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**IN THE COURT OF APPEAL**
**CRIMINAL DIVISION**

[2020] EWCA Crim 193

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 6 February 2020

**B e f o r e**:

**LORD JUSTICE FLAUX**

**MRS JUSTICE ANDREWS DBE**

**RECORDER OF CROYDON**
(HER HONOUR JUDGE ROBINSON)
(Sitting as a Judge of the CACD)

**R E G I N A**

v

**DEMARIO WILLIAMS**
**THIERRY EDUSEI**
**PAUL GLASGOW**
**LAWRENCE WILSON NKUNKU-LINONGI**

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(Official Shorthand Writers to the Court)



**Mr J Wood QC & Mr S Poulier (Solicitor Advocate)** appeared on behalf of the **Appellant Williams**

**Mr N Mian QC & Mr B Rich** appeared on behalf of the Appellant **Edusei**
**Mr A Eissa QC** appeared on behalf of the **Appellant Glasgow**
**Ms I Forshall QC** appeared on behalf of the **Appellant Nkunku-Linongi**
**Mr O Glasgow QC & Mr W Emlyn Jones** appeared on behalf of the **Crown**
**Mr E Fitzgerald QC** appeared on behalf of the **Intervener The Howard League for Penal Reform**

**J U D G M E N T**
(Approved)

LORD JUSTICE FLAUX:

1. On 31 October 2018, following a trial at the Central Criminal Court before His Honour Judge Leonard QC and a jury, the appellants Glasgow and Nkunku-Linongi were convicted of murder. The appellant, Edusei, was acquitted of murder but convicted of manslaughter. The jury was unable to reach a verdict in relation to the appellant, Williams. Following a retrial before the same judge and a jury he was convicted of murder on 21 January 2019. At the date of their respective convictions Williams was 17 years and 1 month, Glasgow 17 years and 5 months, Nkunku-Linongi was 17 years and 6 months and Edusei was 16 years and 8 months. At the time of the offending they were all still 16.
2. On 15 February 2019 they all were sentenced by the same judge. Williams was sentenced to detention at Her Majesty's Pleasure for a minimum term of 20 years, Glasgow and Nkunku-Linongi were sentenced to detention at Her Majesty's Pleasure for a minimum term of 18 years and Edusei was sentenced to 11 years' detention in a young offender institution.
3. Williams now renews his application for leave to appeal conviction following refusal by the single judge. All four appellants appeal against sentence with the leave of the single judge.
4. The facts of the offending are as follows. The appellants were part of a larger group of youths from Hackney invited by Ruth Kassa to her 16th birthday party, in a rented

Airbnb flat in Earl's Court Road, London SW5 on 17 February 2018. Another group of youths from Camden, who had not been invited, congregated outside and forced their way into the flat. They included the deceased, Lewis Blackman. Alarm was caused and some guests were scared. Williams was stabbed in the arm by Lewis Blackman who was armed with a knife. The uninvited group left and were chased by a group of 20 youths (with Williams in the lead) which included the other appellants. Over half that group were carrying knives including Williams. Both groups were caught on local CCTV. Lewis Blackman was still armed with a knife, one of his friends had a BB gun.

5. During the early part of the chase Lewis Blackman had fallen behind his friends. He came out from behind a car, turned and faced the chasing group and ran towards them, resulting in a standoff for a few seconds. However, he then turned and ran away, trying to escape, realising that he was outnumbered. Williams, who ran very fast, caught up with him after about a further 80 metres and drew his right arm back, swinging his knife in a wide arc towards Lewis Blackman's back, stabbing him in the back with considerable ferocity and severing his aorta. Lewis Blackman collapsed after 20 paces or so and fell over onto his front where he was stabbed a further 13 times by six of the group in a shocking and brutal attack. Glasgow and Nkunku-Linongi plunged their knives into his body - Nkunku-Linongi at least three times. Williams moved in and administered the final stab wound, or certainly what was one of the final stab wounds. Lewis Blackman died from two of the wounds to his chest, front and back, causing severe damage to his heart and leading to massive blood loss. It was Williams who caused the fatal wound to his back (the first stab which severed his aorta).

6. The prosecution case was that the ferocity of the first stab by Williams and of the further stabbings when Lewis Blackman was on the ground was such that there was clearly an

intention to cause him really serious bodily injury. This was not a case of loss of self-control (one of the defences run by Williams) but a group attack in revenge and reprisal for what had taken place at the flat. Ruth Kassa knew there had been history between the Hackney group and the Camden group, which is why she had been careful only to invite people from Hackney to her party. When Lewis Blackman attended the party with his friends and (in his case) armed with a knife, he met with resistance. When he and his friends left the flat, the group of which the appellants formed part did not need to chase after them but chose to do so armed with knives. Lewis Blackman had been foolish enough to turn round and face up to his attackers. As a result, he did not escape like his friends but was caught and attacked.

7. The defence case for Williams was that Lewis Blackman and his friends had been the aggressors, entering the flat brandishing knives and bats. Williams was grabbed by Lewis Blackman who was carrying a Rambo knife. He took a silver chain from around Williams' neck and another youth took Williams' mobile phone. Lewis Blackman stabbed Williams in the right forearm penetrating his whole arm above the elbow. Lewis Blackman and his friends then ran from the flat. Williams was wounded and in shock but he needed to recover his property, the silver chain being of sentimental value. He had been unable to form any intent at all. When he left the flat he did not discuss with his friends what he was going to do or ask them to help. They chased Lewis Blackman. Williams was in the front of the group. He saw that Lewis Blackman had a Rambo knife. He asked for his property back but Lewis Blackman taunted him. He felt intimidated but, in the company of his group of friends, continued to chase Lewis Blackman. He had a knife to defend himself which he had snatched from another party goer. Lewis Blackman was in front of him and Williams made an arching stabbing

motion towards him aiming for his arm. He did not believe that this would cause serious injury or know whether he had made contact. As Lewis Blackman fell to the ground others in the group had attacked him. Williams had then approached him on the ground to recover his property but did not stab him.

8. At the first trial James Wood QC, for Williams, sought to rely on defences of self-defence, loss of control, causation and lack of intent for murder. As the trial progressed, the judge expressed concern that the defences of self-defence and loss of control were not open to Williams on the facts of the case. Having heard submissions from Mr Wood QC and Mr Oliver Glasgow QC, for the prosecution, he determined that the defence of loss of control, together with causation and lack of intent, could be left to the jury but that self-defence was not a defence open to Williams.

9. In his ruling the judge summarised the evidence that Williams had given at the first trial and the submissions made by counsel. He said that Mr Wood QC had rightly conceded that, at the time of the killing, Williams was not acting in self-defence in respect of what had occurred at the flat. No reasonable jury properly directed could conclude that he believed he was responding to an attack or believed he had been about to be attacked when he had stabbed Lewis Blackman some 120 metres from the flat, where he had been stabbed himself, and well over a minute after Lewis Blackman had left the flat. Mr Wood QC realised that his submissions had to be based at what happened in Logan Place (where Lewis Blackman was stabbed) against the background of what had happened at the flat.

10. The judge held that the same issues of temporality arose in relation to the combination of defences, a reference to the various defences upon which Williams sought to rely: self-defence, defence of property and the defence of reasonable force in the prevention of

crime, as referred to in section 76(2) of the Criminal Justice and Immigration Act 2008. Any robbery of Williams' property was complete before Lewis Blackman left the flat. The judge held that the so-called "householder defence" cannot apply to something which happens some distance from the property and the use of force in defence of property could not be extended to include recovery of that property by force some time and some distance from where it was taken. Accordingly, there were no circumstances in this case in which defence of property could provide Williams with a defence. Once he left the flat there was a break in the action and no jury properly directed could conclude that he was still acting in defence of property.

11. Section 329 of the Criminal Justice Act 2003, on which Mr Wood QC relied, was designed to protect a person from civil proceedings where they have committed a trespass: assault, battery or false imprisonment, on a claimant where that person believed the claimant was about to or had committed an offence immediately beforehand, so long as the person's actions were not in the circumstances grossly disproportionate. The judge considered that that section had no bearing on the issues in this case either in law or in fact.

12. The judge also rejected the suggestion that any jury properly directed could reach the conclusion that Williams was acting in prevention of crime. The offence of robbery was complete and, even if the stabbing by Lewis Blackman occurred after the robbery and so was not force during the robbery but a separate offence of wounding with intent, the offence was complete at least a minute before Williams left the flat.

13. By the time Lewis Blackman came out from behind the car and faced Williams and his group, Williams was already committed to a course of action which did not arise from any of the defences or a combination of them. He had entered into pursuit willingly and

the fact that Lewis Blackman turned and faced him whilst both were armed with knives did not provide Williams with the opportunity to claim that he then began to act in self-defence, defence of property or in prevention of crime. Even if the judge were wrong about that, he said that, by the time Williams had chased Lewis Blackman for a further 80 metres before lunging a knife towards his back, he could not avail himself of any of those defences and no jury properly directed could reach the conclusion that they affected his actions.

14. At the retrial the same arguments were advanced by Mr Wood QC and the judge revisited his previous ruling in the light of the evidence given by Williams at the retrial. In his evidence Williams accepted that at the moment of swinging the knife at Lewis Blackman he was not defending himself. The judge confirmed his ruling on the basis that there had been no material change of position.

15. In support of the renewed application Mr Wood QC submitted first, that the judge had erred in failing to consider the three triggering defences and had insufficient regard to the terms of section 76 of the Criminal Justice Act and Immigration Act 2008. He had erred in concluding that the common law defence of property and the defence of prevention of crime, under section 3 of the Criminal Law Act 1967, were temporarily limited. He submitted that temporal proximity was an issue for the jury not the judge. He submitted that the judge had taken an unduly narrow approach to the defence of property, limiting it to the householder defence when it applied to chattels as well as to trespass to land. The judge should have found that the defence extends to permitting a person to use reasonable force to recover recently stolen chattels.

16. The judge had also erred in concluding that section 3 of the 1967 Act, which permits reasonable force in the prevention of crime, had to be limited to ongoing offences. Mr

Wood QC sought to argue that as the section refers to "prevention of crime" generically rather than "prevention of a crime" or "prevention of an ongoing or current crime", those words were apt to cover reasonable force in the recovery of chattels recently stolen. Both defences of defence of property and the use of reasonable force in preventing crime were apt to permit the use of reasonable force by a person to prevent another from making off with recently stolen property and to secure recovery of that property.

17. Mr Wood QC submitted that even if the temporal point made by the judge were correct, Lewis Blackman had been engaged in violent disorder which was count 2 on the indictment and the use of reasonable force was justified to prevent that. Even though the circumstances of this offence were extreme, Lewis Blackman was armed with a lethal weapon and was attempting to make off with Williams' property and to deter Williams from taking the property back by threatening him with that weapon. Whether the force used by Williams was reasonable in these severe circumstances was crucially a matter for the jury, not the judge. Mr Wood QC relied in that regard upon the well-known passage to that effect in the speech of Lord Diplock in *Attorney-General for Northern Ireland's Reference (No 1 of 1975)* [1977] AC 105 at 137.

18. Elegantly though these submissions were advanced, we cannot accept them. Contrary to Mr Wood's first submission, in a long and careful ruling the judge did consider the triggering defences under section 76 together. Also contrary to his submission, the judge did not err in failing to leave all these issues to the jury. The question whether or on facts and the evidence a particular defence is available as a matter of law, including whether a reasonable jury properly directed could conclude that the defence was made out, is a matter for the judge not the jury. It will only be if the defence is one available as a matter of law that the judge is obliged to leave it to the jury and only at that stage

that the principle enunciated by Lord Diplock comes into play.

19. In the present case the judge was entirely correct to conclude that by the time that Williams caught up and stabbed Lewis Blackman in the back, there was no question of the use of reasonable force in the defence of property. Any robbery (if it took place at all) or wounding with intent was complete by the time that Lewis Blackman and his group left the property. When Williams stabbed Lewis Blackman he was not defending his property, nor was he preventing the commission of a robbery which had been completed sometime earlier. He was engaged in an act of retaliation or revenge for whatever crime had been committed by Lewis Blackman inside that flat.

20. The judge did not take an unduly narrow approach to the defence of property. He simply, quite correctly, concluded that it was not a defence available on the facts of this case. As Mr Oliver Glasgow QC rightly points out for the prosecution, Mr Wood QC has not cited any authority for the proposition that the law allows the use of force to recover stolen property after a robbery has been completed. Certainly the authorities cited in Mr Wood QC's skeleton argument do not support that proposition. As Mr Glasgow QC says, it would be an invitation to chaos. If his property was stolen Williams could and should have stayed in the flat and called the police. There was no necessity for him to take a knife out and pursue his alleged robber.

21. In our judgment, there is nothing in the fine linguistic distinctions which Mr Wood QC seeks to draw in relation to the wording of section 3 of the 1967 Act. The crime which it is contended that Williams was "preventing" was the alleged robbery, but that had already occurred and been completed, and so nothing he did after Lewis Blackman left the flat can have been done to prevent that crime. This defence is only available in relation to preventing crimes in progress not in relation to reacting to crimes already

committed. As Mr Glasgow says, at the time of the murder, Lewis Blackman was not committing the crime of violent disorder, he was not using or threatening violence but, as the CCTV footage shows all too graphically, he was alone running for his life.

22. The judge was entirely correct to conclude that none of the defences which Mr Wood QC sought to advance was available to Williams as a matter of law. In any event, no reasonable and properly directed jury could have concluded that the force used by Williams was reasonable. The conviction was entirely safe and the renewed application for leave to appeal conviction is dismissed.

23. We turn to the appeals against sentence, dealing first with the antecedents of the appellants. Williams was born on 27 December 2001. He had five convictions in 2017 for 14 offences. His relevant convictions included three convictions for possession of a bladed article in September 2016, December 2016 and May 2017.

24. Glasgow was born on 13 June 2001. He had three convictions in 2015, relevantly one conviction for assault occasioning actual bodily harm.

25. Nkunku-Linongi was born on 30 April 2001. He had five convictions for eight offences spaning between 2016 and 2018. His relevant convictions were in 2017 for robbery and possession of a bladed article.

26. Edusei was born on 5 February 2002. He had a conviction in 2017 for possession of an offensive weapon.

27. At the outset of his sentencing remarks the judge referred to the evidence of Ruth Kassa that she had not invited anyone from Camden to the party in part because there was some sort of history between the Hackney boys and the Camden boys. She knew they were not fond of each other and described it as a matter of postcodes.

28. The judge said that the evidence did not support the suggestion on behalf of Williams that

the group of 12 youths, including Lewis Blackman, who congregated in Logan Place in the early hours of the morning had done so to invade the party and rob people there. Only Williams had suggested anything was taken, in his case the cross and chain and a mobile phone. He had been unable to produce the cross and chain, which he contended he had retrieved from Lewis Blackman as he lay on the ground. The judge concluded that there had been no theft of a cross and chain and it had simply been used to explain why Williams had gone over to Lewis Blackman's body. The judge accepted the prosecution case that he had done so in order to stab Lewis Blackman again, not to recover the cross and chain.

29. The judge accepted that Lewis Blackman and his group had burst into the flat and caused fear and distress. He was armed with a knife, another youth had a BB gun (with the appearance of a real gun) and others had knives. Whilst in the flat he had stabbed Williams in the arm. The judge had no doubt that the whole incident was the product of a clash between the two groups (one from Camden and one from Hackney) with which the appellant's group was affiliated and this had been going on for some time before 17 February 2018.

30. Lewis Blackman and his group were only in the flat for about 40 seconds before they ran off at speed. After about another minute the appellants, with 16 other youths, ran out of the flat and across Earl's Court Road following the first group which had gone into Logan Place. A resident had heard one of the appellants' group shout as they crossed the road: "Fuck it, I don't care. Let's chase them down". At least 12 of the group were armed with knives, one with a stick. Williams was in the lead. He had more reason to be angry than the others having been stabbed in the arm. Lewis Blackman came out from behind a car. When he realised he was hopelessly outnumbered he ran away as fast as

he could. However, as shown on the CCTV, with a burst of speed, Williams was able to catch up with Lewis Blackman, plunging a knife into his back with a swinging movement and considerable force. The wound cut his aorta and he was bound to die from it. Williams stopped running, but others in the group passed him and continued to chase Lewis Blackman, who covered about another 20 paces, before he collapsed on the ground. Glasgow and Nkunku-Linongi with two or three others plunged knives into his body, 13 further stabbings (three by Nkunku-Linongi). Williams was the last to approach and delivered the final stab wound. No other conclusion could be reached than that they had intended to kill Lewis Blackman that night.

31. The judge said that, on the jury's verdict, Edusei could not have been one of those who went up to the body whilst Lewis Blackman lay on the ground. The judge could not be sure that Edusei had been armed with a knife that night, and accordingly sentenced him on that basis. His role was, in the knowledge that other members of the group were armed with knives, to lend encouragement and support and being ready to assist if necessary.

32. The judge referred to the starting point for the minimum term in relation to murder as being 12 years because all three appellants were 16 at the time. The judge said that this type of offending behaviour is prevalent in boys under the age of 18 and if one of the purposes of sentencing is to try to deter this type of knife crime and group violence, then that has to be marked by sentences well above the minimum of 12 years. This was something the courts recognised. The judge then went on to identify the aggravating factors affecting each of the three of the appellants: (i) the use of knives, which in his judgment were brought to the party and were in their hands by the time they ran out of the flat; (ii) they were part of a group of 20 youths; (iii) the murder was

committed in the context of a conflict between two groups; (iv) this was a sustained and ferocious attack in which a fatal blow was delivered to Lewis Blackman as he ran away, after which he was repeatedly stabbed on the ground; (v) whilst they were taken by surprise by the invasion of the Camden group, they were always prepared to meet such a group head on. There was a degree of planning and this was not spontaneous. Twenty boys had to be encouraged to chase which must have represented the majority of boys at the party and that is why there was a delay of about a minute whilst this was arranged; (vi) they had stabbed Lewis Blackman whilst he was lying on the ground and vulnerable, although the judge took account of the fact the vulnerability arose from the first stab wound.

33. Turning to the individual appellants, the judge noted that Williams was the second youngest but the differences in age between the three appellants being sentenced for murder was only, he thought, about 5 months so he would treat them all in the same way in terms of age. He rejected the suggestion that Williams had taken a knife from someone else as he left the party. He found that Williams was in the habit of carrying a knife. He rejected the suggestion that Lewis Blackman had stolen the cross and chain or mobile phone from Williams but he accepted that Lewis Blackman had stabbed Williams in the flat. Whilst that would lead to a small reduction in his sentence, when balanced against his pivotal role in the revenge attack together with the fact that he brought Lewis Blackman to the ground and stabbed him again, it was balanced out by the aggravating features in his case. The judge took account of his previous convictions for carrying knives. Because he had not taken part in the preparation of a pre-sentence report its value was limited. The judge took account of what was said in that report about Williams' family background.

34. Nkunku-Linongi had chased Lewis Blackman and stabbed him at least three times. He was also 16 at the time and had relevant convictions including robbery committed by a group armed with knives and possession of a Rambo style knife, for which he was on bail at the time of the murder. The judge had no doubt he had brought a knife to the party ready to use if necessary. The judge had considered everything in the pre-sentence report. The most important consideration in his case was his low IQ and mental problems. He was unlikely to have been a decision maker or responsible for planning an organisation. These factors had a real impact on his vulnerability to join a group and his capacity to understand fully the consequence of what he was doing. The judge made some reduction in sentence to account for those matters. Nkunku-Linongi's counsel had referred to the Sentencing Guideline on Sentencing Children and Young People. Whilst the judge took those principles into account, the reduction for his age was already taken into account by the starting point of 12 years.

35. Glasgow was also 16 at the time, with one previous conviction for assault. The judge was sure he also came to the party armed. He took account of the family situation described in the pre-sentence report, that he was given freedom in the community and his behaviour went unchallenged and unaddressed. He looked up to his elder brothers who carried knives. He took account of his attempts to improve his education before going into custody and whilst in custody. He took account of the fact that he had no previous convictions for carrying a weapon and he was the sort of boy who follows his peers.

36. Had they been over 18, the starting point for the minimum term would have been 25 years. Because of the further aggravating features, especially the group nature of the attack and its ferocity, the minimum would have risen to 27 years, if not more, taking account of how much above the age of 18 the defendant was. Because they were all 16

at the time, the starting point was 12 years but the judge said he had to adjust that to take account of the seriousness of the offence. The judge noted that the Court of Appeal had confirmed that the carrying of knives used to commit murder by someone under 18 amounts to a seriously aggravating feature requiring condign punishment (a reference to what was said in *R v AM* and *R v Moore* to which we will refer later in this judgment). The judge also took account that the lower starting point affects children aged between 12 and 17, and that the Court of Appeal has observed that the sentencing approach to a 12 year old convicted of murder will be very different from the approach to a 17 year old or indeed a 16 year old, an express reference to what Leveson LJ said in *R v Odegbune* [2013] EWCA Crim 711, at paragraph 35.

37. The judge said that taking account of their ages, the fact that knives were involved and the other aggravating features, it set out the starting point was a 20 year minimum term. He then set that period of 20 years at the minimum term for Williams and reduced it to 18 years for Nkunku-Linongi and Glasgow.

38. In relation to Edusei, the judge noted that he was just 16 at the time of the offence. He had a history of being in possession of knives and was on bail for offences of robbery, violent disorder and murder at the time of this offence, offences in relation to which investigations were ongoing. The judge ignored those alleged offences but it was relevant that he was on bail. The pre-sentence report referred to his being involved to secure a reputation with his friends, which the judge said was the very characteristic that led to this group behaviour. The judge took account of the good aspects of what was said in the report, such as his attempts to improve his academic achievements.

39. The judge had considered the issue of dangerousness but concluded that, in view of his age and the prospect of rapid development in his awareness of right and wrong, it was

appropriate to pass a determinate sentence. Applying the Sentencing Guidelines for Manslaughter he found that Edusei did intend harm which fell just short of grievous bodily harm during an unlawful act which carried a high risk of death. That, taken with the extreme nature of the group attack to which he lent support, placed the offending in category A of the Guideline with a starting point for an adult of 18 years and a range of 11 to 24 years. Taking account of the mitigating factors, if he had been an adult the sentence would have been 18 years. Applying an appropriate reduction under the Sentencing Guidelines on Sentencing Children and Young People would lead to a sentence of half to two-thirds of that imposed on an adult. The sentence passed was one of 11 years' detention.

40. In relation to all three appellants against the sentence for murder, their counsel raise a ground of appeal that the judge wrongly had regard to deterrence as a factor in fixing the minimum term, when that should be no relevance in sentencing offenders under the age of 18. We have also had the benefit of written and oral submissions from Mr Edward Fitzgerald QC on behalf of The Howard League For Penal Reform. Their submissions were, in summary, that: (i) there was strong scientific evidence that children have cognitive developmental deficits in relation to the type of consequential reasoning necessary for deterrence to be effective; (ii) there is no consistent evidence that increasing sentence length effectively deters other children from committing like offences; (iii) increasing a child's sentence is without purpose, can be harmful and may be arbitrary and unlawful; (iv) deterrence as a legitimate factor in the sentencing of children is not mandated by statute.

41. With no disrespect to any of the counsel who advance this argument, we do not consider it necessary to consider it further on this appeal for two reasons. First, although the judge

stated that if one of the purposes of sentencing is to try to deter this type of knife crime and group violence, then it has to be marked by sentences well above the minimum figure of 12 years, he did not state that he was applying any particular uplift, on top of the aggravating features which he identified, to reflect a general deterrence factor. He assessed the right sentence for each appellant by reference to those aggravating and mitigating factors and the circumstances of the particular individual. He did not then increase the sentence to reflect further the need for deterrence. We consider that, as is apparent from what he says later in his sentencing remarks about the need for condign punishment, the judge is doing no more than repeating in his own words what Gross LJ said in *R v Moore* [2010] EWCA Crim 2197; [2011] 1 Cr App R(S) 94, another case involving a murder with a knife by a 16 year old, in turn reiterating what Lord Judge LCJ had said in *R v AM* [2009] EWCA Crim 2544; [2010] 2 Cr App R 19: "... the message as to condign punishment for knife crime must and will be repeated." This approach was endorsed by Leveson LJ in *R v Odegbune* [2013] EWCA Crim 711.

42. Secondly, even if we were wrong about this and the judge had in some respect increased the sentence to reflect the need for general deterrence, it is not necessary for us to consider whether he was right to do so, because we have concluded that the sentences for murder were too high in any event for the reasons which follow. We shall therefore reconsider what the appropriate sentences should be. Since the issues raised in relation to the relevance of deterrence to the sentencing of children and young people (particularly by Mr Fitzgerald QC) are complex, we consider those issues should await determination in a case or series of cases where the issues arise directly. We consider that at the very least the Attorney-General should be afforded the opportunity to make submissions about these issues before they are determined by this court.

43. The other ground of appeal which is raised by all three appellants is age. Although the judge got the difference in age between them wrong (saying it was 5 months when in fact it is just under 8 months), we do not consider that he can be criticised for treating them equally in age. He clearly had in mind that they were all 16 at the time of the offending, in setting the 12-year starting point for the minimum term, and expressly referred to the point made by Leveson LJ in *Odegbune* about the difference in approach to sentencing a 12 year old for murder as opposed to a 16 or 17 year old.

44. Turning to the specific grounds of appeal raised by Mr Wood QC on behalf of Williams, he submits that the judge was wrong in two respects in his assessment of the facts. First, he submits that there was no evidence to support the "history" between the two groups of youths or that there was an element of planning by Williams and his group and second, he submits that the judge was wrong to conclude that Williams was the last to stab Lewis Blackman.

45. In our judgment, there is nothing in either of those points. The judge had evidence of some history between the groups from Ms Kassa and we agree with Mr Glasgow QC, for the prosecution, that since the appellants had all gone out that night with weapons, they were either anticipating violence or ready for it should it arise. After Lewis Blackman and his group left the flat there was a period (albeit only a minute) when the appellants and other youths regrouped and made the decision to run out and seek revenge. There was thus a degree of planning which the judge was entitled to regard as an aggravating factor.

46. So far as the second point is concerned, it is quite clear from the CCTV footage (which we have viewed more than once) that after the others have stabbed Lewis Blackman on the ground, Williams moves in and inflicts the final stab wound or what was at least one

of the final stab wounds. The judge had been entitled to disbelieve Williams' evidence about the theft of the cross and chain and the mobile phone, which was scarcely credible.

47. Next, Mr Wood QC submitted that the judge erred in failing to give sufficient weight to the provocation to Williams by the stabbing of his arm by Lewis Blackman. In our judgment, the judge clearly did take this into account as reducing the sentence somewhat, though he referred to it being balanced out by the other aggravating features. However, given the sentence the judge arrived at of 20 years minimum term, an 8 year or two-thirds uplift on the 12-year starting point, the question which arises is whether in that balancing exercise the judge has given undue weight to the aggravating factors and insufficient weight to the appellant's youth. We are acutely aware that the judge had seen and heard the evidence in the case of Williams at two trials and that this was, on any view, a horrific murder, but we have reached the conclusion that notwithstanding the seriousness and ferocity of this group attack on Lewis Blackman, an uplift of 8 years was too much. We consider that, in relation to defendants of the age of these appellants, an uplift of two thirds on the starting point of 12 years should be reserved for cases even more serious than the present, such as a clearly pre-planned attack by a gang on an unarmed man or murder committed by youths in the course of an armed robbery. In our judgment, the appropriate uplift would have been one of 6 years.

48. In his oral submissions Mr Wood QC advanced an argument about disparity that the judge had erred in passing a sentence of a minimum term 2 years higher for Williams than for the other two appellants. In our judgment, there is nothing in this argument. The judge concluded, correctly, that Williams had a pivotal role in the attack but, as Mr Glasgow QC says, the judge did not increase Williams' sentence, but reduced the sentence for the other two appellants to reflect their personal mitigation. The judge was

fully entitled to adopt this approach. It follows that the minimum term for Williams will be reduced from 20 years to 18 years and to that extent his appeal against sentence is allowed.

49. On behalf of Nkunku-Linongi Ms Isabella Forshall QC raises the same point as Mr Wood QC, criticising the judge's conclusion about the background of hostility between the two groups but, as we have already held, the judge was entitled to make the findings which he did and to regard this as an aggravating feature. There is nothing in any suggestion that the judge failed to account Nkunku-Linongi's intellectual difficulties. The judge expressly referred to them and said he was taking them into account.

50. Ms Forshall QC submitted that in concluding that there was a degree of planning in the minute after Lewis Blackman and his group left, the judge had set at nought the significant mitigation available, particularly to appellants aged only 16, from the fact that the offence was an immediate response to a highly transgressive attack. It seems to us that there is force in the submission that the judge has given insufficient weight to the youth, impetuousness and susceptibility to peer pressure which played a part in the involvement of all these appellants in this offending. In our judgment, the appropriate sentence for Nkunku-Linongi, reflecting his personal mitigation and his intellectual difficulties would have been a minimum term of 16 years rather than the 18 years and to that extent his appeal is allowed.

51. On behalf of Glasgow, Mr Adrian Eissa QC makes the same point as is made on behalf of Williams and Nkunku-Linongi about the provocation of Lewis Blackman and his group bursting into the party and stabbing Williams. He also submits that, unlike those appellants, Glasgow had no previous convictions involving knives or other weapons. His only relevant conviction was for assault occasioning actual bodily harm when he was 14,

for which he had received a referral order, which he successfully completed. He had other positive qualities including his participation in educational courses at college and whilst in custody.

52. As in the case of Nkunku-Linongi, we consider that the judge has given insufficient weight to the youth, impetuousness and susceptibility to peer pressure which played a part in the involvement of all these appellants in this offending. The pre-sentence report in the case of Glasgow had noted that both his older brothers (to whom he looked up as role models) had been convicted of offences of carrying weapons and of drug-related offending for which they were sentenced to custody. We also consider that there should be a further limited reduction in the case of Glasgow to reflect the fact that notwithstanding that family history, he had no previous conviction involving knives or other weapons. In our judgment, the appropriate sentence in his case would have been a minimum term of 15 years and to that extent his appeal is allowed.

53. On behalf of Edusei, Mr Naeem Mian QC submits that the judge erred in putting his case into Category A of the Manslaughter Guideline. He fell to be sentenced, as the judge found, on the basis that he did not have a knife and he did not stab Lewis Blackman. He had continued to provide encouragement and support notwithstanding that he knew the others had knives and was ready to assist if necessary. Mr Mian QC submits that the judge should have placed this appellant's offending in Category B of the Guideline for which the starting point for an adult would have been 12 years. With the 40% reduction which the judge gave for his youth the appropriate sentence would have been seven-and-a-half years rather than 11.

54. Category A in a Manslaughter Guideline, “very high culpability” provides that:

> "Very high culpability maybe indicated by:

- the extreme character of one or more culpability B factors and/or
- a combination of culpability B factors."

55. As Mr Glasgow QC pointed out, the judge identified two Category B factors here: (i) death caused in the course of an unlawful act which involved an intention to cause harm falling just short of grievous bodily harm and (ii) death caused in the course of an unlawful act which carried a high risk of death or grievous bodily harm, which was or ought to have been obvious to Edusei. The judge held that that combination of factors, together with the extreme nature of the group attack to which Edusei lent support, placed this offending in Category A.

56. In our judgment, he was fully entitled to reach that conclusion on the evidence. As Mr Glasgow QC says, in any event, either of the two Culpability B factors could properly be regarded as of an extreme character bringing the case within the first limb of Category A. The risk of death or grievous bodily harm was overwhelming, given that Lewis Blackman was heavily outnumbered by a group armed with knives, seven of whom stabbed him.

57. No complaint can be made about the reduction of the sentence to reflect his age: 11 years was between half of 18 years (which would be 9 years) and two-thirds of 18 years (which would be 12 years), so it was an appropriate application of paragraph 6.46 of the Sentencing Guideline on Sentencing Children and Young People.

58. We should add that we were not assisted by the case of *Joseph* to which Mr Mian QC referred. That was a case heard by this court, before the Manslaughter Guideline came into effect, and it is of no assistance in determining the appropriate sentence applying that guideline which the judge did here. Edusei's appeal against sentence is dismissed.

LORD JUSTICE FLAUX: To make it absolutely clear, what the judge said about time

spent in custody will of course reduce the length of the minimum term, as the judge held.

Thank you all very much indeed.

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

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