

Neutral Citation Number: [2016] EWCA Crim 447

Case No: 201405516 C2
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IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT
MS RECORDER HENSON
T20147013/ T20147462

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday 19th April 2016

Before:

LADY JUSTICE SHARP
MR JUSTICE WARBY
and
THE RECORDER OF MAIDSTONE
(Sitting as Judge of the Court of Appeal, Criminal Division)

Between:

GARFIELD RICARDO STEWART
- and -
REGINA

Appellant

Respondent

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Ms Grace Ong (instructed by **Ronald Fletcher Baker LLP**) for the **Appellant**
Mr Kenneth Millett (instructed by **The Crown**) for the **Respondent**

Hearing date: 2 December 2015

Judgment
As Approved by the Court

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Lady Justice Sharp

Introduction

1. On 7 October 2014 at the Central Criminal Court, the appellant was convicted after a retrial before Recorder Henson (as she then was) and a jury, of one count of possessing a firearm with intent to endanger life contrary to section 16 of the Firearms Act 1968 (Count 1). He was acquitted of one count of possessing ammunition with intent to endanger life contrary to section 16 of the Firearms Act 1968 (Count 3). He had pleaded guilty on 7 April 2014, at the Crown Court at Inner London to the less serious alternative to Count 1 (possessing a firearm without authority contrary to section 1(1)(a) of the Firearms Act 1968) and to a charge of simple possession of cannabis (Count 4). An abortive first trial had taken place at the Crown Court at Inner London before HHJ Burn, in May 2014.
2. On 30 January 2015 at the Crown Court at Inner London, the appellant was sentenced to 11 years' detention in a Young Offenders' Institution on Count 1. No separate penalty was imposed on Count 4 and the charge of possessing a firearm without authority was ordered to lie on the file on the usual terms.
3. He appeals against conviction with limited leave, and against sentence with leave of the single judge.

Grounds of appeal against conviction

4. The conviction appeal relates to a ruling made by the Recorder in which at the start of the trial, she permitted the prosecution to adduce certain "gang related" evidence pursuant to section 98 of the Criminal Justice Act 2003 (the CJA 2003), on the ground that it had to do with the alleged facts of the offence with which the appellant was charged. She also said that if she had had to consider admissibility under Section 101(1)(d) of the CJA 2003 the same evidence would have been admissible under those provisions.
5. The single judge considered that the Recorder held with good reason that the evidence was admissible both under section 98 and under section 101(1)(d); but that having regard to a reference in her ruling to the fact that both provisions had safeguards to protect fairness to the defendant in the trial, it was arguable that her failure then to direct the jury not to give that evidence undue weight or convict solely on the strength of it, was a misdirection. This was not a ground of appeal advanced by the appellant.
6. The appellant's grounds as originally advanced were these. First, that the judge was wrong to rule that the evidence in question was to do with the facts of the case under section 98 of the CJA 2003 rather than bad character evidence under section 101 of the CJA 2003. Secondly, that the judge was wrong to rule (in the alternative) that it was admissible as bad character evidence. And thirdly, that the conviction was unsafe in all the circumstances, given the prejudice caused to the appellant by the admission of the bad character evidence.
7. Ms Ong for the appellant obviously adopts the ground on which leave was given; and also renews her application for permission in relation to the first ground

originally advanced. The focus in the appeal has therefore been on two points: first, the correct route to admissibility; and second, whether the jury were given adequate directions on the evidence by the judge in her summing-up.

Summary of the facts

8. The facts relating to this case are straightforward. On the evening of the 10 January 2014, the appellant who was then 19 years old, was travelling as the sole passenger in the rear seat of a mini cab in the Tulse Hill area of London. The mini cab was being followed by police in an unmarked vehicle; and was stopped in a three-sided stop on a housing estate in South London. The appellant was arrested and detained at the scene. Concealed underneath his coat was a Nike holdall which he was carrying with the strap over his shoulder. The holdall contained a Miroku 12-bore double barrelled sawn-off shotgun and ammunition fitting the gun in the form of two cartridges. The gun itself was wrapped using two bin liners, a grey cloth and a towel. It was not loaded. The appellant made no comment when arrested and cautioned and he made no comment in interview.
9. The prosecution case was that the gun was to be used in connection with a gang dispute; and the jury could properly infer the requisite intent from the nature of the weapon itself, the appellant's actions on the night, and the surrounding circumstances. It relied on evidence of the appellant's involvement with a violent gang; evidence that he had been the victim of gang violence; and images seized from his phone which showed an interest in guns beyond being a mere courier, to prove intent.
10. The defendant's case on the other hand, was simply that he did not have (or the prosecution could not establish) the requisite intent. In his defence statement, the appellant said he had been asked to deliver the gun and merely acted as a courier; he was not a gang member and he was not aware that the male who asked him to deliver the gun was a gang member.
11. However, the appellant did not give evidence at trial, and no evidence was called on his behalf. Since he had, as the jury were told, admitted simple possession, the issue for the jury at trial on Count 1 was whether the prosecution had proved he possessed the firearm with the requisite intent.

The Recorder's ruling on bad character

12. The background to the bad character application made to the Recorder by the prosecution was as follows.
13. On 27 March 2014, the prosecution served evidence from Detective Constable Whiteway, a recognised expert in gangs and gang culture, relating amongst other things to the appellant's membership of, and association with, a gang, the TN1 (Trust No One) gang in Tulse Hill in London.
14. The prosecution made no bad character application in respect of that evidence. The first trial began before HHJ Burn and a jury on 14 May 2014. It was stopped after the first prosecution witness had given evidence. We do not have a transcript of the judge's reasons, but it appears that the judge concluded that DC

Whiteway's evidence should have been the subject of a bad character application, and he directed the prosecution to make such an application, which it then did.

15. It was common ground that the Recorder was not bound by the views expressed by the judge at the first trial. The prosecution made the application to her on two alternative bases. Its principal contention was that the evidence identified in the application, including that from DC Whiteway, fell outside the definition of bad character evidence in section 98 of the CJA 2003 as it went directly to motive/intention, and thus had to do with the alleged facts of the offence with which the appellant was charged. Alternatively, the prosecution contended (essentially on the same basis) that this evidence was admissible under section 101(1)(d) of the CJA 2003. It was said that the appellant's intention was an important matter in issue between the prosecution and the defence; evidence of his gang related activities was relevant to his intention to use the gun in connection with such violent disputes; and the images showed he had more than an interest in just delivering firearms.

16. Section 98 of the CJA 2003 provides that:

“References in this Chapter to evidence of a person's “bad character” are to evidence of, or a disposition towards, misconduct on his part, other than evidence which –

(a) has to do with the alleged facts of the offence with which the defendant is charged, or

(b) is evidence of misconduct in connection with the investigation or prosecution of that offence.”

17. Section 101 of the CJA 2003 provides in part that:

“(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if –

...

(c) it is important explanatory evidence,

(d) it is relevant to an important matter in issue between the defendant and prosecution.

...

(3) The court must not admit evidence under subsection 1(d)...if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.”

(4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject matter of the offence charged.”

18. In a full and careful ruling the Recorder concluded that the evidence which the prosecution wished to adduce had to do with the alleged facts of the offence with which the appellant was charged, because it went to intent, which was an element of the offence in Count 1. But she said, for the avoidance of doubt, if she had had to consider admissibility under Section 101(1)(d), the same evidence would have been admissible under those provisions since it went to an important issue in the case between the prosecution and the defence, namely that identified by the prosecution.
19. In the course of her ruling, the Recorder expressed the view, that there was no practical difference in the route to admissibility and that both routes (under section 98 and section 101(1)(d)) had safeguards to protect fairness to a defendant in any trial.
20. The single judge thought, as we have indicated, that this meant the Recorder specifically envisaged giving a bad character direction (of some description) in the summing-up. It seems clear from her ruling however, that the Recorder was merely indicating that whichever route to admissibility was used, the fairness of admitting the evidence had to be considered, either under section 78 of the Police and Criminal Evidence Act 1984 (PACE) if the evidence had to do with the facts of the case, or under section 101(3) of the 2003 Act if it was bad character evidence as defined by section 101(1)(d), in circumstances where the defence objected to its admissibility.
21. Having concluded that the evidence was admissible outside the confines of the 2003 ‘gateways’, the Recorder went on to consider whether each specific item of evidence which the prosecution wished to adduce should be excluded on grounds of fairness, applying the test in section 78 of PACE.
22. In broad terms, she permitted evidence of background knowledge of gangs in the area; and in particular, evidence of a long-running dispute between two gangs – the Lambeth GAS (Gangsters Always Shoot) gang, and TN1, which had manifested itself in violence. She permitted evidence that the appellant was himself a member or associate of the TN1 gang. She excluded however what was described as “association evidence” from patrolling officers, of anti-social behaviour by the appellant with others, who it was suggested were gang members (this excluded all crime reports, apart from one dated 2 March 2012). Evidence that the appellant was the victim of a (gang) attack on 2 March 2012 where he was stabbed 28 times by a number of assailants with knives was permitted, as was evidence of the conviction of one of the attackers (a man called Ryan, an associate or member of the GAS gang) for the attempted murder of the appellant, at a trial conducted without the appellant’s co-operation.

23. The Recorder also permitted the prosecution to rely on photographs found on the appellant's phone. In her view, this (photographic) evidence, which we shall describe in more detail shortly, was capable of assisting the prosecution to establish that the appellant was an associate or gang member and had an interest and intention in relation to firearms which went beyond that of a mere courier. Though the defence made the point that the photographs were not "first generation" photographs, but came from others, the Recorder said they were on the appellant's phone and had not been deleted, and such points as the defence wished to make about this could be made to the jury
24. However the Recorder excluded evidence linking the appellant to a man called Myles Hedley, then awaiting trial for firearms offences and attempted murder (the appellant's fingerprints had been found on Hedley's car at the time), and three text messages sent from the appellant's phone on the 10 January 2014 i.e. on the day of his arrest, culminating in one saying: "Your [sic] dead". The Recorder concluded that though clearly to do with the facts of the offence, it would be unfair to the defence to admit those texts, because the prosecution had only notified the defence of their intention to rely on them on the first day of the trial before her; and the defence had not therefore had the opportunity to serve evidence as to whom those messages had been sent.

The evidence in more detail

25. The appellant lives at an address in South London, Woodvale Walk SE 27, in the area of the Poynders Gardens Estate. On 10 January 2014, he hired a minicab from a minicab office in Selhurst Park, Whitehorse Lane, SE 25 using a false name. A statement from the minicab driver was obtained. He said that he had collected the appellant from the minicab office. During the journey in the cab, the appellant was speaking on his mobile phone telling someone that he was going to Tulse Hill. When he got to Tulse Hill, the minicab driver was given directions by the appellant to go on to the Tulse Hill Estate. We have already described the circumstances of the arrest and what was found on the appellant. When the police officers tried to stop the minicab, the appellant attempted to get out of the rear door and to run off.
26. The gun was examined by a firearms expert, who found it was Japanese made Miroku 12 bore 'over and under' shotgun. The wooden stock and barrels had all been shortened, and clear adhesive tape had been wrapped around the grip and action of the gun. White masking tape had also been wrapped round the grip.
27. The gun was in poor condition, but in working order. No fingerprints were found on the gun or the ammunition. Mixed DNA profiles were recovered but were unsuitable for testing. There was no evidence that any attempt had been made to discharge the cartridges in the shotgun; the two 12 gauge cartridges were unfired and live.
28. When the appellant was searched, he was found to be in possession of a black cap, a pair of gloves which were in his pocket, £210 cash and two mobile phones, one of which was a smartphone.

29. The images recovered from the smartphone which were before the jury were as follows. Four showed the appellant posing as if holding a gun; and two showed him posing as if he was holding a sawn-off shotgun (in one of them, the appellant and another unidentified male were on the Tulse Hill Estate wearing facemasks covering the bottom half of their faces). Three others showed images of firearms. One of these showed (according to the expert evidence of Mr O'Rourke, the prosecution's firearms expert) a disassembled Winchester model 1400 self-loading 12-bore shotgun. Another showed a semi-automatic shotgun. Another showed a set of black body armour, a pair of black shoes, a black backpack and a semi-automatic rifle.
30. Other images included a number relating to a young man called Zac Olumegbon, who was a friend of the appellant. He was a member of the TN1 gang, and had been murdered in 2010 when he was 15, in a gang dispute between the TN1 gang, and the Lambeth GAS Gang. The images included one of Olumegbon himself, one of his funeral flowers (spelling out the name "Zac") and one of the logo of the TN1 gang.
31. The third strand of evidence came from DC Whiteway. This covered the matters encompassed by the Recorder's ruling, as set out at para 22 above. DC Whiteway said the appellant was affiliated with a gang called the New Park Gunners, which in turn was affiliated with the larger and dominant gang, TN1. TN1 and its affiliated gangs, including the New Park Gunners, operated out of the Tulse Hill Estate, the New Park Road area and the Clapham Park Estate. He said the GAS gang operated from areas north of Brixton, including Myatts Field Estate, the Angell Town Estate, and the Loughborough Estate. He said the long-running feud between TN1 and the GAS gang, which had been going on since at least 2005, had resulted in a number of assaults, stabbings and murders, including the attempted murder of the appellant which occurred on 2 March 2012.
32. DC Whiteway also said that this was not the only time the appellant had been subject to attack; and there had been at least three other occasions when he had been attacked.
33. Ms Ong submitted that the jury should not have been told this, as albeit the incidents formed part of the prosecution's bad character application, the Recorder had not expressly ruled that evidence about them was admissible. However, in our view there is no substance in this point. We do not have a transcript of DC Whiteway's evidence, and there is a difference between Ms Ong and Mr Millett about how that evidence emerged. We are prepared to accept that it did so in re-examination. Be that as it may, it was not suggested at trial that the prosecution had gone beyond the ruling of the Recorder, and there was only the briefest reference to the assaults in the summing-up in a manner which did not connote they were gang-related, and which was not objected to. We do not therefore consider the evidence prejudiced the position of the appellant or adds anything of substance to the appeal over and above the points which we address at paras 35 and following below.
34. As we have said, the appellant denied in his defence statement that he was a member of any gang. It was suggested in cross-examination of DC Whiteway that gangs used young members as couriers; and it was mooted that the appellant

might have been a mere courier. It was also put to DC Whiteway that living on estates in South London meant one would invariably come into contact with gang members. Inevitably however, the extent to which the prosecution evidence from DC Whiteway or on any other issue, could properly be challenged, was limited by the absence of any evidence to contradict it from the defence.

Discussion

35. There was no dispute before the Recorder about the admissibility in general terms of expert evidence on “gang related issues” and we were not addressed by reference to the questions subsequently considered by the Privy Council in *Myers, Brangman and Cox v The Queen (Bermuda)* [2015] UKPC 40.
36. As we have indicated, Ms Ong renews her first ground of appeal, namely that the Recorder was wrong to characterise the evidence which was the subject of the bad character application as evidence to do with the facts of the case. She also submits that howsoever the evidence came to be admitted, the Recorder should have given the jury a bad character direction about it in the course of her summing-up.
37. In agreement with the single judge, we would refuse leave on this first ground. We think the gang-related evidence which the jury heard was appropriately characterised as evidence to do with the facts of the case, because it was directly relevant to the appellant’s motive for having the gun and his intention in possessing it, and admissibility was not therefore required to be determined by reference to one of the 2003 Act ‘gateways’.
38. In *R v Sule* [2012] EWCA 1130, a renewed application for permission to appeal against the defendant’s conviction for murder was refused. The principal ground of appeal was that evidence of three incidents of violence between rival gangs which had taken place in the three months preceding the murder was inadmissible bad character evidence, and had been wrongly admitted as evidence to do with the facts of the case.
39. In rejecting that ground as not arguable, Stanley Burnton LJ, giving the judgment of the court, said this:

“12. In our judgment, the evidence of the three incidents was evidence that was alleged to do with the evidence of the murder in question. The words of the statute are straightforward, and clearly apply to evidence of incidents alleged to have created the motive for the index offence. Indeed, where the evidence is reasonably relied upon for motive, it would be irrational to introduce a temporal requirement. Take these examples. A man is wounded in a shooting. He is hospitalised for six months. On discharge, he is alleged to have shot the man who is alleged to have been his attacker. In another case, the reprisal is the day after the first attack. In the second case, the evidence of the first attack is not bad character for the purposes of s.98, in the first it is.

13. In our judgment, the judge's decision was clearly right, and we pay tribute to his clear and cogent ruling. Incidents (1) and (3) gave rise to the alleged motive for the murder that was the subject of the indictment. Incident [(2)] [...] was part of the pattern: as was put by Mr Price, part of a series of "tit for tat" incidents. Each of them had to do with the others, as had the index offence. They were not merely relevant: they were intrinsic to the prosecution's case.

14 We add that, given these four incidents took place within a period of three months, if there were a temporal requirement in s.98(a), we would have held it to be satisfied.”

40. In *Lunkulu and Ors v R* [2015] EWCA Crim 1350, the appellants were convicted of a murder which took place in the context of a feud between two Turkish gangs, involved in drug dealing. The judge permitted the prosecution to rely on evidence of earlier incidents of “tit for tat” violence between the two gangs, including the conviction of one of the defendants, Arslan, for the attempted murder of two members of the opposing gang, as evidence to do with the facts of the offence under section 98 of the CJA 2003. After citing the passage from *Sule* to which we have referred, Fulford LJ, giving the judgment of the court, said this at para 99:

“The circumstances described in *Sule* are markedly similar to the present case, and the reasoning in our view is entirely apposite. We consider that the shooting of Arslan on 31 July 2009 and the evidence of the attempted murders of Coban and Demir on 30 September 2009 [Arslan was convicted of those offences] was admissible because it was relevant to the facts of the present case. Although the prosecution could prove the charges without introducing this material, it fell within section 98(a) because this evidence of misconduct was directly relevant to it. These events were closely, indeed inextricably, linked to the facts of the present murder. As described above, what otherwise might have been viewed as a random or inexplicable shooting, was on the prosecution case a vital part of the ongoing feud between two Turkish drug gangs in North London – the Tottenham Turks and the Hackney Turks – and most particularly the series of tit-for-tat stabbings and shootings in the Autumn of 2009. We agree with Stanley Burnton LJ that section 98(a) includes no necessary temporal qualification, and it applies to evidence of incidents whenever they occurred so long as they are to do with the alleged facts of the offence with which the defendant is charged. That will involve a highly fact-specific question.”

41. Looking at the facts of this case, the issue for the jury on Count 1 was one of intention. The prosecution had to prove, as the Recorder correctly directed the jury, that the appellant had the intention of using the gun himself, or that he intended to enable another to use it as and when the occasion arose to endanger life. Whether he had such an intention was a matter which could be inferred from a number of strands of evidence. One of those strands was the nature of the gun itself, and the circumstances of its finding. The weapon had been shortened, which enabled it to be concealed when carried, and used and handled more easily than if it was in its full length. It was common ground that had the firearms and ammunition been used against a human, it would have had serious or fatal results. Shortening it too, enabled it to have a wider spread at a shorter distance than if in its proper form, potentially increasing its lethal force. The case for the prosecution was that when such a weapon was possessed in such a form in urban South East London, and taken on to an estate in Tulse Hill, in the way this one was, the compelling inference was that it was not for shooting pigeons or other wild life in South East London; but was for use to endanger human life – as and when the occasion arose – and the appellant knew that is what it was for and intended such use.
42. Another strand was the gang-related evidence, which went directly to both intention and to motive. Motive could be inferred from the evidence of the murderous attack on the appellant, and his friend Zac (whose image he still held on his mobile phone) in the context of the violent and long-running feud between the TN1 gang, with which the appellant was “associated”, and the GAS gang. The striking gun-related images found on the appellant’s phone were also admissible to show the appellant had an interest in guns which went beyond being a mere courier. Taken together, this evidence, if the jury accepted it, provided a proper evidential basis for the inference that the appellant had the requisite intent in relation to the use of this gun in gang-related violence.
43. In the event, the Recorder’s directions to the jury were faithful to her ruling. In summary the jury were told in simple terms that the gang-related evidence, if they accepted it, was part of the evidence from which they were entitled to infer intent; but even if they were sure of the appellant’s link to gangs, they still had to consider whether he may merely have had possession of the gun with intent to supply it, for the opportunity to endanger life, and that if they concluded that may be the position, this was insufficient for a guilty verdict.
44. The Recorder had indicated in her ruling, as we have said, that it was her view that had it not come in as evidence to do with the facts of the case, she would have permitted this evidence to be admitted under section 101(1)(d) of the CJA 2003. It did not follow, however, that she was then required to treat the evidence for the purposes of summing-up as though it had been admitted pursuant to that gateway. Indeed as Mr Millett for the Crown points out, after the Recorder’s ruling, the trial proceeded on the footing, and only on the footing, that the evidence was to do with the facts of the case.
45. There is a difference between counsel as to whether the issue was raised again after the ruling, in the discussions of law that took place before speeches and the summing-up. Mr Millett says his clear recollection is that nothing whatsoever was said about such a direction and points out that the suggestion that something was

said, was made for the first time at the hearing before us. Ms Ong says her stance then was a negative one, in that she indicated she did not consider the defence were entitled to any form of bad character direction because the evidence had been admitted pursuant to section 98 of the CJA 2003. The resolution of this issue is not however material to our conclusions. It is clear that the Recorder was not invited to give the jury the sort of direction (identified in *R v Lowe* [2007] EWCA Crim 3047 for example) that would have been appropriate if the evidence had been admitted under section 101(1)(d) of the CJA 2003 either before the summing-up or at its conclusion, before the jury retired. And as we have said, the absence of such a direction did not feature as a discrete ground of appeal, until the issue was raised by the single judge in the way we have described.

46. We quite accept that had the Recorder decided to direct the jury that they could also use this evidence as though it had been admitted as ‘bad character’ evidence under the relevant gateway, then a suitably tailored *Lowe* direction would have been required; and we note that this two-pronged approach was taken by the judge in *Lunkulu and Ors*: see para 93. We also accept that there may be cases where the jury should be told to be careful not to make unwarranted assumptions about a defendant because of his or her reprehensible conduct admitted pursuant to section 98 of the CJA 2003. Whether such a direction will assist the jury or should be given as a matter of fairness to a defendant will depend on the facts.
47. However, we do not think the absence of such a direction can be criticised here; or that this leads to the conclusion that the appellant’s conviction was unsafe. Looking at the matter realistically, there were only two possible explanations for the appellant taking a sawn-off shotgun concealed on his body at night, onto the Tulse Hill Estate. He was either a (mere) courier of the gun, or he intended to enable another to use it as and when the occasion arose to endanger life. This was a straightforward and simple case; and in our view, the parties and the Recorder in her directions to the jury, adopted an appropriately straightforward and focused approach to it at the trial. In short, given the specific purpose for which the disputed evidence was admitted, and the Recorder’s directions which were properly tailored to that purpose, there was no prospect of the jury treating the evidence as generally prejudicial and no more by way of direction was required.
48. The case against the appellant was a strong one. We are satisfied his conviction is safe. It follows that the appeal against conviction is dismissed.

Sentence

49. The nub of the appeal as Ms Ong puts it, is that the sentence of 11 years’ detention was too long having regard to the appellants’ acquittal on Count 3. It is said in particular that the Recorder was not entitled to reject the defence assertion in mitigation that the appellant should be sentenced as a “courier plus” without giving cogent reasons for doing so.
50. We do not accept these submissions. The appellant was not of good character, and though his convictions related to a time when he was still a juvenile, he had two convictions for robbery and two convictions for possession of knives (in 2009 and 2010). The Recorder accepted that the gun was not loaded or discharged, and she made it plain in her sentencing remarks that the appellant was not being sentenced

for the ammunition found because he was acquitted on that count. However, she had heard the evidence at trial, and was not obliged to put on blinkers when it came to sentence. She said, and was entitled to say in our view, that there was an intention for this gun to be used in a gang-related dispute, and that it was indeed fortuitous that the police stepped in when they did. She also paid particular regard to *Attorney General's Reference (Nos 4, 5, 6, 7 and 8 of 2014) (R v Deacon)* EWCA Crim 651; [2014] 2 Cr. App. R. (S) and ors, where this court said as follows:

“Whatever the rightness of that observation made at that time, it simply does not reflect the attitude required to be taken by the courts now. Even in the last 12 years things have moved on considerably given the prevalence of and concerns about the carrying and use of firearms, as indeed Lord Judge has made so clear. We do not think that that particular case should any more be cited or relied upon as authority for any general proposition that a range of seven to eight years still is appropriate for offending of this particular kind. Thus, in *Attorney General's Reference No.6 of 2011 (R. v Rollings)* [2012] 2 Cr. App. R. (S.) 67, a starting point of 11 years was taken by the Court of Appeal on a Reference as appropriate as being “the very least possible sentence” on the particular facts of that case, where the offender was in possession of a gun loaded with live and expanding ammunition. There was considerable emphasis before us today on a decision of another constitution of this court in the case of *R. v Sugulle* [2013] 2 Cr. App. R. (S.) 61 (p.389). There a starting point of 15 years, reduced to 10 years to allow for an early plea, was held to be appropriate where the accused, who had no previous convictions for any relevant firearms offences, was found in possession of a loaded gun, which gun had been used in a previous shooting relating to gangs some four days earlier.

It may however be noted that in *Sugulle* there had been no findings as to any particular gangland context in which the accused was found to be in possession of the loaded gun. We further note that in *Sugulle* it was made clear that the previous decision in the *Attorney General's Reference, Rollings* case should not itself be taken as a rigid guidelines case as to the appropriate sentencing range for offending of this kind.”

51. The Recorder was conscious of the appellant's relatively young age. He was only 20 years' old at the time of sentence, and the sentence was undoubtedly a severe one for someone of that age. However she had the benefit of written submissions from Ms Ong and Mr Millett on the relevant facts and the law, and her sentencing

remarks were full and well-reasoned. We do not consider the sentence was either manifestly excessive or wrong in principle.

52. It follows that the appeal against sentence is also dismissed.