sustained fatal injuries while trying to escape from assault by the accused. These are: (1) that the victim immediately before he sustained the injuries was in fear of being hurt physically; (2) that his fear was such that it caused him to try to escape: (3) that whilst he was trying to escape, and because he was trying to escape, he met his death; (4) that his fear of being hurt there and then was reasonable and was caused by the conduct of the accused; (5) that the accused's conduct which caused the fear was unlawful; and (6) that his conduct was such as any sober and reasonable person would recognise as likely to subject the victim to at least the risk of some harm resulting from it, albeit not serious harm."

8. In Roberts (1971) 56 Cr App R 95, Stephenson LJ giving the judgment of the court said this at page 102:

> "The test is: Was it the natural result of what the alleged assailant said and did, in the sense that it was something that could reasonably have been foreseen as the consequence of what he was saying or doing? As it was put in one of the old cases, it had got to be shown to be his act, and if of course the victim does something so 'daft', in the words of the Appellant in this case, or so unexpected, not that this particular assailant did actually foresee it but that no reasonable man could be expected to foresee it, then it is only in a very remote and unreal sense a consequence of his assault, it is really occasioned by a voluntary act on the part of the victim which could not reasonably be foreseen and which breaks the chain of causation between the assault and the harm or injury."

9. See further R v Williams & Anor (1992) 95 Cr App R 1 at page 8:

> "The jury should consider two questions: first, whether it was reasonably foreseeable that some harm, albeit not serious harm, was likely to result from the threat itself; and, secondly, whether the deceased's reaction in jumping from the moving car was within the range of responses which might be expected from a victim placed in the situation which he was. The jury should bear in mind any particular characteristic of the victim and the fact that in the agony of the moment he may act without thought and deliberation."

10. The judge crafted his steps to verdict before the close of the prosecution case with those principles in mind. It was common ground that before they could convict of manslaughter the jury had to be satisfied in relation to the defendant whose case they were considering of the following (using the wording of the judge): (1) that the defendant had either attacked PP himself or had joined in the attack upon PP by others; (2) that PP had escaped from the maisonette by climbing from the bathroom window, and immediately before he had done that he had feared that he would be attacked again, either by the defendant [on his own or by his] joining in such an attack by others; (3) that the fear on PP's part was reasonable; (4) that it was that fear which had made him escape by climbing out of the bathroom window; (5) that it had been reasonably foreseeable to someone in the position of the defendant that escaping through the bathroom window had been within the range of responses which might be expected of someone in PP's position; (6) that it had been as a result of his attempt to escape that PP had sustained the injuries from which he died.

11. These steps to verdict provided the focus for the submission of no case, and are the focus of the appeal before us today. Both appellants now concede that there was a prima facie case that they had committed an unlawful act in or at the maisonette. However, the appellants submitted to the judge, as they do before us, that there was no or no sufficient evidence against them on steps 2 to 5, and that the judge should therefore have withdrawn the case from the jury.

12. The points made on behalf of the appellants in summary are these. There was no evidence that PP left the bathroom window through fear of a further attack by VT, JT or VKT and/or that it was that fear that led PP to escape in that way. There was compelling evidence that there was an intervening event at about 1.15 am which broke the chain of causation, and no reasonable jury properly directed could make an adverse finding against the appellants on causation in the face of that evidence. Given the lack of evidence about what PP did and about what the appellants knew PP had done, it was not reasonably foreseeable that PP would have escaped in the manner he did. Further, given that PP could have sought sanctuary or raised the alarm, it would not have been reasonably foreseeable, even to someone in full possession of the facts, that exiting in the manner PP did was within the range of reasonable possibilities.

13. The appellants' argument focuses in particular on two matters. Firstly, on the 92-minute gap between the time of the initial assault at 11.54 pm and 1.26 am, when PP could be seen outside after he had exited the bathroom window. This, it is said, is an unexplained lacuna which deprives the prosecution of a rational link between the unlawful act and the eventual death. Secondly, on the evidence of an upstairs neighbour, Natalie Marks, given on behalf of the prosecution at trial. This showed, so it was said, that there was a strong probability at the very least, that at 1.15 am PP was involved in a fight, during which he was precipitated out of the window by someone other than the appellants, an event which broke the chain of causation between the appellants' unlawful act and PP's flight from it. Moreover, the timing of that second fight dovetailed with the time in which PP was seen outside on CCTV footage after exiting the window. JT maintains that Ms Marks' evidence is of particular significance to his case because by 1.15 am, as was common ground, he had left 225 and was on his way home. He was seen on CCTV footage on Streatham High Road at 12.37 am walking north towards his flat where he

would have arrived by 1.00 am. It follows that he must have left the flat some minutes earlier than 12.37 am.

14. We have been referred to significant parts of the evidence of Ms Marks from the transcript of her evidence, but it is sufficient for this purpose to set out the judge's summary of it in his summing-up, which it is accepted is accurate:

> "Natalie Marks; she lives directly above Denise.
>
> 'Three weeks before 13 January, I had seen three men beating a younger man outside and I'd called the police. I can't say if he lived there. The police spoke to the young guy and there was a warning to everyone and they all went inside.'
>
> On the 12th/13th she said this and the defence rely heavily on it:
>
> 'I went to bed at 1.15 am. Ten minutes later, I heard banging and shouting, really loud, from below. I was sleeping on the top floor. It was not in English, there were two English swearwords, "Fucking bastard". My window was slightly open. It was going for a while. It sounded as though it was coming from the green (you know, where the green area is, outside the flats) from my right, as you look out from Denise's back door. Because it was quite loud. It started inside and seemed to move outside. I drifted off to sleep because I'm quite used to the sound of arguments.'
>
> In cross-examination, she said:
>
> 'I messaged my daughter at 1.15 am and it was about ten minutes after that that I'd heard the noise. I'd been watching television in the living room. There was banging, shouting, this guy really screaming. It was arguing and fighting. Almost all the words were in a foreign language. Some was muffled. It went on for some minutes, five to ten minutes. It could have been coming from Denise's bedroom level. Then I felt the noise was from outside.'
>
> She described there was traffic noises on the High Street. In further cross-examination, 'I can't say how long the noises went on for...'."

15. Against that background we turn to the evidence relied on in support of the prosecution case.

16. The case was a circumstantial one and depended on the following strands of evidence. There was considerable evidence that on 12 January 2013 a serious issue had arisen between the brothers and PP before he was assaulted. They believed (wrongly, as it turned out) that PP had stolen JT's mobile telephone and they were very angry about that.

JT had recently become a father and the phone had on it irreplaceable photographs of his new born child.

17. Mr Pelikant give evidence that earlier that evening he went downstairs and heard a loud conversation in Lithuanian or Russian coming from the lounge. He went in and saw the three brothers and PP "fighting over the phone" and talking as though PP was guilty of stealing it. While he was there, VT came from the kitchen with a bowl of water and a cloth and wiped what appeared to be blood from the floor.

18. CCTV footage of poor quality showed three figures outside 255 at 11.54 pm. The tallest had his arms outstretched towards one of the others as though pushing him. At 1.26 am there was footage of PP outside 255 stumbling and finally collapsing at the point where his body was found. The Crown's case was that the first footage was of the earlier stage of the assault on PP and the second was of PP after he jumped from the window.

19. There was a considerable body of forensic blood evidence that the assault on PP had begun outside 255, that it had continued in the living room, and that PP had fled from there upstairs, locking himself first in the toilet and then in the bathroom from which he exited from the small window.

20. Evidence was given by Andrew Bell that there was a trail of PP's blood outside the front door and there was clear evidence of a clean-up in the living room. There were airborne spots of PP's blood on the television in the living room, which, in Mr Bell's opinion, were the result of an impact to a bleeding person or an object wet with blood or an expiration of blood. For this to occur, the person had to have had blood in their nose, mouth or airways. There were further spots of PP's blood on the door into the garden and on the living room floor in front of that door. A considerable amount of blood was also found in the bathroom and the toilet, including on the window frames of each, where PP's finger marks were also found. VKT's jacket was found to have a transfer stain of PP's blood on the chest and a mixed profile spot of blood on the sleeve containing a major profile match of PP. Similar spots were found on his hooded jacket, on the heel of his shoes and there were numerous spots of airborne blood on the toes. These were the result of at least one impact to a bleeding person or object wet with blood. Mr Bell could not exclude the possibility that they were the result of an expiration of blood.

21. Although the clothes that VKT was wearing that night were recovered, the clothes that VT and JT were wearing that night which were captured on CCTV, were never recovered by the police, despite extensive searches.

22. Mr Pelikant gave evidence that he heard the sound of running water from the bathroom during the night and found the door of the bathroom was locked. He and Mr Sitak investigated. Mr Sitak pushed the door open. They found water running in the sink and the bath, and the window open. At that point he saw Denise Selmes and other residents cleaning what appeared to be blood from the walls upstairs.

23. When the police arrived at about 12 noon on 13 January, they met VKT coming outside with a clear plastic container containing liquid which he threw on the ground. The

officers saw blood inside the house, which appeared to have been freshly mopped, and a mop by the front door.

24. Just before the police arrived there were various communications between VT and the VKT on the telephone. At 11.31 am VT sent VKT a text message in Russian. This translated at "Hi, how is your health? What is going on in the house? Basically do me a favour. Look outside where the boiler is. Maybe Gurik's. The phone signal is good." The text message was followed by a telephone call from VKT to VT lasting 1 minute 25 seconds. At 11.36 VT sent a second text message to VKT in Russian. The translation of this was, "Don't be a fool. Don't set your brothers up (or 'don't let them down'). Clean the blood." There was evidence at the trial that the word "brothers" may have been a slang expression for "mates" or "blood brothers". Finally, at 11.58 am VKT sent a text message to VT, the translation of which was, "There is no mobile. Looked where boiler is and we are being kicked out by Denise herself for what happened yesterday. I washed all the blood but there is too much. That is all for now!"

25. BB gave evidence of a conversation she had with JT on the evening of 15 January 2013 shortly before his arrest. He told her that he had been at 255 on the evening of 12 January and discovered that his phone was not in his pocket. As recorded in the summing up, BB gave this account of what JT had told her:

> "Some people indicated that the man who was with the woman had taken it. He went, said Jurius, to the man and started to hit him. He said two or three times. She was asked 'Can you be sure it was hit?' to which she answered I don't remember if he said push instead of hit. Then he said that the man had run away to the bathroom or toilet. Jurius said to the man that he was going to come back the following day and to expect the phone to have been found by then. Jurius said he then left."

26. The prosecution said this was significant evidence. It confirmed other scientific evidence of PP's flight to each of the two rooms on the landing; it confirmed the assault injuries had been inflicted on PP and that he had sought refuge in those rooms before JT had left 255.

27. Dr Jerreat, a pathologist, gave evidence that PP had sustained a considerable number of serious injuries: head injuries, chest injuries with flailed segments to the ribcage, neck injuries with three fractures to the cervical vertebrae, facial injuries with a fractured nose and with aspiration of blood, abdominal injuries with a lacerated liver and blood in the abdomen, and injuries and haemorrhages to the brain. Only some of these serious injuries could have been caused by a single fall from a height. The massive bruising and tear to the liver were much more compatible with direct violence of kicking or severe punching and there had been a minimum number of six blows to the head. In his opinion, PP had been repeatedly assaulted and beaten to the front and back of his body.

28. The first two interviews with JT were not recorded due to mechanical failure. In his third interview, JT said there had been an altercation with PP but it had involved pushing not fighting. PP had grabbed him by the collar and JT had pushed him away. PP had got a bread knife from the kitchen, whereupon JT had fled. The prosecution said the

jury would be entitled to reject this account, since, if true, JT would be abandoning his brothers to a violent, knife-wielding man.

29. VT said in interview that he was present at 255 on the night and had seen PP. He said he had gone to buy vodka for Denise, and when he returned to the living room JT complained his phone had been stolen. VT said he and VKT went upstairs to speak to Denise and complain about this. He heard shouting from downstairs and when he went back everyone had left. There was no sign of disturbance or blood. When he saw PP that night he had no visible injuries. VT said that he then went to sleep in the living room, got up early for work the next day and left.

30. By reference to that evidence, the appellants' developed submissions are as follows. On the Crown's case taken at its highest, PP must have exited the bathroom window shortly before 1.26 am where he can be seen moving around the building line on 13 January 2013. The timing is consistent with the evidence of Ms Marks hearing a fight below her maisonette, starting inside and moving outside. It cannot be inferred that PP left the window earlier.

31. Similarly, there is no evidence of an unlawful act (committed by the appellants) after the incident captured at 11.54 pm; it is this which gives rise to the evidential lacuna of about 92 minutes, during which the prosecution were unable to say where PP was and/or what he was doing. There is and was therefore no direct evidence that PP was in fear of a further attack by whoever was involved in the original unlawful act, and there were too many imponderables to draw a reasonable inference from the circumstantial evidence that PP was in fear. This meant there was "no evidence of cause and effect" or that "but for" the unlawful act the flight or fatality would not have occurred.

32. Further, the gap in time between the unlawful act and the escape made the cause of the latter so remote that it became the voluntary act of a drunken man; or, as it is put, his own acts constituted a *novus actus interveniens*. Added to that was the real possibility (or probability, as the defence would have it) of an intervening act at about 1.15 am, namely the fight between PP and third parties which resulted in him being bundled from the window. This latter possibility was supported by evidence of grip-marks to PP's legs and the finding of his palm mark in blood on the inside of the bathroom door. This evidence was consistent with PP having tried to keep the door shut at some point, which is consistent with a struggle in and around the bathroom. There was no evidence that either VT or VKT were involved in that incident, and JT could not have been involved in it as he had left the address more than half an hour earlier. In any event, it is and was no part of the prosecution case that the appellants were so involved.

33. The appellants attach significance not merely to what Ms Marks said she heard but what she did not hear, i.e. she heard no disturbances earlier than 1.15 am. Further, the position of her flat, directly above the top floor of the maisonette, with a living room area above the bathroom of 255, meant, it is said, that had there been anything to hear earlier, Ms Marks would have heard it, a matter which was of fundamental relevance to the sufficiency of the prosecution's case on both steps 2 and 3.

34. Finally, even if the appellants had unlawfully assaulted PP, it is said that no sober and reasonable man in their position could have foreseen that PP would flee upstairs, take refuge in a locked bathroom and at some time in the future, exit head-first through the window, particularly since the front door was open and there were others in the house from whom he could have obtained assistance. In short, to adopt Mr Siddle's words, this was a case where the minimum evidence to establish causation, fear and acting out of fear had not been established, and the case should have been stopped, therefore, pursuant to the first limb of Galbraith.

35. We are unable to accept those submissions. In short, in our judgment, the evidence on which the prosecution relied provided a safe route for the jury to conclude that the appellants were guilty of manslaughter. The prosecution were unable to pinpoint the time at which the assault on PP terminated or the time at which he jumped from the window. We do not consider, however, that this was fatal to their case. There was sufficient evidence for the jury to be sure that the events were linked: that PP had been severely beaten by the appellants, that he had run away, as JT had said to BB, or escaped upstairs and had locked himself in the bathroom, having tried to escape via the toilet, and that he had then tried to escape via that means in immediate fear of further assaults, thus falling to his death. Indeed, the very difficulty of this means of escape, given the size of the window, its height from the floor and the severity of his injuries, was potent evidence in support of the prosecution's case of his state of mind and fear at the time. In our judgment, the mere fact that there may have been a gap between the time when the beating occurred and PP's flight from further assaults through fear was not fatal to the prosecution's case either.

36. We accept that the cases on "flight" to which reference has been made involved "immediacy", in the sense that the assaults and the flight from them were close together in time. However, we can see no logical reason to make this a requirement, provided immediately before the victim sustained the fatal injuries he or she was in fear of being hurt, and, the other questions identified in Daley can be answered in the affirmative. The length of time that a victim of an assault may hide from an attacker, may be relevant, depending on the facts, as to whether the fear of an immediate assault was still operative on the victim's mind when the attempt to escape was made. But the issue is fact specific: and in our judgment, mere length of time between assault and flight, cannot in and of itself fatally undermine a prosecution of this nature.

37. There was ample evidence to support the safe conclusion that the appellants were the perpetrators of the savage beating which PP had suffered before exiting the window. And it was open to the jury to find that his escape was within the range of reasonable responses to be expected from someone in his situation.

38. The evidence of Dr Jerreat, after all, was that PP had been subjected to a very serious assault which had resulted in very serious injury; multiple blows to the head, five areas of injury to the neck and multiple blows to the body, none of which were caused by the fall. There was scientific blood evidence coupled with CCTV evidence that the assault on PP had started outside 255 and that it had continued inside in the living room. The fact that PP felt driven to escape through a tiny bathroom window on the first floor, notwithstanding the seriousness of his injuries, in the context of the other evidence in the

case, entitled the jury to infer that he was in fear of further attack immediately before he exited the bathroom window, and had avoided going downstairs and out through the front door past "the lion's den" as Mr Jafferjee put it, where he had already been seriously assaulted.

39. Ms Marks' evidence was, as Mr Jafferjee submits, only part of the evidence the jury had to consider. She did not see a further assault on PP, nor was she entirely clear that what she heard took place outside 255. However, as Mr Jafferjee points out the prosecution did not have to call her, and had she not been called it could not reasonably have been said there was no case to answer. As it was, her evidence did not undermine or contradict the prosecution case and we do not consider it required the case to be stopped. What the jury made of her account in the context of the remainder of the evidence was, in the end, a matter for them.

40. Mr Jafferjee submits the interpretation which the appellants seek to put upon Ms Marks' evidence involves the following by way of inference: that PP was a victim of two unconnected attacks in the same house, and bled in the bedroom occupied by all three brothers when there was no evidence of motive for a second attack, whereas there was plainly evidence of motive for the first. Moreover, the two potential candidates who were identified at trial as being the perpetrators of this second attack were those who forced the lock. Mr Pelikant had a leg in plaster at the time and Mr Sitak was a friend of the deceased. It was implausible (or the jury would have been entitled to conclude that it was) having regard to the size of the window on the one hand and the size of PP on the other that he, a man of 79 kilograms and nearly 6 foot with several layers of clothing on, "a bull of a man" as he was described by the judge, had been forced through this window high off the ground by someone possibly with a broken foot or his own friend. Further, this account was (at least potentially was) undermined by the forensic evidence which demonstrated by blood and finger-marks that PP had tried first to escape through the toilet window and then coincidentally, as it were, was ejected out of the bathroom window. This was sufficiently incredible for the possibility to be rejected as a break in the chain of causation, let alone amounting to a scenario which could or should have resulted in the case being stopped.

41. JT however had a motive for the attack. He was in the bedroom when blood spatter was found despite cleaning, and he had on BB's account correctly identified the seat of sanctuary for the man who was assaulted. On that account, there was no gap between the assault and PP's arrival at the first seat of sanctuary, which was the toilet or the bathroom. As for VT, if there was a second attack, he was on his own account awake at the time, yet he heard and said nothing about it, even though on the appellants' interpretation of Ms Marks' evidence the noise on the green would have been related to events which took place outside the window where he was then awake.

42. We recite these points to illustrate that this was, as Mr Jafferjee submits, all the “stuff of a trial”.

43. In our view, the observations of Tuckey LJ giving the judgment of the Court in R v van Bokkum (7 March 2000, unreported) at paragraph 32, are apposite to this case:

> "Read literally the passage in Moore would mean that in any case dependent on circumstantial evidence the judge would be required to withdraw the case from the jury if some inference other than guilt could reasonably be drawn from the facts proved. We do not think that the Court intended to say this and if it did it is contrary to what was said in Galbraith. The approach suggested may be appropriate in a case such as Moore where the inference of guilt is sought to be drawn from a single fact, but this is much more difficult in a case such as the instant case where the Crown rely on a combination of facts. The judge will, of course, withdraw the case if he considers that it would be unsafe for the jury to conclude that the defendant is guilty on the totality of the circumstantial evidence adduced, but if he concludes that it is open to them to convict then Galbraith requires the judge to leave the decision to them."

44. As it is, in all the circumstances, there was in our judgment, sufficient evidence to leave the case to the jury. We are satisfied the appellants' convictions are safe and these appeals against conviction are both dismissed.

45. MR SIDDLE: My Lady, thank you very much. I wonder whether you would be kind enough to give a short time for me to consider whether there is a point of law of general public importance here? Maybe 30 minutes or so.

46. LADY JUSTICE SHARP: We have numerous other cases to deal with in our list, so once you have considered the matter you can come into court and indicate the matter to the associate what the position is, and then we will hear you, of course.

47. MISS SMART: My Lady, just this. When the first appeal was heard, judgment on 26 June 2015, there were reporting restrictions concerning that judgment, because of course retrials had been ordered. If that is still in place, I would ask for those restrictions to be lifted.

48. LADY JUSTICE SHARP: We will have to wait and see what Mr Siddle says about that. I do not know whether it would be appropriate to do so, but perhaps we can reserve that until Mr Siddle comes back.

49. MISS SMART: Indeed. And just finally, I think in two places in the earlier part of the judgment the earlier incident was described as happening at 12.54 instead of 11.54. That was corrected by the end of the judgment.

50. LADY JUSTICE SHARP: Yes, I will make sure that is consistent. Thank you very much.

(Other matters were heard)

51. LADY JUSTICE SHARP: Yes, Mr Siddle?

52. MR SIDDLE: This is a question that both my learned friend and I have formulated outside court. As was mentioned in legal argument, all the cases on manslaughter by flight flow from a direct flight as the result of an unlawful act. There is no other example of a case where there is a break in time between the unlawful act and the flight,

and the question therefore that I would submit should be certified for the Supreme Court is as follows:

> "In a case of unlawful act manslaughter by flight based on circumstantial evidence as to fear, is there a requirement that there be an immediacy, or at least a close temporal connection, between the unlawful act and the flight causing death?"

53. LADY JUSTICE SHARP: Thank you very much.

54. MISS SMART: Yes, indeed that is a joint effort between ourselves.

55. LADY JUSTICE SHARP: Do you want to say anything?

56. MR BROWN: Only that there already is an immediacy aspect in the test. The question of the time between the unlawful act and the flight is really just a fact-specific issue, as was ventilated in argument.

57. LADY JUSTICE SHARP: We will rise.

(A short adjournment)

58. LADY JUSTICE SHARP: Mr Siddle, Miss Smart, we decline to certify the point of law which you identified. In our judgment, this case involved the application of well-settled principles to the particular facts, and gives rise to no point of law of public importance.

59. MR SIDDLE: My Lady, thank you for interposing us. In relation to the previous appeal, there is no reason why any embargo on it should continue.

60. LADY JUSTICE SHARP: Let us hope that the copies, if anybody has an opportunity to read them, are slightly more legible than the ones which we had. Can I thank all counsel for their extremely clear and helpful submissions in this case, and if you could pass on my thanks, please, to Mr Jafferjee, and of course thank you to you, Mr Brown. Thank you very much.