Neutral Citation Number: [2021] EWCA Crim 1243

Case No: 2019/01928/01853/01951/01993B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE BRADFORD CROWN COURT
Judge Durham Hall Q.C., The Recorder of Bradford
T20187259; T20197023

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/08/2021

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE FULFORD)
MRS JUSTICE THORNTON
and
MR JUSTICE WALL

- -

Between:

Tony Lee Vincent GRANT, Mohammed Nisar KHAN and Salman ISMAIL	**Appellants**
- and -	
REGINA	**Respondent**

- -
- -

Timothy Raggatt Q.C. (assigned by the Registrar) for the **Appellant Tony GRANT**
Robert Ward (assigned by the Registrar) for the **Appellant Mohammed Nisar KHAN**
Rodney Ferm (assigned by the Registrar) for the **Appellant Salman ISMAIL**
Peter Moulson Q.C. and David Gordon (instructed by the Crown Prosecution Service) for the Respondent

Hearing date: 21 July 2021

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Approved Judgment

Lord Justice Fulford VP :

Introduction

1. On 1 May 2019 at Bradford Crown Court before Judge Durham Hall Q.C. (the Recorder of Bradford) and a jury, the appellant, Tony Grant, was convicted of one count of murder (count one) and two counts of conspiracy to pervert the course of public justice (counts four and six). The appellant, Mohammed Nisar Khan was convicted of murder, attempted murder and two counts of conspiracy to pervert the course of public justice (counts one, two, four and six). The appellant, Salman Ismail was convicted of two counts of conspiracy to pervert the course of public justice and one count of arson (counts four, five and six).

2. On the same day, Tony Grant was sentenced to life imprisonment on count one (murder) and the period of 17 years was specified as the minimum term under section 269(2) of the Criminal Justice Act 2003, less 203 days spent on remand. He was sentenced to terms of 17 years' imprisonment on count four and six, to be served concurrently with each other and the sentence on count one. Mohammed Khan was sentenced to life imprisonment on count one and the period of 26 years was specified as the minimum term under section 269(2) of the Criminal Justice Act 2003, less 191 days spent on remand. On count two (attempted murder) he was sentenced to life imprisonment and the period of 7 years was specified as the minimum term, to be served concurrently with the sentence on count one. He was sentenced to terms of 17 years' imprisonment on counts four and six, to be served concurrently with each other and concurrently with the sentences on counts one and two. Salman Ismail was sentenced to terms of 17 years' imprisonment on count four, five and six, to be served concurrently.

3. Before this court, Mohammed Khan appeals against conviction by leave of the single judge on ground 7(l) of the Grounds of Appeal, namely that the judge was wrong to allow the *ex post facto* finding of weapons and face masks in Tony Grant's BMW motor vehicle to be adduced in evidence. He renews his application for leave to appeal on grounds 7(j) and 7(k), respectively that the judge was wrong to leave count two to the jury following a defence submission of no case to answer and the judge erred in failing to provide any written directions or a route to verdict to the jury. He renews his application for leave to appeal against sentence following refusal by the single judge.

4. Tony Grant appeals against conviction by leave of the single judge, limited to grounds one, two and four. He renews his application for leave to appeal in respect of ground three. He additionally renews his application for leave to appeal against sentence after refusal by the single judge. The four conviction grounds of appeal are, in summary, that the judge erred in declining to leave as a key issue to the jury that the killing could or might be viewed by them as an "overwhelming supervening act" ("OSA") as defined by *R v Jogee* [2016] UKPC 7; [2017] AC 387 (ground one); that the judge's directions to the jury vis-à-vis the appellant's case were unfocussed, unspecific and ultimately inadequate on all the key issues relevant to his case (ground two); mirroring Mohammed Khan's ground 7(k), the judge erred in failing to provide any written directions or a route to verdict to the jury (ground three); and mirroring Mohammed Khan's ground 7(l), the judge was wrong to allow the *ex post facto* finding of weapons and face masks in Tony Grant's BMW motor vehicle to be adduced in evidence (ground four).

5. Salman Ismail appeals against sentence by leave of the single judge.

The Facts

6. At just after 1.00 pm on 3 October 2018 in the Barkerend area of Bradford, a silver Kia Sedona with at least five occupants on board, drove into two pedestrians, Amriz Iqbal and Adnan Ahmed. Mr Iqbal, who returned to Bradford two days earlier having spent some time in Dubai, died whilst Mr Ahmed was essentially uninjured. These events were reflected in counts one and two.

7. It was the prosecution's case that Mohammed Khan was the driver. On his own admission Tony Grant, a long-time associate of Khan's, was in the front passenger seat.

8. The incident was captured (albeit at some distance) on CCTV footage which was recovered from a nearby house. This showed Mr Iqbal and Mr Ahmed walking along the left side of the pavement on Sandford Road, Bradford. Prior to the collision, the Kia had been cruising or circling around the nearby area until it was captured on CCTV at the junction of Barkerend Road and Sandford Road. It first travelled past the end of Sandford Road, giving the passenger, Tony Grant, an unimpeded view down the road. The motorcar then went past the end of Sandford Road, circled and drove back, now giving the driver a clear view of Mr Iqbal and Mr Ahmed as they walked down Sandford Road. The Kia circled again, returning to the junction and it entered Sandford Road. The vehicle weighed two tons and there were five occupants. Having gone over a speed bump, and whilst Mr Iqbal and Mr Ahmed were crossing Sandford Road, the driver accelerated hard, travelling at an average of 18 miles an hour but in all likelihood in excess of that speed at the moment of collision. The CCTV provided sound as well as images; screeching tyres and shouts from people in the area could clearly be heard. The driver seemingly deliberately swerved into the two men. Mr Iqbal was thrown onto a grass bank between the road and the pavement on the driver's side, whilst Mr Ahmed landed on the road on the passenger side of the Kia. The car continued forwards approximately 20 yards before braking and reversing back towards the victims at speed.

9. Three men alighted via the rear passenger door, at least one of whom was carrying a weapon and one of whom was wearing a mask or face covering. Fozia Iqbal, whose evidence was read at trial, recalled:

> "The car stopped suddenly and reversed back about 5 yards then a male got out of the rear driver's side door. He was average height, wearing a light padded jacket with his hood up, he also had some sort of patterned balaclava covering his face. Due to this I could not see the male's skin colour. I noticed he was carrying what looked like a metal crowbar. I think this was in his right hand. The male walked towards the male who had landed on the grassed area and started to hit him whilst he was motionless on the floor. He was hitting him to his legs and hit him several times".

10. Tony Grant appeared from the front passenger side of the vehicle; he hesitated for some five seconds before getting back in the car, as did the other men. The Kia was driven away. The prosecution submitted this was, therefore, a deliberate and fatal "hit and run".

11. Mr Iqbal died of injuries, from which survival was never a possibility, when he was thrown during the collision, hitting a hard surface (a tree or the pavement). The pathologist found areas of bruising to his back and lower limbs which could have been caused when he was struck whilst lying on the ground. Mr Ahmed suffered minor injuries.

12. The Kia, following the incident, travelled to a livery yard in a semi-rural location. It was followed by a BMW 320D (EV11 MOB). It was the prosecution's case that the BMW belonged to Tony Grant. Not only was it registered in his name but just prior to his arrest on the afternoon of 5 October 2018, Tony Grant had been seen by a police officer getting out of an HGV he had driven on a round trip to Wales on 4 and 5 October 2018 before driving away in the BMW. It bore false registration plates and the true registration of the vehicle was GY14 LJN. There was documentary evidence which linked Grant not only to the BMW but to both registration numbers. At the time of his arrest, moreover, Grant was in possession of the BMW keys which he told police were his.

13. The BMW emerged from the livery yard shortly after entering, but the Kia has never been seen again.

14. Tony Grant was arrested on 5 October 2018. The BMW was seized and examined two days later. Following a search of the boot a number of items were recovered including (i) a pair of white gloves with grey rubber grip; (ii) a black and red sledge hammer; (iii) a black "Slogger" baseball bat; (iv) a pair of yellow gloves with green rubber grip; (v) a pair of "biker gloves"; (vi) a skull balaclava/neck tube; (vii) a neoprene skull lower face mask; (viii) a yellow folding knife; (ix) a red folding knife; and (x) the original registration plates for the vehicle namely, GY14 LJN.

15. It was the prosecution's case that the BMW had been parked at Mohammed Khan's home address prior to the fatal incident. Cell site evidence for Tony Grant's mobile telephone demonstrated that between 8.06 am and 11.46 am on 3 October 2018 the BMW drove to Mohammed Khan's address, arriving at 11.46 am. It is suggested that Tony Grant, Mohammed Khan and the other three men then got into the Kia, taking with them at least some of the items which were later found in the BMW. They travelled to the Whitehall Road Petrol Station, Bradford, arriving on the forecourt at

11.57 am (approximately an hour, therefore, before the fatal incident). Tony Grant, as the front seat passenger, filled the vehicle with petrol, whilst Mohammed Khan entered the kiosk and paid. The vehicle left the forecourt at 12.00 noon. Thereafter it cruised or circled around the nearby area prior to the fatal collision, as described above.

16. Following the incident, the Kia was driven back to Mohammed Khan's home address, whereupon Tony Grant transferred back into his own BMW which he then drove, following the Kia, into the livery yard.

17. The Kia was identified as being registered to Platinum Cars at 58 Devonshire Street, Keighley and it was insured by a Nadeem Khan (originally a defendant in these proceedings) between January 2018 and 3 October 2018. Mohammed Khan had links with Platinum cars. Nadeem Khan removed the vehicle from his trader's insurance policy at 1.42 pm on 3 October 2018, some 40 minutes after the fatal attack. We note in passing that the actions in relation to the insurance policy were reflected in count three (conspiracy to pervert the course of justice). The judge upheld a submission of no case to answer on this count against all the defendants, and Nadeem Khan was discharged.

18. At 11.00 pm on 3 October 2018 attempts were made to set fire to the Whitehall Road Petrol Station with the intention, said the prosecution, of destroying the CCTV footage which had captured the fuel stop earlier in the day by Mohammed Khan and Tony Grant. This was reflected in count four, an offence of conspiracy to pervert the course of justice. It was alleged that Mohammed Khan and Tony Grant had been in telephone contact with Salman Ismail to arrange the arson. The point of attack was a window at the rear of the shop behind the counter. External cameras showed two people approach the premises, a window was smashed and liquid was squirted through it and onto the counter. The liquid was ignited, albeit almost no damage resulted. The fire quickly went out. Salman Ismail alone faced the count of arson (count five).

19. Witnesses in the Golden Fleece Public House opposite the Petrol Station saw two men acting suspiciously on the Station forecourt. Some of the witnesses went outside as the arson attack took place. They gave chase (an event which was partly captured on the CCTV footage) and saw the two men disappearing into Oakwood Avenue (a nearby cul-de-sac). As the witnesses approached Oakwood Avenue a Skoda Octavia, with its lights off, drove quickly away towards Birkenshaw Roundabout. A witness made a mental note of the vehicle registration and quickly passed it to the police 999 operator. The registration was HN09 OKO, described by him as a Silver Skoda Estate, a vehicle linked to Salman Ismail.

20. The following day at 1.16 pm there was an attempted robbery at the Petrol Station with the intention, said the prosecution, of obtaining the CCTV (count six, involving Mohammed Khan, Tony Grant and Salman Ismail). This coincided with telephone contact between the three defendants. Two individuals approached the Petrol Station on a stolen scooter. They looked through the window and rode away before returning two minutes later, having waited for a customer to leave. They then entered the shop and made demands for the CCTV system. Both suspects were wearing gloves and face coverings. One was carrying a metal bar, which was used to threaten a member of staff,

Ilyas Umarji. The service counter was hit with the bar. The demands were resisted and Mr Umarji, using an upturned stool, chased the offenders from the petrol station. A customer assisted him outside. The offenders made off on foot towards the centre of Birkenshaw. The scooter was left at the scene. No relevant forensic evidence was obtained.

21. The defendants were subsequently arrested. Mohammed Khan and Tony Grant each answered "no comment" to all questions in interview. In Mohammed Khan's case a prepared statement was served, as follows:

> "I Mohammed Nisar Khan make this prepared statement in relation to the disclosure provided to my Solicitor by DC Wasti and DC Smith on the 17th of October 2018. Number one, I deny the allegation of murder in relation to the deceased namely Amriz Iqbal, two, I deny the allegation of attempted murder against the injured party, namely Adnan Ahmed and finally I deny being involved in the alleged offence dated the 3rd of October 2018. […]".

22. In his defence case statement Mohammed Khan denied having been in the Kia at the time of the collision and said that he had left the vehicle following the visit to the Whitehall Road Petrol Station. He learnt of the incident but did not attempt to destroy evidence from the service station or to cancel the insurance. In his defence case statement Tony Grant indicated he had been a passenger in the Kia. He said he did not know either of the victims and that he was entirely uninvolved in what occurred. The collision took him completely by surprise. Both men did not give evidence and their individual defences reflected the assertions just set out.

23. The police obtained authority to record covertly visits to both Mohammed Khan and Tony Grant whilst they were held on remand. It is unnecessary to review the somewhat uncertain or ambiguous detail of what was said.

The Conviction Appeals/Renewed Applications

Tony Grant: Ground 1 (Overwhelming Supervening Act)

24. Tony Grant appeals on this ground with the leave of the single judge. It was agreed that there was a case to answer on count one against Tony Grant and Mohammed Khan on the basis that they were jointly responsible for causing the death of Mr Iqbal, having intended to cause him really serious bodily harm. On the issue of whether the judge should have directed the jury as to OSA, in essence Mr Raggatt Q.C. submitted to the judge that the decision of the driver of the Kia pre-emptively to run down the victims instead of waiting to attack one or both of them on foot in a face-to-face confrontation amounted to a departure from the agreed plan such as to constitute an overwhelming supervening act. In the court below, he used the analogy of a team of assassins who set out to shoot a victim and one of the conspirators, without informing his companions, instead commits murder using an explosive device en route as opposed to the gun as arranged. It was submitted that the individual responsible, in those circumstances, would have pursued a separate and distinct plan for which the other would-be assassins carried no criminal responsibility. The original agreement between the team of assassins, using Mr Raggatt's expression, would have been "*rendered obsolete*". On

this submission it would not matter that the consequence intended by the assassins had been achieved because it was the result of a "*different plan*". It was suggested to the judge that the issue was essentially one of causation, in the sense that it was open to the jury to conclude that the joint plan as agreed was not the cause of death because another event overtook it.

25. The judge considered that Mohammed Khan's use of the Kia as a weapon to attack the two victims was evidence of a sudden escalation in the violence, in that he seized the opportunity, as a "*turn up for the books*", to drive into the two men. In his judgment it could not sustainably be treated as something that consigned the agreement to cause really serious harm to history, in that it provided a break in the history of the relevant events.

26. In support of this ground of appeal, Mr Raggatt maintained the submissions he advanced to the judge. He emphasised that it had not been suggested at trial that there was a basis for suggesting that Tony Grant had intended to kill. Instead, as just set out, the appellant accepted there was a case fit for the jury to consider that he had intended the infliction of really serious harm, albeit he denied this had been his intention. It was emphasised in this context that the judge allowed a submission of no case to answer in his case for count two on the basis that there was insufficient evidence that he had an intention to kill as opposed to an intention to inflict really serious harm. It was, accordingly, on this basis that he was tried on count one. Mr Raggatt characterised the events in Sandford Road as being "*sudden and highly specific*".

27. Mr Raggatt put his argument on the need for the judge to direct the jury on the issue of OSA in the alternative. He suggested that the availability of OSA in these circumstances should be viewed through either the lens of "*causation*" (*viz.* was there a basis fit to be left to the jury that Tony Grant's encouragement of Mohammed Khan had not had a positive effect on what, in fact, occurred?) or, alternatively, the lens of "*encouragement*" (*viz.* was there a basis fit to be left to the jury that Tony Grant had not encouraged what, in fact, happened?). As regards "*causation*", it is submitted that Mohammed Khan's conduct in attacking Iqbal in this way was arguably of a fundamentally different nature from that which Tony Grant had foreseen. As regards *"encouragement*" it is submitted that there is no evidence that Tony Grant as a passenger, pursuant to section 8 of the Accessories and Abettors Act 1861 aided, abetted, counselled or procured the sudden use of the Kia as a deadly weapon. Particularly, it is highlighted that there is no evidence that he had encouraged ("*egged on*") Mohammed Khan in the few seconds during which the motor car accelerated towards Mr Iqbal.

28. Put broadly, it is suggested that no one could have anticipated what Mohammed Khan decided to do, which was fundamentally different from anything Tony Grant would have foreseen which consigned the original plan to history.

29. Mr Raggatt additionally advanced submissions concerning the decision in *R v Anderson and Morris* [1966] 2 QB 110, particularly as regards the need to address the present issue as a question of causation. In *Anderson and Morris* – a five-judge court presided over by Lord Parker C.J. – it was held that if two men formed a common design to do an unlawful act and death resulted by an unforeseen consequence, they would be guilty of manslaughter. However, if the death resulted or was caused by the sudden action of

one of them who decided to kill and killed "*in a moment of passion*", considered "*as a matter of causation*" this may well comprise "*an overwhelming supervening event which is of such a character that it will relegate into history matters which would otherwise be looked upon as causative factors*" (page 120).

30. The headnote to the Queen's Bench Division report helpfully summarises the central element of the decision as follows:

> "Held, that where two persons embarked on a joint enterprise, each was liable for the acts done in pursuance of that joint enterprise including liability for unusual consequences if they arose from the agreed joint enterprise, but that, if one of the adventurers went beyond what had been tacitly agreed as part of the common enterprise, his co-adventurer was not liable for the consequences of the unauthorised act, and it was for the jury in every case to decide whether what was done was part of the joint enterprise or went beyond it and was an act unauthorised by that joint enterprise."

31. Mr Raggatt's main proposition in this regard is that *Anderson and Morris* was not overturned by *R v Jogee* [2016] UKSC 8; [2017] AC 387. The decision in *Jogee* principally concerned the approach to be taken to the intention of an accessory to a crime. If the crime requires a particular intent, foresight is not to be equated with intent to assist and instead it is to be treated as evidence from which an intent to assist and encourage can be inferred. Fatal to Mr Raggatt's submissions in this regard, however, is that in *Jogee* the Supreme Court expressly disavowed the suggestion that the secondary liability of someone who encourages or assists the crime is based on causation. The following was set out in the judgment of Lord Hughes and Lord Toulson (with whom the other members of the Supreme Court agreed) at [12]:

> "Once encouragement or assistance is proved to have been given, the prosecution does not have to go so far as to prove that it had a positive effect on D1's conduct or on the outcome: *R v Calhaem* [1985] QB 808. In many cases that would be impossible to prove. There might, for example, have been many supporters encouraging D1 so that the encouragement of a single one of them could not be shown to have made a difference. The encouragement might have been given but ignored, yet the counselled offence committed. […]"

32. In our view, that passage is an insuperable obstacle to the suggestion that the concept of OSA should be viewed through the lens of causation. To the contrary, as the Supreme Court in the next two sentences in paragraph 12 explain, it is encouragement and assistance principally that count:

> "[…] Conversely, there may be cases where anything said or done by D2 has faded to the point of mere background, or has been spent of all possible force by some overwhelming intervening occurrence by the time the offence was committed. Ultimately it is a question of fact and degree whether D2's conduct was so distanced in time, place or circumstances from the conduct of D1 that it would not be realistic to regard D1's offence as encouraged or assisted by it."

33. This is further explained later in the judgment:

> "97. [...] it is possible for death to be caused by some overwhelming supervening act by the perpetrator which nobody in the defendant's shoes could have contemplated might happen and is of such a character as to relegate his acts to history; in that case the defendant will bear no criminal responsibility for the death.
>
> 98. This type of case apart, there will normally be no occasion to consider the concept of "fundamental departure" as derived from English. What matters is whether D2 encouraged or assisted the crime, whether it be murder or some other offence. He need not encourage or assist a particular way of committing it, although he may sometimes do so. In particular, his intention to assist in a crime of violence is not determined only by whether he knows what kind of weapon D1 has in his possession. The tendency which has developed […] to focus on what D2 knew of what weapon D1 was carrying can and should give way to an examination of whether D2 intended to assist in the crime charged. If that crime is murder, then the question is whether he intended to assist the intentional infliction of grievous bodily harm at least, which question will often, as set out above, be answered by asking simply whether he himself intended grievous bodily harm at least. Very often he may intend to assist in violence using whatever weapon may come to hand. In other cases he may think that D1 has an iron bar whereas he turns out to have a knife, but the difference may not at all affect his intention to assist, if necessary, in the causing of grievous bodily harm at least. Knowledge or ignorance that weapons generally, or a particular weapon, is carried by D1 will be evidence going to what the intention of D2 was, and may be irresistible evidence one way or the other, but it is evidence and no more."

34. As it seems to us, the Supreme Court in these paragraphs in *Jogee* significantly limited the circumstances in which a jury will need to consider the possibility that there had been a departure from the agreed plan. Although paragraph 98 is not expressed in absolute terms (*viz.* "*(t)his type of case apart, there will* ***normally*** *be* ***no occasion*** *to consider the concept of "****fundamental*** *departure'*" (our emphasis)), the only situation expressly contemplated by the Supreme Court, therefore, is when the limited circumstances described in these three paragraphs arise. As regards the offence of murder (we stress we are not considering manslaughter), the effect of the decision in *Jogee*, and particularly paragraph 12, is that the principal focus of the court as regards OSA will be on whether there is a credible basis for suggesting that anything said or done by the accessory by way of encouragement or assistance "*has faded to the point of mere background*", or "*has been spent of all possible force by some overwhelming intervening occurrence by the time the offence was committed*" and which "*nobody in the defendant's shoes could have contemplated might happen and is of such a character as to relegate his acts to history".* The court emphasised that ultimately the question will be whether the accessory's conduct may have been "*so distanced in time, place or circumstances from the conduct of* (the perpetrator) *that it would not be realistic to regard* (his or her) *offence as encouraged or assisted by it".*

35. It is unnecessary – indeed, it would probably be unhelpful – to attempt to paraphrase the "*ultimate question*" as just set out, given the clarity of the language used by the Supreme Court in describing the test to be applied. On the present facts, there was nothing to suggest that the encouragement given by Tony Grant was potentially "*so distanced in time, place or circumstances*" that the jury needed to be directed that they should consider whether it would be unrealistic to suggest that Mohammed Khan, in killing Mr Iqbal, had not been "*encouraged or assisted*" by Tony Grant. Indeed, the opposite is the position. There was a clear case to answer that the five men whilst circling or cruising in the immediate area were together seeking the victim or victims with intent to inflict really serious harm. Mohammed Khan, using the car as a weapon, drove at the two men during the course of this reconnaissance. There was simply no basis in those circumstances for suggesting that his actions were in any sense "*distanced*" from Tony Grant's encouragement, to the extent that it was unrealistic to suggest that the fatality was encouraged or assisted by the latter defendant.

36. Notwithstanding those conclusions, the facts of the present case nonetheless contain three distinct and important elements that need to be addressed. First, Mohammed Khan, as the perpetrator, had a different intent from that alleged against Tony Grant, given the verdict against the former on count two demonstrated an intention on his part to kill. Second, the act changed, in that this was a hit and run as opposed to a face-to-face confrontation on the street. Third, the weapon used was different from anything that would have been used in a street confrontation. Do these factors mean that there had been a fundamental departure which nobody in the position of Tony Grant could have contemplated might happen, and which was of such a character as to relegate Tony Grant's encouragement "*to history*?

37. It is of note that the features just highlighted resemble the circumstances facing the trial judge, Carswell J, in Northern Ireland in *R v Gamble* [1989] NI 268. The victim in that case was a member of the Ulster Volunteer Force who was suspected of having given information about its activities to the police. He was shot twice but died from having his throat cut. Four men were charged with his murder. Carswell J acquitted two of the defendants on the basis that they had realised that, by way of punishment, the victim might be kneecapped with the use of a firearm or have his limbs broken, but not that he would be deliberately killed. This decision has been the source of some significant debate, most notably in the Judicial Committee of the House of Lords in *R v Rahman* [2008] UKHL 45; [2009] 1 AC 129, in which case their lordships were divided as to whether, under the law of England and Wales, Gamble would be guilty of murder.

38. We are confident that post-*Jogee*, the two acquitted defendants in *Gamble*, if tried in England and Wales, would be guilty of murder and would be unable to rely on the concept of OSA. On a charge of murder, if the accessory intentionally assisted or encouraged the perpetrator and intended that the perpetrator should cause grievous

bodily harm with intent, he or she will have satisfied the elements of the offence of murder. The precise manner in which the victim happens to be killed and whether the perpetrator intended to kill as opposed to inflict really serious harm are by the way, so long as the encouragement or assistance of the accessory has not been "*relegated to history*" as set out above. Save perhaps for exceptional circumstances which are not readily easy to envisage, there will be no need to direct the jury on the concept of OSA simply because the fatal injuries were inflicted using an entirely different kind of weapon or method of killing than that originally contemplated and/or the perpetrator intended to kill rather than to inflict really serious harm.

39. In all the circumstances we are unpersuaded that the judge erred in not giving an OSA direction. We stress, however, that this conclusion and the explanation for it as set out above are not intended to undermine the need, in the right case, to direct the jury in accordance with the concluding part of paragraph 12 of *Jogee* whenever there is a sustainable basis for contending that the encouragement or assistance previously provided by the accessory had lost material connection with what occurred:

> "Conversely, there may be cases where anything said or done by (the accessory) has faded to the point of mere background, or has been spent of all possible force by some overwhelming intervening occurrence by the time the offence was committed. Ultimately it is a question of fact and degree whether (the accessory's) conduct was so distanced in time, place or circumstances from the conduct of (the perpetrator) that it would not be realistic to regard (the perpetrator's) offence as encouraged or assisted by it."

40. For the reasons extensively set out above, those circumstances did not apply in the instant case.

Tony Grant: Ground 2 (the judge's directions to the jury vis-à-vis the appellant's case were unfocussed, unspecific and ultimately inadequate on all the key issues relevant to his case)

41. Tony Grant appeals on this ground with the leave of the single judge but it was not pursued by Mr Raggatt with any enthusiasm or in any detail. When asked by the court if he was able to develop submissions demonstrating that any of the individual directions in law were in error, he accepted that although the summing up did not follow a conventional structure, on every issue the jury were directed with sufficient accuracy and sufficiency. We note that Mr Ward on behalf of Mohammed Khan made a similar concession.

42. Although the summing up would have benefited from less of an *ex tempore* approach, we agree with the respondent that the directions in law nonetheless captured the essence of each of topics that the judge was required to address. In those circumstances this ground of appeal is unarguable.

Tony Grant: Ground 2 and Mohammed Khan: Ground 7(k) (the judge erred in failing to provide any written directions or a route to verdict to the jury)

43. For both appellants this is a renewed ground of appeal.

44. We have no doubt that the better course in this case would have been to provide the jury with the directions of law in writing, incorporating therein a route to the verdicts. There were multiple counts and some counts had alternatives which were not included on the indictment. There were a significant number of legal directions. The guidance to judges, when viewed overall, strongly tends to suggest that written directions should now be given in all cases save perhaps for the most straightforward. The Criminal Procedure Rules at 25.14(4) are permissive, "*(t)he court may give the jury directions, questions or other assistance in writing*". The Criminal Practice Direction at VI (Trial) at paragraph 26K.11 provides that *"(a) route to verdict, which poses a series of questions that lead the jury to the appropriate verdict, may be provided by the court*" and at paragraph 25K.12 "*(s)ave where the case is so straightforward that it would be superfluous to do so, the judge should provide a written route to verdict. It may be presented (on paper or digitally) in the form of text, bullet points, a flowchart or other graphic*.". The Crown Court Compendium at 1-9 (Written directions and Routes to Verdict) is more forceful in suggesting that written assistance is usually necessary:

> "[…] The argument in favour of providing juries with written directions is now overwhelming. Recent surveys with judges at Judicial College courses have revealed that over 90% judges now use written directions some of the time, although there are differing views about how often, when and what form written directions should take. […] The authors of this work very much hope that the Compendium will provide some of the tools to assist judges in using written directions.
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> **Forms of written directions**
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> There is no required or agreed form of written directions for juries, and judges are known to use a variety of different approaches to written directions, including:
>
> 1. Brief bullet point summaries of the law
> 2. Longer narrative summaries of the law
> 3. A full transcript of judge's legal directions
> 4. Routes to verdicts in the form of questions and answers
> 5. Diagrammatic routes to verdicts
> 6. Charts showing permissible combinations of verdicts
>
> Examples of the different forms in which written directions might be given in any one case appear in Appendix I.
>
> At present there is no definitive answer as to which approach is most effective in aiding juror comprehension (and in which types of cases), although

> Professor Thomas is currently conducting further research with jurors at courts exploring this question.
>
> **Routes to Verdict**
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> When a jury is faced with more than one issue in a case, judicial experience suggests that jurors can be assisted by having a written sequential list of questions, or what is often referred to as a "Route to Verdict". Such a document can help focus jury deliberations and provide them with a logical route to verdict/s. In more complicated cases some judges have a practice of providing a chart showing the jury the permissible combinations of verdicts. […]"

45. The jurisprudence of this court strongly supports judges providing the jury with written assistance. In *R v Atta-Dankwa* [2018] EWCA Crim 320, [2018] 2 Cr App R 16, Holroyde LJ pointed out at [28] that, "*(n)umerous decisions of this court have made clear the importance and desirability of written directions, and have encouraged their use. The provision of a written route to verdict was recommended by Sir Brian Leveson in his Review of Efficiency in Criminal Proceedings in 2015*". The court added:

> "31. There is a lesson to be learned from this case. It is that one should never be too quick to assume that a case is so straightforward that a route to verdict would be superfluous. Experience shows that problems can arise even in cases which seem straightforward. […] Moreover, quite apart from the assistance which the end product will provide to the jury, the mental discipline of drafting a route to verdict in itself assists the court to identify the essential ingredients of the offences charged and the issues on which the jury must focus.
>
> 32. We recognise, of course, the pressure of work on judges and recorders sitting in the Crown Court and we accept that some cases are so straightforward that no written materials for the jury are necessary. But such cases are in a minority and this case illustrates the general desirability of providing the jury with written directions, a written route to verdict, or both."

46. In *R v PP* [2018] EWCA Crim 1300, Irwin LJ observed:

> 25. […] we wish to record that we are deeply concerned as to the weaknesses in the summing-up that have been raised. In the course of oral submissions this court learned that both counsel asked the Recorder for written directions and were refused. They were merely given a verbal checklist of the broad matters of law which it was intended to cover in the summing-up, and they were given a route to verdict document.
>
> 26. In our judgment, none of these problems would have arisen if the judge had either given detailed draft directions on law to counsel, or even had

> engaged in a detailed discussion of the directions of law which he intended to give. It was the greatest shame that he did not do so. Had he done so in the manner which has now become customary and widespread, these difficulties would never have arisen. It is clear from the submissions that both counsel have made carefully to us that they would have raised these points in the course of such a debate before the matter went to the jury.

47. The short answer to the complaint that the verdicts are unsafe because the judge decided not to provide written directions is that although it is now expected that judges will provide the directions in law or, at the very least, a route to verdict in all but the simplest of cases, the failure to do so does not render the verdict(s) unsafe as a complaint standing on its own. There would need to be some additional feature of sufficient seriousness to lead to that result. In this regard we follow the approach taken in *R v N* [2019] EWCA Crim 2280; [2020] 4 W.L.R. 64, a case which involved oral directions to the jury in a joint enterprise case. Green LJ described, in dismissing the appeal, that the judge had cured a lack of clarity in his initial oral direction on joint enterprise by making the position clear in his oral direction in response to a note from the jury. The matter was explained thus:

> "19. […] counsel argues that the failure in and of itself on the part of the judge to give written directions to the jury renders the verdict unsafe in a case such as this. In circumstances in which an oral direction only is provided a conviction will, in normal circumstances, be quashed because that oral direction was wrong or materially confusing, etc. It will not be because of the mere omission of written directions. It might be that the exercise of crafting written directions would have led to the errors being avoided but the errors remain those embedded in the oral directions and not in the mere fact that no written equivalent was given. We do not however rule out the possibility that, exceptionally, a direction might be so complex that absent an exposition in writing a jury would be at a high risk of being confused and misled in a material manner. […]"

48. As to the need for written directions, particularly in cases of any complexity, we note that in *R v B* [2018] EWCA Crim 2733; [2019] 1 W.L.R. 2550, Sir Brian Leveson P. observed in a complicated case involving sexual offences perpetrated by the appellant on his two young daughters at [40] that "*(t)he present case was not at all straightforward; accordingly, it was all the more desirable for the jury to have been provided with a written summary of the directions and for the judge to have discussed the precise form and content of those directions with counsel beforehand*". In a similar vein, in *R v Guy (Andrew)* [2018] EWCA Crim 1393; [2018] 1 W.L.R. 5876, Simon LJ expressed the view:

> "24. Third, while it may sometimes seem impractical in busy courts which hear many relatively short cases, it is usually sensible and good practice to discuss the directions that the judge is intending to give before speeches, and

> to make written directions available to the jury. In the present case, the jury was provided with a written route to verdict but not written directions."

49. Given the failure on the part of the judge to give written directions in law or a written route to verdict to the jury does not render the verdicts unsafe and given there is no complaint as to the sufficiency or accuracy of the several oral directions in law, this ground of appeal fails and we refuse to grant leave to appeal.

50. However, we respectfully suggest that this is a matter that should be considered afresh by the Criminal Procedure Rules Committee, namely as to whether the essentially permissive approach within the present Rules and Practice Directions in this regard should become more directive, bearing in mind the strength and the consistency of the observations on the need for written directions in law and a written route to verdict that are to be found in the numerous decisions of this court.

Mohammed Khan: Ground 7(j) (the judge was wrong to leave count 2 to the jury following a defence submission of no case to answer)

51. This is a renewed application for leave to appeal by Mohammed Khan.

52. The submission of no case to answer he advanced on count two – the charge of the attempted murder of Mr Ahmed – was that the use of the car as a weapon was essentially opportunistic, arising suddenly when the perpetrators came across Mr Iqbal and Mr Ahmed crossing the road in front of the Kia. The Crown's case was that Mr Iqbal was the target of this attack and that the occupants of the vehicle had been driving around seeking him out with intent to attack him with weapons, such as baseball bats and metal bars. The underlying intent of those involved was that of causing really serious bodily harm rather than an intent to kill. The judge relevantly upheld a submission of no case to answer on count two by Tony Grant on the basis that a last-minute formulation of intent to kill could not be attributed to him, given he was not driving the car.

53. Against that background, it is submitted that there was insufficient evidence upon which an inference of intention to kill on the part of Mohammed Khan could properly be drawn and count two should not have been left to the jury. It is observed that Mr Ahmed suffered, as described by the judge in his ruling "relatively modest injuries consistent with a relatively low bumper collision, between his body and the Kia Sedona." No subsequent violence was alleged to have been used against him (in contrast to Mr Iqbal who it is suggested was struck on his legs whilst lying injured on the roadside).The average speed of the Kia in the period immediately prior to the point of impact with the pedestrians was, as set out above, 18 mph and the agreed evidential position was that impact with a pedestrian even by a heavy car such as a Kia Sedona would not normally cause serious injury, let alone a fatality. Mr Iqbal died because his head hit a hard surface. The incident occurred very quickly, within a few seconds. It is submitted that merely deliberately driving the car at the victim at

the speed, with no material injuries being inflicted to Mr Ahmed, therefore does not provide sufficient evidence of an intent to kill.

54. The judge's summing up on count one was:

> "In this case the Crown's case for you to consider is whether Mr Khan or Mr Grant intended when death was caused […] intended to cause Mr Iqbal some really serious bodily harm."

55. Addressing count two, the judge said:

> "[…] for Mr Khan to be guilty on Count 2 the prosecution must prove if he was the driver […] that he in deliberately driving into Mr Ahmed intended to kill him. Any lesser intention will not do; an intent to cause really serious harm will not suffice for attempted murder."

56. A two-ton vehicle with five men inside was driven over a speed bump and it dipped as heavy acceleration was deliberately applied by the driver, who changed course and steered the car towards the two victims. The vehicle was in all likelihood increasing its speed throughout this manoeuvre. There is no minimum time limit necessary for forming the intention to commit a criminal offence; indeed, the decision can be made on the spur of the moment, contemporaneously with the conduct element of the offence. It was wholly open to the judge to determine that the jury could decide that, when suddenly confronted with the two men, the driver of the motorcar decided to use the car as a weapon, intending to kill the victim by hitting him with a heavy vehicle rather than inflicting grievous bodily harm during a street encounter. It was logical for the judge to uphold the submission on count two on behalf of Tony Grant (as the front seat passenger), given there was no evidence that he shared, in the few relevant seconds, the particular mens rea which is necessary for the crime of attempted murder. There is no inconsistency such as to render the verdict on count two unsafe between the "lesser" mens rea summed up by the judge as regards count one and the "greater" mens rea summed up for count two. The summing up could have benefited from a greater explanation by the judge as regards the difference in approach to the two counts, but this lack of judicial assistance does not undermine the safety of the conviction on count two, given the judge clearly explained the level of intention that needed to be established in order for the jury to convict.

57. We decline to give leave on this renewed ground of appeal.

Mohammed Khan: Ground 7(l) and Tony Grant: Ground 4 (that the judge was wrong to allow the *ex post facto* finding of weapons and face masks in Tony Grant's BMW motor vehicle to be adduced in evidence).

58. On behalf of Tony Grant, an application was made to the judge to exclude the evidence of certain items seized from his BMW. The police found two face coverings (a black fabric face/neck covering with a white skull jaw design and a black face mask made from a neoprene-type material with a white skull jaw design) hidden from immediate view in a compartment in the BMW. Saliva detected on the inside of both

those masks was only attributable to Tony Grant. They also found a sledgehammer and a baseball bat. The judge admitted the masks and the baseball bat, on the basis that their probative value outweighed their prejudicial effect. He observed that they were available to the occupants of the Kia. The ruling is ambiguous as to whether this evidence, in the view of the judge, related to Tony Grant alone or whether it was also germane to the case of Mohammed Khan.

59. Mr Moulson Q.C. submitted to the jury that there was evidence of a predetermined plan by both Tony Grant, Mohammed Khan and others (the members of a "*team*") to kill or to cause really serious harm. Examples of the teamwork of those involved were said to include, *inter alia*, the weapon (baseball bat) and face coverings recovered from the BMW; the rendezvous between Mohammed Khan and Tony Grant; the collection of the other three men; the fact that at least one of the three men who got out from the back of the Kia at the scene had a face covering; the circling/cruising/"predatory" movements of the Kia; the clear searching until the victims were spotted; the beating of Mr Iqbal with a heavy object even though he was dead or dying; the immediate disposal of the Kia after the incident, having travelled in convoy with the BMW to the livery yard; the determined attempts to avoid detection; and the admitted deleting of messages between Mohammed Khan and Tony Grant.

60. The judge directed the jury that these items were potentially "*to hand*" for use by those involved in the violence that was intended and they were relevant to the issue of whether the occupants of the Kia were simply having a day out. Therefore, they went to the question of the intention of those in the Kia, and whether the occupants were seeking out Mr Iqbal in order to cause him harm. The judge stressed that the BMW was arguably closely involved in what occurred.

61. As we have already observed, no submission is advanced as regards the judge's direction. Instead, the point taken is that of admissibility. It was submitted to the judge and repeated on this appeal that there was no basis for concluding that the items found in the BMW had been in the Kia at the material time, and it is suggested that they were consequently irrelevant. Put otherwise, it is argued the prosecution case in this context is based on an entirely speculative assertion that the items had been transferred by Tony Grant to the Kia as part of a premeditated plan shared by the other occupants and then, after the incident, they were removed from the Kia and placed back into the BMW, possibly without ever having been used. In those circumstances it is argued there was simply no proper basis to admit this evidence and in consequence the convictions are unsafe.

62. In our judgment, there was a clear inference available for the jury to draw that Tony Grant drove to Mohammed Khan's house in the BMW which contained items that would be of clear use in a street attack on one or both of the victims. One of the men who alighted from the Kia was armed with an object which "*looked like*" a metal crowbar. He used it to attack Mr Iqbal who was dead or dying. One of the men who got out of the Kia was wearing a mask/face covering. Given the nature of the items that had been used during the attack, there was a sustainable basis, therefore, for suggesting that Tony Grant had brought items of disguise (masks/face covering) and a weapon (a baseball bat), to the gathering of the men in order for those objects to be "*at hand*" for use if the need arose. If the jury were satisfied of that contention, it was potentially of considerable relevance to the issue of the intention of those in the Kia.

In any event these items formed part of the immediate background to the incident, in the sense that they potentially illuminated the preparations that had been put in place for the assault on Mr Iqbal, given that a mask and a heavy, long object were used during the assault. Therefore, the evidence of the discovery of the masks and the baseball bat was admissible in this trial.

Conclusion on the conviction appeals/applications

63. It follows that the renewed applications for leave to appeal against conviction and the conviction appeals on behalf of Mohammed Khan and Tony Grant fail in their entirety. The applications, therefore, are refused and the appeals dismissed.

The Sentence Appeals/Renewed Applications

Mohammed Khan: Application for leave to appeal against sentence (minimum term of 26 years for the life sentence on count one)

64. Mohammed Khan renews his application for permission to appeal against the length of the minimum term of 26 years for murder, permission having previously been refused by the single judge.

65. Mr Ward submitted that the disparity between the minimum term for Mohammed Khan (26 years) and that for Tony Grant (17 years) was too great and resulted in a sentence for Mohammed Khan that was manifestly excessive. He accepted that Mohammed Khan was found by the judge to be the ringleader, that his minimum term had to reflect both the murder of Amriz Iqbal and the attempted murder of Adnam Ahmed, and that he had the intent to kill. However, he submitted that the other aggravating features of the case (such as the premeditation, previous convictions and the destruction of the Kia motor car after the event) were common to both men. While it was conceded that the differences between the positions of the two men should properly have resulted in a longer sentence for Mohammed Khan, it was argued that it should not have been a difference as great as nine years. It was suggested that the minimum term of 26 years in Mohammed Khan's case might lead one to conclude that Mohammed Khan's intent to kill had been treated as an aggravating factor rather than, as it should be, Tony Grant's intention to cause grievous bodily harm a mitigating feature.

66. We do not agree that the minimum term passed on Mohammed Khan was manifestly excessive. The culpability of the two men was sufficiently distinct to justify the judge taking the course he did.

67. In his sentencing remarks the Judge singled out Mohammed Khan as being the ringleader of the group who recruited a number of willing men including Tony Grant to provide back-up and muscle for the attack. He described Mohammed Khan as a ruthless and dangerous man who commanded obedience and loyalty, which he then abused by involving others in his plans. He considered himself untouchable. The series of events that led to the death of Mr Iqbal would not have occurred but for Mohammed Khan. He set up the attack. He recruited others to carry it out. It was he

who ultimately decided to use his two-ton motor car as a weapon and who formed the intent to cause the death of those two men with it. The fact that he had attempted to kill a second man necessitated a significant uplift in his minimum term despite the fact that, by chance, the second man was not seriously harmed. In contrast, the judge concluded that the intent of Grant was to cause grievous bodily harm to one man, Amriz Iqbal, rather than to kill. Afterwards, Mohammed Khan was at the heart of the plan to cover up what had been done. He did that firstly by making sure that the Kia car was never recovered and then by trying to ensure that the CCTV footage from the service station which might have implicated him in the attack was never seen by the police. He sought to achieve that by getting people to set fire to the petrol station and, when that did not work, by seeking to have the CCTV footage stolen in the course of a robbery.

68. Accordingly, we refuse permission for Mohammed Khan to appeal against his sentence on count one.

Salman Ismail: Appeal against sentence (17 years for conspiracy to pervert the course of justice and arson on counts four, five and six)

Tony Grant: Application for leave to appeal against sentence (17 years for conspiracy to pervert the course of justice on counts four and six)

69. Tony Grant and Mohammed Khan were sentenced to seventeen years for two offences of conspiracy to pervert the course of justice relating to the robbery and arson at the petrol station each of which was designed to prevent the CCTV from the petrol station falling into the hands of the police. The sentences in each of their cases were ordered to be served concurrently with one another and concurrently with the life sentences imposed on them. Mohammed Khan does not seek permission to appeal against those sentences; Grant renews his application for permission to appeal, his application having been refused by the single judge.

70. Salman Ismail was sentenced to seventeen years' imprisonment on each count of conspiracy and on a count of arson reckless as to the endangerment of life (Counts four, five and six). Those sentences were ordered to run concurrently with one another. He appeals with the permission of the single judge.

71. On behalf of Salman Ismail, Mr Ferm submitted that the term of 17 years was manifestly excessive. Firstly, Salman Ismail should not be placed in a worse position than that of Tony Grant or Mohmmed Khan because he was convicted of an offence of arson as well as two offences of conspiring to pervert the course of justice. That, he submitted, reflected the fact that Salman Ismail was a "*foot soldier*" who went to the service station to help set the fire as opposed to being an organiser of events. Secondly, he had been unable to identify any previous cases involving this type of offending which had resulted in a sentence approaching this length apart from *R -v- Beech* [2020] EWCA Crim 1580, the facts of which were very different. He identified *R -v- Tunney* [2006] EWCA Crim 2066 as setting out the criteria to be used by a court in assessing the seriousness of offences involving an attempt to pervert the course of justice, namely the seriousness of the substantive offence, the degree of persistence of the conduct and the effect of the attempt to pervert the course of justice. He readily

accepted that the substantive offence was murder and that there was a degree of persistence but argued that the objectives of those who participated in these offences were not achieved: the CCTV was not destroyed or stolen and the fire caused very little damage. Mr Ferm suggested that the proper range for these sentences was between 12 years for the ring-leaders and 8 to 10 years for others involved. Thirdly, he argued that the sentence passed on Salman Ismail did not reflect his personal mitigation: he was not a party to the murder, he became involved in these events at the last minute, this was his first custodial sentence, and he was a family man aged 31.

72. Mr Raggatt adopted the relevant submissions made on behalf of Salman Ismail in relation to Tony Grant. He acknowledged that, absent success in his appeal against conviction, a reduction in the sentences for these offences would have no practical impact on Tony Grant's position as he was serving a minimum term of 17 years for murder. Nonetheless, he rightly argued that if the sentences for these offences were manifestly excessive, they should be corrected in his case as well as in that of Ismail.

73. We do not find that it is of assistance to refer to previously decided cases of this court in order to assess the appropriate term. None of them provide guidance as to length (although we accept that *R -v- Tunney* provides guidance as to the proper approach to sentence to be adopted). Cases of this nature turn on their facts and fall to be assessed accordingly.

74. These were very serious attempts to pervert the course of justice. Their object was to prevent the prosecution of those who had committed murder. It is difficult to imagine a more serious objective than that. They involved a sustained course of conduct: an attempt to destroy a petrol station by fire followed by an attempted robbery. Had they succeeded in their objective, the CCTV evidence would have been lost and this was material evidence to link Mohammed Khan and Tony Grant to the offending acts. Without access to that footage, the police might not have traced those responsible. The CCTV footage remained crucially important evidence at trial even though by that stage it was not the sole evidence against Mohammed Khan and Tony Grant.

75. There was a degree of persistence to the conduct. Additionally, the offences agreed on by the conspirators in order to pervert the course of justice were themselves serious. The arson resulted in minimal damage. However, the clear aim of the conspiracy was to damage the petrol station to the extent that the CCTV would have been unrecoverable. This plan ran the risk that, had the fire taken hold, it might have set fire to the store of petrol held at the service station leading to potentially significant damage and an enhanced risk of loss of life. The robbery (not indicted, but an essential part of the conspiracy to pervert the course of justice)) was not persisted in but involved two people entering the petrol station when it was in use and making threats while armed with weapons. It had the potential to escalate into an incident in which people were caused physical or psychological harm. Each of these offences alone would have attracted a significant sentence. The arson would have merited a sentence in excess of six years after trial on the basis that it was a category B1 offence in the relevant guideline (Arson: Criminal Damage by Fire). The robbery would have merited 5 years on the basis that it was category B2 in its guideline (Robbery: Street and Less Sophisticated Commercial). Those sentences would undoubtedly have been

ordered to be served consecutively to one another with some small adjustment for totality. The additional and serious element of their being committed in order to pervert the course of justice in a murder investigation had to be reflected in the sentence passed by a significant uplift.

76. In our judgment the least permissible sentence for someone at the heart of these conspiracies after trial was 14 years. That was the position that Tony Grant was in. We have concluded that the sentence of 17 years in his case was manifestly excessive. We grant him permission to appeal and reduce his sentence on counts four and six to 14 years.

77. We accept that Salman Ismail was in a different position. Significantly, he was not involved in the offences of murder or attempted murder and had nothing to gain personally from a successful outcome to these conspiracies. The judge specifically found on the evidence that he was not a leader in forming the agreements. He had done as he was told by Mohammed Khan. He had some personal mitigation to be reflected in his sentence – in particular the fact that this was to be his first custodial sentence. None of that reduces the serious nature of what he did and the potentially serious consequences he tried to bring about. It does, however, mean that there should have been some distinction between his sentence and that of Mohammed Khan and Tony Grant. We accept that his sentence should not be adversely affected by his conviction on count five (arson) which is no more than the plan encompassed by the conspiracy (count four) being put into action. In all the circumstances we find that his sentence was manifestly excessive and the proper sentence on him on each of counts four, five and six was one of 11 years' imprisonment. To that extent we allow his appeal against sentence.

Conclusion on the sentence appeals/applications

We refuse permission for Mohammed Khan to appeal against his sentence. We grant Tony Grant permission to appeal and reduce his sentence on counts four and six to 14 years (to be served concurrently with one another and concurrently with the life sentence). We allow Salman Ismail's appeal against sentence and reduce the sentences on counts four, five and six to 11 years' imprisonment, to be served concurrently.