NCN: [2019] EWCA Crim 1144
No: 2018 01275/02790 B2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 13 June 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE PICKEN

MR JUSTICE SWIFT

R E G I N A
V
JUNIOR SIMPSON
ADAM BENZAHI

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Ms Diana Ellis QC appeared on behalf of the **Appellant Simpson**
Mr James Scobie QC appeared on behalf of the **Applicant Benzahi**
Ms Alexandra Healy QC & Ms Henrietta Paget appeared on behalf of the **Crown**

J U D G M E N T

LORD JUSTICE SIMON:

1. On 14th February 2018 the appellant, Junior Simpson, and the applicant, Adam Benzahi, were convicted of the murder of Jermain Goupall following a trial before His Honour Judge Leonard QC and a jury at the Central Criminal Court. On 15th February they were both sentenced to life terms. Simpson, now aged 18, was ordered to be detained at Her Majesty's Pleasure with a minimum specified term of 18 years less 185 days on remand, and Benzahi, now aged 22, was sentenced to life imprisonment with a minimum specified term of 22 years less 105 days on remand.

2. Three other defendants stood trial with the appellant and the applicant. Samuel Oliver-Rowland was convicted of murder and sentenced to life imprisonment with a minimum specified term of 20 years. Saskia Haye-Elliott was convicted of manslaughter and was sentenced to 12 years and 6 months' youth detention. Daniel Luke was acquitted of murder.

3. Simpson appeals against conviction with the leave of the single judge, who granted a representation order. He is represented by Ms Diana Ellis QC. Benzahi renews his application for permission to appeal sentence following refusal of the single judge. He is represented by Mr James Scobie QC acting *pro bono*. The Crown is represented by Ms Alexandra Healy QC and Ms Henrietta Paget.

4. On the evening of 8th August 2017 Jermaine Goupall (aged 15) was with five friends: Brandon McDermott, Khie Degrads, Audley Malcolm, Alanzo Gordon and Zac Bazi. They were members of or associated with the CR7, the postcode for Thornton Heath, gang. McDermott, Degrads and Malcolm gave evidence; Bazi and Gordon refused to make statements

or come to court. Just before 11 pm, as they were standing outside Costcutter near Green Lane, Thornton Heath, a Ford Focus pulled up at the junction of Georgia Road and Green Lane. There were five occupants of the car. There was no dispute that the appellant, Simpson and Haye-Elliott (his girlfriend) were in the front seat. The three rear seat passengers, according to the appellant but disputed by each one of them, were Oliver-Rowland, Daniel Luke and the applicant Benzahi.

5. Jermain Goupall and his friends entered the Costcutter store; and, shortly after, Degrads and Malcolm left. Sometime later, Jermain Goupall and McDermott emerged. They started to jog up Georgia Road, but as they were doing so the Ford Focus appeared and headed towards them. The rear seat passengers got out and gave chase. McDermott ran into Costcutter and the shutters were pulled down. The three men from the car were shown on CCTV recordings chasing Jermain Goupall along the northern pavement of Georgia Road, where he fell. A witness described seeing him being attacked by at least two people, each wearing a balaclava and making arm movements in a jabbing motion many times. One of the men was heard to say, "Do you think you can fuck with us?" After the stabbing two of the men were captured on CCTV images fleeing west along the northern pavement of Georgia Road and then north up Green Lane towards the Ford Focus.

6. A third man was captured on CCTV crossing to the south pavement of Georgia Road. He emerged on Green Lane outside Costcutter, where he was witnessed displaying his knife and saying, "Where is the pussy?" - apparently, said the prosecution, still searching for one of Jermain Goupall's associates. He then turned and ran up Green Lane after the other two to the Ford Focus. The appellant drove the men back to Croydon.

7. Jermain Goupall was stabbed a number of times. One of the stab wounds cut the right femoral vein in his right thigh causing massive and fatal blood loss. It was not possible to establish who was responsible for inflicting the fatal injury.

8. The appellant was subsequently arrested. A Ford Focus was parked about 200 metres from the flat he shared with Haye-Elliott. The car was registered in the appellant's sister's name. There was no dispute that this was the car that they and the others had been in on the night of 8th August seen by the eyewitnesses and captured on CCTV.

9. In interview the appellant answered no comment to all questions, apparently on legal advice.

10. In evidence, which reflected his defence statement, he accepted he was the driver of the car. He said that the rear seat passengers (whom he named as Oliver-Rowland, Benzahi and Luke) jumped out of the car and chased members of the CR7 gang. He was first aware of the presence of knives at the moment the three passengers left the car. He was not aware that anyone had been stabbed until the passengers returned to the car. There was no common intention with others to attack anyone with knives or weapons and no intention to cause serious injury to anyone.

11. The prosecution case was that the killing came amid heightened tensions between the CR0 and CR7 gangs, fuelled by a series of taunting music videos posted online. The appellant appeared in videos and wrote lyrics to rap songs. The defendants were members of CR0. On 8th August they had gone to Thornton Heath, where the CR7 were based, intending to attack anyone they believed to be associated with that gang. It was pure chance that Jermain Goupall,

who was not himself an active gang member, became their victim.

12. Three phones later recovered from the appellant, Haye-Elliott and Luke demonstrated, said the prosecution, a common intention on the part of the five defendants to attack members of the CR7 gang with knives. The call patterns and movements of the phones from 9.06 pm until the time of the attack were consistent with that intention. All phones went silent at the time of the attack.

13. At trial the prosecution were allowed to adduce particular evidence of the appellant's bad character pursuant to section 101(1)(d) of the Criminal Justice Act 2003. This included videos on the appellant's phone showing Haye-Elliott and him playing with knives, rap lyrics written by the appellant said to illustrate conflict and violence between the CR0 and CR7 gangs, and a finding of guilt for possession of a bladed article in March 2015 when the appellant was 14, which the appellant had admitted. This evidence was admitted as relevant to the issue of whether the appellant carried a knife, or knew others had knives, and was willing to take part in a joint enterprise to stab someone. The decision to allow the prosecution to adduce this evidence is not criticised and does not form the subject matter of this appeal.

14. The evidence that was admitted and which <u>does</u> form the subject of the appeal relates to what was referred to as the "Goat incident". On 24th December 2016 (about seven-and-a-half months before the fatal stabbing in Georgia Road) CCTV cameras outside the Goat public house, Broom Road, Croydon, recorded an incident involving a number of men including, the prosecution said, the appellant and Oliver-Rowland. Oliver-Rowland became involved in an argument with a man called Nkosi. The CCTV footage captured Oliver-Rowland in possession of what was

described as an "implement". As Oliver-Rowland pulled a bag from Nkosi's shoulder, Nkosi dropped a knife on the ground, and it was the prosecution's case that it was at this point that the appellant produced a large knife, which was clearly visible, and which he used to stab Nkosi. Nkosi was taken to hospital, where a police officer saw him and noted a number of wounds. However, Nkosi did not pursue a complaint about the stabbing.

15. As a result of this incident, both the appellant and Oliver-Rowland were charged with offences. Oliver-Rowland accepted that he had used threatening behaviour. He had also faced a charge of possession of a bladed article, which he denied and the prosecution offered no evidence in relation to this charge.

16. The appellant faced a charge of possession of a bladed article. He denied that he was outside the Goat at the time. At a trial heard in the Croydon Youth Court the prosecution relied on the evidence of a police officer, Detective Constable Davies, who said he recognised the appellant on the CCTV having seen him on a number of previous occasions. He was not able, however, to point to any particular features which led him to make the identification, and following a successful submission of no case to answer the district judge acquitted the appellant.

17. At the trial in February 2018 the prosecution sought leave to adduce evidence of the Goat incident as evidence of bad character under section 101(1)(d) of the Criminal Justice Act 2003 on the basis that it was admissible as relevant to an important matter in issue between the defence and the prosecution. They sought to rely on the evidence of Detective Constable Gibson who had sat in during lengthy interviews with the appellant. In a statement he described the youth with the knife who stabbed Nkosi in the Goat incident as a "... lighter skinned black

male, slim build with short Afro hair ..." The other features he described related to his clothing, but there was no suggestion that any clothing was found to match what the youth had been wearing on 24th December 2016. The judge was told that before he viewed the CCTV Detective Constable Gibson had been informed that both the appellant and Oliver-Rowland appeared on it.

18. The defence opposed the application on the basis that the prosecution had to rely on the CCTV recording of the Goat incident and the purported identification, which had been rejected by the youth court. Furthermore, there was no scientific evidence to support the identification and the CCTV was not sufficiently clear to identify facial characteristics so as to enable comparison to be made by the jury between the image on CCTV and the defendant in court. Moreover, given that the incident took place one year before, Detective Constable Gibson was in a worse position than Detective Constable Davies to identify the male with the knife.

19. On 18th January 2018 the judge ruled that there was no safe basis on which he could allow the prosecution to adduce the Goat incident evidence. Whilst a prior acquittal was no bar to the evidence being adduced, it was dangerous to allow the evidence to go before the jury. The prosecution did not suggest that the jury could themselves view the CCTV footage, look at the defendant in court and come to their own conclusion as to the correctness of Detective Constable Gibson's identification. The lack of detail in the statement by the officer as to the features he recognised and which allowed him to reach the view that he could identify the appellant on CCTV provided a further reason why the evidence ought not to be admitted.

20. The appellant's case statement stated that he was the driver of the car, but that he was neither

in possession of a knife nor aware that anyone else in the car had a knife until the rear passengers jumped out and chased members of the CR7 gang. As we have noted, he identified the rear passengers as Oliver-Rowland, Benzahi and Daniel Luke.

21. In stark contrast, Luke's case statement stated that he had never been in the Ford Focus, and he provided an alibi for the material time, including his accessing of a Snapchat group between 11 and 11.30 pm.

22. The appellant started to give evidence during the late afternoon of 24 January and gave evidence implicating Daniel Luke as foreshadowed by his case statement.

23. An application was then made on behalf of Daniel Luke to adduce evidence of the Goat incident under section 101(1)(e) of the Criminal Justice Act 2003.

24. The judge indicated that he would wish to hear first from the officer on a *voir dire*, and, having done so, ruled in favour of the application, reserving his reasons.

25. His careful and comprehensive reasons were handed down on 29th January and it will be necessary to consider some of the points in more detail later. However, in summary, the judge noted (at paragraph 14) that the defences being run by the appellant and Luke were not of themselves mutually exclusive but they conflicted. They were not saying "It was not me, it was him". Nevertheless the appellant's case was that Luke was present and one of those who alighted from the car, while Luke denied he was in the car at all.

26. At paragraph 18 of the ruling he identified the relevant question as being:

> ... is the evidence of what is said to be Junior Simpson's involvement in the stabbing on 2nd December 2017 [the 'Goat incident'], which he denies, of substantial probative value when assessing the evidence he has given against Luke as to his presence and actions on 8th August?

27. That, it is common ground, is the relevant question that arises under section 101(1)(e). Section 104(1) of the 2003 Act provides:

> Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under section 101(1)(e) only if the nature or conduct of his defence is such as to undermine the co-defendant's defence.

28. Section 104(2) provides:

> Only evidence-
>
> (a) which is to be (or has been) adduced by the co-defendant ...
> is admissible under section 101(1)(e)

29. The judge continued at paragraph 19 and 20:

> Pursuant to section 104(1) of the Act evidence relevant to the question whether the defendant has a propensity to be untruthful is admissible under section 101(1)(e) if the nature or conduct of his defence is such as to undermine his co-defendant's defence. There can be no doubt that is what Junior Simpson has done in respect of Luke's defence.
>
> The evidence which Luke seeks to admit complies with section 104(2).

30. The judge referred to *R v Lawson* [2006] EWCA Crim 2572 [34] where this Court, Hughes LJ (as he then was) was concerned with the application of section 101(1)(e). In the judge's view there could be no doubt that the nature of the appellant's defence was such as to undermine Luke's defence. In principle Luke should be permitted to use the evidence of the Goat incident

to attack the truthfulness of the appellant's evidence against him. As the judge put it at paragraph 22:

> We know that Junior Simpson denies that he was present and, if the defence for Luke can prove that it was Junior Simpson that stabbed a man outside the Goat public house, then his denial of being responsible for stabbing that person would undermine his credibility which is a matter in issue.

31. The judge went on to consider the effect of section 109, which provides:

> (1) Subject to subsection (2), a reference in this Chapter to the relevance or probative value of evidence is a reference to its relevance or probative value on the assumption that it is true.
>
> (2) In assessing the relevance or probative value of an item of evidence for any purpose of this Chapter, a court need not assume that the evidence is true if it appears, on the basis of any material before the court (including any evidence it decides to hear on the matter), that no court or jury could reasonably find it to be true.

32. In view of his earlier ruling on the prosecution application he had decided that he would need to hear from Detective Constable Gibson before deciding whether his evidence should be excluded on the basis that no jury could reasonably find it to be true. He described Detective Constable Gibson's evidence on the *voir dire*. He had identified the person who had used knife in the Goat incident as the appellant, having watched the footage twice. He said he was 100% sure. He was able to compare the person he saw with the appellant whom he interviewed for a total of just over two-and-a-half hours. He had also spent a considerable time looking at YouTube videos of the appellant in order to transcribe his rap lyrics and had looked at good quality pictures of the appellant from telephone downloads. His identification was strengthened, said the judge, by the fact that he was able to identify Oliver-Rowland as present at the Goat incident and Oliver-Rowland accepted that Detective Constable Gibson's evidence of

identification of him on the CCTV footage was correct. The judge concluded that the jury should hear Detective Constable Gibson's evidence. He noted that there were weaknesses within it and there had been breaches of Code D:3 of PACE, particularly D:3.35, in relation to what he had been told before he looked at the CCTV footage.

33. He then considered whether those breaches made the identification unreliable. He referred to the case of *R v Smith & Others* [2009] EWCA Crim 1342, to which Ms Ellis QC had referred, and identified significant distinctions between that case, where breaches of the code had rendered the identification unreliable, and the quality of the identifying evidence of Detective Constable Gibson. He noted that it is only in rare situations that a breach of procedural rules will entitle a court to exclude evidence of substantial probative value and there was no discretion to prevent its use on fairness or case management grounds. He referred in this context to *R v Phillips* [2011] EWCA Crim 2935 at paragraphs 55 and 57.

34. In the grounds of appeal and in her oral argument Ms Ellis QC submitted that the judge erred in admitting the CCTV footage of the Goat incident, and having done so he further erred in refusing to allow the jury to be told that the appellant had been acquitted of the charge in relation to it. The appellant had not given evidence in the Goat trial, he had given no comment answers in interview and had not been required to serve a defence statement. There was therefore no basis on which it could be said that he had been untruthful. The sole issue at the Goat trial was identification and it was on this basis that the charges were dismissed against him on a submission of no case to answer. The youth court had heard from the identifying officer, Detective Constable Davies, and had ruled that the CCTV footage was not good enough to enable the identification to be made. Detective Constable Gibson had been in no better position;

in fact he had been in a worse position since he met the appellant for the first time eight months after the Goat incident, and he had not identified any particular facial features in support of his identification. The prosecution had already failed in its application to adduce the Goat incident, at least in part on the basis of the unreliability of the identification. Furthermore, there had been breaches of the safeguarding provisions under PACE Code D, in that Detective Constable Gibson had been told before viewing the CCTV recordings that the appellant was on the video, thereby creating the risk of confirmation bias. The admission of the evidence created a real risk that the jury would use the Goat incident evidence as relevant to the issue of the appellant's propensity to use a knife or inflict violence using a knife, particularly when coupled with the other bad character evidence adduced on the prosecution's application. The appellant's case was that he was the driver and did not get out or brandish a weapon at any stage. The judge had erred in treating the Goat incident as evidence which provided substantial probative value, as required by section 101(1)(e); and once the evidence was admitted, the appellant should have been allowed to tell the jury of his acquittal in support of his contention that he had been wrongfully identified.

35. The prosecution, by Ms Healy QC and Ms Paget, submitted in broad terms that the judge was right for the reasons he gave. So far as his refusal to allow the appellant to give evidence of his acquittal on the charge relating to the Goat incident, they referred to Archbold 2019 at paragraph 4-400 and the principle that the effect of an acquittal is irrelevant save in exceptional circumstances. The central issue between the appellant and Luke was whether or not Luke was one of the three men back in the car driven by the appellant. In relation to this point the appellant's credibility was very much in issue. When applying the statutory test, the court was required to proceed on the basis that the evidence that the man with the knife outside the Goat

was the appellant was true, unless the court took the view that no court or jury could reasonably find it to be true (see section 109 of the 2003 Act). Having heard Detective Constable Gibson's evidence on the *voir dire*, the judge specifically declined to take that adverse view. Thus, the court was dealing with evidence that the appellant had indeed carried and used a knife in the street outside the Goat in December 2016. The fact that the evidence had been considered in earlier proceedings was immaterial. The judge had given the jury careful directions as to the use that could be made of the evidence. He had emphasised that no use could be made of it at all unless they were sure on the evidence of Detective Constable Gibson that the person shown on the footage was the appellant; and he had specifically directed the jury that the evidence went to the appellant's credibility only and could not and did not assist in deciding whether the appellant played a part in the killing. The evidence ruled admissible by the judge was not properly to be regarded as "evidence of a previous acquittal". It was direct evidence of a person (said to be the appellant) carrying a knife in the street in the CR0 postcode. It was irrelevant that the video evidence had previously been presented in court and that those proceedings had resulted in an acquittal. The appellant had not given evidence and the evidence which was assessed by the tribunal of fact in those proceedings was not the evidence called on behalf of Luke at the trial at the Central Criminal Court.

36. Having considered the rulings and the arguments, we have concluded that the appellant's grounds of appeal are not made out. An important matter in issue between the appellant and Daniel Luke was whether Luke was one of the passengers in the car driven by the appellant. The appellant's case before the jury was that he was; Luke's case was that he was not. Evidence which was relevant to the question whether the appellant had a propensity to be untruthful was admissible under section 101(1)(e) and section 104(1) if the appellant's defence undermined

Luke's defence, as it plainly did. The judge considered the provisions of section 109 in relation to the assumptions of truth in assessing its probative value and, having heard evidence on a *voir dire*, concluded that the evidence was not such that no jury could reasonably find it to be true. That rendered it admissible as between co-defendants.

37. The difficulty facing Ms Ellis QC is that the points she raises by way of objection to the judge's approach were very much a matter of judgment for the judge in the light of the facts as he found them to be.

38. In *Lawson* the Court made this very point at paragraph 34:

> ... it remains nevertheless wholly rational that the degree of caution which is applied to a Crown application against a defendant who is on trial when considering relevance or discretion should not be applied when what is at stake is a defendant's right to deploy relevant material to defend himself against a criminal charge. A defendant who is defending himself against the evidence of a person whose history of criminal behaviour or other misconduct is such as to be capable of showing him to be unscrupulous and/or otherwise unreliable should be enabled to present that history before the court for its evaluation of the evidence of the witness. Such suggested unreliability may be capable of being shown by conduct which does not involve an offence of untruthfulness; it may be capable of being shown by widely differing conduct, ranging from large-scale drug - or people - trafficking, via housebreaking to criminal violence. Whether in a particular case it is in fact capable of having substantive probative value in relation to the witness' reliability is for the trial judge to determine on all the facts of the case.

39. That last sentence is important and emphasises the advantage of the trial judge over this Court.

40. Similarly, when the Court in *Lawson* came to consider the issue of whether the evidence was capable of having substantial probative value at paragraph 39:

> Where the issue is truthfulness or credibility, the judge must address the question of whether it is capable of having substantial probative value in relation to that issue. If the evidence has such value, there is no discretion to exclude it. If it does not, it cannot be admitted. We accept that it may well be that, for example, a single conviction for an offence of shoplifting especially some time ago might not be held to be capable of having substantial probative value on an issue of truthfulness or credibility. As in other areas of the application of this part of the Criminal Justice Act 2003, the feel of the trial judge will often be critical. The Court is unlikely to interfere unless it is demonstrated that he is plainly wrong or Wednesbury unreasonable. We endorse on this point the words Sir Igor Judge in Renda at paragraph 3.

41. The application was concerned with the Goat incident as evidence and not with the relevant conviction or acquittal in relation to it; and it was for Luke's defence to prove that it was the appellant that stabbed the man outside the Goat public house and was being untruthful about it. The judge in his rulings rightly drew a distinction between the position of the prosecution and the position of a co-defendant when it came to the application of section 101(1) and the fact that an application under section 101(1)(e) is not subject to the residual discretion that arises under section 101(3). He dealt with the arguments on breaches of Code D and came to the clear view that they did not justify excluding the identification evidence. It is clear that the breaches were fully explored with Detective Constable Gibson in evidence; and points were properly made to the jury. The judge himself summed up the points on breaches and on the identification evidence itself, and no criticisms are or could be made of the way he did so. The way in which the judge directed the jury as to the use to which the evidence could be put in relation to credibility and not propensity; and the direction of the summing-up at pages 29B-31F is a model of clarity and balance.

42. Finally, the fact that the prosecution against the appellant in the youth court had failed did not prevent the co-defendant from relying on the evidence to impugn the truthfulness of the

appellant's accusation that Luke was a passenger and (implicitly) one of the assailants. All evidence which is sufficiently relevant is admissible and the outcome of an earlier trial is irrelevant: see, for example, *Hui Chi-Ming v R* [1992] 1 AC 34, at 43, referred to in Archbold 4-400. Since the legal challenge fails, Simpson's appeal against conviction must be dismissed.

43. We turn then to the renewed application for leave to appeal against sentence advanced by Mr Scobie on Benzahi's behalf. As we have already noted, Simpson, Oliver-Rowland and Benzahi were sentenced to life terms with different specified minimum terms. Benzahi seeks an 87-day extension in which to apply for leave to appeal against the specified term of 22 years which was refused by the Single Judge.

44. He was born in September 1996 and had one previous and material conviction for possession of a knife in 2016.

45. In passing sentence, the judge noted that each of the defendants was a member of the CR0 gang which had been involved in a feud with the CR7 gang. The feud, which had lasted for many years, involved the use of knives and guns and threats. Simpson and another man had played key roles in providing transport to Thornton Heath and to making trips around various addresses to pick up others, including Benzahi. While Simpson had remained in the vehicle, it was clear from the jury's verdict that he intended that someone should be wounded or stabbed. The email traffic between the defendants showed that they went to the area intending to use knives on someone they found. It was pure chance that Jermain Goupall became the victim. There was no evidence as to which of the three men in the back of the car caused the fatal wound, but the evidence suggested the use of two knives. There was not, however, sufficient

evidence to conclude that there was an intention to kill rather than an intention to cause really serious harm.

46. The judge referred to section 296 and Schedule 21 of the Criminal Justice Act 2003. By reference to these provisions and in view of their ages the starting point for Benzahi was 25 years, and for Simpson and Oliver-Rowland, 12 years. However, on the basis that gang-related offending tended to be committed by people under 18, there had to be a substantial increase in the minimum term applicable to reflect the community's abhorrence of the violent use of knives. There was significant planning and premeditation, as well as the possession and use of knives and balaclavas. However, the judge accepted that the significant planning and premeditation did not apply to Benzahi. Nevertheless, the offence took place in public and within the context of gang violence. The victim was only 15.

47. Benzahi was 20 at the time of the offence. He had fled the country when he realised he might be implicated in the killing, only returning when he thought it safe or had run out of money. He was in breach of a suspended sentence for carrying a knife and that was a serious aggravating feature. Further, he was stopped on 16th June (less than two months before the killing) with a balaclava. In his pocket was a receipt dated the same day from a store in Reading, where two cooking knives with 26-cm blades, a machete with a 30-cm blade and a lockable combat knife had been bought. His involvement with a knife on 8th August was not, in the judge's view, out of character.

48. In his favour was his immaturity for his age, that he came from a large and supportive family, and that he was not involved in the planning. It was in these circumstances that the judge set the

minimum term of 22 years.

49. There is now a single ground of appeal. Mr Scobie's argument was that the minimum term of 22 years failed to properly reflect the distinction identified between the roles of the co-defendants and the particular distinction between their ages and their maturity: see *Peters & Others* [2005] EWCA Crim 605. In that case the Court said this at paragraph 11:

> It has long been understood that considerations of age and maturity are usually relevant to the culpability of an offender and the seriousness of the offence. Schedule 21 underlines this principle. Although the passage of an eighteenth or twenty-first birthday represents a significant moment in the life of each individual, it does not necessarily tell us very much about the individual's true level of maturity, insight and understanding. These levels are not postponed until nor suddenly accelerated by an eighteenth or the twenty-first birthday. Therefore although the normal starting point is governed by the defendant's age, when assessing his culpability, the sentencing judge should reflect on and make allowances, as appropriate upwards or downwards, for the level of the offender's maturity.

50. Mr Scobie's argument was essentially that if Oliver-Rowland, as the leader and armourer of the group who was very close to being 18, received a minimum term of 20 years then so should have Benzahi.

51. We have considered this submission. The judge was clearly aware of the issues which arose when fixing minimum terms between co-defendants where markedly different statutory starting points applied. He did not approach the sentence mechanistically and recognised that, so far as possible, it was necessary to pass sentences that avoided significant diverging minimum terms. At page 21F of the sentencing remarks he agreed with Benzahi's trial counsel that he should reduce the minimum term to take into account his actual maturity and so that his sentence should be more closely conforming with that of Oliver-Rowland and Simpson, whom he considered to

be more involved than Benzahi but whose sentences, because of their actual age, had to be lower than his. The judge carefully analysed the respective maturity of, and the role played by, the defendants in the murder. He increased the minimum term imposed on Oliver-Rowland by 8 years over the starting point in Schedule 21 and reduced Benzahi's minimum term by 3 years. In his view the resulting gap of 2 years was a proper reflection of the difference in all which necessarily had to take this into account.

52. The judge had acknowledged that Benzahi was not involved in the planning of the attack and recognised his lack of maturity for his age. However, he identified and properly factored in the aggravating features specific to the applicant's case, carrying a knife during the attack and the commission of the offence during the currency of a suspended sentence for carrying a knife. In our view the imposition of the minimum term on Benzahi does not give rise to properly arguable grounds of appeal, and the renewed application must therefore be refused.