



Neutral Citation Number: [2022] EWCA Crim 742

Case No: 202200389 A2
202104120 A3 & 202104121 A3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM
HHJ HENDERSON
SITTING IN THE CROWN COURT AT BIRMINGHAM
HHJ LUCRAFT QC, RECORDER OF LONDON
SITTING AT THE CENTRAL CRIMINAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/05/2022

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION
MRS JUSTICE MCGOWAN
and
MRS JUSTICE FARBEY

Between :

Darren Lestat Collins **Appellant**
-and-
Regina **Respondent**

Jamie Lewis **1st Applicant**
Deniz Jaffer **2nd Applicant**
- and -
Regina **Respondent**

Ms Kelly Cyples (instructed by **Turnocks Solicitors**)
for the **Appellant**

Mr Peter Grieves-Smith (instructed by **Appeals Unit of the CPS**) for the **Respondent**

Mr Luke Ponte (instructed by **Reynolds Dawson Solicitors**) for **1st Applicant**
Mr Neil Saunders (instructed by **Reynolds Dawson Solicitors**) for **2nd Applicant**
Mr Joel Smith (instructed by **CPS Complex Casework Unit**) for the **Respondent**

Hearing dates: 11 May 2022

Approved Judgment

Dame Victoria Sharp P:

Introduction

1. The cases before us raise important questions in relation to sentencing those who are guilty of misconduct in public office. They concern misconduct in the form of the creation, possession and misuse of photographic images.
2. Darren Collins pleaded guilty to one count of misconduct and was sentenced to 3 years' imprisonment. While working for the police as a civilian Digital Forensics Expert, he had transferred thousands of images of scenes of crimes, including numerous images of murder victims and other dead bodies, from police databases to computers and other devices at work and at home. He appeals against sentence with leave of the Single Judge.
3. Jamie Lewis and Deniz Jaffer were police officers who, while tasked with protecting the scene of the brutal murder of two sisters, breached a police cordon and took photographs of the dead women's bodies. The two men exchanged photographs with each other. They showed or sent photographs of the bodies to other police officers and (in Jaffer's case) to a friend.
4. Lewis and Jaffer each pleaded guilty to one count of misconduct and were each sentenced to 2 years and 9 months' imprisonment. Their applications for leave to appeal against sentence have been referred to the full court by the Registrar.

The legal framework

5. Misconduct in public office is a common law offence. In *Attorney-General's Reference (No. 3 of 2003)* [2004] EWCA Crim 868, [2005] Q.B. 73, para 61, the court reviewed the case law and confirmed that the offence requires proof of:
 - i. A public officer acting as such;
 - ii. Who wilfully neglects to perform his or her duty and/or wilfully misconducts him- or herself;
 - iii. To such a degree as to amount to an abuse of the public's trust in the office holder;
 - iv. Without reasonable excuse of justification.
6. The court held (at para 56) that there must be a serious departure from proper standards before the criminal offence is committed. That departure must be not merely negligent but must amount to an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder. Save in exceptional circumstances, the gravity of the offence and the high public interest in deterrence means that it will attract a sentence of immediate custody (*R v Butler* [2021] EWCA Crim, para 41).
7. In *Attorney General's Reference (No. 30 of 2010) (Mark Edward Bohannon)* [2010] EWCA Crim 226, [2011] 1 Cr. App. R. (S.) 106, the offender was a serving police officer who had provided sensitive and confidential information to a drug dealer for a

period of about five years in return for the supply of cocaine to his wife. The information assisted the drug dealer to avoid detection and to run his drugs business. Increasing the offender's sentence from three to six years' imprisonment, the court (Leveson LJ, Davis J and Lloyd Jones J as they then were) considered the relevant case law and held at para 64:

“None of these decisions are, of course, binding in the sense that they drive the decision in this case. They are, however, illustrative of a number of important principles. First, punishment and deterrence are always important elements in these cases: not only must police officers be deterred from misconduct, but also the public must see that condign punishment will be visited on police officers who betray the trust reposed in them and do not live up to the high standards of the police service. Secondly, an incentive (usually money but it need not be) inevitably increases the seriousness of the offence. Third, misconduct, which encourages or permits criminals to behave in the belief that they will be kept informed of areas to avoid in connection with their criminal activities, or of those who might be informing on the police also increases its gravity. That is reflected in the observation of the learned judge who commented that Ahmed had boasted that it was ‘like having his own police station at the end of a phone’. Fourth, any misconduct that impacts on police operations moves the offence into a different category of gravity.”

8. The four broad principles set out in this passage are plainly not an exhaustive list of factors relevant to sentencing: there will be other aggravating or mitigating factors in particular cases. The *Bohannan* principles are, however, a good starting point for sentencing in misconduct cases.
9. In the fourth *Bohannan* principle, the court recognised the gravity of offending that has an impact on police operations. We would emphasise that misconduct that has an impact on the investigation and prosecution of crime must be regarded as serious. The criminal justice system plays a vital part in keeping the public safe and in ensuring that the rule of law is upheld. It is essential that the public should be able to trust the police to play their proper part in ensuring that those who commit crimes are brought to justice. Conversely, the rule of law means that those who are not guilty of crimes should have the opportunity to exculpate themselves. Misconduct that undermines public trust in the process of bringing those guilty of serious offences to justice, or the process of preventing innocent people from early exculpation, must be punished severely.
10. The retrieval, examination and storage of data in electronic formats has become essential to the investigation and prosecution of crime. Whether in the form of text or images, the collection and storage of data is an essential tool of contemporary policing and is now fundamental to the administration of justice. As the case of *Collins* demonstrates, electronic databases may hold vast amounts of personal and sensitive material. Those who work for the police may be entrusted with privileged access to large amounts of data that may touch on the personal lives of victims, suspects and members of the public alike. In *R v Kassim* [2005] EWCA Crim 1020, [2006] 1 Cr. App. R. (S.) 4, para 19, this court (Lord Justice Rose VP, Bodey and Owen JJ) held:

“It seems to us that, especially nowadays, the preservation of the integrity of information regarding members of the public held on databases like those maintained by the police is of fundamental importance to the well-being of society. Any abuse of that integrity by officials including the police is a gross breach of trust, which, unless the wrongdoing is really minimal... will necessarily be met by a severe punishment, even in the face of substantial personal mitigation.”

11. If data is copied or disseminated other than in lawful ways for lawful purposes, it carries the inevitable risk that neither the police nor the victims of crime nor their families will be able to control who sees it or the circumstances in which it is viewed. In the cases before us, the statements that we have read from family members movingly describe the deep distress caused by their loss of control of the treatment of those for whom they grieve.
12. The harmful effects of the misuse of electronic images may be impossible to rectify. The ease with which images may be disseminated by electronic means (via phones, laptops and other devices) and the difficulty in controlling their spread is an important aspect of the harm caused by offences of this kind.
13. In relation to images of the dead in particular, the act of creating, accessing or copying such images, if unauthorised, will amount to a failure to accord dignity and respect to those who have died and their families. This loss of dignity and respect is an integral part of the harm that may be caused by offences of this kind and warrants appropriate, and sometimes condign punishment in itself.
14. The harm caused by sending images to others is not limited to distribution of images to members of the public who are not bound by the same duties of confidentiality as police officers. When images are shown or distributed by one police officer to another in these sort of circumstances this has a corrosive and pernicious effect, putting pressure on colleagues to collude in activity that demeans the police and is hidden from those who have responsibility for the effective investigation of crime.

Darren Collins

The facts

15. Collins had worked for Staffordshire Police since 2002. He was employed as a civilian employee rather than a police officer. He was initially employed as an IT Technical Support Officer. In September 2015, he was appointed as a Digital Forensics Specialist whose role was to examine the content of digital devices seized during police investigations. He would examine the content of devices and produce reports for evidential purposes.
16. Collins was subject to strict terms and conditions governing the confidentiality of information. His contract stipulated that he was permitted to use police IT and police information only in connection with his work for Staffordshire Police. He had received training in data protection and the lawful handling of police information.

17. On 16 January 2019, during the course of an unrelated enquiry, police investigators seized computers used by Collins in his employment which, upon examination, contained thousands of images of scenes of crimes which had been investigated by Staffordshire Police. On 26 March 2019, he was arrested at his home address. In response to caution Collins said: “I have an interest in that kind of thing, I want to be a Scenes of Crime Officer. I was only looking at them out of interest.” He went on to say: “I’ve just been stupid, there was no malicious intent.”
18. In interview Collins admitted that he had deployed a method to gain access to police databases that circumvented proper procedures. He accepted that he had extracted data from the police computer system and had taken that data home on a memory stick.
19. Investigations revealed that Collins had either accessed at work or brought home over 700,000 images. The police found over 60 electronic devices at his home, albeit that not all the devices that were examined contained images of the sort we have described. The material he had accessed included images of murder victims and decomposed bodies, the deposition sites of murder victims and post-mortem images. As many as 178 images related to the post-mortem of one particular murder victim.

The criminal proceedings

20. On 9 November 2021, in the Crown Court at Birmingham before HHJ Henderson, Collins pleaded guilty on re-arraignment to one count of misconduct in public office. The particulars were that, between 1 April 2014 and 31 December 2018, he had gained access to Staffordshire Police photographic folders containing numerous images of deceased persons taken from crime scenes and transferred large numbers of such images to memory sticks and thereafter to his personal computers.
21. On 7 January 2022, before the same judge, he was sentenced to 3 years’ imprisonment.

The judge’s sentencing remarks

22. The judge took into consideration that Collins (who was 56 years old) had acted from morbid and gratuitous curiosity. He noted the long indictment period (nearly five years) during which Collins had accessed thousands of images. As described in the many victim personal statements from family members, Collins had insulted the victims of murder whose images had been accessed and had also insulted their families.
23. The judge went on to say:

“one of the most serious consequences of this kind of behaviour, if not the most serious consequence, is that it shakes the public’s faith in the system and their confidence that, if they tell something to the police in confidence or the police have to intrude legitimately into private situations and private lives, that material will be kept safe and private as far as possible.”
24. By way of mitigation, the judge emphasised that there was no evidence that Collins had made any attempt to distribute any of the material. He had significant psychiatric difficulties, to the extent that he was suffering post-traumatic stress disorder, as a

consequence of viewing disturbing material legitimately during the course of his employment. He had no previous convictions.

25. The judge took into consideration the four principles in *Bohannan* that we have set out above. He had been assisted by reading the sentencing remarks of HHJ Lucraft QC in the cases of Lewis and Jaffer. He noted that each case turned on its own particular facts. He concluded that he should not distinguish between a civilian employee of a police service and a police officer. He stated that it was proper to treat both categories in the same way because the public is entitled to expect the same standard of behaviour. He regarded the case as less serious than the cases of Lewis and Jaffer. The sentence before the 10 per cent discount for guilty plea would be 4 years' imprisonment, making 43 months after the discount. Taking account of mitigation the judge further reduced the sentence to 3 years.

Jamie Lewis and Deniz Jaffer

The facts

26. In the early hours of the morning on 6 June 2020 two sisters, Nicole Smallman and Bibaa Henry, were brutally murdered in a park in North West London. Ms Henry had arranged an outdoor party with family and friends on the evening of 5 June to celebrate her birthday. The last of the guests left at around 12:35 am on 6 June, leaving the sisters together in the park. Subsequently, both women were stabbed to death. Their bodies were found by concerned friends who had returned to the park to search for them. On 6 July 2021 Danyal Hussein was convicted of murdering both women. On 28 October 2021 he was sentenced to life imprisonment at the Central Criminal Court with a minimum term of 35 years.
27. The bodies of Ms Henry and Ms Smallman were found inside a wooded strip, some five metres deep, hidden by a row of trees. They were not readily visible. In order to preserve the scene for forensic examination before the bodies were removed, various cordons were set up. The innermost cordon was placed around the area of hedgerow where the bodies were located.
28. Lewis and Jaffer were police officers. They arrived in the park at approximately 3.30 am on 8 June and were assigned (with other officers) to guard the scene. Their duties were to preserve the integrity of the scene and to prevent it from being contaminated. They were placed on the inner cordon at the points closest to the bodies and were instructed by the officer in charge to remain at their posts. They were not wearing full barrier forensic clothing. They were made aware of the general location of the bodies but were not shown the bodies and had no reason to enter the hedgerow area. They were expected to remain at their place on the cordon until another officer relieved them for a break.
29. Although it was a key part of their duty to remain at their allocated posts, they each walked backwards and forwards, leaving their posts, to talk to each other and to another officer, PC Asprogenis. At one stage PC Asprogenis left her post and visited Lewis, who shone his torch into the bush area to show her the locations of the bodies.
30. During a refreshment break between 5.00 am and 6.00 am, Lewis, Jaffer, PC Asprogenis and another officer, PC Wilson, drove together to a nearby petrol station.

During the journey, Lewis showed PC Wilson a photograph on his phone of the women lying in the hedgerow. He later showed one of the images to a female probationary officer who was disgusted and told him she did not think it was appropriate to show such images. Lewis showed his phone, displaying an image of the crime scene, to another female officer.

31. Forensic examination of their phones revealed that Lewis took two images of the crime scene and that Jaffer took four. In addition, Lewis created an image on his telephone on which he superimposed his own face in front of the bodies of the deceased (“the selfie image”).
32. Lewis and Jaffer were members of a WhatsApp group called the “A Team” (which we shall call “the A group”) which had 41 members who were officers in the Metropolitan Police Service. Jaffer was a member of a WhatsApp group called “Covid Cunts” (which we shall call “the C group”) comprised of ten individuals, the other nine of whom were not police officers.
33. At approximately 3.50 am on 8 June, Lewis sent a series of messages to the A group. He sent a link to a Daily Mail article concerning the finding of the bodies and stated “Me, Izzy, Dennis [*sic*] and Matt are living the Wembley dream.” An image was attached of the park showing grass (but not the bodies), as was an image of the park showing a tent (but not the bodies). Another officer responded stating: “Enjoying the sunrise.” Lewis responded: “Unfortunately, I’m sat next to two dead birds full of stab wounds.”
34. Jaffer sent a series of messages to the C group. He sent a link to the same Daily Mail article and a second message which said: “I’m here now – will try to take pictures of the two dead birds.” A further message read: “This is my view now.” He attached a photograph of the scene which did not show the bodies.
35. At 3.58 am another officer sent a message to the A group, in apparent reference to Lewis’s use of the words “dead birds”, saying: “Who’s been out stabbing pigeons?” Lewis replied with a picture image of a man with pigeons on his shoulder. He then took a photograph with the bodies of the deceased visible in the background.
36. At 4.39 am Jaffer sent two pictures to Lewis, both of which showed the two women. Two minutes later Lewis used Snapchat to create the selfie image which he sent to Jaffer on WhatsApp. At 5.10 am Lewis took another, closer photograph of the two deceased lying in the hedgerow. At 5.21 am Jaffer sent a series of images to Lewis showing the women lying on the ground. At 5.49 am Jaffer sent four WhatsApp messages to PC Asprogenis containing four images of the women, including the selfie image.
37. At 7.10 am Jaffer sent a WhatsApp message to a friend who was not a police officer. The message said: “Good morning ... do you want to see the two dead bodies?” He then posted a link to a Sky News article concerning the finding of the bodies and sent a message to the C group saying: “I have pictures of the two dead victims. Let me know who doesn’t want to see?”. The friend replied: “Yes, what happened?”. Jaffer responded with a message which said: “The best pictures of the two dead victims, both stabbed to death in broad daylight and dragged up the trees – one is 14 and the other is 20 – she is pregnant.” The ages of the women and the reference to pregnancy were

wrong. He then sent a message to the friend which contained an image of the two women.

38. At 8.49 am a member of the C group responded: "Is it bad, Den?" to which Jaffer responded: "Not really; I've seen worse."
39. At approximately 4.10 am Lewis sent two photographs of the park without the bodies being identifiable to a female friend and told her that he was "sat next to two stabbed up dead women." He sent a series of messages to another WhatsApp group containing seven non-police members in which he stated that he was involved in the investigation of a double murder. He said that the deceased were sisters, aged 14 and 20 and that one was pregnant. As we have said, he was wrong. He told the group: "Got pics," but those pictures were not disseminated.
40. The women's bodies were not visible from the path on which Lewis and Jaffer should have been standing and so it would not have been possible for them to take photographs from where they had been instructed to stand. It would have been necessary to enter the bushy area itself, thus risking contamination of the crime scene.
41. On 19 June 2020 the Independent Office for Police Conduct was alerted to what had happened. Lewis and Jaffer were arrested and interviewed. Their phones were seized.
42. During Hussein's trial, agreed facts were placed before the jury stating that (i) the officers had distributed images of the deceased bodies; (ii) it would have been necessary for them to have left their posts to take the photographs; (iii) neither of the officers had been wearing protective clothing, and (iv) their DNA had not been compared to DNA findings from the deposition site and the bodies as there was no unknown DNA recovered in that area.
43. It was suggested by the Defence at Hussein's trial that one reason to explain the presence of forensic evidence emanating from Hussein at the crime scene was that the integrity of the crime scene had been compromised as a result of the actions of the applicants. In their closing speeches, both prosecution and defence counsel addressed the conduct of Lewis and Jaffer. In the event Hussein was convicted of all charges that he faced.
44. On 24 November 2021 an accelerated misconduct hearing took place. Neither Lewis nor Jaffer participated. A finding of gross misconduct was made against each of them on the basis of the conduct that we have described above and the fact that Jaffer had used a racially derogatory term in a message to members of the public and that Lewis had failed to challenge or report its use.
45. Lewis was dismissed on the same day as the misconduct hearing. Jaffer had already resigned.

The criminal proceedings

46. Lewis and Jaffer first appeared at Westminster Magistrates' Court on 27 May 2021 when each indicated an intention to plead guilty. The case was sent for trial at the Central Criminal Court.

47. Although they were each indicted on a separate count, the particulars of the offence were the same in each case, namely that each had wilfully misconducted himself by:
- i. entering a crime scene they had been assigned to protect without authorisation;
 - ii. sending information about his attendance at the scene to members of the public on WhatsApp;
 - iii. taking photographs of the crime scene (including photographs of the bodies);
 - iv. showing a photograph or photographs taken at the crime scene to another officer; and
 - v. sending a photograph or photographs taken at the crime scene to other officers (and in Jaffer’s case also to members of the public) on WhatsApp.
48. On 2 November 2021, before the Recorder of London, the applicants each pleaded guilty on accepted bases of plea. It was common ground before him that no distinction needed to be made between the applicants for the purposes of sentence. Lewis said he did not touch or otherwise disturb the bodies and did not, at any point, enter the wooded strip. He accepted that he did not remain at his post but said that it had not been made “entirely clear to him” that he had to remain in one place. He accepted that his actions had caused a risk that the integrity of the crime scene could be called into question at the murder trial but claimed that the risk did not occur to him on the night. We note (and endorse) the judge’s scepticism about this last element of the basis of plea and his observation that, while Lewis had only limited service as a police officer, the primary reason for having a cordon must have been obvious to him.
49. In his basis of plea, Jaffer accepted that he had entered the crime scene but said he was never close enough to have touched or in any way interfere with either of the bodies. He estimated he was about 20 feet away but accepted it could have been closer.
50. Following the pleas, the judge adjourned the sentencing hearing until 6 December 2021 when he imposed sentences of immediate imprisonment in the terms set out above. Jaffer (who was 47 years old) had joined the Metropolitan Police just over two years’ previously having worked before then in unrelated employment. Lewis was 33 years old and had just over 9 months’ service in the Metropolitan Police having previously worked for the British Transport Police for over three years.

The judge’s sentencing remarks

51. In his detailed sentencing remarks, the judge said that the defendants’ conduct was “appalling and inexplicable.” They had violated the police cordon. They had wholly disregarded the privacy of the two women and their families by taking images and passing them to others, for what could only have been a “cheap thrill, kudos, a kick or some form of bragging right.” They had undermined the trust and faith in police officers that the public should be able to expect at such times. They acted without any thought as to the wider public interest.
52. Having referred to *Bohannon*, the judge concluded that there were five aggravating features as identified by prosecution counsel, namely:

- i. The general breach of public trust which was particularly weighty in the case of police officers committing misconduct in the course of their duties.
 - ii. The offending took place in the midst of an investigation into the double murder of two women which caused a justified and significant public outcry. It was almost impossible to conceive of a more serious piece of offending against the background of which the offenders' own criminal acts had been committed.
 - iii. While it could not be shown that the integrity of the crime scene was compromised, the offender responsible for the murders could suggest it had been. The misconduct had assisted Hussein in placing an unmeritorious defence to murder before a jury.
 - iv. The offending had stripped Ms Henry and Ms Smallman of dignity in death. This factor was weightier given that Lewis and Jaffer were charged with protecting their bodies.
 - v. The offending had included not only the taking of photographs but also their dissemination. In the case of Jaffer, that dissemination was not only to police officers but also to civilians (in respect of whom there could be less confidence that there would not be further dissemination). Both Lewis and Jaffer had continued to show or disseminate the images after they left the crime scene.
53. In terms of mitigating factors, the judge took into consideration that there was no financial gain. Both defendants had admitted the offence from the earliest stage. The judge had read the many extensive character letters and references written on behalf of both men from family and close friends. He kept in mind the medical material that had been provided in relation to Jaffer, his wife, father and daughter. He took account of their previous good character but that was of little, if any, weight in cases such as this. They had shown some remorse.
54. The judge said that he did not intend to draw any fine distinction between them in terms of conduct which needed to be seen as one piece. After a trial, there would have been sentences of some 4 years 6 months' imprisonment. After a one-third discount for the guilty pleas, that would be reduced by one third to 3 years. Making a further allowance for the remorse and personal mitigation, the lowest sentence the court could impose was one of 2 years and 9 months' imprisonment.

The parties' submissions

55. In her written and oral submissions on behalf of Collins, Ms Kelly Cyples submitted that the judge had been wrong to refer to the sentencing remarks in the cases of Jaffer and Lewis as they did not amount to binding authority and those cases could be distinguished on their facts. In assessing the seriousness of Collins' offending, the judge ought to have drawn a distinction between a police officer and a civilian employed by the police force. Emphasising the mitigating factors, Ms Cyples submitted that the sentence of 3 years was manifestly excessive.
56. In response, Mr Peter Grieves-Smith QC on behalf of the prosecution submitted in writing that the role of civilians employed by police forces is vitally important and that the public place significant trust in all employees whether civilians or constables. The

judge was right not to distinguish a civilian employee from a police officer. We did not need to call on Mr Grieves-Smith to make oral submissions.

57. In their joint written submissions, supplemented by individual oral submissions, Mr Neil Saunders on behalf of Jaffer and Mr Luke Ponte on behalf of Lewis submitted that the judge had treated the general breach of public trust not only as an ingredient of the offence but also as an aggravating factor warranting an upward adjustment to the sentence. As a result the judge had risked “double counting” by increasing the sentence on the basis of a factor already included in the nature of the offending itself.
58. Mr Saunders and Mr Ponte acknowledged the serious nature of the offence but submitted that there were important factors that reduced its gravity in the present cases. Referring the court to the *Bohannan* principles, they submitted that the operational impact of the offending was limited. Any operational impact in the present case was a by-product of, rather than the purpose of the offending. No operational harm had eventuated: there was no evidence that the crime scene was contaminated and Hussein was convicted after his trial. There had been an operational risk but the judge should have sentenced the applicants on the basis the risk was taken, at worst, recklessly. For these reasons, the offending did not merit moving the case into a different category of gravity.
59. There was strong personal mitigation in each case: remorse, good character, the impact of delay in the proceedings, health-related matters and the particular impact of a custodial sentence on the applicants who have both suffered assaults from fellow prisoner who know that they were police officers. In all the circumstances, the sentence in each case was manifestly excessive.
60. In response, Mr Joel Smith on behalf of the prosecution submitted that the sentences imposed were not arguably manifestly excessive or wrong in principle. He argued that there were four factors to justify the length of the terms imposed. Firstly, the background was two offences of murder. Secondly, the misconduct created two distinct breaches of trust: the general trust of the public that police officers will conduct themselves in an appropriate manner and further that the officers were specifically entrusted to guard this particular crime scene. Thirdly, he emphasised the inevitable impact upon the family of the deceased. The actions of the officers had displayed a complete lack of respect or willingness to afford any dignity to the victims. Fourthly, the misconduct had put at risk the integrity of the murder scene and the consequential risk to the conviction of the man who was guilty of these brutal murders. He added that the act of taking of the photographs was greatly aggravated by the dissemination of the photographs in the manner outlined above.
61. Mr Smith submitted that there had been no double counting of the breach of trust given, as he submitted, that there had actually been a double breach of trust. Further he argued that the Recorder of London had properly accounted for all mitigating features, both those personal to the applicants and the factors that reduced the seriousness of the offending. The lack of financial gain might properly be described as an absence of an aggravating factor. The duration of offending continued from the crossing of the cordon until the point of the final dissemination of the photographs. The potential damage to the integrity of the crime scene may not have been the purpose of their actions but it was an obvious consequence of their deliberate acts.

Discussion

Collins

62. We turn to our consideration of the sentence imposed on Collins. The question for this court is whether the sentence imposed by the judge was manifestly excessive or wrong in principle. We do not see how reference to the sentencing remarks of another judge, in the way the sentencing judge in Collins did, can possibly lead to either conclusion. It may be the case that the employment status of a person carrying out particular duties for the police could make a difference to the degree of trust afforded to him or her by the public; but it made no difference in Collins' case. His job involved forensic examination of electronic devices seized by police officers and the production of reports for evidential purposes. In terms of public trust in the police bringing to justice the perpetrators of crime, and the damage to public confidence in policing which misconduct in relation to such data is likely to cause, we see no material difference between a civilian forensic examiner, such as Collins, and a police officer. As the judge observed, the public is entitled to expect the same standard of conduct. The judge had in mind the mitigating factors (such as they were) but in light of the duration of Collins' offending and the sheer number of images involved, he was entitled to impose a three-year term of imprisonment. There is no reason for this court to take a different view.

Lewis and Jaffer

63. The culpability that falls to be punished by an offence must be reflected in the sentence that is imposed. In relation to the offence of misconduct in public office, the culpability lies in the abuse of public trust. In order to reflect the degree of culpability underlying an offence of misconduct, the starting point will be that offences involving a high degree of abuse of trust will attract longer sentences. We reject the submission that the abuse of trust inherent in the offence debars a judge from differentiating between higher and lower degrees of abuse on grounds of double-counting. On orthodox sentencing principles, the more serious the conduct which the offence is intended to punish, the more severe the sentence.
64. Nor do we regard it as necessary for a miscarriage of justice to have occurred before misconduct may be regarded as having had an impact on police operations. The fourth principle in *Bohannan* suggests no such limitation. In the case of a grave crime such as murder, in which there is intense public interest in bringing the perpetrator to justice, the risk of a police officer compromising a full and proper forensic investigation itself represents an acute breach of public trust that will increase an offender's culpability.
65. The impact of the misconduct of Lewis and Jaffer was clear. It enabled Hussein to rely on their offending at the murder trial to support what the jury concluded was his false defence. Although the jury rejected his defence, the misconduct of the police officers afforded him an opportunity to bolster his case which imperilled the administration of justice. In sentencing Lewis and Jaffer, the judge was entitled to treat their misconduct as involving high culpability and to reflect that culpability in the sentences he imposed.
66. The misconduct also caused serious harm. By taking photographs for their own inexplicable purposes, both officers breached universal standards of decency; and they denied the two murdered sisters and their family the dignity and the respect that they deserved. The officers ought to have known the perils of unauthorised entry to the

scene of a double murder. Even if they did not know, they had received an instruction to stay in post – which they disobeyed. The purpose of the instruction was to preserve the murder scene. It is in truth no mitigation to say that they did not appreciate what they were doing.

67. Given the corrosive effect of such conduct as we have described above, it is an aggravating factor that they shared images of the bodies with colleagues. In Jaffer's case, it was an aggravating factor that he shared an image with a member of the public who was not subject to the authority or scrutiny of superior officers. An upward adjustment to their sentences was appropriate to reflect this additional harm.
68. The judge appreciated the various mitigating factors in relation to each offender, including their previous good character. He was however entitled to conclude that the serious breach of trust and the need for appropriate deterrence outweighed any mitigation. It is not arguable that the sentences were manifestly excessive or wrong in principle.

Conclusion

69. As we announced in court:
 - i. The appeal of Collins is dismissed.
 - ii. The applications of Lewis and Jaffer for leave to appeal are refused.