Neutral Citation Number: [2025] EWCA Crim 51

Case No: 2023 01777/0178/2091/1793 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT BIRMINGHAM
Pepperall J
T2020 7725

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/01/2025

Before:

LORD JUSTICE HOLROYDE, VICE-PRESIDENT
OF THE COURT OF APPEAL, CRIMINAL DIVISION
MR JUSTICE MORRIS
and
HH JUDGE LEONARD KC
(sitting as a Judge of the Court of Appeal, Criminal Division)

- -

Between:

ELIJAH CLIVE STOKES **CRAIG MILLER** **CONNOR PALMER**	**Applicants**
- and - **THE KING**	**Respondent**

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- -

Jeremy Dein KC and Ms Kerrie Ann Rowan (instructed by **Reeds Solicitors**) for **Stokes**
Edward Fitzgerald KC and Rabah Kherbane (instructed by **Berkeley Square Solicitors**) for **Miller**
Simon McKay (instructed by **Opus Law Solicitors**) for **Palmer**
Jonathan Kinnear KC, Kevin Dent KC, Ms Nadia Silver and Alex Langhorn (instructed by **CPS Appeals Unit**) for the **Respondent**

Hearing dates: 13 November 2024

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Approved Judgment

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Lord Justice Holroyde:

1. On 2 May 2023, after a lengthy trial in the Crown Court at Birmingham before Pepperall J and a jury, the three applicants were all convicted of conspiracy to murder (count 1). The applicant Craig Miller was also convicted of a separate conspiracy to murder (count 2).

2. On 6 June 2023 Elijah Stokes was sentenced to 27 years' imprisonment. Craig Miller was sentenced to life imprisonment on both counts, with minimum terms of 30 years on count 1, 15 years on count 2. Each of his minimum terms was reduced by 1,054 days which he had spent in custody on remand. Connor Palmer was sentenced to life imprisonment with a minimum term of 23 years, less the 1,054 days which he too had spent on remand in custody.

3. All three made applications for leave to appeal against conviction. Craig Miller also applied for leave to appeal against sentence. Those applications were refused by the single judge. They are now renewed to the full court. Additional applications are made by Craig Miller, who seeks to rely on fresh evidence, and by Connor Palmer, who seeks to vary his grounds of appeal.

4. We heard argument on all matters, and reserved our decision. We now give our judgment. For convenience, and meaning no disrespect, we shall for the most part refer to the applicants and others by their surnames only.

5. At the outset, we thank all counsel for their submissions, and for the very helpful way in which they cooperated in dividing up the main issues so that there was no unnecessary duplication of arguments.

Summary of the facts:

6. For present purposes, the relevant facts can be briefly stated.

7. Count 1 charged the applicants with conspiring, together with Philip O'Brien, Peter Henry and others unknown, to murder Reiss Larvin, who was shot by a masked gunman in his own home on the night of 29 May 2020. By good fortune, Larvin survived, and others present in the house were uninjured.

8. The prosecution case was that the shooting was related to drug dealing and had been commissioned by O'Brien, who was based in Dubai but running a drug-dealing operation in Birmingham. The prosecution alleged that O'Brien had hired Miller, Palmer and Henry to kill Larvin for £100,000; that Stokes, an associate of O'Brien, had introduced Miller, Palmer and Henry to O'Brien, and had agreed to provide them with a gun and a car for use in the killing; and that Miller, Palmer and Henry had sub-contracted the killing to the masked gunman, whose identity is not known.

9. The prosecution further alleged that, although Larvin had survived the shooting, O'Brien was content to pay the agreed sum. He told Miller, Palmer and Henry that he had four more contract killings, for which he would pay them £500,000. Count 2 related to one of those planned murders. It alleged a conspiracy between Miller, O'Brien and others unknown to kill Adam Smith.

10. The applicants were arrested on dates in July and August 2020.

Summary of prosecution evidence:

11. Evidence in support of the charges was derived from communications between the applicants, and their alleged co-conspirators, using encrypted and secure messaging between EncroChat devices. These communications provided very strong evidence against the persons using the relevant EncroChat devices at the relevant times.

12. Persons who used EncroChat devices for their secret communications were allocated "handles". The prosecution attributed the use of the EncroChat handles relevant to this case as follows: O'Brien used AmazonWorld and MidlandKing; Stokes used Worldscooter and Betterbee; Palmer, Miller and Henry at different times used Whitestuff; and Miller also used Browsword. In relation to the Whitestuff device, it was alleged that whichever of the three accused Palmer, Miller and Henry was using it at a particular time, he was doing so with the knowledge and approval of the other two.

13. In support of those attributions, the prosecution relied on circumstantial evidence, including cell-siting evidence relating to the EncroChat devices, call data and cell-siting relating to the applicants' mobile phones, telematic evidence and ANPR data, to show movements of the accused consistent with their alleged use of the EncroChat devices. The prosecution also relied on the fact that the WhiteStuff device, a loaded handgun, and a quarter of a kilo of cocaine were found in a concealed compartment in Palmer's Mercedes car.

14. The prosecution further relied on the failure of Stokes to give evidence at trial; and on the failures of Miller and Palmer to mention in interview facts relied upon in support of the defences which they put forward at trial, and failures to set out their cases fully in their respective defence statements.

Summary of the defence cases:

15. Stokes did not answer questions in interview and did not give evidence at trial. The case put on his behalf was that he accepted having used the Worldscooter and Betterbee devices, but denied having done so in relation to any of the communications relevant to this case. He challenged evidence said by the prosecution to co-locate his mobile phone with the EncroChat devices at particular times. The prosecution's expert witness accepted that there were occasions in relation to both devices when there were features inconsistent with co-location. He also accepted more generally that instances of apparent co-location could only be regarded as potential co-location. It was submitted on Stokes' behalf that the evidence pointed to the possibility that more than one person used those two devices. It was further submitted that the messaging did not point unequivocally to a conspiracy to murder.

16. Miller gave evidence. He accepted that he knew Palmer and Henry, but said he did not know O'Brien. He denied knowledge of any plan to murder, denied having used either the Whitestuff or the Browsword devices, and denied any communications with the other handles relevant to the charges. He also denied being the user of the mobile phone which the prosecution ascribed to him, saying that it was his brother's phone. He denied taking part in a journey in which the prosecution alleged that he, Palmer and Henry had collected an advance payment of £50,000 from an associate of O'Brien and had then gone on to meet Stokes in order to collect the gun.

17. Palmer gave evidence. He said that he had allowed others to use his Mercedes car, and he put forward explanations for journeys which he admitted making. He accepted that he had at one stage had the Whitestuff device, but denied that he had ever used it and denied any communications with either Amazonworld or Worldscooter. He said that he used an EncroChat device with the handle Saltyherb in connection with the importing of cannabis.

EncroChat devices: a brief overview:

18. Before summarising the criminal proceedings, it is convenient to give a brief overview of the investigation of EncroChat devices.

19. The EncroChat network was thought by its users to be impenetrable, and it was therefore used by organised criminals to send and receive messages about their criminal activities.

20. The EncroChat servers were based in France. In 2020, French and Dutch prosecutors formed a Joint Investigation Team ("JIT"). The UK was not part of the JIT but participated in an operational task force. At a Europol meeting in February 2020, the National Crime Agency ("NCA") were informed that the JIT would be able to collect data by inserting malware into EncroChat devices via a software update. It was anticipated that the data would be collected for a period and would thereafter be available for use in evidence. In the event, the JIT harvested data between in April, May and June 2020.

21. The actions of the JIT were "interception", as defined in the Investigatory Powers Act 2016 ("IPA 2016"). The type of warrant required to authorise interception under that Act, and the admissibility in evidence of the product of an interception, depend in part on whether the communications in question were stored in or by a telecommunications system, or were intercepted in the course of transmission.

22. In March 2020 the CPS served a European Investigation Order on the French authorities, asking for messages intercepted from EncroChat devices located in the UK. On 27 March 2020 a Targeted Equipment Interference warrant ("TEI") was issued to the NCA authorising interference with EncroChat devices located in the UK.

23. EncroChat material has been adduced as prosecution evidence in a number of cases. Its admissibility has been challenged on a variety of grounds. In *R v A, B, D and C* [2021] EWCA Crim 128 and in *R v Atkinson* [2021] EWCA Crim 1447 this court held that EncroChat material is admissible in criminal proceedings on the basis that the relevant data had not been intercepted in the course of transmission: rather, it had been intercepted from the data stored on the devices.

24. In *SF v National Crime Agency* [2023] UKIPTrib 3, the legality of the TEI which authorised the obtaining of the date was challenged before the Investigatory Powers Tribunal ("the IPT"). The challenge was unsuccessful.

25. In the present case, EncroChat messages on the UK-based devices were provided to the NCA as part of Operation Venetic, an ongoing operation aimed at investigating and disrupting serious organised crime. During the collection of data by the JIT, data were provided in daily packages to the NCA.

26. In addition, a small number of NCA officers were provided with remote access to the French Threats to Life ("TTL") system, which enabled them to gain the latest intelligence derived from UK-based devices. This meant that if the daily transfer of data relating to a particular device had revealed a threat to life, the officers could access the most up-to-date data from that device without waiting for the daily transfer of data.

27. As we have noted, O'Brien was based in Dubai. As part of the police investigation into the shooting of Larvin, the NCA issued a request for mutual assistance seeking data from handsets based in Dubai. They were provided with Dubai data in the form of Excel spreadsheets. A prosecution expert witness Luke Shrimpton (the NCA's lead technical officer in relation to EncroChat) gave evidence about the reliability of data from the UK-based and Dubai-based devices. He was able to explain some of the methodology by which the Operation Venetic data had been obtained by the JIT from the UK-based devices, but was not able to give such evidence about the methodologies by which the material from the Dubai-based devices had been handled by the JIT.

28. On 13 June 2020 EncroChat users were alerted to the fact that the security of the network had been compromised. The prosecution case in relation to count 2 was that the conspiracy to murder Smith was not put into action because of that breach of the network's security.

The criminal proceedings:

29. By virtue of s30 of the Criminal Procedure and Investigations Act 1996, the trial began in November 2021, when the judge conducted a preparatory hearing. He heard submissions over five days. He gave a written ruling, which he handed down on 7 March 2022.

Admissibility rulings at the preparatory hearing:

30. The judge ruled that the EncroChat messages relied on by the prosecution in this case had been intercepted from storage, not from transmission. He therefore rejected submissions on behalf of the applicants to the effect that the messages had been intercepted in the course of transmission and should be excluded from evidence pursuant to s58 of IPA 2016. He also rejected submissions to the effect that the Dubai material was inadmissible in evidence on the grounds that there had been interception-related conduct within the meaning of s56(2)(c) of IPA 2016, or alternatively should be excluded pursuant to s78 of the Police and Criminal Evidence Act 1984 ("PACE").

31. He accordingly ruled, in summary, that the EncroChat material was lawfully intercepted pursuant to s6(1)(c) of, and paragraph 2 of Schedule 3 to, IPA 2016; that the prohibition in s10(2) of that Act upon the making of a request for assistance under an EU mutual assistance instrument without the earlier issue of a mutual assistance warrant was disapplied by s10(2A); and that the interception itself was not unlawful "interception-related conduct" within the meaning of s56 of the Act.

32. In addition, the judge rejected an application by Palmer alone seeking to stay the proceedings against him as an abuse of the process.

33. No appeal was brought against any of those decisions.

Admissibility – further rulings:

34. At a hearing in January 2023, the applicants again challenged the admissibility of the EncroChat evidence, arguing that some of the Operation Venetic material (relating to UK-based devices) and the Excel spreadsheet (relating to Dubai-based devices) were inadmissible hearsay. Palmer also challenged the admissibility of the Dubai material on a further ground, namely that NCA officers had unlawfully intercepted EncroChat transmissions by monitoring the French TTL feed.

35. The judge rejected the applicants' submissions. As to the first argument, he held that the evidence on which the prosecution relied, namely the Operation Venetic packages and the Dubai material contained in the Excel spreadsheets, was admissible as hearsay pursuant to s117 of the Criminal Justice Act 2003 ("CJA 2003"), and its reliability was such that it did not fall to be excluded pursuant to s117(7).

36. As to the second argument, s4 of IPA 2016 states in material part:

> "**Interception in relation to telecommunication systems**
>
> (1) For the purposes of this Act, a person intercepts a communication in the course of its transmission by means of a telecommunication system if, and only if –
>
> (a) the person does a relevant act in relation to the system, and
>
> (b) the effect of the relevant act is to make the content of the communication available, as a relevant time, to a person who is not the sender or the intended recipient of the communication.
> …
>
> (2) In this section 'relevant act', in relation to a telecommunication system, means –
>
> (a) modifying, or interfering with, the system or its operation;
>
> (b) monitoring transmissions made by means of the system;
>
> (c) monitoring transmissions made by wireless telegraphy to or from apparatus that is part of the system. …
>
> (4) In this section 'relevant time', in relation to a communication transmitted by means of a telecommunication system means –
>
> (a) any time while the communication is being transmitted, and
>
> (b) any time when the communication is stored in or by the system (whether before or after its transmission).

> (5) For the purposes of this section, the cases in which any content of a communication is to be taken to be made available at a relevant time include any case in which any of the communication is diverted or recorded at a relevant time so as to make any content of the communication available to a person after that time."

37. The judge held that when they accessed the French TTL system, the NCA officers did not monitor the EncroChat telecommunications system: they monitored the French computer system. That was not a "relevant act" within the meaning of s4(2) of IPA 2016, and was not "interception-related" conduct within the meaning of s56 of the Act.

38. We turn to issues relating to the jury which arose at a late stage of the trial.

Issues relating to the jury:

39. One of the jurors, to whom we (like the judge) shall refer as Y, had given ample notice of a holiday abroad which she had booked and paid for. The trial encountered delays, and it became clear that the jury would only retire to consider their verdicts a short time before the beginning of Y's holiday. A defence application was made for Y to be discharged. On 4 April 2023 the judge refused that application.

40. Later that day, and before the closing speeches of counsel, the judge gave his directions of law. No criticism is or could be made of those directions. They included a clear direction to the jury to decide the case only on the evidence which had been given during the trial. They ended with a reiteration of that direction, and directions that the jurors must not conduct any private research, and must bring to the judge's attention anything during the trial which caused any of them a concern.

41. The judge's summing up of the evidence began on 13 April 2023. He concluded it early on the afternoon of 17 April. He gave a conventional instruction to the jury that they were under no pressure of time. He then referred to the fact, of which all jurors were aware, that Y would not be able to continue her service beyond lunchtime on 20 April. The judge emphasised that neither Y, nor any other juror, should feel under pressure to reach verdicts before that time. The jury then retired to consider their verdicts.

42. Thereafter there were several notes passed by members of the jury to the judge. One of the grounds of appeal is that a serious jury irregularity occurred. We therefore summarise the sequence of relevant events.

43. On 19 April a juror, to whom we shall refer as X, sent a note informing the judge that the juror who was going on holiday on the following day (whom we have called Y) had reached her decision on all the charges and wished to know if those decisions "will be taken forward with the rest of the jury's verdicts". The note added that the other jurors were still determining their decisions.

44. The judge informed counsel in general terms of the nature of that enquiry, but did not at that stage tell counsel that the note indicated that Y had reached her decisions. He later told the jury that he would address their question at the appropriate time.

45. The judge had in any event prepared a draft of what he would say to the jury if it became necessary to discharge Y. After discussions, no counsel raised any objection to that draft.

46. At the end of the court day on 19 April, the jury were asked whether they had reached any verdicts upon which they were all agreed. Their forewoman answered that they had not. The judge then discharged Y. He directed her that she must not contact any of the other jurors until the case was over. He then directed the remaining 11 jurors that it was now their sole responsibility to reach verdicts: any views which Y had expressed during their deliberations were relevant only if a juror agreed with them.

47. The jury of 11 continued their deliberations for the next four sitting days. On Tuesday 25 April, the judge sought the submissions of counsel as to the timing of a majority direction if that became necessary. There was a consensus that an appropriate time would be around lunchtime on Thursday 27 April.

48. On the morning of 27 April, however, the judge received a note from a juror to whom we shall refer as A. The judge sent the jury home for the day, explaining that a matter had arisen which needed to be looked into before the trial could continue. He reminded them that they must not contact each other and must not contact Y.

49. The judge drew the attention of counsel to Criminal Practice Direction 26M ("Crim PD 26M") in relation to jury irregularities. He adjourned for about 2 hours. He then gave a warning to all in court that it is a criminal offence to disclose information about a jury's deliberations. He read A's note to counsel, omitting only those parts which named or otherwise identified individual jurors or indicated information about a juror's views.

50. The heading of the note referred to non-compliance with the legal responsibilities of a juror and non-compliance with the judge's directions. A alleged that, since the jury had been reduced to 11 –

> "[X], to name one, has been in contact with the released juror [Y] and the individual deliberations of myself discussed."

51. The judge interrupted his reading to explain that he could not reveal information contained in the next part of the note which indicated jurors' views, and would therefore edit it to the extent necessary. He then continued his reading of the note. The transcript is as follows:

> "Furthermore, as an 'influencer' [and I now paraphrase] a shorthand of [Y's] views of the appropriate verdict has [I go back to verbatim] been written by X on the whiteboard where progress to date on individual verdicts has been noted, written in oversized characters and remaining on the board since [Y] left the jury. This conduct has resulted in the deliberation not complying with the description of being fair."

52. The judge allowed time for counsel to reflect and take instructions. He expressed his own preliminary view that, amongst other things, he might investigate whether there

had been any impropriety by questioning the entire jury in writing. Submissions were later made by all parties.

53. Overnight the judge drafted a proposed direction to the jury, mindful of the need to ask them the minimum questions necessary. When the court sat, without the jury, on 28 April, the judge told counsel that the note sent by X on 19 April (see paragraph 43 above) had made it clear that Y had reached a concluded view on the case, but had not indicated what that view was. A's note of 27 April, however, had indicated what verdicts Y had decided.

54. The judge then told counsel that he had now received a further note from A, in which A alleged a breach of the direction that jurors should only discuss matters when they were all together. A complained that when he arrived at court that morning, X had said that the other jurors had been discussing sending a note to the judge giving the state of their deliberations to date, and seeking guidance. A said that this was not fair, as he was not included in an important discussion which, furthermore, had been held outside the jury's retiring room. The judge commented that he had not received any note from the jury about their deliberations.

55. No counsel objected to the judge's draft questions, which were given to the jury in writing. In question 1, they were asked whether they had had any contact with Y, since she left court on 19 April, concerning the jury's deliberations in this case. In question 2, they were asked whether they were able to continue to try the case faithfully and to give true verdicts according to the evidence.

56. The jurors in due course returned their written answers to those questions. The judge told counsel that ten jurors had answered question 1 'no'; one juror, who was not [X], had answered question 1 'yes'; and all 11 had confirmed that they could return true verdicts. He asked counsel whether anyone wished further investigations to be made.

57. No counsel sought any further investigation, and no counsel applied for any juror to be discharged. All submitted that robust directions by the judge would be sufficient to address the concerns which had arisen. No one felt it appropriate to investigate the further complaint by A that important matters relating to the trial had been discussed by other jurors in his absence.

58. The jury then came into court. In answer to a question, they indicated that they had not reached any verdict on which they were all agreed. The judge told them that their answers to the written questions did not disqualify any of them from continuing to serve on the jury, but that it was necessary for him to repeat some of his directions. He directed the jury that they must not contact Y, or receive any communication from her; that they must not discuss the case with anyone outside the jury; that any views expressed by Y were relevant only insofar as an individual juror agreed with them; that they must only discuss the case when all together in their room; and that they should raise with him any matter of concern about the case.

59. The judge went on to give the majority direction.

60. The judge gave a ruling explaining his approach to the issues which had arisen. He recognised, rightly, that although there had been no application to discharge the jury, it was his responsibility to ensure that the case was tried fairly. He said that there had

been an irregularity, in that there had been contact between Y and at least one other juror, and discussion of the jury's further deliberations since Y's discharge. Nonetheless, he accepted a submission by counsel that there was a distinction between the present circumstances and a case in which a juror had discussed the jury's deliberations with a third party. Y had been a party to the jury's deliberations for two and a half days: she had reached concluded views before she was discharged, and her views would have been fully ventilated in the jury room.

61. The judge added that there may have been a further irregularity, in that there may have been some discussion in A's absence; but no counsel had suggested that should be investigated further, or should lead to the jury's being discharged, and he agreed with that assessment.

62. In those circumstances, the judge said, he had concluded that any irregularity which had occurred could be cured by appropriate directions and that there was no high degree of necessity to discharge all or any of the remaining jurors.

63. At the end of the court day the jury were sent home. There was then a Bank Holiday weekend, and the court next sat on Tuesday 2 May 2023.

64. At the start of that day, the judge informed counsel that he had received another note from A, in which A required his immediate release from the jury, and expressed his belief that members of the jury had committed perjury in answering the written questions. The transcript shows that the judge, redacting in the same way as previously, read out A's note as follows:

> "Friday pm 28 April after leaving the court Z [I'm not going to identify the person] a member of the jury asked me the uninvited question 'How did they (ie the court) know that they (ie members of the jury) were in contact with [Y]?'. The content of the question and the manner in which it was delivered confirmed to me that indeed members of the jury had been in contact with [Y], who was no longer a member of the jury. It is my absolute belief that an inquiry would confirm that conversations had been had and in particular conversations regarding the deliberations of myself. The unacceptable display of [Y's] verdicts [and the note goes on to explain what those verdicts would have been] on the deliberation whiteboard (only removed Friday 28th pm) evidence the unacceptable involvement of a person external to the jury in its deliberations."

65. A's note concluded by saying that he would no longer be part of the jury and required guidance as to how his immediate release would be secured.

66. The judge added that A had also sent a further note, saying that he refused to be associated with the jury and did not wish to join them in court.

67. The judge confirmed that only one juror had answered "yes" to the first written question. The judge added that that was the juror referred to as Z (see paragraph 64 above).

68. A discussion with counsel followed as to whether A should be discharged. The consensus amongst counsel was that A could not realistically continue to serve as a juror. The judge allowed a short time for counsel to speak to their lay clients and confirm their positions, which counsel did by speaking to the applicants in the dock. All counsel thereafter submitted that A could no longer engage with other jurors in accordance with his oath or affirmation.

69. A was brought into court, reassured that he had been correct to raise his concerns, and discharged. The remaining 10 jurors were then brought into court. The judge explained that A had been discharged. He directed the jurors that A's views no longer had any standing, save to the extent that any juror agreed with them. He instructed the jury not to contact A until after the trial was concluded. He gave an appropriate further majority direction. The jury of 10 retired again.

70. The judge gave a ruling explaining his reasons for discharging A. He said that, having considered whether it would be possible to correct A's mistaken assumption, he had concluded that the relationship between A and at least one other juror had irretrievably broken down and that there was a high degree of need for A's discharge.

71. After deliberating for a short time, the jury unanimously returned the guilty verdicts to which we have referred.

Sentencing:

72. At the sentencing hearing in June 2023, Miller refused to leave his cell and was sentenced in his absence. Given that he alone challenges his sentence, and does so on limited grounds, it is unnecessary to refer in detail to the judge's sentencing remarks. We limit our summary to the material features of the sentencing remarks relating to Miller.

73. The judge reflected on Schedule 21 to CJA 2003 and observed that, if both Larvin and Smith had in fact been killed, each of their murders would have involved a substantial degree or premeditation or planning and Miller therefore would have been "at serious risk of a whole life order". The judge noted that the Whitestuff device had sent messages to O'Brien expressing disbelief that Larvin had survived and offering to "go again"; and the judge was sure that, but for the EncroChat network being taken down, Miller had both the means and the settled intent to murder Smith.

74. With reference to the Sentencing Council's definitive guideline in relation to offences of attempted murder, the judge assessed the count 1 offence as involving very high culpability and category 2 harm. For both Miller and Palmer he took the guideline starting point of 30 years' imprisonment. The offence was aggravated by their previous convictions, (which, in Miller's case, included convictions for rape, for transferring a self-loading handgun and 150 rounds of ammunition, and for a serious offence of violence); by their willingness to murder for substantial payment; by the harm caused and risked to Larvin's partner and child; and by the significant attempts they had made to avoid detection.

75. The judge concluded that in Palmer's case the appropriate determinate sentence was 35 years' imprisonment, the top of the category range. In Miller's case, taking into account the serious aggravating feature of the second conspiracy to murder – which

again contemplated the shooting of a stranger in return for substantial payment, but which was "some way from completion" – the appropriate determinate sentence would be 45 years' imprisonment.

76. The judge then found both Miller and Palmer to be dangerous, as that term is defined for sentencing purposes, and concluded that the seriousness of the count 1 offence demanded a life sentence in each of their cases. He reduced the notional determinate sentences by one-third to reflect the early release provisions which would have been applicable to determinate sentences. Thus he arrived at the sentences to which we have referred. We shall refer later to the manner in which the judge expressed the minimum terms he imposed.

The grounds of appeal:

77. Grounds of appeal were settled by trial counsel on behalf of each of the applicants. However, each of the applicants subsequently instructed new counsel.

78. The grounds of appeal – all of which are opposed by the respondent – are for the most part common to all applicants. Palmer seeks leave to vary his grounds of appeal in order to argue points not raised before the judge, and the other two applicants seek to rely on those points if Palmer is permitted to argue them. We will therefore refer to many of the submissions compendiously. We shall summarise them briefly, by reference to the principal issues. We shall not refer to every one of the many points made by individual counsel, but we have considered all of the submissions.

Issue 1: Admissibility of evidence: the French Threat to Life system:

79. All counsel submit that the judge was wrong to find that the monitoring of the French TTL system was not a "relevant act" and that the NCA officers involved were not engaged in "interception-related conduct" within the meaning of ss 3, 4 and 56 of IPA 2016. It is submitted that the relevant act by the officers was the monitoring of EncroChat transmissions "in almost real-time". In Palmer's varied grounds of appeal, which are adopted by the other applicants, it is further argued that the judge was wrong to rule that there was no breach of either s9 or s10 of IPA 2016.

80. It is submitted that in the circumstances of this case, the EIO regime did not apply to the evidence obtained by the JIT, that no valid mutual assistance warrant was in place for the purposes of s10 of IPA 2016, and that consequently the admission of the evidence was contrary to s56 of the Act. Alternatively, if an EIO was the correct instrument, it is submitted that the EIOs relied on by the prosecution were defective in a number of respects, and that the EIO issued in September 2020 (in relation to data already obtained) was in breach of both EU and international law. In this regard, counsel accept that it is for the national courts to determine the rules of admissibility of evidence. However, relying on the decision of the Grand Chamber of the European Court on 30 April 2024 in *Case C-670/22, MN (EncroChat)*, especially at [131], it is argued that evidence must be disregarded if the accused is not in a position to comment effectively on it, and the evidence is likely to have a preponderant influence on the findings of fact.

81. It is further argued that these proceedings were an abuse of the process of the court because the JIT's actions breached the sovereignty of the United Arab Emirates.

82. At the relevant time, and so far as is material for present purposes, ss 9, 10 and 56 of IPA 2016 provided as follows:

> "**9. Restriction on requesting interception by overseas authorities**
>
> (1) This section applies to a request for any authorities of a country outside the United Kingdom to carry out the interception of communications sent by, or intended for, an individual who the person making the request believes to be in the British Islands at the time of the interception.
>
> (2) A request to which this section applies may not be made by or on behalf of a person in the United Kingdom unless –
>
> (a) a targeted interception warrant has been issued under Chapter 1 of Part 2 authorising the person to whom it is addressed to secure the interceptions of communications sent by, or intended for, that individual, or
>
> (b) a targeted examination warrant has been issued under that Chapter authorising the person to whom it is addressed to carry out the selection of the content of such communications for examination.
>
> **10. Restriction on requesting assistance under mutual assistance agreements etc**
>
> (1) This section applies to –
>
> (a) a request for assistance under an EU mutual assistance instrument, and
>
> (b) a request for assistance in accordance with an international mutual assistance agreement so far as the assistance is in connection with or in the form of, the interception of communications.
>
> (2) A request to which this section applies may not be made by or on behalf of a person in the United Kingdom unless a mutual assistance warrant has been issued under Chapter 1 of Part 2 authorising the making of the request.
>
> (2A) Subsection (2) does not apply in the case of a request for assistance in connection with, or in the form of, interception of a communications stored in or by a telecommunication system if the request is made –
>
> (a) in the exercise of a statutory power that is exercised for the purpose of obtaining information or taking possession of any document or other property, or

(b) in accordance with a court order that is made for that purpose.

56. Exclusion of matters from legal proceedings etc

(1) No evidence may be adduced, question asked, assertion or disclosure made or other thing done, for the purpose of or in connection with any legal proceedings … which (in any manner) –

(a) discloses, in circumstances from which its origin in interception-related conduct may be inferred –

(i) any content of an intercepted communication, or

(ii) any secondary data obtained from a communication, or

(b) tends to suggest that any interception-related conduct has or may have occurred or may be going to occur.

This is subject to Schedule 3 (exceptions).

(2) 'Interception-related conduct' means –

(a) conduct by a person within subsection (3) that is, or in the absence of lawful authority would be, an offence under section 3(1) (offence of unlawful interception);

(b) a breach of the prohibition imposed by section 9 (restriction on requesting interception by overseas authorities;

(c) a breach of the prohibition imposed by section 10 (restriction on requesting assistance under mutual assistance agreements etc):

(d) the making of an application by any person for a warrant, or the issue of a warrant, under Chapter 1 of this Part;

(e) the imposition of any requirement on any person to provide assistance in giving effect to a targeted interception warrant or mutual assistance warrant.

…"

Issue 2: Admissibility of evidence: the Dubai data:

83. All counsel argue that the judge was wrong to rule that the Excel spreadsheet of the Dubai data was admissible. They submit that this evidence was not raw unprocessed data, as was available in relation to the Operation Venetic evidence; rather, it consisted of a highly-processed Excel spreadsheet which had been created by unknown persons using unknown methods. They submit that it should have been excluded because it was inadmissible multiple hearsay. Alternatively, if it was

admissible, they submit that the judge was wrong not to exclude it, pursuant to s117(7) of CJA 2003 or s78 of PACE.

84. In Palmer's varied grounds, this issue is developed to include a submission that the court could not be satisfied as to the reliability or integrity of the evidence. Reliance is placed on the decision of the Grand Chamber of the European Court of Human Rights in *Yalcinkaya v Turkey* (App no 15669/20) 56 BHRC 481.

Issue 3: Jury irregularity:

85. All the applicants submit that the verdicts are unsafe because of a serious jury irregularity. By reference to the stepped process then set out in Crim PD 26M (and now contained in paragraphs 8.7ff of the Criminal Practice Directions 2023) it is submitted that the judge failed to isolate both X and Z from the other jurors, and failed to make sufficient enquiry of the jury. In particular, it is submitted that any juror who had answered "yes" to question 1 should have been asked further questions to establish what precisely Y had said. The point is made that the judge himself had initially contemplated supplementary questioning to that effect, and prosecution counsel at trial had initially submitted that it would be appropriate. It is submitted that the result of the action which the judge took was that he was made aware that at least two jurors (X and Z) had been in communication with Y, but he did not know what Y had said and therefore could not evaluate its potential effect on the fairness of the trial. Y, having been discharged, was at liberty to conduct research into matters relating to the case; but the judge made no enquiry as to whether the fruits of any outside research Y may have undertaken were communicated to any other juror. The applicants submit that that is a matter of particular concern, because of the possibility that Y may have discovered and passed on information about their previous convictions.

86. The applicants rely on the recent decision of the Privy Council in *Campbell v R* [2024] UKPC 6. Their Lordships there confirmed that judges faced with allegations of juror misconduct have a wide discretion as to how to proceed and, in many circumstances, it would not be necessary to discharge the entire jury. Once a jury irregularity has been identified, the key question is whether a fair trial remains achievable. It is therefore necessary for the judge to investigate the facts as best as possible, and to establish the extent to which contamination has spread. Counsel emphasise that the high regard in which juries are held depends on their individual and collective integrity. In the circumstances of this case, it is submitted, there is clearly a real danger that the applicants may have been prejudiced.

87. Counsel all indicated that they inferred that Y's views, recorded on the jury whiteboard, were in favour of guilty verdicts. If so, they submit, it was incumbent on the judge (who knew for sure what views had been recorded, but who felt unable to pass that information to counsel) to take particular care to avoid any risk that other jurors may have been influenced in their verdicts by contact with Y. They argue that this court should make the jury notes available to counsel, so that submissions could be made in full knowledge of the complete terms of the notes.

88. It is also submitted that the judge was wrong to discharge A alone, when he should have discharged the whole jury: it was anomalous that the one juror who had complied with his duty by reporting matters of serious concern should have been

discharged when others – all of whom had all failed to alert the judge to any problem, and some of whom had breached the judge's clear directions not to have any contact with Y – were not. Counsel acknowledge that none of the legal representatives at trial objected to the action which the judge took; but they submit that trial counsel were given insufficient time to discuss the important issues with their lay clients; that the applicants were in an extremely difficult position, because they had spent a very long time awaiting their trial and understandably did not want the trial to be stopped; and that in any event, the judge had rightly acknowledged that the decisions as to the appropriate action were for him alone, whether or not the legal representatives agreed with him.

Miller's fresh evidence application:

89. In support of his submissions on this issue, Miller invites the court to exercise its power under s23 of the Criminal Appeal Act 1968 to receive fresh evidence, including a statement by Miller himself. The evidence is to the effect that when instructions were taken from him at the dock in relation to whether A should continue to serve as a juror, Miller said that A should be discharged and so, too, should all the other jurors; but the second part of what he said was either misheard or misunderstood by counsel, with the result that no application was made to discharge the whole jury.

90. In written submissions, the applicants invited this court to direct an investigation into the conduct of the jury, pursuant to s23A of the Criminal Appeal Act 1968.

91. The respondent submits that the judge faithfully followed the procedure in Crim PD 26M and acted appropriately.

Issue 4: The summing up of Stokes' case:

92. In addition to the grounds relied on by all counsel, Stokes submits that the judge in his summing up failed sufficiently to identify the evidence and arguments relied on by Stokes. The judge's approach was to remind the jury of the evidence but not to refer to counsel's arguments: he therefore gave detailed summaries of the evidence given by Miller and Palmer, which (it is submitted) placed Stokes at a significant disadvantage. It is submitted that, although Stokes had answered no questions in interview and had not given evidence, there were important points which had been advanced on his behalf, and aspects of the prosecution evidence which were relied on as supporting his defence.

Analysis:

93. In the circumstances of this case, we are prepared to permit the applicants to argue their amended or varied grounds of appeal. We therefore consider all the submissions made.

Issue 1: Admissibility of evidence: the French Threat to Life system:

94. We agree with the judge that the actions of the NCA officers in connection with the French TTL system were self-evidently not the monitoring of communications in the course of their transmission by means of a telecommunication system. The officers did not see the data until after the relevant communications had been made,

intercepted by the JIT and added to the French TTL system. The fact that at times that sequence of events happened very quickly is nothing to the point: the messages were not in the course of transmission. We therefore accept the submission of the respondent that the monitoring of the French TTL was not interception-related conduct.

95. There was no breach of s9 of IPA 2016. The purpose of that section is to prohibit UK authorities from requesting a foreign state to carry out interception which would require a warrant if carried out in this country by the domestic authorities unless the necessary warrant is in place: see *R v A, B, D and C* at [78]. It does not apply to the product of an interception which has already been carried out, or to interception which the foreign authority was undertaking in any event. In this case, the UK authorities did not request the carrying out of interception of communications from devices located outside the UK.

96. We further accept the submissions of the respondent that none of the EIOs relevant to this case was defective, and that there was no breach of s10 of IPA 2016. We reject the submissions of the applicants to the effect that the relevant EU Directive (Directive 2014/41/EO of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in Criminal Matters) excluded the use of EIOs in circumstances where a JIT had been formed. In any event, messages between the AmazonWorld and WhiteStuff devices which were contained in the material from the French TTL system were also contained in the material provided in response to the EIO issued in September 2020. That EIO was a lawful request for assistance in connection with the interception of communications stored in a telecommunication system, made in the exercise of a statutory power. The Dubai data provided in response to it, and relied on by the prosecution at trial, was not obtained by monitoring the French TTL system; so even if the monitoring of that system had been unlawful (which we do not accept), the evidence at trial did not disclose anything relating to that system and did not breach s56 of the Act.

97. We note moreover that in relation to the AmazonWorld device, the French TTL system contained no data which could be accessed by the NCA officers: the first information about a threat to life revealed by that device was sent in a different way, on a "police-to-police" basis, several days after the device had ceased to be used.

98. The applicants' arguments are not in our view assisted by reference to *MN*. In the circumstances of this case, the CPS were competent to issue an EIO requesting data which had already been intercepted; and the defence plainly were able to challenge and comment on the evidence effectively. The fact that the jury were nonetheless sure of guilt does not mean that no effective challenge to the evidence was possible. Moreover, it must be remembered that one part of the relevant messages was sent or received by a UK-based device attributed to an applicant, the user of which would have a full knowledge of it, and that each of the applicants in any event denied making or receiving any of the relevant messages.

99. We are not persuaded that the assertion of a breach of the sovereignty of the UAE is correct; but even if it were, it would do no more than provide an alternative basis on which the applicants might have sought to exclude the Dubai data pursuant to s78 of PACE. It would not have rendered the evidence inadmissible, and we reject the

submission that it would have provided a basis for taking the exceptional step of staying the proceedings as an abuse of the process.

Issue 2: Admissibility of evidence: the Dubai data:

100. We do not think it necessary to address the respondent's argument that the statement contained in these spreadsheets was real evidence, not hearsay: that was not the basis on which the judge admitted it, and no applicant submits that he should have proceeded on that basis. Instead, the judge treated it as hearsay evidence and, in our view, conducted an unimpeachable assessment of its admissibility in accordance with s117 of CJA 2003. The arguments put forward by the applicants in challenging the admissibility of this evidence were jury points: the judge was correct to conclude that the criteria of s117 were satisfied, and that the reliability of the statement made in the spreadsheets was not doubtful so as to lead to its exclusion under s117(7).

101. The applicants' submissions are not in our view assisted by reference to *Yalcinkaya*. The key principles stated by the Grand Chamber in that case, in particular at [303] were already well established: a review of the overall fairness of the proceedings must incorporate an assessment of whether the applicant had been given the opportunity of challenging the evidence and opposing its use; and the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its accuracy or reliability. As we have already noted, the applicants in this case were able to, and did, address all those matters, and there was no inequality of arms as between prosecution and defence.

102. We therefore agree with the conclusion of the single judge when he said in relation to this issue:

> "Ultimately, the matter was one for the judge's evaluation under s117 of the Criminal Justice Act 2003. He correctly directed himself as to the law. He took into account and balanced the relevant factors. He also noted that there was other evidence lending support to the reliability of this evidence. I can, overall, see no valid argument that the judge's evaluation and conclusion were not properly open to him."

Issue 3: Jury irregularity:

103. We do not accede to the request for disclosure of the jury's notes. The judge had to, and did, steer a careful path to inform counsel of as much as possible of the content of the notes, without breaching the prohibition on revealing the jury's discussions or individual decisions.

104. Nor do we think it necessary or appropriate to exercise our powers under s23A of the Criminal Appeal Act 1968.

105. We of course accept the principles stated in *Campbell*: but that decision, with respect, reflects the established principles which the judge plainly had well in mind, and is consistent with the approach which in this jurisdiction is required by the Criminal Practice Directions.

106. The judge did not omit any of the steps in the process required by Crim PD 26M: he took those steps in a way which the applicants now say was wrong.

107. The judge's decision to discharge A may at first glance seem anomalous, but in truth it was no more than a recognition that A could not realistically continue to serve. A was not, of course, entitled to decide for himself that he would resign from the jury; but it was clear from his notes that he suspected all or many of his fellow-jurors of committing perjury, and that he refused even to come into court with them. He did so on the basis of a mistaken assumption which could not be corrected in a way which could realistically be expected to enable A to continue to serve. It is clear that the judge made a careful assessment of all relevant factors, and he was entitled to conclude that there was a high degree of necessity to discharge A.

108. As to the remaining 10 jurors, we accept that careful further questioning could have been undertaken without trespassing on forbidden territory. In particular, it would have been possible to ask if Y, since her discharge, had said anything to any juror which added to or differed from the view as to verdicts which she had expressed in deliberations before her discharge. We have given anxious consideration to the point made on behalf of the applicants, that the judge had not asked, and therefore could not know, whether Y had said anything to any juror about researching the case since her discharge. In our view, however, the judge could be confident that if any juror had referred during deliberations to Y having mentioned any such matter, the judge would be aware of it because A would have reported it. A did not report any such thing: on the contrary, his principal concern appears to have been that other jurors, and Y, were discussing the views which A himself had expressed.

109. In those circumstances, the fact that Y had served as a juror throughout the trial and for a significant part of the deliberations was a very material factor against discharging the jury. There was nothing to suggest that Y, after her discharge, had communicated anything different from the views she had expressed during the first two and a half days of deliberations. The judge was in our view entitled to take the view that further questioning was not necessary.

110. The applicants repeatedly emphasised A's description of the note of Y's views which was shown on the whiteboard as an "influencer". In our view, the emphasis is misplaced. It can be presumed that Y had made her views known before she was discharged. Jurors who agreed with something she had said were entitled to follow their own views. We see no basis for suggesting that jurors who disagreed with Y would be caused to change their minds simply because there was a note on the whiteboard.

111. We reject the suggestion that the judge allowed insufficient time for trial counsel to take instructions before making submissions as to an important issue. We accept that the judge understandably wanted to deal with the matter as quickly as possible, but he said nothing to suggest that any request for further time would inevitably have been refused. If counsel had needed more time, they could, and no doubt would, have asked for it. They did not do so.

112. We do not receive as fresh evidence the statements on which Miller seeks to rely. If counsel had misunderstood clear instructions which Miller had given from the dock, it is to say the least surprising that he did not complain about it immediately. We are

therefore far from convinced that his statement is reliable. In any event, even if Miller had given such instructions, his preference would not have provided a reason for the judge to depart from the course which he had concluded was appropriate. The proposed fresh evidence therefore could not afford a ground for allowing Miller's appeal.

113. The judge was faced with a difficult and changing situation. A alleged that X had communicated with Y, but X had answered 'no' to the first question. A also alleged that other jurors had communicated with Y, but only Z had admitted doing so. The judge took into account that A appeared to have made the incorrect assumption that other jurors had answered 'yes' to the first question; and he made clear to counsel (see paragraph 67 above) that only Z had done so.

114. The judge was also entitled to take into account his experience of conducting the trial over a period of weeks, and his assessment of what may be described as the jury dynamics. He was well placed to assess, for example, the extent to which the notes reflected an apparent clash of personalities between A and one or more of the other jurors. In this context, the stance taken by all counsel is important: it was of course for the judge, not counsel, to make the decisions; but he was entitled to take into account the collective view of all the legal representatives who had been involved in the trial.

115. The separate complaint made by A, about discussions in his absence, plainly did not provide any basis for discharging the jury, and was appropriately addressed by the judge's further directions.

116. We have no doubt that the judge rightly had as his primary concern the impact on the trial of the irregularities which A had reported. He carefully followed the process set out in Crim PD 26M, and we are not persuaded that he fell into error in the manner in which he did so. The second question which he asked of the jurors was in our view critical. By their answers, all the remaining 10 jurors had confirmed that they could remain true to their oaths or affirmations, and return true verdicts according to the evidence. Notwithstanding the matters relied on by the applicants, the judge was entitled to accept those answers as truthful, and to conclude that a fair trial remained achievable.

Issue 4: The summing up of Stokes' case:

117. It was Stokes' choice not to give evidence. He therefore cannot complain that the judge's summing up reminded the jury, entirely appropriately, of what had been said by Miller and Palmer. It would have been unfair to those applicants if the judge had failed to mention their evidence, simply because he could not give a corresponding summary in Stokes' case. Insofar as that exposed a difference between Stokes' position and those of his co-accused, that was a product of his own choice and not a matter for criticism of the judge.

118. We do not accept that, in his summing up of the prosecution evidence, the judge failed sufficiently to remind the jury of those points which are said to have favoured Stokes. In particular, he reminded the jury that, in relation to the issue of co-location of Stokes' mobile phone with one of the EncroChat devices, the prosecution's expert witness had conceded that –

> "… he had identified occasions when used cells were a considerable distance apart at similar times, so that it was possible they were not co-located but sometimes, he said, it was not possible to say either way."

The judge also referred to the document which Stokes' counsel had provided to the jury, showing the defence analysis of the co-location evidence.

119. After submissions on behalf of Stokes in which reliance was placed on the decision of this court in *R v Singh-Mann* [2014] EWCA Crim 717, the judge included in his summing up the following passage:

> "First, the principal issue is whether you can be sure that Elijah Stokes sent the messages on the Worldscooter and Betterbee devices that are relied upon by the prosecution, and it is said that the co-location evidence is not consistent with his sole use of those devices. Secondly, there is an issue that if you are sure that those were his messages, it is said you cannot be sure that the messages contained a conspiracy to murder anyone and, if it did, that you cannot be sure that the target was Reiss Larvin. It's also said that the Bicester and Bedworth journeys are explicable by coincidence, drug use or some other matter and don't go to prove these conspiracies."

120. That passage of course has to be set in the context of the judge's review of the prosecution evidence and the challenges to it. It must also be borne in mind that if the judge had adopted a different approach, and had rehearsed counsel's submissions as well as the evidence, he would have reminded the jury not only of the points made for Stokes but also those made against him.

121. Stokes relies on the following statement of principle in *Singh-Mann* at [90]:

> "On the basis of those authorities, it is clear that when a defendant has said little or nothing in interview and has elected not to give or call evidence, ordinarily the limit of the judge's duty is simply to remind the jury of 'such assistance, if any, as (defence) counsel had been able to extract from the Crown's witnesses in cross-examination' and any 'significant points made in defence counsel's speech'. In this context, it is to be stressed that in order to present a defence to the charges the defendant is not compelled to give or to call evidence; instead, he is entitled to rely on evidence presented by the prosecution or by his co-accused when advancing arguments for the jury's consideration as to whether the prosecution has established his guilt. The rehearsal of this material by the judge does not necessarily have to be extensive or detailed – indeed, frequently it will be sufficient merely to identify the central submissions and the evidence that underpins them – but the judge must generally ensure that the jury receives a coherent rehearsal of the main arguments that are being advanced by the accused."

122. It may be noted that in *Singh-Mann* the court found that the trial judge had failed to summarise the defence submissions, but that the convictions were nonetheless safe: the central issue was straightforward, the jury would clearly have appreciated the arguments and issues that they needed to bear in mind, and the prosecution case was extremely strong.

123. Here, the case presented on behalf of Stokes was essentially very simple: he admitted that he had used the two EncroChat devices attributed to him, but denied that he had sent or received the messages on which the prosecution relied. He did not give evidence to explain why he used the EncroChat network, or to explain who was or may have been using the devices at the material times. He did not call any defence evidence in support of his challenge to the reliability of the co-location evidence: that aspect of his case relied on cross-examination of the prosecution's expert witness, and the jury cannot have failed to understand the reliance placed by the defence on suggested deficiencies in the prosecution's case. There was ample evidence on which the jury could be sure that Stokes was indeed the user of the relevant devices at the relevant times; and once they were satisfied on that issue, the inference from the evidence as a whole that the relevant messages related to a conspiracy to murder was very strong.

124. In our view, the judge's summing up of Stokes' defence was sufficient and fair in all the circumstances of the case. The contrary is not arguable.

125. In relation to the applications for leave to appeal against conviction, we have stepped back and considered the overall position at trial. The applicants were able to give evidence and put forward their own accounts if they wished to do so. Whether or not an applicant gave evidence, he was able to, and did, put forward reasons why the jury might not be sure that the EncroChat evidence was reliable or that one or more of the relevant exchanges of messages had correctly been attributed to a particular applicant. Nonetheless, the evidence as a whole provided ample support for the jury to be sure that the evidence was reliable, and sure that each of the applicants had exchanged EncroChat messages, had been a party to an agreement to murder, and had intended that the agreement would be carried out.

126. For those reasons, we are satisfied that the convictions are safe.

Miller's application for leave to appeal against sentence:

127. No challenge is made to the imposition of the life sentence, but Miller submits that the minimum term of 30 years was manifestly excessive. In particular, it is argued that the judge gave undue weight to the count 2 offence. It is submitted that the count 2 offence was effectively an extension of the criminal enterprise which involved the count 1 offence. Comparing Miller's minimum term with that imposed on Palmer, it is submitted that the judge must have increased the notional determinate sentence by 10 years solely to reflect the count 2 offence.

128. There is, in our view, a short answer to this submission. Having presided over a long trial, the judge was in the best position to assess Miller's overall criminality. We note that after the first attempt to shoot Larvin had failed, it was Miller who contacted O'Brien offering to "finish off" Larvin. We agree with the respondent's submission that the judge was therefore entitled to view Miller as having a senior role in the count

1 conspiracy. Miller also displayed his readiness to kill another person for money, which added substantially to the seriousness of his offending. Although the count 2 conspiracy was of short duration, that was because the EncroChat system was compromised: it did not reflect any change of heart on Miller's part. In those circumstances, the judge's decision to reflect the count 2 offence by an increase of 10 years in the notional determinate sentence for count 1 was within the range properly open to him. We can see no basis on which it could be argued that the overall sentence was manifestly excessive.

Conclusions:

129. For the reasons we have given, we refuse the applications for leave to appeal against conviction on the grounds relating to the admissibility of evidence and to the summing up of Stokes' defence. We accept that the submissions in relation to the issue of jury irregularity have raised arguable points, and we therefore grant each of the applicants leave to appeal against conviction on that ground; but we dismiss their appeals. We refuse Miller's application for leave to appeal against his sentence.

130. From the applicants' points of view, the effect of our decisions is that they remain convicted and sentenced as before.

131. We add finally that in the light of recent guidance by this court, including in *R v Sesay* [2024] EWCA Crim 483, [2024] 2 Cr. App. R. (S) 30, the minimum terms imposed on both Miller and Palmer were incorrectly expressed. We direct that the record be amended to show that their sentences were as follows:

    i) Miller: count 1: life imprisonment with a minimum term of 27 years 41 days;

    ii) Miller: count 2: life imprisonment with a minimum term of 12 years 41 days

    iii) Palmer: count 1: life imprisonment with a minimum term of 20 years 41 days.