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Case Nos: 202400786 B2 (C), 202400922 B2 (C), 202400380 B2 (C), 202401872 B2 (C), 202303800 B2 (C) / 202202221 B2 (S), 202400820 B2 (C) / 202202331 B2 (S), 202201861 B2 (C) / 202202255 B2 (S)

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM MANCHESTER CROWN COURT
Mr Justice Goose
Ind. No. T20217072 / T20217166 / T20217217

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2024

Before :

LORD JUSTICE DINGEMANS
MR JUSTICE KERR
and
MR JUSTICE HILLIARD

- -

Between :

Harry Oni **Jeffrey Ojo** **Brooklyn Jitoboh** **Martin Thomas (Junior)** **Ademola Roheez Mark Adedeji** **Raymond Savi** **Omolade Okoya**	**Applicants**
- and -	
Rex	**Respondent**

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Mr Green KC and **Ms Kramo** on behalf of **Harry Oni**
Mr Newton KC and **Ms Webb** on behalf of **Jeffrey Ojo**
Mr Abraham on behalf of **Brooklyn Jitoboh**
Ms Piercy and **Ms Papamichael** on behalf of **Martin Thomas (Junior)**
Mr Monteith KC and **Ms Mogan** on behalf of **Ademola Roheez Mark Adedeji**
Mr Temkin KC on behalf of **Raymond Savi**
Mr Kane KC and **Mr Gray** on behalf of **Omolade Okoya**

Hearing date : 12 July 2024

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Approved Judgment

This judgment was listed to be handed down remotely at 1 pm on 31.7.24.

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Lord Justice Dingemans :

Introduction

1. This is the hearing of applications: for leave to appeal against conviction on behalf of all of the applicants, together with extensions of time on the part of all of the applicants save for Mr Okoya; and for leave to appeal against sentence on the part of Mr Adedeji, Mr Savi and Mr Okoya.

2. The applicant Mr Okoya had sought leave to appeal against conviction and sentence. That application had been refused by the single judge. The applicants Mr Adedeji and Mr Savi had sought leave to appeal against sentence. Those applications had also been refused by the single judge.

3. Mr Okoya, Mr Adedeji and Mr Savi renewed their applications to the full court on 10 November 2023. At the hearing on 10 November 2023 Mr Monteith KC informed the court that Mr Adedeji was seeking an extension of time for leave to appeal against conviction, and leave to appeal against conviction. Fresh evidence had been identified, and it was explained that there were issues in relation to the judge's directions on conspiracy and other matters. Mr Monteith explained that the grounds of appeal might be relevant to the other applicants. The full court therefore gave directions for the service of the applications and the obtaining of identified transcripts. The Registrar referred all the applications which had not been before the single judge to the full court.

4. The matter was then relisted to consider the applications on 12 July 2024. Notwithstanding the directions that had been given (and agreed) on 10 November 2023 for the orderly service of the applications and respondent's notices, there were numerous amendments to applications and responses in the lead up to the hearing on 12 July 2024. There have been amended grounds, and re-amended grounds, and respondent's notices and further respondent's notices, and responses to those notices. We have heard oral submissions from Mr Monteith KC, Mr Green KC, Mr Newton KC, Mr Abraham, Ms Piercy, Mr Temkin KC, Mr Kane KC and Ms Mogan on behalf of the applicants. We are very grateful to all of them, and their respective legal teams who have worked pro bono in making these applications, and to counsel for the Crown who have responded to the various applications in writing, for all of their assistance.

5. In the light of our conclusions on the renewed applications and applications which have been referred to this court, this judgment records our reasons for: (1) granting leave to appeal for some grounds of appeal against conviction; (2) refusing leave to appeal on other grounds of appeal against conviction; and (3) granting leave to appeal against sentence.

6. As there will now be appeals against conviction heard by the full court, and because, if any of the appeals against conviction are allowed, there might be a retrial, we have directed that the contents of this judgment should not be reported until the conclusion of the hearing of the appeals or, if the appeals are allowed and a retrial ordered, the conclusion of any retrial. The order granting leave to appeal against conviction on some grounds, refusing leave to appeal against conviction on other grounds, and

granting leave to appeal against sentence may be reported. There is permission to apply in relation to the reporting restrictions.

Factual background

7. Some of the applicants pleaded guilty, at various dates in 2021 at the Pre Trial Preliminary Hearing, Pre Trial Review or date of trial, to the offence of violent disorder which occurred on 5 November 2020 around 7 pm in Birchenhall Street, Moston.

8. Three of the applicants were found guilty, together with another defendant (Gideon Kalumda), on 17 May 2021 after a trial before Goose J and a jury which lasted 8 weeks, of a conspiracy between 4 November 2020 and 6 February 2021 to murder. Five of the applicants were found guilty at the same trial, together with another defendant (Azim Okunola), on 17 May 2021 after trial, of a conspiracy between 4 November 2020 and 6 February 2021 to cause grievous bodily harm with intent.

9. The applicants before this court, in the order in which they appeared on the indictment and with their ages at the time of sentencing and at the time of the offences are: (1) Harry Oni, 15/5/03 - 19 years (17 years at time of offences) no previous convictions but two cautions for possession of a knife and possession of cannabis on 15 November 2019; (2) Jeffrey Ojo, 27/1/01 - 21 years (19 years at time of offence) no previous convictions; (3) Brooklyn Jitoboh, 30/8/03 - 18 years (17 years at time of offences) no previous convictions. These three applicants were convicted of conspiracy to murder and seek leave to appeal against that conviction. Mr Oni and Mr Jitoboh had pleaded guilty to the offence of violent disorder in Moston at approximately 7 pm on 5 November 2020.

10. The other applicants are: (4) Martin Junior Thomas, 14/2/03 - 19 years now (17 at time of offences) a previous conviction of possession with intent to supply Class A drugs; (5) Ademola Adedeji, 1/6/03 - 19 years (17 years at time of offence) no previous convictions; (6) Raymond Savi, 27/1/03 - 19 years (17 years at time of offence) no previous convictions; and (7) Omolade Okoya, 24/2/03 - 19 years (17 years at time of offence) no previous convictions. These four applicants were convicted of conspiracy to cause grievous bodily harm with intent, and seek leave to appeal against conviction. Another co-defendant Simon Thorne, and the applicant Mr Thomas had pleaded guilty to the offence of violent disorder.

Circumstances of the offences

11. Although we are granting leave to appeal on some grounds, we are refusing leave to appeal on many other grounds. It is therefore necessary to set out the circumstances of the offences so that the issues raised by the grounds of appeal may be understood. The summary is based on the findings of fact set out in sentencing remarks by the judge, who had heard a trial over some 10 weeks. The judge found that the background to the offences lay in a rival gang culture between two gangs. Given that one of the proposed grounds of appeal raises the issue about whether it was appropriate to use the word gang, we will refer to them as gangs or groups. The rivalry was between the M40 gang or group, named after the M40 postcode, of which each was a member or affiliate, from the Moston area of north Manchester, and the RTD gang or group from Rochdale and Oldham. The rivalry manifested itself on

social media and through Drill Rap music, with threats of violence, the display of weapons, including firearms, machetes and cross bows. The judge said that entering the territory of one gang or group was treated as provocation, to be met by violence or the threat of violence.

12. On the 5 November 2020 at 2.40 pm in the afternoon a group of young men, including Mr Oni, Mr Jitoboh, Mr Thomas and Mr John Soyoye, also known as MD, chased down and attacked a member of the RTD gang or group in Manchester City Centre, in Piccadilly Gardens. The RTD gang or group member was kicked, punched and stabbed whilst on the ground. It was a very public display of serious group violence captured on CCTV and observed by frightened members of the public.

13. Later that evening the events of violent disorder occurred. At about 6pm, 13 men with knives, machetes and other weapons travelled to Birchenall Street, Moston. They were associated with the RTD gang or group and were seeking violent revenge for what had happened earlier. They were searching for the M40 gang or group. Eight of the M40 gang or group, including Mr Jitoboh, Mr Thorne, Mr Thomas, Mr Samedo and Mr Oni as well as Mr John Soyoye (who was aged just 16 years at the time), prepared themselves for the fight with machetes, sticks and poles.

14. The two groups came together. Mr Soyoye openly carried a machete, as did another unidentified youth. Mr Oni, Mr Jitoboh, Mr Thorne and Mr Thomas carried either long poles or a baseball bat. Mr Samedo had no weapon at the start, but was carrying one later. All were prepared for a fight with weapons. All weapons were visible in their hands. The CCTV recording of what happened was seen by the court during the trial.

15. When they realised that they were outnumbered by the RTD gang or group, the M40 gang or group ran, but Mr John Soyoye was caught and attacked with machetes. He received 15 separate stab wounds and died at the scene. Mr Jitoboh, Mr Thorne, Mr Thomas, Mr Samedo and Mr Oni subsequently pleaded guilty to the offence of Violent Disorder arising out of that conflict.

16. In a subsequent trial before a different jury, seven of those 13 men of the RTD gang or group were convicted of the murder of Mr Soyoye and one was convicted of his manslaughter. Life sentences of imprisonment were imposed.

17. The judge stated that the prosecution case, accepted by the jury, was that after Mr Soyoye's murder on the 5 November 2020, ten persons formed a criminal agreement or conspiracy, in which the defendants decided that one or more of them would attack the rival gang or group. The jury found that four of them being Mr Oni, Mr Ojo, Mr Kalumda and Mr Jitoboh intended that they would kill a member of the RTD gang or group. The jury found that the others being Mr Thorne, Mr Thomas, Mr Adedeji, Mr Savi, Mr Okoya and Mr Okunola intended that grievous bodily harm would be caused.

18. The judge was sure that the conspiracy was formed quickly, within days after the murder of Mr John Soyoye. In a Telegram social media chat on the 8 November 2020, the judge found that seven individuals were exchanging ideas in planning, identifying where the targets could be found and who might be threatened to disclose information about them. The judge found that the Telegram social media chat was clear evidence

of the conspiracy in action and not just its formation. The discussion quickly turned to the issue of revenge by 'touching' (stabbing) members of the rival gang or group responsible for the murder of Mr Soyoye. From this it could properly be deduced that those invited to participate in the chat were trusted members or associates of the M40 gang or group. Seven potential targets for attack were identified by name - the participants exchanged information about where those targets could be located and attacked - the participants discussed an attack on a person called Jair (Ismael Correia) which had been arranged later on the afternoon of 7 November 2020. The participants discussed kidnapping Jair and forcing him to reveal the whereabouts of others that the gang or group wished to attack. The participants discussed the use of violence, bribery and blackmail against young female associates of their intended targets to force those females to provide information about the whereabouts of those targets and ensure the said females did not go to the police.

19. So far as Mr Adedeji is concerned, he joined the Telegram Chat, using the false name of "Shay Mya" and was known to others as 'Stormzy'. The judge found that he did not express any surprise or concern about being invited to or participating in a discussion, the focus of which was seeking out and attacking and stabbing those believed to be responsible for the murder of Mr Soyoye. Mr Adedeji did: (i) reveal and share his accurate knowledge that one of those responsible for the murder of Mr John Soyoye lived on Lime Side Street, Oldham and that was where most of them were based; (ii) a short time later Mr Adedeji provided a postcode for the address that he had obtained in a separate chat from a female associate informing his co-conspirators that there was "Drop there" (a location where one of their intended targets could be found and attacked); and (iii) Mr Adedeji enquired about another target of the conspirators called Khalid, asking where he lived.

20. The judge found that in pursuance of the conspiracies, there followed three incidents of violence against some of those who were targeted before the conspirators could be arrested. The judge was sure that these incidents were just the start of what was intended, because despite the violence that was used, the men identified in the Telegram chat as the prime targets, were not found or attacked before arrest.

21. Those incidents were as follows. First, on the 10 November 2020 Mr Oni and Mr Ojo confronted Hellion Santos at Hopwood College. Mr Oni took with him a large knife, most likely a sword or machete in a sheath, which he revealed to Mr Santos. Mr Ojo was present as back up. Although Mr Oni denied that he had a bladed weapon, the judge was sure that he had one. This was because during this time he was purchasing significant numbers of machetes on line, within weeks he used a machete to attack another victim, and he was found in possession of a quantity of machetes on later arrest. In the event, Mr Santos managed to escape after being chased by both Mr Oni and Mr Ojo. Mr Santos' evidence was recorded in a document and was hearsay and grounds of appeal related to the admission of that evidence.

22. Secondly, on the 16 December 2020 Mr Oni and Mr Kalumda travelled to the Freehold Flats area of Rochdale, to what they considered to be the territory of the RTD gang or group. Mr Oni took a machete again. This time he caused serious injuries. The attack was captured on CCTV as both Mr Oni and Mr Kalumda chased after the victim. The victim was struck across his back several times, causing very deep and long slash type injuries. As the victim ran across the road to reach safety in a shop, Mr Oni struck him again across the back, in front of traffic. The judge was sure

that, had Mr Oni not been disturbed by the traffic and the victim's escape into the shop, his injuries would have been even more severe. The judge found that Mr Oni's intention was obvious: it was to kill, as part of the conspiracy.

23. Thirdly, on the 28 December 2020 four men, including Mr Kalumda, travelled in a stolen car, again to Freehold Flats in Rochdale. The driver remained in the car whilst the other three, including Mr Kalumda, chased another victim, who initially managed to escape. Mr Kalumda and the other two returned to the waiting car and went in search of the victim. When he was found, the same three with machetes got out of the car and ran after the victim who was brought to the ground and attacked in full view of a CCTV camera. Two of them, not Mr Kalumda, repeatedly struck the victim with their machetes, causing very serious slash injuries whilst he was on the ground. Mr Kalumda stood close by with his machete in hand. They returned to the car leaving the victim on the pavement. The car was then used as a weapon in an attempt to drive over the victim whilst still lying on the ground. It was only because that man realised what was to happen, that he managed to get up and was thrown onto the bonnet of the car. The judge found that the intention of those men in that car was clear, it was to kill as part of the conspiracy

24. The judge was sure that, had it not been for the arrests carried out by the police, this conspiracy would have led to further incidents of very serious injury or killing.

25. When sentencing, the judge found that Mr Oni, Mr Ojo and Mr Kalumda played equal roles within the conspiracy to murder. Mr Oni and Mr Ojo clearly played the main role in the planning. Mr Ojo set up the Telegram group chat, in which plans to carry out the violence were discussed. Mr Oni and Mr Ojo drove the discussion. Mr Oni and Mr Ojo carried out the attack on the 10 November 2020. Mr Oni and Mr Kalumda carried out the attack on the 16 December 2020. Mr Kalumda also carried out the attack, with three others, on the 28 December. Mr Jitoboh's role in the conspiracy to murder was slightly less than for the others. He was part of planning targets for attack in the Snapchat conversation, which followed the Telegram chat, identifying the "main targets" the order in which they were to be attacked and how to bleach knife blades to clean them of evidence.

26. In respect of the conspiracy to cause grievous bodily harm with intent, the judge found that the co-defendants Mr Thorne, Mr Thomas, Mr Adedeji, Mr Savi, Mr Okoya and Mr Okunola each played a role of similar culpability. Those roles were to seek and acquire weapons, to locate the targeted victims or to obtain the information necessary to locate them. The judge found that each of them played an important role in the conspiracy to cause grievous bodily harm with intent, which offence was carried out on two occasions and was attempted on another. The judge was sure that the weapons planned and used as part of the conspiracy, both in count 1 and count 2 were highly dangerous machetes, which were acquired for the purpose only of threatening and causing very serious injuries.

Some relevant matters at the trial

27. The prosecution state in the Respondent's Notice that there were four key issues at trial being: (1) was the M40 a criminal gang or group involved in a real feud or just a music group; (2) were any of the defendants at trial a member, affiliate or supporter of the M40; (3) was there a conspiracy to take violent revenge on the rival gang or group

with an intention to kill members of the rival gang or group (count 1) or to cause grievous bodily harm with intent to members of the rival gang or group (count 2); (4) if so, were any of the defendants a party to either of the agreements.

28. It is apparent that prosecuting and defence counsel at the trial co-operated (in accordance with their duties under the Criminal Procedure Rules) and agreed a number of matters at the trial including: (a) the admission of evidence, including 'gang or group' evidence and evidence of drill lyrics; (b) the admission of the evidence of PC McGregor; (c) other facts under the Criminal Justice Act 1967; and (d) the directions of law given to the jury as appropriate to the issues and circumstances of this case.

29. During the trial the judge made various rulings which are relevant to the grounds of appeal. The first ruling related to hearsay evidence of Helione Santos, who was the victim of an attack at Hopwood Hall College on 10 November 2020.

30. The statement of Mr Santos was taken by a staff member of the college, Laura Hilley, and was exhibited by another member of staff, Katie Howarth (as KH/01). The statement was kept in the computer records of the college by those engaged in safeguarding measures within that establishment. This raised the business records hearsay issue.

31. Helione Santos' account was that the applicants Mr Oni and Mr Ojo confronted him at the college and what looked like a sheath of a long knife was produced. Mr Santos admitted being friends with and knowing members of the rival group, RTD, but denied being a member. Mr Oni accepted that a confrontation occurred but his case was that a baseball bat, not a knife, was produced. Mr Ojo denied any threats or violence were issued by him.

32. The Judge ruled that KH/01 was evidence of a business record and was admissible under section 117 of the Criminal Justice Act 2003 (CJA 2003) as a business record because oral evidence of the matters stated in the statement would have been admissible in criminal proceedings (s117(1)(a)). The judge addressed the relevant criteria and found that they were satisfied.

33. The next relevant ruling related to a bullet casing found in Mr Jitoboh's possession. The Judge ruled that the bullet casing found in Mr Jitoboh's possession on arrest was admissible for the following reasons. Mr Jitoboh accepted gang or group membership and did not dispute that the discussion between gang or group members included talk of revenge violence, whilst not admitting what it was or its level of force or intention. There was admissible evidence before the jury that some members of the gang or group expressly declared their intention in relation to the use of firearms as part of the violence, either in the lyrics and drill music or in the images recovered from the phone of Mr Oni and Mr Ojo as well as others. One of those images recovered from Mr Jitoboh's phone was one such image. It was a real issue for the jury to determine if Mr Jitoboh was a party to the conspiracy and shared an intention to kill or cause grievous bodily harm. The possession of a firearm bullet casing on arrest was relevant to that issue against the background of other evidence already before the jury. The Judge was satisfied that he could admit the evidence either as not being bad character under s98 of the CJA 2003 as it had to do with the offence itself, or as bad

character under s101(1)(d). Further, it did not create an unfairness sufficient to exclude it under s101(3) of that Act.

34. The next ruling related to an image found on Mr Adedeji's phone showing him holding cash to his ear. The Judge ruled that the evidence was admissible for the following reasons. First, the applicant denied gang or group membership. Secondly, the image of holding a substantial amount of cash to the right ear in a similar way to other images by other gang or group members was relevant to his membership or affiliation with the M40 gang or group. Thirdly, the judge did not conclude that the admission of the evidence reversed any burden of proof. It was relevant evidence to a significant issue, namely whether Mr Adedeji was a member or affiliate of the M40 gang or group, some of whose members held cash in the same way to show the camera how much they had.

35. In closing the prosecution suggested the money held to the ear had come from drug dealing. It is contended on behalf of Mr Adedeji that the prosecution never suggested to the applicant in cross-examination that the money was the proceeds of drug dealing and did not challenge that it was from the applicant's work. In summing up the judge referred to the jury seeing "large amounts of cash which you may think is evidence of drug dealing by some of the defendants".

36. The next ruling related to Mr Okoya and images extracted from Mr Okoya's mobile telephone. These were two images of the applicant with unknown youths making hand gestures; a screenshot of a news article about the arrests in the case; and a "selfie" photograph of the applicant holding a small fold of cash.

37. The Judge ruled that the evidence challenged by Mr Okoya was admissible. Mr Okoya did not admit gang or group membership or affiliation such that it was a significant issue for the jury to determine. The images of the applicant in 2019, before the indictment period of the conspiracy, with unknown youths making hand gestures indicating the possession or intention to use firearms, coupled with images of blue bandanas being worn by other unknown youths, provided relevant evidence of gang or group membership or affiliation by the applicant. The screenshot of the news article of the arrest of six youths concerning the trial offences was also potentially relevant evidence of gang or group affiliation or membership. It showed a clear interest by the applicant of their arrest. The selfie image was also potentially relevant either of gang or group membership or affiliation. It was not just the possession of cash but that it was a significant quantity of cash and was held in the hand to the right ear in a similar fashion to other members of the M40 gang or group. Each of the images was therefore admissible.

38. The next ruling related to an image of a handgun recovered from Mr Thomas' mobile phone. The judge ruled that the evidence of the firearm was relevant to the question as to whether Mr Thomas' interest was confined to such innocent mention of violent aggression and firearms, rather than that he had a clear interest in them, having a picture of one on his phone.

Summing up

39. The judge summed up to the jury. It is apparent that there were a number of different versions of the legal directions which the judge sent to the parties. In the final event

the directions were agreed by all save with the exception of those acting on behalf of Mr Okoya in relation to the use to be made of the fact that Mr Oni and Mr Ojo had pleaded guilty to conspiracy to cause grievous bodily harm. The judge directed the jury in relation to conspiracy in conventional terms. The judge noted that a conspiracy is an agreement between two or more people to commit an intended crime by one or other of them and that such a conspiracy is itself a crime, separate from the intended crime. The offence is complete once the agreement is made.

40. The judge expressly recorded that a defendant may join and leave a conspiracy at different times to others. The judge said that the defendants do not have to join it at the same time and they may play different parts in the conspiracy, and they do not necessarily need to know, meet or communicate with all of the other conspirators, but they must communicate with one or more to be a party to the conspiracy. The defendants do not have to know all the full details of the conspiracy, or exactly what each of the conspirators will do.

41. The judge distinguished between the two forms of conspiracy. He directed that the difference between count 1 and count 2 was the purpose of the conspiracy, whether it was to kill someone, or it was to intentionally cause them grievous bodily harm.

42. In the directions the judge directed the jury: "To be guilty of Conspiracy to Murder (**Count 1**), the prosecution must prove:- (1) That there was an agreement between 2 or more of the defendants or others, that at least one of them would kill another person; (2) That the defendant, whose case you are considering, was a party to that agreement; and (3) He intended that the agreement be brought into effect. To be guilty of Conspiracy to Cause Grievous Bodily Harm (**Count 2**), the prosecution must prove:- (1) That there was an agreement between 2 or more of the defendants and/or others, that at least one of them would intentionally cause grievous bodily harm to another person; (2) That the defendant, whose case you are considering, was a party to that agreement; and (3) He intended that the agreement be brought into effect. The judge then directed on intention to kill and cause grievous bodily harm with intent."

43. The judge directed the jury in relation to the pleas saying: "… so how are you to treat the guilty plea of Oni and Ojo to count 2? You do not decide that count in their cases because they have admitted, you will only consider count 1 for them: Are you sure that the conspiracy was to kill rather than only to cause grievous bodily harm? Further, the fact that Oni and Ojo have pleaded guilty to count 2 does not prove that any other defendant is guilty of either count on the indictment. You must not find any of those defendants guilty because of Oni and Ojo's guilty plea to count 2."

44. The judge continued: "What you may conclude, however, is that a conspiracy to cause grievous bodily harm existed and it included those two defendants, Oni and Ojo. It does not prove that there was a conspiracy to kill – count 1. Whether the conspiracy included any other defendant and whether it was to kill or only to cause grievous bodily harm is for you to decide on all of the evidence. If you conclude that both Oni and Ojo are guilty of count 1, the conspiracy to murder, then you will have rejected the evidence in their cases of the lesser alternative in count 2 and you will return verdicts of guilty on count 1 for them. In those circumstances their guilty plea to conspiracy to cause grievous bodily harm will not be admissible evidence in the cases of the other defendants. It will be for you to decide on all of the other evidence if

those defendants were a party to a conspiracy in count 1 or count 2, as I have directed you in Part 1 of my directions."

45. When directing on the document containing Mr Santos' hearsay statement, the judge said: "Oni and Ojo deny that any knife was produced, or any violence used, although Santos was threatened and punches were thrown by Oni. You will appreciate that because this evidence has not been tested in cross examination, you should be cautious as to its accuracy. Are there inconsistencies with other evidence, when Santos was spoken to by others? In the evidence read to you from the staff at the College, whilst some recorded Santos referring to a knife, PC Sophie Roberts was told that it was either a sheath or a bat. This inconsistency would have been explored in cross examination before you had Santos given evidence. Therefore, you may accept this evidence from the note, but treat it with caution."

Extension of time

46. It appears that the time for leave to appeal against conviction expired on 14 June 2022. Grounds to leave to appeal against conviction were lodged by Mr Okoya in time. The other applicants need extensions of time for leave to appeal out of time of between 1 year 4 months 16 days (Mr Adedeji) to 1 year 8 months 23 days (Mr Ojo). It is apparent that the applicants seeking an extension of time did not receive positive advice from their legal teams and therefore needed to obtain other advice from legal teams prepared to act pro bono in a case which had generated very substantial amounts of documents. We have in mind that Mr Okoya raised some grounds which were in time, and the other applicants raise some matters which overlap. We will consider the grounds of appeal to determine whether it is in the interests of justice to extend time.

The renewed applications for leave to appeal against conviction

47. The applicants have expressed their grounds in different ways, although there is an overlap between them, particularly in relation to the grounds relating to conspiracy, and some applicants have expressly adopted grounds of others. The grounds of appeal which have been renewed, or referred to this court by the Registrar, are set out below.

48. We record that the way in which a very large number of differently expressed grounds of appeal have been advanced on behalf of the applicants has not assisted the Court. There is an understandable temptation to pursue every possible ground of appeal, regardless of merit, where legal representatives are concerned about the safety of convictions. Such an approach, however, rarely assists the applicants. This is because the court is diverted from considering the proper grounds, and there is always a risk that the court might fail to identify proper grounds in the blizzard of other grounds of appeal which have been raised. A careful reflection on the distinction between matters that might have been improved in a ruling, closing speech or summing up on the one hand, and matters that are justiciably wrong and which might render a conviction unsafe on the other hand, would have assisted everyone. We asked the applicants to list the grounds being pursued and have used that summary and numbering for the purposes of describing the grounds below.

49. The grounds of appeal for Mr Oni are: (1) failure to properly direct on single conspiracy; (2) inadmissible gang evidence and the adequacy of the direction; (3) misdirection section 34 of the Criminal Justice and Public Order Act 1994. The learned judge's direction failed to identify the specific facts that the Applicant relied on. This denied the jury the opportunity to properly consider the fact/s and whether any failure was reasonable at the time; (4) deficient circumstantial evidence direction. The learned judge when directing the jury on circumstantial evidence ought to have identified the Applicant's case and directed the jury that before drawing an inference against him they were required to have first eliminated all possibilities consistent with innocence. Such approach was mandated by the Court in *R v Bassett* [2020] EWCA Crim 1376 consistent with a long line of authority; and (5) erroneous admission of hearsay evidence.

50. The grounds of appeal for Mr Ojo are: (1) the learned judge failed to direct the jury that it was only open to them to find one conspiracy (at most), including: only one *Single Conspiracy* ever alleged; and not two separate conspiracies or any sub-conspiracies; misdirection as to upper limits for requisite intention for count 2, conspiracy GBH; misdirection on the jury as to how the applicant's plea to count 2 could be used as evidence against the applicant on c1; (2) the Learned Judge failed to direct the jury adequately about executory intent as opposed to fantasy; (3) the law of conspiracy is uncertain and requires a defence of withdrawal; (4) wrongful admission of hearsay evidence, including: KH/01 should not have been admitted under s.117 CJA 2003 as a business document; KH/01 was plainly prepared for the purposes of contemplated criminal proceedings or investigation per s.117(4) and (5); the learned Judge erred in his interpretation of the test at s.117(6) and (7) on the reliability of business hearsay; in any event statement KH/01 should have been excluded under s.126 CJA or s.78 PACE; (5) insufficient directions to jury on Hearsay Evidence; (6) material factual errors in summing up: listed from page 24 of grounds; (7) failure to address unfairness arising from prosecution closing speech: unfairness arising from prosecution speech outlined in Ground 9; (8) inadmissible evidence, including: wrongful admission of evidence from outside the indictment period; wrongful admission of hearsay evidence not attributable to alleged conspirator; wrongful admission of bad character "Gang" evidence; wrongful admission of prejudicial Drill Music evidence; (9) matters referred to in prosecution closing speech that had not been sufficiently raised in evidence, nor had been put to the Applicant such that he could respond to it in evidence; asserting that Mr Ojo had been speaking with "Skaines 22, or Stan, about the revolver and the sweets", when it had not been put to him in evidence; asserting Mr Ojo was present on 28 December 2020, when it had not been put to him in evidence.

51. The grounds of appeal for Mr Jitoboh are: (1) evident material errors in the learned trial Judge's summing up and in particular the way factual evidence relating to the applicant was amalgamated without any real distinction from the single enduring conspiracy and little delineation between the two conspiracies with which both the Applicant and his co-defendants were charged and evidence led. This covers issues specific to the way applicant's evidence was said to be unfairly summed up and unfair and extensive reliance on background evidence and egregious factual errors during summing-up); (2) misdirection of law relating to acts and declarations and admission of inadmissible evidence as a result. (this covers hearsay evidence and narrative statements, evidence outside conspiracy period, evidence outside aims of alleged

conspiracy); (3) misdirection by the judge of the law relating to conspiracy and impermissible conflation of gang with the criminal conspiracy which are said to be issues of constitutional and public importance. (This covers case law on charging two conspiracies, the intent requirements, withdrawal & reasonableness and reform of the law); (4) wrongful admission of bad character and/or possible disproportionate interference with the rights of freedom of expression and freedom of assembly under articles 10 and 11 European Convention on Human Rights (in conjunction with article 14). (Covers issues specific to client relating to admission of an empty bullet casing allegedly found on Applicant and images allegedly attributed to Applicant obtained from his phone and drill music, gang narrative, racial stereotyping).

52. The grounds of appeal for Mr Thomas are: (1) the Crown should not have been allowed to make assertions about gang association and / or the meaning of lyrics and without suitably qualified expert evidence to specifically address those issues, the distinction between relying on first hand facts to suggest gang violence and specific gang association evidence- i.e. wearing blue, territory, rivalries; (2) lyrics should have been excluded. Crown says they show lyrics are confessional – insufficient evidential basis without expert evidence. Lyrics are generic, not probative and highly prejudicial; (3) screenshot of gun should have been excluded: (a) it was accepted it was only a screenshot; (b) it was referred to as a firearm/prohibited weapon. There was no evidence of this; (c) the picture was dated outside the indictment period of April 2021. A bad character application should have been made by the Crown and would not have met CJA 2003 criteria. It was highly prejudicial and not probative of issues for jury to determine; (4) the "spinner and sweets" telegram message (at Appendix "B") should have been excluded – this was not a firearms case; (5) the previous defence team should not have agreed facts on Mr Thomas' behalf that M40 which was a gang which was inconsistent with his instructions. This is indicative of a wholescale failure to distinguish a music group from a violent criminal gang by all parties in the trial; (6) the defence expert report should not have been heavily edited and read in the terms it was as the redacted sections were highly relevant to address the Crown's case.

53. The grounds of appeal for Mr Adedeji were: (1) the identification evidence from PC McGregor was wrongly admitted at trial; (2) the photograph of Mr Adedeji with cash to his ear was prejudicial, lacked probative value, required a bad character application and expert evidence, and should not have been admitted; (3) there were misdirections on conspiracy in that the judge failed to direct the jury, pursuant to the Crown Court Compendium and key jurisprudence, that they needed to be sure Mr Adedeji was a party to one enduring conspiracy to commit grievous bodily harm with intent; (4) the judge failed to direct the jury that the evidence of the conspiracy to murder was inadmissible in relation to the conspiracy to commit grievous bodily harm, *R v Barnard* (1980) 70 Cr. App. R. 28; (5) the judge failed to direct the jury that the evidence of drill lyrics could not be used against Mr Adedeji; (6) the judge delegated the issue of determining the admissibility of 'acts and declarations' in relation to the drill lyrics, to the jury, *R v Platten* [2006] EWCA Crim 140; [2006] Crim. L.R. 920; (7) the judge directed the jury that the pleas of Mr Oni and Mr Ojo to count 2 on the indictment was evidence of the existence of a conspiracy to cause grievous bodily harm (submissions on behalf of Mr Okoya are adopted); (8) the judge failed to direct the jury that they had to be sure the Applicant had gone beyond mere discussion and had reached an agreement with the requisite executory intent; (9) the law of

conspiracy is uncertain and requires a defence of withdrawal, and in conspiracies that include substantive matters a requirement to plead overt act or acts; (10) the judge failed to appropriately direct the jury as to how they should approach the concept of a 'gang'; (11) the racialised use of gang evidence and the 'gang narrative' was discriminatory and violated the Applicant's right to a fair trial under Article 6 of the European Convention on Human Rights in conjunction with Article 14; (12) the racialised use of gang evidence and the 'gang narrative' was discriminatory and violated the Applicant's and right to private life under Article 8 of the European Convention on Human Rights in conjunction with Article 14; (13) Mr Adedeji relies on fresh evidence being: (a) a witness statement from Kevin Liles music executive and former President at Def Jam Recordings and Executive Vice President at Warner Music Group on the phenomenon of the 'money phone' as used by celebrities and social media personalities unconnected with criminality; (b) a witness statement and annex from instructing solicitor Zachary Whyte of Sperrin Law supplementing the statement of Liles on the topic of the 'money phone' with 12 photographs of celebrities using the 'money phone'. This directly supports the Applicant's evidence that he was copying what celebrities were doing; (c) statements from counsellors Eric Thompson and Reece Williams; (d) expert Report from Dr Patrick Williams, Senior Lecturer in the Department of Sociology at Manchester Metropolitan University on the use of the racialised 'gang narrative' in Mr Adedeji case to infer and attribute violent intentions and criminality on non-criminal behaviour; (e) statement from Tyrone Numa (addendum grounds) who identifies himself as the person in the 'blue bandana'; (f) an expert report of Ciaran Thapar (addendum grounds) - Expert report on youth social media and communications

54. The grounds of appeal for Mr Savi were: (1) ground 3 (misdirections on conspiracy) as advanced by Mr Adedeji is adopted; (2) ground 4 (misdirections on conspiracy) as advanced by Mr Adedeji is adopted; (3) ground 8 (misdirection on conspiracy) as advanced by Mr Adedeji is adopted.

55. The grounds of appeal for Mr Okoya were: (1) the jury were not directed with sufficient clarity about the use to which they might put the pleas of guilty to count 2 of the indictment by Mr Oni and Mr Ojo, and the circumstances in which, and extent to which, they proved the fact of a wounding conspiracy; (2) the judge erred in ruling that two photographs of Mr Okoya on the street taken 11 months before the indictment period, and one of him holding a money-fold taken 11 months before the indictment period, were admissible (as they were not relevant to and probative of an issue); alternatively (3) their proper relevance to the proceedings was so marginal, yet their potential effect upon the view of Mr Okoya so unfair, that those photographs ought to have been excluded.

The grounds of appeal for which leave to appeal is granted

Conspiracy

56. We will grant: the applicants who need it, an extension of time; and all of the applicants, leave to appeal to argue that the approach taken to the law of conspiracy in this case was wrong. As the applicants have put the same and overlapping points in a number of different ways we have set out below what we consider to be the arguable grounds of appeal.

57. It is arguable that in this case there needed to be shown two separate conspiracies, namely: either an agreement to take revenge on members of the RTD group or gang with an intention to kill; or an agreement to take revenge on members of the RTD group or gang with an intention to cause really serious bodily harm. This was the approach set out in the judge's directions as they were given, and that approach is consistent with the approach taken in *R v Barnard* (1980) 70 Cr App R 28 in relation to robbery where the court held that a conspiracy to commit theft was not a lesser form of conspiracy to rob, it was a different agreement, see page 33.

58. However, when sentencing, the judge referred to and appeared to take into account the actions of Mr Oni and Mr Ojo, who were convicted of conspiracy to murder, in confronting Mr Santos on 10 November 2020, as well as acts on 16 and 28 December 2020, in relation to the sentences imposed on those convicted of the conspiracy to cause grievous bodily harm with intent. If Mr Oni and Mr Ojo were part of a different conspiracy to murder, then it is arguable that their actions on 10 November 2020 had nothing to do with the separate conspiracy to cause grievous bodily harm with intent. As part and parcel of the same point, but raising the point in relation to conviction, it is arguable that the judge had not identified that the actions of one group of conspirators (namely those convicted of conspiracy to murder) could not be used in relation to the second group of conspirators (namely those convicted of conspiracy to cause really serious bodily harm with intent) in directions set out in paragraph 15 of the legal directions at Part two.

59. In part recognition of this point, the prosecution in its Respondent's Notice referred to *R v Crothers* [2000] NI 55, a decision by the Court of Appeal of Northern Ireland. In *Crothers* Carswell LCJ accepted that a count alleging conspiracy to murder members of the RUC permitted the trial judge to return a verdict of conspiracy to cause grievous bodily harm. In that case there had been found only a conspiracy to cause grievous bodily harm. That approach was followed in *R v Mehta* [2012] EWCA Crim 2824 at paragraph 55. As was pointed out, however, in submissions on behalf of the applicants, the decisions in *Crothers* and *Mehta* do not say that a conspiracy to murder amounts to the same thing as a separate conspiracy to cause grievous bodily harm.

60. The wording of section 1 of the Criminal Law Act 1977 (CLA 1977) provides:

> "(1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out <u>in accordance with their intentions</u>, either—
>
> (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or
>
> (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,
>
> he is guilty of conspiracy to commit the offence or offences in question." (underlining added)

61. The conventional approach to section 1 of the CLA 1977 has been to require those convicted of a conspiracy to share the same intention, which goes full circle back to the judge's original starting point on the directions. It will be a matter for the full court to consider whether the prosecution can, consistently with section 1 of the 1977 Act, allege a single conspiracy to take violent revenge, where one set of conspirators have an intention to murder and another set of conspirators have an intention to cause grievous bodily harm with intent or whether they are properly to be understood as two separate conspiracies.

62. We will also grant leave to the applicants to argue that the the jury were not directed with sufficient clarity about the use to which they might put the pleas of guilty to Count 2 of the indictment by Mr Oni and Mr Ojo, and the circumstances in which, and extent to which, they proved the fact of a wounding conspiracy. This is because that ground overlaps with the main point identified above, although the judge's final directions did make it clear that the convictions could not be used in the event that Mr Oni and Mr Ojo were convicted of conspiracy to murder, and they were. It is fair to note that the grounds of appeal relating to conspiracy developed in part from the submissions which Mr Kane had made to the judge about the directions that could be made on the guilty pleas of Mr Oni and Mr Ojo.

Leave to appeal against sentence

63. As appears above it is arguable that the judge took into account the actions of those who had been convicted of a separate conspiracy, when assessing the culpability and harm caused by the separate conspiracy to cause grievous bodily harm with intent. We will therefore grant leave to appeal against sentence to raise this point. We will not restrict the grounds on which the applicants seek to rely to challenge the sentence, but this is because there might be some overlap with this arguable ground of appeal against sentence, rather than an encouragement to argue grounds relating to the approach that the judge took to sentencing young persons or disparity.

Section 34 of the Criminal Justice and Public Order Act 1994

64. We will grant all of the applicants an extension of time, and leave to appeal on the ground relating to section 34 of the Criminal Justice and Public Order Act 1994. The judge gave agreed directions about the failure to mention facts in interview in relation to the applicants apart from Mr Adedeji. However the judge did not identify the specific facts that any of the nine defendants to whom the direction applied had failed to mention. It was submitted that this denied the jury the opportunity to properly consider the facts and whether any failure was reasonable at the time.

65. The Respondent submitted that for the judge to have listed for each defendant every fact not mentioned in interview would have resulted in "an encyclopaedic direction that would have been overly complicated and counterproductive", and made the proper point that if the direction was inadequate at least one of the seventeen counsel for the nine defendants to whom it applied would have drawn it to the attention of the court.

66. If this point had stood alone we would not have considered that it arguably rendered the convictions unsafe, in circumstances where no complaint was made by experienced counsel about it at the time. Where, however, we have already granted

leave to appeal in relation to conspiracy, the direction was arguably insufficient, and where it is apparent that the applicants complain that they were effectively treated as one by being referred to as part of the M40 gang or group, we grant leave to appeal for this point.

Identification of Mr Adedeji by PC McGregor

67. We grant an extension of time, and leave to appeal for Mr Adedeji to challenge the identification evidence of him by PC McGregor on a video (ground 1). This is because of the fresh evidence from Mr Tyrone Numa (ground 13(f)) to the effect that he was the person in the video. At the hearing Mr Monteith had sought to adduce the statement without any explanation about why the evidence was not called at trial. As has been said on numerous occasions a trial is not a dress rehearsal, and section 23(d) of the Criminal Appeal Act 1968 requires the Court to consider, among other matters, "whether there is a reasonable explanation for the failure to adduce the evidence" at the trial. After the point was discussed in the course of oral submissions, a witness statement was obtained from Mr Ian McMeekin, junior counsel to Mr Adedeji at trial, which was to the effect that attempts to locate Mr Numa had not been pursued because all that had been known was the general area in which he lived. Such an explanation might satisfy the court, which will also have to assess, among other matters, whether Mr Numa's evidence is credible. In these circumstances we will grant leave to appeal on the issue of the identification evidence. We will direct that Mr Numa attend to give evidence at the hearing, and that the prosecution should notify Mr Adedeji's legal team whether Mr McMeekin is required to give evidence. Any issues of waivers will need to be resolved. The issue of whether the statements of Mr Numa and Mr McMeekin should be admitted as fresh evidence is reserved to the full Court hearing the appeal.

The admissibility of the cash by the ear photos

68. We grant an extension of time and leave to appeal to the applicants to whom this point relates, to raise the issue about whether the photographs of them with cash by their ear was sufficiently relevant in circumstances where it was alleged that this was an indication of gang or group membership of the M40 (this is for Mr Adedeji on ground 2 and Mr Okoya in relation to one of the photographs in grounds 2 and 3). This includes the issue of whether there was sufficient evidence to show that this was a feature of M40 gang or group membership, as opposed to an imitation of part of celebrity culture where similar photographs have been taken. As this point also includes the suggestion made in the prosecution closing speech that Mr Adedeji had come by this money by drug dealing we grant leave on this point because it is related to the cash by the ear point.

69. We do not grant leave for the applicants to apply to rely fresh evidence on this ground from Mr Liles or Mr Whyte. First, this is because we have been given no reasonable explanation about why this evidence was not adduced at trial. The issue of whether this was just imitation of celebrity culture or an indication of membership of the M40 gang or group was before the jury, see page 139B of the summing up. The issue was not whether celebrities did this, the issue was whether such a gesture had been adopted by the M40 gang or group and the use of that gesture by the applicants was an indication that they were part of the M40 gang or group.

Grounds for which leave to appeal is refused

70. We refuse leave on all the other grounds. This is because they do not raise arguable grounds to show that the conviction of the applicants is unsafe.

71. For Mr Oni leave to appeal is refused on the grounds relating to: (2) the gang evidence and the adequacy of that direction. The short answer to this point is that it was agreed that PC McGregor should be called to be cross examined. The directions on gang membership were sufficient and agreed by counsel. We can see nothing that would make the conviction unsafe; (4) deficient circumstantial evidence direction. The direction was sufficient and approved by counsel. There is nothing in *R v Bassett*, which related to a submission of no case to answer, that required a particular form of words to have been used when directing the jury; (5) erroneous admission of hearsay evidence. The judge was entitled to find that this was a business record and admissible under section 117 of the CJA 2003. The statement was created or received by a person in the course of their profession or other occupation within the meaning of section 117(2)(a) of the CJA 2003, even though the police may have been on their way. Mr Santos had or may reasonably have been supposed to have had personal knowledge of the matters dealt with for the purposes of section s117(2)(b). The statement was taken by the college for its own purposes and not for the purposes of pending or contemplated criminal proceedings, therefore section 177(1)(c) of the CJA 2003 did not apply. The judge was entitled to conclude that to adduce the evidence through business record was not of itself unfair or wrong. Mr Oni accepted there was a confrontation, what was in dispute was what was said during the confrontation about membership or association with the rival group or RTD gang or group, and also whether a knife was produced. The judge was entitled to reject the arguments under sections 117(6) and (7) of the CJA 2003. There was evidence from the Snapchat on 7 November 2020 and the Telegram Chat on 8 November 2020 that Mr Oni and Mr Ojo were intending to seek out persons associated with the RTD gang or group, including with knives, and on 8 November 2020 Mr Oni had identified a person called 'Hellion' as someone who was to soon be targeted.

72. For Mr Ojo leave to appeal is refused on the grounds relating to: (2) directions on executory intent as opposed to fantasy, and (3) the law of conspiracy requiring a defence of withdrawal. We have identified above arguable grounds relating to the issue of conspiracy. As to these two proposed grounds the judge's directions identified what was required in relation to intention, and were approved by counsel. The law of conspiracy is contained in the 1977 Act and it is not for the courts to amend it; (4) wrongful admission of hearsay, for the reasons given above in relation to Mr Oni; (5) the directions on hearsay (which are set out earlier in the judgment) because they were adequate and approved by counsel; (6) factual errors in the summing up, because the material errors were addressed and remedied at the time; (7) failure to address unfairness in the prosecution speech. There was nothing which was said by prosecuting counsel in relation to Mr Ojo which was capable of rendering the trial unfair or the verdict unsafe; (8) the judge was entitled to admit the evidence that he did. This is because evidence from outside the indictment period was relevant to issues about Mr Ojo's association with the M40 gang or group; the hearsay evidence was properly admitted, and the issue about conspiracy has been addressed above, the judge was entitled to admit the evidence about the M40 gang or group; the evidence about drill music was an important part of the defence of some of the applicants,

whose case was that the M40 gang or group was a music group and not a criminal gang; and (9) matters referred to in the prosecution closing speech had been adequate covered in the evidence.

73. For Mr Jitoboh leave to appeal is refused on the grounds relating to: (3) save to the extent it is covered by the matters relating to conspiracy on which we have granted leave to appeal; (4) the individual complaints made by Mr Jitoboh about matters save insofar as it covered by the grounds relating to conspiracy identified above. Mr Jitoboh has referred freedom of expression and freedom of assembly protected by articles 10 and 11 of the ECHR, in conjunction with article 14. These articles have been given domestic effect by the Human Rights Act 1998, but also reflect pre-existing common law freedoms. The rights are not infringed by using what has been said, for example a threat to stab someone, by an applicant to another applicant, as evidence in a trial for conspiracy to murder or conspiracy to cause grievous bodily harm with intent. The prosecution was not based on racial stereotyping but on evidence about a rivalry between two gangs or groups, which had resulted in other convictions, and materials discovered about communications between the applicants which was capable of supporting the prosecution case that there was a conspiracy to murder. As to the bullet casing, which was alleged to have been found, it was an issue whether Mr Jitoboh was a party to the conspiracy and shared an intention to kill or cause grievous bodily harm with intent. The judge was entitled to find that possession of a firearm bullet casing on arrest was relevant to that issue against the background of other evidence already before the jury.

74. For Mr Thomas leave to appeal is refused on the grounds relating to: (1) the assertions about gang association and the meaning of lyrics and without suitably qualified expert evidence to specifically address those issues, this is because it was agreed at trial that PC McGregor should be called to give evidence; (2) lyrics, this is because they were relevant to whether M40 was a gang or group involved in violence or a music group; (3) the screenshot of the gun, because the judge was entitled to allow the prosecution to adduce the screenshot of the gun as it was relevant to the issue of whether Mr Thomas was seeking firearms in order to take revenge against the RTD gang or group for the murder of Mr Soyyoye; (4) the "spinner and sweets" telegram message, because it was the prosecution case that firearms were being sought; (5) the agreement of facts on Mr Thomas' behalf that M40 which was a gang, because the court is entitled to infer that counsel were acting in accordance with their duties and there was evidence which justified the making of the agreed fact; (6) the editing of the defence expert report, because it was apparent that parts of the report were not matters about which an expert could give evidence, but were matters for the jury to determine having heard the relevant evidence. The disadvantages of calling an expert who had not confronted some of the relevant background facts in the report are obvious.

75. For Mr Adedeji leave to appeal is refused on the grounds relating to: (5) the failure to direct the jury that the evidence of drill lyrics could not be used against Mr Adedeji, save insofar as this is covered by the ground of appeal relating to conspiracy, because it was agreed that the evidence of the lyrics would be admitted; (6) the delegation by the judge of the admissibility of 'acts and declarations' in relation to the drill lyrics, to the jury, because the judge was entitled to leave the issue of the lyrics to the jury, and it was for the jury to assess whether they were sure that it was part of the conspiracy; (8) the directions on executory intention in relation to the conspiracy, because they

were adequate; and (9) the need for a defence of withdrawal in conspiracy, for the reasons given above; (10) directions on the approach to the concept of a 'gang', because the directions were appropriate for the issues between the parties, and in particular whether the M40 was a gang or a music group pretending to be a gang; (11) and (12) the racialised use of gang evidence and the 'gang narrative', for the same reasons set out above in relation to Mr Jitoboh. The applicant had a fair trial which conformed with article 6 of the ECHR, and he will have a fair appeal on the grounds for which leave was granted. The applicant's right to a private life under article 8 of the ECHR, either on its own or in conjunction with article 14 of the ECHR, is not infringed by prosecuting him in circumstances where he discussed, on a Telegram chat, "touching" (or stabbing) a person from the RTD gang or group, and gave the actual address of a member of the RTD gang or group to other members of the chat.

76. As to the other fresh evidence on which Mr Adedeji seeks to rely, we repeat the point about the Criminal Appeal Act 1968 and the need to consider "whether there is a reasonable explanation for the failure to adduce the evidence" at the trial. As a general point we have had no explanation for the failure to adduce the evidence at trial. There is a short second witness statement from Mr McMeekin which does not explain why the evidence was not called. We have already dealt with the witness statement from Kevin Liles music executive and Zachary Whyte. The statements from counsellors Eric Thompson and Reece Williams were available at trial but were not called. Any statement from these counsellors would have left them very exposed to cross examination about the admitted parts of the chat from Mr Adedeji about "touching" or stabbing, about giving an address of a member of the RTD gang or group, and threatening another person. The only person who could properly answer those points was Mr Adedeji. The same applies to the reports from Dr Patrick Williams, Senior Lecturer in the Department of Sociology at Manchester Metropolitan University and Ciaran Thapar on youth social media and communications. We refuse leave to argue grounds relating to this fresh evidence.

77. For Mr Savi leave to appeal is refused on the grounds relating to: (3) the directions on executory intention in relation to the conspiracy, because they were adequate.

78. For Mr Okoya leave to appeal is refused on the grounds relating to: (2) and (3) save insofar as it relates to the cash by the ear photo. This is because the other photograph was relevant to and admissible in relation to issues at the trial and the judge was entitled to admit it.

Directions

79. The matter is to be listed before the full court with a time estimate of two days. The parties are to liaise and agree a timetable for the hearing of evidence from Mr Numa and the submissions from each applicant (avoiding repetition) and the prosecution. There will be representation orders for the applicants.

80. The applicants and respondent are to liaise and prepare an appeal bundle containing: (1) the agreed timetable for the hearing of the appeal: (2) the orders made by the court, and this judgment; (3) for each applicant, one final amended advice and grounds of appeal, comprising any original and revised grounds of appeal, restricted to those grounds on which leave to appeal has been granted. This direction is not so that the applicants have to rewrite their grounds, but is intended to strip out those

matters for which leave to appeal was not granted. This is to prevent the Court hearing the appeal being confronted with the difficulties that we had to deal with in order to attempt to make a fair determination of the issues before us. For Mr Adedeji this is to include the applications for leave to call Mr Numa and Mr McMeekin; (4) for the respondent, one final amended respondent's notice, comprising any original and revised grounds of appeal, restricted to those grounds on which leave to appeal was granted; (5) the transcripts relevant to the grounds of appeal; and (6) any other documents agreed by both parties.

81. The applicants and respondent are to liaise and prepare a bundle of the relevant statutory provisions and authorities. The parties have permission to apply for further directions.

Conclusion

82. For the detailed reasons set out above we grant leave to appeal against conviction as set out above. These are: grounds 1 and 3 for Mr Oni; ground 1 for Mr Ojo; grounds 1, 2 and 3 for Mr Jitoboh; grounds 1, 2, 3, 7 and 13(e) for Mr Adedeji; grounds 1 and 2 for Mr Savi; ground 1, and part of grounds 2 and 3 for Mr Okoya. As appears from paragraphs 56, 62 and 64 above, the grant of leave to appeal on conspiracy and at section 34 of the Criminal Justice and Public Order Act 1994 applies to Mr Thomas. We refuse leave to appeal on all the other grounds of appeal against conviction. We grant leave to appeal on sentence to Mr Adedeji, Mr Savi and Mr Okoya.

83. The contents of this judgment should not be reported until the conclusion of the hearing of the appeals or, if the appeals are allowed and a retrial ordered, the conclusion of any retrial. The order granting leave to appeal against conviction on some grounds, refusing leave to appeal against conviction on other grounds, and granting leave to appeal against sentence may be reported. There is permission to apply to the media and any interested person in relation to the reporting restrictions.