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IN THE COURT OF APPEAL

CRIMINAL DIVISION

Neutral Citation Number: [2021] EWCA Crim 190

CASE NO 201901975/B1-201902184/B1-202000758/B1-201901882/B1-202000761/B1-202001133/B1-202000766/B1-202000778/B1

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 4 February 2021

LORD JUSTICE HOLROYDE

MR JUSTICE LAVENDER

MRS JUSTICE COLLINS RICE DBE

REGINA

V

HEIDI MURPHY

DARREN PALMER

PAUL WILKINSON

MARTIN LEE MURPHY

AMANDEEP SINGH

SHERAZ MOHAMMED

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR N BLEANEY appeared on behalf of the Appellant H MURPHY.

MR M CRANMER-BROWN appeared on behalf of the Applicant PALMER.

MR A TURTON appeared on behalf of the Applicant WILKINSON.

MR J MCNALLY appeared on behalf of the Applicant M MURPHY.

MR J BECK appeared on behalf of the Applicant SINGH.

MR I SHAFI appeared on behalf of the Applicant MOHAMMED.

MR J COX appeared on behalf of the Crown_

J U D G M E N T

1. LORD JUSTICE HOLROYDE: On 30 and 31 January 2020, in the Crown Court at Lincoln, the Honorary Recorder of that city, HHJ Pini QC, sentenced 25 men and women who had pleaded guilty to, or had been convicted of, conspiracies to supply controlled drugs of Class A and associated offences. The conspiracies, which ran between January 2017 and June 2018, related to the supply of substantial quantities of high purity cocaine into Lincolnshire from Sheffield (count 1) and from Essex (count 2). Three of those who were convicted and three who pleaded guilty are before this court today.
2. We record at the outset our gratitude to all counsel for their admirably focused and very helpful submissions to the court. We reiterate our particular thanks to those who have been good enough to appear pro bono.
3. The appellant Heidi Murphy was charged with both conspiracies. She was convicted after trial of both counts 1 and 2. She was sentenced to 12 years' imprisonment concurrent on each count. She has the leave of the single judge to appeal against her convictions, on a single ground, and to appeal against her sentence. She renews her application for leave to appeal against conviction on another ground, in respect of which the single judge refused leave.
4. Darren Palmer was charged with, and convicted of, the Sheffield conspiracy (count 1). He was sentenced to imprisonment for 12 years. He renews his applications for leave to appeal against both conviction and sentence.
5. Paul Wilkinson was also charged with, and convicted of, the Sheffield conspiracy. He was sentenced to imprisonment for 14 years 4 months. In addition, he pleaded guilty to a separate conspiracy to supply heroin, for which he received a concurrent sentence of 9 years. He renews his application for leave to appeal against conviction.
6. Martin Murphy (the brother of Heidi Murphy) pleaded guilty to both conspiracies. He was sentenced to imprisonment for 18 years 8 months on count 1, with a concurrent sentence of 12 years on count 2. He renews his application for leave to appeal against sentence.
7. Amandeep Singh pleaded guilty to count 1. He was sentenced to 6 years' imprisonment. He renews his application for an extension of time to apply for leave to appeal against sentence.
8. Sheraz Mohammed also pleaded guilty to count 1. He was sentenced to 15 years' imprisonment. He renews his application for leave to appeal against sentence.
9. At the trial of Heidi Murphy, Darren Palmer and Paul Wilkinson the prosecution adduced evidence of the convictions of others in order to prove the existence of the conspiracies. The issue for the jury in relation to each of the defendants was whether they were sure that he or she had been a party to one or both conspiracies. It is sufficient for present purposes to give a brief summary of the case against them and of their respective defences.
10. The prosecution case was that the obtaining of drugs from Sheffield and Essex, and the distribution of the drugs in Lincolnshire, were organised and controlled by the heads of two organised crime groups - the applicant Martin Murphy, and Daniel Beeken. Martin Murphy set up the Sheffield conspiracy with Sheraz Mohammed. He obtained drugs also from Essex, usually couriered by Neil Dodd, who pleaded guilty to counts 1 and 2, and was sentenced to a total of 13 years' imprisonment. Beeken pleaded guilty to

counts 1 and 2 and was sentenced to 16 years 6 months' imprisonment.

11. The prosecution relied on evidence of observations and on cell-siting and GPSR analysis in relation to phone calls and messages passing between the conspirators. The jury were provided with a detailed schedule of events. The prosecution were able to show 34 meetings between those based in Lincolnshire and those based in Sheffield. Two arrests were made during the course of the conspiracy. The first was of a Lincolnshire courier, Matthew Creese. He was arrested in possession of 1 kilogram of cocaine, at 84% purity (a level indicative of being close to the point of importation), with a value of £48,000. Creese pleaded guilty to counts 1 and 2 and was sentenced to a total of 11 years 8 months' imprisonment.
12. Heidi Murphy played a senior role in the Sheffield conspiracy. She assisted her older brother Martin Murphy, organising the receipt and storage of the drugs, sorting out payments and acting on his behalf when he was unavailable. She recruited Darren Palmer as a courier and put him in contact with conspirators in Sheffield. She was in regular contact with Neil Dodd to receive drugs and money. Her phone was in contact with co-conspirators at the time of trips between Sheffield and Lincolnshire. She received and passed on large quantities of drugs.
13. Paul Wilkinson and another man, Jason Bloor, were Lincolnshire-based drugs suppliers. Bloor pleaded guilty to count 1, to a further drugs conspiracy (count 3) and to an offence of possession with intent to supply cannabis (count 4). He was sentenced to 11 years 6 months' imprisonment.
14. Paul Wilkinson, who was controlled by Martin Murphy, was instrumental in establishing the Sheffield line of supply. He was the first courier to travel to Sheffield, and made three trips in all to collect drugs. He was arrested in possession of drugs and his car was seized. He therefore recruited Darren Palmer to travel to Sheffield on his behalf. Wilkinson was then arrested for a second time. He discarded two bags of drugs as he tried to escape the police. The drugs were recovered and he was found also in possession of £870 cash.
15. Over a period of five weeks Darren Palmer made three trips to Sheffield to collect drugs which he delivered to Wilkinson. He was in contact with Heidi Murphy and with a co-conspirator in Sheffield, Mohammed Ali, who was an assistant to Sheraz Mohammed. At the end of the five-week period, it is submitted on his behalf that his involvement in the conspiracy ceased.
16. Martin Murphy and Beeken also sent couriers to collect drugs from co-conspirators based in Essex. Heidi Murphy's role was alleged to be similar to her role in the Sheffield conspiracy. Again, the prosecution relied on observations and on cell-siting analysis of contacts between phones. There were 60 meetings between conspirators based in Lincolnshire and those in Essex. During the conspiracy, Neil Dodd was arrested in possession of a quarter of a kilogram of cocaine at a high level of purity.
17. Heidi Murphy denied any involvement in the conspiracies. Her case was that she did not know that her brother was dealing in drugs. She believed him to be a market trader. Text messages on her phone from Dodd related to her brother's market stall. Her contact with Palmer (who was a friend of the family) was innocent. Her explanation for incriminating phone records was that her phone had been used by other people.
18. There was agreed evidence that in 2010 she and her brother had been convicted of a conspiracy to supply amphetamine. She said that, at that time, she had had a problem

with amphetamine and had asked her brother if she could do something for which she could be paid with that drug. She denied that she was again now working for or with her brother in supplying drugs. She said that if she had known what he was doing, she would have refused to become involved.

19. Darren Palmer's case was that he had been paid £150 by Paul Wilkinson to collect Class B drugs from Sheffield. His contact with Heidi Murphy had not been connected to drugs and he had not collected drugs either for her or for her brother.
20. Paul Wilkinson's case was that he had travelled to Sheffield to sell stolen goods to Ali and had received £500 in part payment. He said he had been asked to courier Class A drugs but had declined to do so. It was a coincidence, and not connected with drugs, that Martin Murphy had telephoned him shortly after a trip to Sheffield. In the course of the trial he changed this account and said that he had asked Palmer to travel to Sheffield on his behalf to buy cannabis.
21. As to those who pleaded guilty, we have already indicated that Martin Murphy played a leading role in both conspiracies. Mohammed was the head of the crime group in Sheffield and was the main link to Martin Murphy in Lincolnshire. Amandeep Singh, based in Lincolnshire, made two trips to Sheffield. First, he collected an encrypted phone which Mohammed was providing to the Lincolnshire group; on the second occasion he was arrested in possession of that phone and 1 kilogram of cocaine at a high level of purity.
22. The trial began on 1 April 2019 and lasted nearly 6 weeks. The grounds of appeal against conviction challenge two rulings which the judge gave in the course of the trial.
23. The first related to an issue which arose when Heidi Murphy gave evidence. Those representing her had become concerned about her ability to understand and communicate particularly during cross-examination. They obtained a report from Dr Harry Wood, a consultant clinical psychologist and forensic psychologist. Dr Wood's report was received after Heidi Murphy had started to give evidence. Mr Bleaney frankly says that the contents came as a surprise to him. As an experienced criminal practitioner, he had throughout felt that Heidi Murphy's intellectual capacity was on the low side of average. Dr Wood's report indicated however that her actual -- as opposed to her measured - IQ was extremely low, placing her in the bottom 1% of the population. In intellectual terms she functioned at a level associated with a learning disability, though she did not meet other criteria for such a diagnosis. Dr Wood noted that she had no limitations on her independent living skills and had in the past worked, including in a relatively senior position. Testing also showed her to be a highly compliant individual who would tend to do things others would like even if she privately disagreed with them. Mr Bleaney submits that the report shows that Heidi Murphy was suffering from a latent rather than a patent disability. As a result, she presented as functioning at a much higher level than was in fact the case.
24. Dr Wood's report indicated that he would have recommended the appointment of an intermediary if the trial had not reached the stage it had. As it was, he proposed a number of special measures which should be taken to assist Heidi Murphy to give her best evidence, in particular as to the form in which questions were asked. The judge accepted most of those suggestions. Heidi Murphy's evidence-in-chief continued, followed by cross-examination on behalf of her co-accused and the prosecution.
25. Mr Bleaney drafted three potential agreed facts drawn from Dr Wood's report which, he

submitted, should go before the jury because they were relevant to whether Heidi Murphy was capable of doing as her brother ordered, and also relevant to place into context her generally monosyllabic answers during a long cross-examination. After a recital of the fact of the appellant's assessment by Dr Wood and the nature of the testing carried out, the third proposed agreed fact read as follows:

"There is a 95% chance that Ms Murphy's *actual* (as opposed to measured) Full Scale IQ score is in the range 62 to 70. This is an extremely low score, placing her in the bottom 1% of the general population with respect to her overall level of functioning. There is debate between psychologists as to the appropriateness of estimating an adult's mental age on the basis of their performance on IQ testing. Some psychologists believe this is a helpful way of illustrating the degree of impairment when an adult achieves a low score. Ms Murphy's mental age was estimated at 10 years and 5 months on the basis of her performance on the WAIS-IV on 18.04.19."

26. Mr Cox, then as now appearing for the prosecution, opposed that application. He submitted that Ms Murphy's case was that she was not involved in any conspiracy, not that she had been pressured into acting, and her low IQ was not relevant to any of the elements of the offences charged. She had been able to answer questions during cross-examination, including stating on occasions that she had not understood a particular question. He submitted that expert evidence was not required in order for the jury to evaluate the appellant's level of intellect.
27. The judge in his ruling noted that Heidi Murphy had not been thought to need any assistance when interviewed under caution in July 2018, and that no concerns about her intellectual abilities had arisen at any earlier stage of the proceedings. She had not appeared to him to have been confused while giving her evidence. The role ascribed to her in this case was the same as the role which she had admitted playing with her brother in the previous amphetamine conspiracy. He concluded that the evidence of Dr Wood was not relevant to any issue in the case and that the jury would be able to make their own assessment of Heidi Murphy having read her interviews and heard her give evidence.
28. No issue arises as to the judge's directions of law. However, at the end of the first day of their deliberations the jury sent a note asking:

"Please can we have a record of all telephone contacts and meetings between Shiraz and Ali relevant to the Sheffield conspiracy? We are unable to find a link."

29. In answer to a question by the judge their forewoman clarified that they required a shortcut to the pages in the schedule of events where such contacts might be found.
30. Overnight the prosecution prepared an eight-page document. All defence counsel objected to its going to the jury, on the ground that its contents went beyond the jury's question and amounted to a further prosecution speech. The judge held that the

document could properly go before the jury. All the information contained in it was already before the jury, but they needed assistance to navigate through their papers in order to understand the contact between Mohammed, Ali and the wider Sheffield conspiracy. When he subsequently provided the document to the jury he emphasised that it contained nothing new. He summarised the contents in these terms:

"... it sets out the two text message contacts between Mohammed Ali and Sheraz Mohammed and it sets out a number of occasions when they cell site together in the vicinity of Mohammed Ali's home address and twice at Sheraz Mohammed's home address. It includes, simply for ease of reference for you to find it in the evidence and navigate your way through the evidence if you wish to do so, any contact between Paul Wilkinson and Darren Palmer and Mohammed Ali and also between Heidi Murphy and Darren Palmer."

31. The judge went on to remind the jury briefly of the explanations which had been given by the three defendants.
32. On behalf of Heidi Murphy, Mr Bleaney advances two grounds of appeal against conviction. The first, on which the single judge gave leave, is that the judge erred in not allowing the jury to hear the proposed agreement facts relating to Dr Wood's evidence. Mr Bleaney submits that it was relevant for the jury to hear Dr Wood's expert opinion because the appellant's very low IQ should have been taken into account by the jury when assessing the manner in which she responded to cross-examination. In the absence of that expert evidence, the jury may have thought that the appellant's monosyllabic answers showed that she had no explanation to give because she was guilty. He submits that her conviction is therefore unsafe. He relies on R v Masih [1986] Crim LR 395 as authority that expert evidence as to a defendant's IQ may be admissible, if relevant to the case, in order to enlighten the jury about a matter which was outside their own experience.
33. The second ground, on which the application for leave to appeal is renewed, is that the judge erred in allowing the prosecution to submit such a wide-ranging document in response to the jury's request. The evidence showed that there had been very little contact between Mohammed and Ali and the document went much further. He submits that if any document was to go before the jury in retirement, it should have been much shorter and focused on the question which the jury had asked.
34. On behalf of Darren Palmer, Mr Cranmer-Brown renews his application for leave to appeal against conviction on two grounds which effectively echo those put forward on behalf of Heidi Murphy. First, he points to the fact that the prosecution relied on the association between Palmer and Heidi Murphy in order to prove that Palmer's trips to Sheffield were part of the Sheffield conspiracy and did not, as he said, relate to cannabis. He submits that if Heidi Murphy were not guilty of count 1, there would be no basis for the case against Palmer. He submits that the judge was wrong to refuse to permit Mr Bleaney to adduce expert evidence, because it was plainly relevant to whether Heidi Murphy was capable of co-ordinating drug runs, and the jury's assessment of her evidence may well have been affected by their knowledge of her learning disability. He further submits that the judge was wrong to refuse to hear submissions from him, as well

as from Mr Bleaney, when this matter arose.

35. Secondly, he submits that the eight-page document should not have gone before the jury. Even if it was based on material already before the jury, it was a fresh document which should not have been given to them during retirement. It went beyond providing the requested assistance and amounted to a distillation of important parts of the prosecution case.
36. On behalf of Paul Wilkinson, Mr Turton renews his application for leave to appeal against conviction, on the ground that the judge was wrong to permit a fresh document to go to the jury after they had retired. The jury's question should have been answered by reminding them of the specific evidence to which the question related. He relies on what was said by Lord Widgery CJ in R v Davis 62 Cr App R 194, at page 201, as to the prohibition on the jury receiving any additional evidence or material after they had retired to consider their verdicts.
37. In response to these arguments Mr Cox submits that the judge was correct to rule the evidence of Dr Wood inadmissible. He submits that the jury were able to form their own assessment of Heidi Murphy and he relies on the principles stated in R v Turner (1974) 60 Cr App R(S) 80:

"If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary. In such a case, if it is given dressed up in scientific jargon, it may make judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is a danger that they may think it does."

38. Mr Cox further relies on R v Mulindwa [2017] 4 WLR 157, to which we shall return shortly. He submits that both the appellant's work history, and her role in the previous amphetamine conspiracy, showed the dangers of the jury being invited to attach significance to a specific IQ measurement. Dr Wood had identified special measures to provide for limitations consequent upon the appellant's low intelligence and underlying tendency towards compliance, and the jury needed no expert evidence in relation to those characteristics. In any event, he submits, the evidence against the appellant was very strong and her convictions are safe.
39. As for the document provided to the jury, Mr Cox submits that it provided no more than the assistance which the jury had requested, putting that into relevant context, and did so in an appropriate and fair manner. It referred to facts which were agreed or contained in the sequence of events, a document which had been used throughout the trial, and it contained no new evidence. There was a mass of documentary evidence in this complicated circumstantial case, and it was appropriate to state some of the context by reference to the prosecution case. Further, the judge had reminded the jury of the defence cases.
40. In any event, Mr Cox submits, the provision of this document to the jury does not affect the safety of any of the convictions. The association between Mohammed and Ali was not in issue in any defence case. The evidence against each defendant was

overwhelming.

41. We consider first the issue relating to the proposed expert evidence of Dr Wood. We accept that if this affects the safety of Heidi Murphy's conviction, it may also have an effect on the safety of Palmer's conviction. For that reason, it would have been better if the judge had heard submissions from Mr Cranmer-Brown as well as from Mr Bleaney. Mr Bleaney was however able to make all relevant points, and the strength of the argument was not materially affected by the judge's unwillingness to hear additionally from Mr Cranmer-Brown.
42. In Mulindwa the court, at paragraph 34, accepted that medical evidence may in principle be admissible to assist a jury to understand the presentation of a witness who suffers from a mental disorder. The court went on however to say:

"36. We are satisfied that there is a clear dividing line between evidence from a psychiatrist or a psychologist which may legitimately provide the jury with necessary assistance in understanding the presentation of a defendant in the witness box, and impermissible evidence from such witnesses which amounts to no more than an expert's opinion on the credibility or truthfulness of the evidence of the witness, an issue which must remain a matter exclusively for the jury. The former is permissible because it is designed to enhance the ability of the jury to perform its fact finding role. The latter is impermissible because it has the effect of suborning the jury's fact finding role and substituting for it the decision of the expert.

37. Consistent with the authorities, examples of which are given below, only in rare cases will it be appropriate for such evidence to be given, and there must be a proper medical basis for such a course. The defendant must be suffering from a recognised mental disorder, the impact of which may affect his presentation in giving evidence. It must be recalled that in appropriate circumstances a court can insist that counsel ask questions in a straightforward manner... or the court can permit an intermediary to assist..."

43. In the present case there was, in our view, nothing in the proposed agreed facts which fell on the right side of that clear dividing line. Even if the appellant's very low IQ was in this context to be regarded as a recognised mental disorder, the report did not provide any assistance as to how, if at all, it might affect her presentation. A statement of her IQ, reference to her overall level of functioning, and an assessment of her mental age based upon one of the tests performed, could not have assisted the jury to decide whether her evidence might be true. We agree with Mr Cox that the proposed agreed facts risked confusing the jury, by introducing concepts which would not be explained in oral evidence or be challenged in cross-examination. We feel that that difficulty would remain even if Mr Bleaney had had an opportunity to revise his drafting of the proposed agreed facts.
44. Nor did Dr Wood's report, or the proposed agreed facts, contain anything which could assist the jury to decide whether the appellant was capable of playing the role in the

conspiracies which the prosecution alleged. There was no basis for suggesting either that the appellant was incapable of acting in accordance with her brother's wishes or that her compliant nature made her unable to do otherwise. Dr Wood had not suggested that there had been any material change in the appellant's intellect or character since she admittedly assisted her brother in drug dealing a few years earlier.

45. We are therefore satisfied that the judge was correct to refuse to permit the appellant to adduce expert evidence, whether in the form of the proposed agreed facts or otherwise. Heidi Murphy's first ground of appeal accordingly fails. It follows that Palmer's application for leave to appeal on a similar ground also fails.
46. In our view, and in respectful disagreement with the single judge, the issue relating to the eight-page document provided to the jury does give rise to an arguable ground of appeal. We therefore grant each of the three renewed applications for leave to appeal on this ground.
47. It is a well-established principle that once a jury has retired to consider its verdict, no further evidence should be given to it, though questions they ask may be answered by reference to the evidence they have heard: see, eg, Davis, to which reference has already been made; R v Owen [1952] 2 QB 362; and Criminal Procedure Rules rule 25.9(6)). Case law shows that that prohibition may, in some limited circumstances, be relaxed. We need not however explore the boundaries of the principle because, like the single judge, we agree with Mr Cox that this document added no new evidence to that which was already before the jury.
48. Part 26 of the Criminal Practice Direction permits the provision of written materials to assist a jury. It reads:

"Other written materials

26K.13 Where the judge decides it will assist the jury, written materials should be provided. They may be presented (on paper or digitally) in the form of text, bullet points, a table, a flowchart or other graphic.

26K.14. For example, written materials may assist the jury in relation to a complex direction or where the case involves:

- A complex chronology;
- Competing expert evidence; or
- Differing descriptions of a suspect.

26K.15 Such written materials may be prepared by the judge or the parties at the direction of the judge. Where prepared by the parties at the direction of the judge, they will be subject to the judge's approval."

49. It is to be noted that those paragraphs do not expressly state any time limit on the provision of such materials. It is not however necessary, in this case, to consider whether there are circumstances in which such materials could properly be provided during a jury's retirement.
50. We accept that the prosecution intended only to provide the jury with appropriate and fair

assistance in navigating the evidence. In our view, however, defence counsel were correct in their submissions that the document in fact went well beyond answering the jury's question. Although the evidence as a whole was complex, the specific request made by the jury could, and should, have been answered much more briefly. In seeking to set the relevant features of the evidence in their wider context, the document in fact became a written reminder of aspects of the prosecution case. It should not have gone before the jury in that form. Although the judge briefly reminded the jury of the general nature of each defendant's case, the jury were left with a document which emphasised the features on which the prosecution relied.

51. For those reasons we respectfully conclude that the judge was wrong to allow the document to go before the jury in retirement. We have therefore considered whether that error casts doubt on the safety of all or any of the convictions.
52. We are satisfied that the document did not cause such unfair prejudice to the case of any defendant as to render her or his conviction unsafe. Although it went further than answering the jury's request, it was still focused upon the contacts between Mohammed and Ali, a matter which was not in issue in any of the defence cases. We accept Mr Cox's submission that the evidence against each defendant was very strong. The convictions are, in those circumstances, safe.
53. For those reasons we grant the renewed applications by Heidi Murphy, Palmer and Wilkinson for leave to appeal against their convictions on this ground. In each case however, we dismiss the appeal against conviction.
54. We turn now to the appeal and applications in relation to sentence. Heidi Murphy (now aged 47) had one previous conviction, namely the conspiracy to supply amphetamine to which we have already referred. She was sentenced to 2 years' imprisonment for that offence.
55. Darren Palmer (now aged 49) had numerous previous convictions, including offences of possession with intent to supply of both MDMA and cocaine in 2004, and a further offence of possession with intent to supply of MDMA in 2014, for which he was sentenced to 3 years' imprisonment.
56. Martin Murphy (now aged 52) had numerous previous convictions, including the conspiracy to supply amphetamine in which his sister was also involved. He was sentenced in 2010 to imprisonment for 6 years 6 months for that offence.
57. Amandeep Singh (now aged 42) was of previous good character.
58. Sheraz Mohammed (now aged 43) had previous convictions, including offences of possession of drugs and an offence of conspiracy to supply heroin in 2009, for which he received a sentence of 8 years' imprisonment.
59. The judge in his sentencing remarks described the conspiracies as well-organised commercial enterprises, professionally run for very significant profits, which brought many kilos of high purity Class A drugs onto the streets of Lincolnshire. The Essex conspiracy began first, but by the summer of 2017, and in 2018, both conspiracies were in operation simultaneously. The professionalism of the organisers was shown by their use of encrypted phones. The Sheffield conspiracy trafficked at least 17 kilograms of cocaine. The Essex conspiracy trafficked a lesser quantity, but well in excess of 5 kilograms.
60. The judge then referred to relevant case law, including R v Khan & Ors [2013] EWCA Crim 800, in which the court said that in cases of conspiracy the sentencer is entitled to

reflect the fact that a defendant was part of a wider course of criminal activity. He observed:

"Those who engage in a conspiracy, save where their involvement is truly restricted, agree to the commission of many crimes, and that must be borne in mind when considering the starting point in the guidelines."

61. The judge then rightly considered the category starting points and ranges in the Sentencing Council's definitive guideline for offences of supplying Class A controlled drugs. That guideline does not directly apply to a conspiracy to supply but is of assistance.
62. He assessed Heidi Murphy as performing a significant role in both conspiracies, with category 1 harm in each case. Her offending was aggravated by her previous conviction. The mitigating features were her extremely low IQ and highly compliant character as described in Dr Wood's report. She was however able to make decisions and to lead an independent life. The guideline indicates a starting point of 10 years and a range from 9 to 12 years for a significant role in a category 1 offence. The judge took a starting point of 9 years for Heidi Murphy's role in one conspiracy, uplifted it to 12 years to take account of the other conspiracy and further to 13 years to take account of her relevant previous conviction. He then reduced it to 12 years for personal mitigation and "a small element to reflect the sibling influence."
63. The judge assessed Darren Palmer as having played a significant role as a courier. He also said that Palmer had continued to assist in running the conspiracy after his three trips but he accepted that Palmer was not aware of the scale of the operation. He found that harm fell between categories 1 and 2. He took a starting point of 10 years, which he increased to 12 years to reflect the aggravating feature of Palmer's previous convictions for offences involving Class A drugs.
64. The judge said that Paul Wilkinson was at the head of the Lincolnshire conspiracies. He had been trusted by Martin Murphy to make the first trips and had brought up to 3 kilograms of drugs into Lincolnshire. He had to drop out after his arrest on unrelated matters but he was instrumental in recruiting Palmer. It was a further aggravating factor that when he became involved in the Sheffield conspiracy, he was already running his own drugs supply line in Lincolnshire. He also had numerous relevant previous convictions. The judge assessed him as playing a significant role with harm between categories 1 and 2. He took a starting point of 10 years which he increased to 12 years to reflect those aggravating factors. He took into account totality when considering the sentence for the separate conspiracy.
65. The judge rejected a submission that Martin Murphy had only a significant role and found him to have played a leading role in both conspiracies, with category 1 harm in each case. Murphy had directed and organised the buying of the drugs for financial gain. £3,000 was found at his flat. The judge took a starting point of 18 years for the Sheffield conspiracy, which he increased to 20 years to reflect the aggravating features of the high level of purity of the drugs and Murphy's relevant previous convictions, and increased by a further 2 years to reflect the Essex conspiracy. He allowed credit of 15% for Murphy's guilty pleas which were entered at trial. Thus, he imposed the concurrent sentences of 18 years 8 months and 12 years' imprisonment.

66. Sheraz Mohammed was the head of the Sheffield supply line which he had set up with Martin Murphy, whom he had met in prison. At least 17 kilograms of high purity cocaine had been supplied into Lincolnshire. £20,640 in cash, two encrypted phones and designer goods were found at Mohammed's house. The judge found that he had played a leading role with harm in excess of category 1. His offending was aggravated by the high level of purity and his previous convictions for drugs offences. The judge regarded it as a further aggravating factor that Mohammed's involvement in the conspiracy began when he was on licence from an earlier prison sentence. The mitigating factor was that he had caring responsibilities towards his wife and children, all of whom had health concerns. The judge took a starting point of 18 years, which he increased to 21 years to reflect the aggravating features. He allowed 25% credit for Mohammed's guilty plea, thus reaching a sentence of 15 years 9 months' imprisonment.
67. At a subsequent slip rule hearing the judge accepted that Mohammed's licence had in fact expired before this offence began. He therefore reduced the sentence to 15 years.
68. Amandeep Singh was a taxi-driver in Lincolnshire. He was recruited into the Sheffield conspiracy by Beeken, whom he knew and who had found that Singh was under financial pressure. His involvement was limited to two trips over a period of a week. The judge assessed him as having played a significant role. Harm was in category 1 for the conspiracy as a whole, but the judge took into account Singh's limited involvement. The mitigating factors were his previous good character, his short involvement and the fact that he was recruited. The judge took a starting point of 10 years, reduced it to 8 years to reflect the mitigation and gave 25% credit for the guilty plea.
69. Heidi Murphy appeals against her total sentence of 12 years' imprisonment on the grounds that the judge failed to have sufficient regard to the contents of Dr Wood's report and should not have increased the sentence by as much as 3 years because of the Essex conspiracy. It is submitted that more weight should have been given to her compliant character, as that might have an impact on her being asked by her brother to assist him. That point is said to be particularly important because the fact that she had assisted her brother in the earlier amphetamine conspiracy counted against her. It is further submitted by Mr Bleaney that, given the nature of her role and her intellectual limitations, it is questionable whether she appreciated that there were two conspiracies; it was therefore unfair to raise the sentence by 3 years to reflect that there was a second conspiracy.
70. We can deal briefly with the latter submission. It is reasonable to infer that Heidi Murphy knew that she was dealing with drugs coming from two different areas of the country; and the fact that she was convicted of involvement in two conspiracies, and not just one (as many of her co-accused were), added significantly to her overall criminality.
71. We do however see merit in the first submission. In his otherwise very careful sentencing remarks, the judge, with respect, did not fully assess the significance of the combined effect of Heidi Murphy's intellectual limitations and her compliant character. The judge was of course correct to point out that she was capable of functioning normally, living an independent life and making decisions. He did not however sufficiently address Mr Bleaney's point that her character was relevant to the circumstances in which she was twice requested by her brother to assist him in drug trafficking. We accept Mr Bleaney's point that she acted under the sway of her brother.

In our judgment, that aspect of the case should have resulted in the judge making a greater reduction than he did from the sentence which would otherwise have been imposed.

72. Darren Palmer renews his application for leave to appeal against his sentence of 12 years on the grounds that it was manifestly excessive. In particular, it was out of line with the sentences imposed on Wilkinson and Heidi Murphy, who were more heavily involved. It was imposed on a basis, namely that Palmer continued to play a role after his third trip to Sheffield, which was not supported by any evidence. The judge overestimated the quantity of drugs couriered in the three trips and was wrong to put the offence in category 1. The judge should also have made some allowance for the fact that Palmer committed the offence because of his dire financial position.
73. In our view, none of these grounds is arguable. Whether or not Palmer's involvement continued for a time after his third trip, his participation as a courier was fairly assessed as placing him into a significant role. The judge was entitled to reach the conclusion he did as to the level of harm directly referable to Palmer's activities, and it has to be remembered that he was convicted of involvement in the wider conspiracy. A sentence of 10 years' imprisonment, increased to 12 years because of Palmer's previous convictions, was not arguably manifestly excessive. The fact that he had fallen into financial difficulties through no fault of his own could carry very little weight against offending of this seriousness. As this court has said on a number of occasions, arguments based on disparity will rarely prosper where an experienced judge has heard evidence over many weeks, has had ample opportunity to assess the defendants and is in the best position to determine comparative levels of culpability. We see no arguable basis on which it could be said that there was unfair disparity of sentencing in Palmer's case.
74. Martin Murphy renews his application for leave to appeal against sentence on the ground that his total sentence was manifestly excessive, in particular because the judge took too high a starting point compared to Beeken, overstated Murphy's culpability in relation to the Essex conspiracy and sentenced on a basis which reflected some factual errors and some double counting. It is submitted that for their respective roles in the Sheffield conspiracy (which should have been treated equally) the judge took a starting point of 16 years for Beeken but 18 years for Murphy. He then increased that starting point in Murphy's case alone because of the high level of purity. Mr McNally submits, further, that this was essentially a case of a co-operative of independent drug dealers, not a hierarchy, and that the judge did not correctly analyse the limits of Murphy's role. The judge also made a number of factual errors, ascribing to Murphy as aggravating factors what were in fact the actions of others, such as playing a significant role in arranging the use of encrypted phones. Overall, it is submitted that the sentence on Murphy should, if anything, have been lower than that on Beeken; it should certainly not have been higher.
75. It was for the judge to determine the level of culpability and the appropriate categorisation under the drugs guideline relevant to a substantive offence. He was not bound to agree with submissions made by either the defence or the prosecution. In our judgment, the judge was entitled to reach the conclusions that he did in Murphy's case. In so far as there were factual errors, they do not, in our view, provide any arguable basis for challenging a total sentence of 18 years 8 months' imprisonment for Murphy's leading role in the two conspiracies. We see no force in the comparisons drawn with Beeken's

case. It may be that Beeken was fortunate that the judge did not make against him adverse findings which were made against Murphy. For example, it may be that the aggravating feature of the high level of purity could properly have been found against Beeken as it was against Murphy. Be that as it may, the question for us is whether there is any arguable basis on which it could be said that Murphy's total sentence was manifestly excessive. In our view, there is not. We would add that the credit of 15% allowed for Murphy's very late guilty pleas was generous.

76. Amandeep Singh renews his application for an extension of time to apply for leave to appeal against sentence. Mr Beck tells us, and of course we accept, that the comparatively short delay was attributable to pressure of other professional commitments.
77. Singh's grounds of appeal are that the judge was wrong to place him in a significant role. He had been recruited by Beeken after Creese had been arrested. He had been motivated to act as a courier by the prospect of financial gain, but his participation was limited to about one week and he was, to some extent, exploited by others. On his behalf Mr Beck submits that, with the exception of the motivation by financial gain, there were many features indicative of Singh playing a lesser role: Singh performed a limited function under direction; he was involved through exploitation; and he had little or no awareness of the scale of the operation.
78. We accept that whilst a courier may properly be placed in a significant role, an assessment of the particular circumstances of an individual case may lead to a different conclusion. The timing of this applicant's recruitment, by drug traffickers whose previous courier had been arrested and who knew of the applicant's financial difficulties, lends support to Mr Beck's submission that there was an element of exploitation. Although the applicant was to be sentenced for his part in the wider conspiracy, the judge rightly considered the guideline applicable to a substantive offence; and that guideline states that where there are factors present which fall under different categories of culpability, the court should balance those characteristics to reach a fair assessment of the offender's culpability. We accept that the judge might have given more weight than he did to the points which Mr Beck advanced. The judge was however in the best position to assess the applicant's culpability. We have concluded that the sentence was unarguably within the range properly open to him. In those circumstances, no purpose would be served by our granting an extension of time.
79. Finally, Sheraz Mohammed renews his application for leave to appeal against sentence on the grounds that the judge took too high a starting point; failed to take into account the financial and other consequences for Mohammed's family of a long custodial sentence; and failed to take into account the delay between plea and sentence. On his behalf Mr Shafi points to the passage of more than a year between the applicant's indication of his guilty plea in October 2018 and the imposition of the sentence of 15 years 9 months' imprisonment in January 2020. He relies on the significant medical problems suffered by the applicant's wife and children, such that his wife is herself in need of a full-time carer and therefore cannot look after the children alone. Mr Shafi, in his oral submissions, tells us that the family's difficulties have, as one might have anticipated, been exacerbated by the current pandemic. Relying on the familiar decision in R v Petherick [2013] 1 Cr App R(S) 116, he submits that the judge should have given greater weight to the family's suffering as a result of the applicant's incarceration. He further

- submits that a sentence of 20 years, before credit for plea, was in any event, too long.
80. We have considerable sympathy for the applicant's family. Their rights are engaged and must be taken into account. The sad reality, however, is that the applicant was bound to receive a long prison sentence which would deprive his family of his care and assistance for many years. The judge's categorisation of the offence is not challenged. The high level of purity of the drugs, and the applicant's previous conviction, were significant aggravating factors. Although not on licence, the applicant had only completed his previous sentence a short time before he involved himself in this conspiracy. The passage of time between plea and sentence, which was occasioned by the need to try other co-conspirators who had pleaded not guilty, can carry only limited weight, and the applicant was, in any event, in custody throughout that period. The sentence of 20 years before reduction for the guilty plea was within the range properly open to the judge on a fair assessment of the aggravating and mitigating factors. We cannot see any arguable ground on which it can be challenged.
81. For those reasons, our conclusions in relation to the sentence appeals are as follows. For the reasons which we have explained and which are personal to her specific case, Heidi Murphy's appeal against sentence is allowed. We quash the concurrent sentences of 12 years' imprisonment and substitute for them concurrent sentences of 10 years' imprisonment. The renewed applications for leave to appeal against sentence by Palmer, Martin Murphy, Singh and Mohammed, and Singh's application for an extension of time are all refused.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk