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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Thursday 29 August 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE JEREMY BAKER

and

MR JUSTICE FREEDMAN

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**R E G I N A**

**- v -**

**MARC JASON MURRAY**

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**Mr C Nelson QC** appeared on behalf of the Applicant

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

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**LORD JUSTICE SIMON:**

1. This is a renewed application for leave to appeal against conviction following refusal by the single judge. The applicant is represented today by Mr Cairns Nelson QC (who was not counsel at trial). The application also requires an extension of time (448 days) in which to apply for leave to appeal.

2. On 21 June 2017, following a trial in the Crown Court at Manchester before Her Honour Judge Suzanne Goddard QC and a jury, the applicant (now aged 34) was convicted of a single charge of conspiracy to possess a firearm with intent to endanger life. He was subsequently sentenced by the trial judge to an extended sentence of 25 years, consisting of a custodial term of 20 years and an extended licence period of five years. His application for leave to appeal against that sentence was subsequently refused by the full court.

3. A number of co-defendants pleaded guilty to the conspiracy charge: Patrick McCann, Kane Morrison, Harry Allen and Anthony Smith. John Kennedy was tried and was convicted of the charge. Saim Kinteh and Jamie Morris were tried and acquitted.

4. The indictment charged the defendants with a conspiracy in conventional terms, the particulars of which were:

[Named defendants] between the 1 day of October 2015 and the 21 day of October 2015 conspired together and with persons unknown to possess a firearm with intent by means thereof to endanger life.

5. Before final speeches, the judge directed the jury in relation to the elements of the offence which the prosecution had to prove so that they were sure: first, the existence of an agreement to possess a firearm with intent to endanger life; second, that the defendant whose case they were considering joined or was party to the agreement; third, that the defendant knew what he was agreeing to; and fourth, that when he joined or was party to the agreement, he intended that he or some other party to the agreement should possess the firearm to endanger life. The judge added, in conventional terms, that it was not necessary for a defendant to know the full details of when and where the gun was to be used but that the jury must be sure that he was party to a common design (point 3), and that he intended that someone in accordance with the common design would possess the firearm to endanger life (point 4). At page 9F of the summing-up, the judge said this:

The prosecution here allege that the conspiracy concerned the supply by Murray and Kennedy of a firearm that was used both on the 5 and on 10 October and was used on four occasions in circumstances in which life was endangered or at the very least circumstances in which the shooter must have intended life to be endangered.

6. The charge arose out of the circumstances surrounding the discharge of a single firearm on four occasions in October 2015 in Manchester: once on 5 October and three times on 10 October. It was not in dispute, and could not be, that the same gun was used on each occasion and that it was never recovered.

7. The prosecution case was that the gun was in the possession and control of a Salford Organised Crime Group ("OCG"), of which the applicant and co-accused Kennedy were members. This group was linked with an OCG which operated in the Little Hulton/Bolton area,

headed by the co-accused McCann, whose members were said to include Morrison, Kinteh, Allen, Smith and Morris. The McCann group had been involved in a lengthy dispute with another OCG known as the Holland Blood gang.

8. On the prosecution case, the first shooting on 5<sup>th</sup> October 2015 concerned a grudge which the applicant held against a man called James "Dicko" Dickson who had begun a relationship with the applicant's then girlfriend, Charlene Budgeon, while the applicant was in prison. The applicant wanted revenge. The prosecution adduced evidence in support of this motive. In February 2016, when his new partner, Jessica Rhodes, visited him in prison, the conversation turned to Dickson and Budgeon. The applicant said to Rhodes, "If I ever go to jail for a long time and you were doing things like that, you know I'm going to get something done to him".

9. On 5 October 2015, two men were seen riding up and down Coniston Avenue, Little Hulton, and other nearby roads on a scooter. At around 11.15pm the victim, Darren Williams, was at home at 55 Coniston Avenue with his partner, Natalie Dickson, who was a cousin of Dicko Dickson. Darren Williams heard his name being called from outside. He went out to investigate. As he opened the front door, he was confronted by a man saying "Where's Dicko?" The man immediately produced a gun from his waistband and fired a number of shots, causing serious injury to Williams' leg, arm and abdomen.

10. Two days later, on 7 October, a man named Ryan Deans stole a motorbike from Connor Holland, a member of the Holland Blood gang. The co-accused Morrison, who was allied to the McCann group, was with Deans at the time. Holland reported the theft to the police, sparking further animosity. He was labelled a "grass" and appeared to cause one of his clan to take direct action towards the McCann group through an attack on Morrisons' home a couple of days later.

11. In the early hours of 10 October 2015, a shotgun was discharged at Morrisons' home address in Little Hulton. Morrison was not there, but his mother and her partner were. The partner was shot in the back by a shotgun fired through a window. The discharge did not come from the firearm which was linked to the other shootings in this case. It was from a shotgun. The offence involving this shooting was not part of the conspiracy alleged by the prosecution but was said to provide the motive for what followed.

12. After the motorbike incident of 7 October, there was telephone contact between the applicant's group and the McCann group. This contact took place late on 7 October and then through 8 and 9 October. Immediately following the shooting at Morrison's home, there was contact between Morrison and his mother and then a series of attempted contacts between Morrison, McCann and Kinteh. Further attempts were also made to contact the applicant. The applicant's phone was switched off, but the following afternoon he called Morrison. An hour before the conversation with the applicant, McCann contacted Holland and a threat was made to shoot at the house of Holland's mother, Jane Blood.

13. Following the telephone conversation with Morrison, during the afternoon of 10 October the applicant and Kennedy drove to meet the McCann group in a park known as the Boggart Hole Clough in Blackley, where, on the prosecution case, the applicant supplied the firearm to McCann and his gang. The gun was taken to Stonechurch Flats, the home address of the co-accused Smith, who carried it concealed in a brown paper bag. The gun was to be stored at the flat of John McAtee. During the handover, McAtee accidentally shot and injured himself.

14. At around 10pm on 10 October, Morrison and Allen drove the stolen motorbike to Worsley Road and fired shots at the address of Shaun Holland, the father of Connor Holland and the former partner of Jane Blood. No one was injured, but two bullets were recovered which linked

the firearm to that used during the shooting at Coniston Avenue on 5 October and at Stonechurch Flats earlier that day.

15. At around 11.20pm, a further shooting occurred at Gorse Drive, Little Hulton, the home address of Dean Holland, Jane Blood and her four children, including Connor Holland. Jane Blood was at home with Dean Holland and two of the children. They heard a single shot, fired at the front door. A bullet head was later recovered near the door.

16. On 12 October 2015, McCann sent a text message to the applicant stating "Bel us bro need to drop this hammer off brother". The prosecution said that this was a reference to the firearm which McCann wished to return to the applicant.

17. The applicant was arrested on 3 February 2016. He relied on a prepared statement in which he denied involvement. Thereafter, he made no comment.

18. The main planks of the prosecution case against the applicant were as follows:

1. He had arranged for the shooting of Darren Williams by others on 5 October 2015.
2. He had a motive to do so, evidenced by text messages to his girlfriend, Charlene Budgeon, in June 2012, when he made threats to shoot her, and his remarks to a police officer in a discussion about his licence condition in March 2015 when he referred to Charlene Budgeon as a "slag".
3. He had a propensity to be violent and jealous towards his girlfriends and by inference to their new partners, evidenced by his comments to Jessica Rhodes in 2016.
4. He supplied the same gun to McCann and his gang on 10 October, evidenced by the fact of and the timing and circumstances of the meeting in the park at Boggart Hole Clough.
5. He had a propensity to possess and offer to supply firearms, evidenced by his previous conviction for possession of a firearm in 2012, images of guns on his phone, messages to Charlene Budgeon and others, and discussions covertly recorded in prison.
6. There was also reliance on the McCann message to the applicant on 12 October, referring to returning "the hammer".

19. In proof of its case against the applicant, the prosecution relied on the following evidence:

- An image taken of the applicant meeting McCann at Boggart Hole Clough on 10 October 2015. It was argued that at some point during the meeting, the applicant handed over a firearm.
- On 16 February 2016, in a prison visit, the applicant and his right-hand man Kennedy were covertly recorded discussing the allegations against them and attempting to concoct a false explanation for their actions, both having been already interviewed by the police some days earlier.

- Evidence in relation to his background, behaviour and previous offending. He had the 2012 conviction for possession of a prohibited handgun and ammunition. The gun had contained one live and two fired rounds of ammunition which, the prosecution submitted, demonstrated propensity, making it more likely that he would supply a firearm to McCann and others in October 2015, when he was on licence for the previous offence.
- Images were recovered from mobile phones showing a tendency for the applicant to be in possession of and associated with firearms.
- There was an exchange of messages between the applicant and his ex-girlfriend, Charlene Budgeon, in 2012 recovered from his mobile phone which showed him to be a controlling man who was involved with firearms and was prepared to threaten his domestic partners. The messages confirmed that he had access to guns and was threatening to shoot Charlene Budgeon.
- An exchange of messages between the applicant and an unknown male in June 2012 indicated that he could access guns and offer to supply them to others.
- During a prison visit between the applicant and Morrison on 16 February 2016, the applicant made coded references to images of him with firearms and asked whether they still existed. It was submitted that this supported the prosecution case that the images depicted him with real firearms, contrary to his evidence.
- During the prison visit the applicant made serious threats to his then girlfriend, Jessica Rhodes, as to what would happen to her if she started to see someone else. He said that she would end up like Katie Piper [a victim of an acid attack]. It was submitted that this not only gave an insight into his controlling, bullying attitude towards women, but supported the case that he was seriously offended by Charlene Budgeon having left him for Dicko Dickson, to the extent that it gave him a motive for arranging the shooting on 5 October.
- The jury were invited to draw inferences from the sequence of events chart, the cell site evidence, the pattern and timing of telephone contact and the totality of the evidence.
- The jury were also invited to draw an adverse inference from the applicant's failure to mention in his police interview the account of his actions that he gave in evidence. His account, given in evidence for the first time at trial, was said to be false.

20. It is unnecessary to set out the defence case because the application relates to the way in which the prosecution put its case.

21. The grounds of appeal raise two points. First, Mr Nelson seeks to argue that no jury

properly directed could have concluded that there was a single agreement in relation to the firearm. There were, on the prosecution case, two entirely separate agreements: the first, an agreement involving the applicant to supply a firearm to others unknown, which resulted in the shooting of Darren Williams on 5 October in relation to his personal grudge; the second, an agreement to provide a firearm to members of the McCann group on 10 October, for use in their feud with the Holland Blood gang after the applicant and Kennedy had supplied it to them. Accordingly, there should have been a submission of no case to answer at the close of the prosecution case; or the judge should of her own volition have raised the matter with the prosecution. The applicant was entitled to separate verdicts in relation to each conspiracy; the charging of a single agreement was, Mr Nelson submitted, artificial. He referred to *R v Shillam* [2013] EWCA Crim 160 and the observations there about charging a single, overarching or umbrella conspiracy, rather than particular conspiracies relating to particular offending.

22. Second, Mr Nelson seeks to argue that the evidence in relation to the applicant's threat to Jessica Rhodes during the prison visit in 2016 was evidence of his bad character within the meaning of section 98 of the Criminal Justice Act 2003. As such, it required a bad character application to be made by the prosecution and, if the evidence were admitted, a direction by the judge as to the use the jury could make of it. No such application was made and no such direction was given. On the contrary, the judge misdirected the jury by directing them that this evidence was relevant to a motive to attack Dicko Dickson. The misdirection was material and impugned the safety of the conviction.

23. The applicant waived legal professional privilege and his trial counsel was invited to comment on the grounds of appeal. As to ground 1, counsel has said that he understood that the prosecution proceeded on the basis that there was an agreement between the applicant and others to possess the gun with the requisite understanding and intent. He took the view that there was nothing wrong with this approach, although he says that he agrees with the points made against this view in Mr Nelson's Advice.

24. As to ground 2, counsel recognised that the evidence was admitted in support of a proposition that the applicant had a motive for the use of a gun on 5 October. He had argued, unsuccessfully, that the comments to Jessica Rhodes should be excluded on the basis that their prejudicial effect outweighed their probative value.

25. We have considered the grounds of appeal and the submissions made on behalf of the applicant, as well as the Respondent's Notice. So far as ground 1 is concerned, section 16 of the Firearms Act 1968 makes it an offence to possess a firearm with intent by means thereof to endanger life, whether or not injury is caused. The mischief at which section 16 is aimed is that of a person possessing a firearm ready for use if and when the occasion arises. The prosecution had to prove that there was an agreement between the conspirators that one of them would possess the firearm with the intent that either he or someone else (not necessarily a conspirator) would endanger life as a result of the possession of the firearm and that the defendant whose case the jury were considering was one of the conspirators. It was not necessary for the prosecution to show that any of the conspirators had in fact taken possession of the gun with the necessary intent, providing there was an agreement that one of them should do so. It was sufficient if there were a general agreement that one of their number should take possession of the firearm with the necessary intent if and when required.

26. The prosecution case was that a specific firearm had been used to carry out four separate shootings on 5 October, and on three occasions on 10 October. The firearm was ordinarily in the possession of the Salford OCG, whose members included the applicant and Kennedy who was also found guilty of the conspiracy. The Salford OCG had links with at least one other

OCG, the Little Hulton/Bolton area group, whose members included McCann and others who pleaded guilty. The prosecution case was that there was an agreement between the two groups that the firearm would be used intentionally to endanger life by whichever members of these linked groups needed it at any particular time. The guilty pleas of the co-defendants were relied on in support of the existence of that conspiracy. The issue for the jury in relation to the defendants who stood trial was whether they were parties to that conspiracy. The shootings on 5 and 10 October were evidence of participation in the alleged conspiracy. But there was also a substantial amount of supporting evidence to which we have already referred. This was the way in which the prosecution opened its case. The applicant did not apply to dismiss the charge, did not argue that there was more than one conspiracy and did not submit that there was no case to answer at the close of the prosecution case in relation to the count of conspiracy. The judge directed the jury in line with the way the case was put and argued. No objection was taken to that direction at the time.

27. All of these features of the trial process are strongly indicative that this was the correct way of looking at the prosecution case. The directions made it clear that the jury had to be sure that there was a single agreement to which each defendant was a party and that it did not matter when they joined or left the agreement, provided that the defendant whose case they were considering knew that the agreement was to possess a firearm with the necessary intent. Although Mr Nelson's ingenuity has devised the argument, it was not raised at the time and, in our view, for good reason. The events of 10 October supported the prosecution case of a single agreement between the defendants to pass around a firearm to associates who needed it, intending that it should be used to endanger life. That is what happened. The applicant gave the firearm to the McCann group in furtherance of the overarching agreement, because they needed it for the shootings against their rivals that day, just as the applicant had handed it to the person who shot Darren Williams on 5 October for his own reasons.

28. That is not to say that the prosecution could not have charged two separate conspiracies or a series of substantive offences. If they had, the pleas of the co-defendants might have been confined to a different conspiracy. But the fact is that they pleaded to the conspiracy charged. We would add, as has been frequently observed in this court, that there are hazards in charging a conspiracy rather than substantive offences. However, this was not the case here.

29. As to ground 2, the judge directed the jury in relation to the relevance of the threats made to Jessica Rhodes (see volume 1, pages 19H-20E): first, because the prosecution relied on it to demonstrate the applicant's bullying nature towards women; and second, because it supported the prosecution case that he had been seriously offended by Charlene Budgeon leaving him for Dicko Dickson, which provided him with a motive for providing the firearm for the shooting on 5 October. Although the assailant shot Darren Williams, he had been looking for Dicko Dickson.

30. Since the evidence against the applicant related to his motive for committing the offence, it was evidence "to do with the alleged facts of the offence with which the defendant is charged" within the meaning of section 98 of the Criminal Justice Act 2003 and did not amount to bad character evidence. The judge correctly explained to the jury what the prosecution said the relevance of the evidence of the threat was and reminded them that the weight they attached to this evidence was a matter for them. In our view, the admission of the evidence and the direction in relation to it do not give rise to arguable grounds - certainly not individually; nor do they add to any other argument on ground 1.

31. Accordingly, enticingly as it was advanced by Mr Nelson, the renewed application is refused.

