Report on an Announced Inspection of HMP Whatton

Inspection 30th Jan/3rd Feb 2012 by HMCIP. Report compiled Mar 2012, published 12th June

HMP Whatton's population is made up exclusively of sex offenders. It focuses on managing and reducing the risks presented by this inherently high-risk group of individuals, and on ensuring that they are resettled in a way that is helpful to them and safer for the communities to which they return.

Inspectors were concerned to find that: - not all the sex offenders who required it were receiving the treatment they needed - the prison's approach to resettlement was mixed, with clear weaknesses in strategy, ineffective needs analysis and a need for greater coordination of effort and provision; - while offending behaviour work was excellent, the resources required and the huge demand meant that there was still insufficient provision, particularly in programmes for sex offenders; - many prisoners waited months in many cases years for a place on a programme, leaving some well beyond their sentence tariff or unable to move to lower category prisons; - a small number of prisoners were discharged without having completed a sex offender treatment programme at all; and - there was too little vocational training and limited opportunities for learning progression. - A quite significant number of prisoners self¬harmed

Accused wrongly sentenced should have received compensation for non-pecuniary damage

Chamber judgment in the case Poghosyan and Baghdasaryan v. Armenia (application no. 22999/06), which is not final", the European Court of Human Rights held, unanimously, that there had been: A violation of Article 3 of Protocol No.7 (compensation for wrongful conviction) to the European Convention on Human Rights. The case concerned the dismissal of the applicant's compensation claim after his conviction for murder and rape had been quashed and he had spent 5 years and 6 months in prison. This was the first judgment in which the Court examined a complaint under Article 3 of Protocol No.7 on the merits and concluded that there had been a violation. The Court found in particular that compensation was due even where the domestic law or practice did not provide for such compensation, and that the purpose of Article 3 of Protocol No. 7 was not merely to recover any pecuniary loss caused by wrongful conviction but also to provide a person convicted as a result of a miscarriage of justice with compensation for any non-pecuniary damage such as distress, anxiety, inconvenience and loss of enjoyment of life.

Mr Poghosyan ("the applicant") was found guilty of murder and rape and sentenced to 15 years' imprisonment. He alleged throughout the proceedings against him that he was innocent and that he had confessed to the crimes only after having been ill-treated in police custody.

In April 2004 he was released from prison when his conviction was quashed, the actual perpetrator of the crimes for which he had been convicted having been found and procedural violations during the examination of the case having taken place.

Hostages: Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar,Jordan Towers, Peter Hakala, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Simon Hall, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter 'Inside Out' No 376 14/06/2012)

Justice for Anthony Parsons

'The subject matter of joint enterprise is not a state of mind or intention but an objective act which it is contemplated will or might be done'

On 9th March 2007 Anthony Parsons were convicted by a jury at the Maidstone Crown Court of 'Joint Enterprise' of the murder of Ben Chantler. Stuart Benson was convicted as the index offender as he fired the shot that killed Mr. Chantler.

Anthony and this is not disputed by the Crown Prosecution Service was not in the presence or sight of Benson and Chantler, when Chantler was blown apart with a sawn of shotgun by Benson who had a propensity to violence.

Despite two appeals Anthony remains convicted of 'Joint Enterprise', below is a transcript of the grounds of his final appeal, that gives a definitive outline of the case and many useful references to other 'Joint Enterprise' cases.

Anthony and his family at the moment are looking for somewhere to turn and would welcome any input from any families who are fighting 'Joint Enterprise' Convictions.

Anthony Parsons - Grounds for Leave to Appeal Against Conviction

1. On 9th March 2007 Stuart Benson and Anthony Parsons were convicted by a jury at the Maidstone Crown Court of murdering Ben Chantler. The Crown alleged that at just after 11pm on 30/01/2006 Benson had shot Chantler with a sawn off shotgun at point blank range as Chantler came to the window of his house in Folkestone. Parsons had driven him to the street where Chantler lived . Benson had a motive to attack Chantler. Parsons, who was Chantlers friend had none. It was alleged that Parsons had been instrumental in trying to lure Chantler out of his house by getting his brother Martin Parsons to telephone him and ask him to deliver drugs to Martin Parsons' house in the same street. Parsons then drove the car with Benson in it round the corner a few streets away, to await Chantler. Benson however left Parsons in the car and walked to the street where Chantler lived. He came upon a friend of Chantlers - one Tom Evans who had just left Chantler's house. He frog-marched him back to the house at the point of the gun and forced Evans to ring the doorbell so that Chantler came to the window where he was shot. Parsons said that Benson returned to the car and required Parsons to drive him away from the scene and then spend the night with him in a public house in Folkestone called the White Lion. He made it clear that he must not tell the Police about what he had done. Parsons did give a witness statement to the Police and did not say what had happened to Chantler at the hands of Benson. He later returned to the police station saying that he could not live with what had happened and spoke of what had occurred that night.

2. Both were sentenced to life imprisonment. Benson was told that he must serve a minimum of 30 years, Parsons 24.

3. Parsons seeks leave to appeal his conviction because the learned trial judge Cooke J (1) whilst permitting the jury to know of Benson's character namely his criminal record and details of the misconduct he had reported to a number of psychiatrists, in error did not permit Parsons to adduce evidence of Bensons psychiatric condition. Benson was a psychopath; and (2) ruled that in the case of Parsons, the jury should not be invited to consider whether he might be guilty of manslaughter,

Parsons having admitted to the Police that when he drove Benson to the street where Chantler was killed he, Parsons thought that Chantler might suffer a less than grievous injury.

4. Bad Character:Benson denied killing Chantler. Parsons told the Police when interviewed and repeated in evidence that he did. Benson in turn suggested to the Police and in evidence that it may have been Parsons who committed the murder. He said that Parsons arrived at the White Lion Pub in Folkestone where Benson was spending the night " in an agitated state " some time after midnight an hour or so after Chantler had been shot ; that Parsons had boasted that he had a sawn-off shot-gun because he had had a relationship with a 14 year old and her relatives were after him. In a prepared statement he gave to the Police, Benson said (referring to a possible drugs transaction, Chantler being a small scale supplier of drugs) "I believe that the transaction between himself and Chantler may have resulted in some form of dispute which led to Parsons attacking Chantler" . This was an attack on Parsons not only in relation to their respective accounts as to what happened that night but also as regards Parsons' general character. Further, it was plain that Benson suggested that it was Anthony and his brother Martin Parsons who gave evidence for the Crown, who were involved, perhaps with others in the murder of Chantler.

5. Benson's defence statement pleaded that Ben Chantler bought and sold drugs and was known to associate with Kent and London drug dealers; that he was in dispute with biker gangs; that he had made a girl pregnant and her relatives had made threats against his life; in relation to Parsons that he "is violent and has a history of violence involving weapons (and) Anthony and Martin Parsons have been in possession of firearms".

6. Parsons and others spoke of their fear of Benson. Parsons described his fear of Benson to explain what was relied on by the Crown as suggesting complicity in the murder e.g. driving Benson away from the scene of the murder, going to the White Lion after the death of Chantler and giving a misleading witness statement to the Police. Evans and Ben Chantler spoke of their fear of Benson who is variously described as "nutter" and "psycho". Evans was so frightened that he failed initially to identify Benson as the killer. Ben Chantler was so frightened that he failed to identify him as the man who had assaulted him with a knife a day or 2 before the murder. Parsons was so frightened that he failed to identify him in his witness statement. Parsons also described a bizarre incident when Benson shortly before the killing at the home of Bensons girlfriend had taken out a gun and pointed it at him for no reason so that he thought that he was to be killed; that following the killing of Chantler he, Parsons was told where and how to drive and then thought that Benson was going to kill him; that he was forced to sleep in the same bedroom as Benson, almost held prisoner; that he was threatened that he must not say anything about what had happened. He said that a reason for Benson insisting that his number or call to Martin Parsons' phone earlier that evening be deleted was not a desire to conceal that fact that Benson had been in contact with the man who was being used to lure Chantler out of his house as suggested by the Crown but rather Benson's paranoia. He plainly wanted the jury to accept this evidence. It was important for Parsons therefore not only to show that he was telling the truth when he said that Benson was the killer but also to be able to support what he said happened that night by informing the jury of exactly the sort of man Benson is.

7. It was integral to Parsons' defence statement that Benson is mentally unstable and that for that reason, a most frightening man. Unless the jury knew of Bensons psychological condition, they would not appreciate that for example an innocent person might well become involved in an incident because of the manner in which the principal with his propensity to deceive and manipulate and his capacity to act in an irrational and unexpected way, was able to behave. Nor would they understand why it is that Parsons behaved as he did after the killing. Further the jury would be likely to

and how to bribe and bully information out of their network of contacts.

Nor did it stop at mere bullying: he sanctioned torture, and torture there certainly was. Domestically, he set up a system for mail interception which meant that any letter sent by anyone even faintly suspected of treason was read by him before it got to its intended recipient. Letters then were carried by messengers or couriers who were more often than not in his employment. He even worked out a plan for filching Mary Queen of Scots' outward mail: he conned her into thinking that smuggling letters out in a beer keg was her idea and therefore safe. In fact, he used that service to provide him with access to all her mail. He brought her down by suborning an ex priest whom she trusted into giving her fake letters – her answers led to her death when an actual plot was eventually discovered. The plot was feeble in the extreme – but she still went to the scaffold for it. He planned for success: the surveillance on her went on for years before there were actual grounds for suspicion.

Latter day Walsingham: How very different from the home life of our own dear Queen! The long brawl of history has surely brought us to a state of such civilisation that the idea of spying on the people, treating them as suspects not citizens, intercepting their mail, gathering information on their pursuits, suborning their service providers and tracking their movements just in case a plot is in the offing is barely credible. It could not happen now, or here. Surely?

When the Queen, teeth royally gritted, announced that her government would shortly bring in the Data Communications Bill to ensure that all our internet and mobile phone data and traffic was kept and stored just in case some latter day Walsingham wanted to snoop at in future did she, in her diamond year, feel the shadow of a dark history?

Bail refused to Simon Tang Murder Accused, Over Graffiti Campaign

Simon Tang with his wife and two sons Father of two Simon Tang died after being beaten and robbed outside his Chinese takeaway in June 1996.

One of the men charged with murdering Simon Tang in Carrickfergus 16 years ago must remain in custody, a High Court judge has ruled. Bail was refused to Paul Allen, 38, of Drumhoy Drive, after the judge heard of an "orchestrated campaign" in the town to thwart the police's investigation. The judge was told graffiti has appeared which claims police are targets due to the reopened inquiry. Opposing bail due to fears of interference with the ongoing investigation, he added: "Police believe that the graffiti and general discontent in the area is inextricably linked to the arrest and charge of Allen."

Mr Allen and George Robinson, 36, from The Hollies, both in Carrickfergus, were arrested and jointly charged last month. Both men deny any involvement in the killing. Three anonymous witnesses, identified only as Witness A, B and C, have now given evidence against the two men. The court was told one of them claimed to have overheard a conversation between two men in a bar, in which one of them said they did not mean to kill Mr Tang. A prosecution barrister said it was claimed it was Mr Allen who made the remarks. Mr Robinson was previously granted bail on cash sureties of £10,000 and ordered to keep out of Carrickfergus.

Mr Allen's defence lawyer argued there was not enough distinction between the two accused to mean his client should remain in custody. He also disputed the reliability of the witness evidence and questioned why one of them, thought to have been employed by Mr Tang, had waited 16 years to come forward. "This matter quite rightly featured in Crimewatch and there was a reward of some thousands of pounds.When one looks at someone coming forward 16 years later, and that person having a professional, if not emotional connection to Mr Tang, there are issues." [End]

show a united front... we've got to keep moving on.

Gail Hadfield Grainger, partner of Anthony Grainger said; Fathers day is for all the families to stand together and be counted as one, also to bring all the people who are fighting for their loved ones in the media to keep the momentum going in the public eye, and to help prevent things like this happening over and over again. We want to push to be the change in society that we all need. Justice for one, justice for all.

Sheila Sylvester, Mother of Roger Sylvester said; I am surprised to know that the police and the state are still killing people! Change was supposed to come since Roger's death, but in the past 12 years nothing has really changed. The system should be ashamed of itself! You have to have a lot of money to fight these cases, but all you get is an Inquest, and nothing comes out of an Inquest.

Charlie Williams, BirminghamStrong Justice 4 All said; We will be supporting this event while we continue to support all families' campaigns across the UK by building the public awareness of deaths in custody.

Behind bars / As you string out the bunting Jeannie_Mackie, Solicitors Journal, 1st June 2012

Surely our modern, freedom-loving society cannot condone the type of snooping laws seen in Elizabethan times, asks Jeannie Mackie

History is much among us in these Jubilee days. The Thames, rather wonderfully, was again used as a central waterway, and a Royal Barge replicating the one used by the first Elizabeth, for the second Elizabeth's ceremonial progress on the river. And, inevitably, there will be encomiums about a second Elizabethan age. Two queens, one who has lived long enough for even republicans to realise she keeps the idea of the community of nations alive in a time of genocide, and the other who beheaded, burnt, imprisoned and tortured dissidents and fought like a cat with her European neighbours. There can be few comparisons between these reigns. Elizabeth was, like her father and grandfather, a plotting despot who kept her monarchy safe by methods which, if used now, would be somewhat at odds with most of the articles of the European convention. Right to life? Pshaw. Right not to be tortured? Are you joking? Right to a fair trial? You are joking! Article 8 rights to privacy? Do stop trying to be funny.

School for spies: Elizabeth I's reign was a template of the surveillance state. Her grandfather started it – Henry VII kept tabs on his Yorkist rivals by keeping paid informants among their servants, and annotating the secret information so obtained in the account books over which he pored obsessively. He knew their goings out and their comings in, and jotted down what this information cost him to obtain in shillings and pence. Elizabeth delegated this rough business to her chief spy master, Francis Walsingham. A lawyer, and a passionately anti-catholic protestant, Walsingham became secretary of state in 1568 and devoted the rest of his life to keeping his sovereign – and by natural extension her realm – safe from the threats of invasion , assassination and usurpation. The threats came from Catholics, from Europe, and from the enemy within, Mary Queen of Scots.

To counter these dangers, he instituted a secret service which he deployed to listen at doors, intercept letters, decode communications, and spy for the good of England and national security. And he was phenomenally efficient. In the 1570s he created an actual school for spies in London, recruiting under graduates from Oxford and Cambridge to train up in cryptography and the other dark arts. Many were sent abroad, to Spain, Italy and France – the catholic countries whose fundamental principles he saw as dangerous to his queen. They were taught how to code and de-code, how to open letters and seal them again for their onward journey,

approach the case on the basis of what one might expect of rational human beings and Parsons would not be able to explain the truth of his own state of mind and the reasons underlying his involvement. In other words he would not have a fair trial of the issues.

8. S101 (1)(e) CJA provides that evidence of a defendant's bad character is admissible if but only if "(c) it is important explanatory evidence ." •"(e) it has substantial probative value in relation to an important matter between the defendant and a co-defendant" (See Archbold 13-25.) By S102 (see para 13-29 Archbold) evidence is important explanatory evidence if • " (a) without it the court or jury would find it impossible or difficult properly to understand other evidence in the case" and •"(b) its value for understanding the case as a whole is substantial".By S104 (1) "Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under S 101 (1) (e) only if the nature or conduct of his defence is such as to undermine the co-defendants defence". (See para 13-70 Archbold).

Gateway 101 (1)(e) is wider than 101 (1)(d) which is restricted by s103. S104 is not exhaustive of the scope of S101 (1)(e).

9. A number of psychiatrists examined Benson in 2003 and 2004. The general view was that he was a psychopath, had dissocial personality disorder and a paranoid personality with callous unconcern for the feelings of others, a low threshold for discharge of aggression, incapacity to experience guilt, marked proneness to blame others, to offer plausible rationalisations for his behaviour, excessive sensitiveness to rebuffs, a tendency to bear grudges, use of violence to gain respect from others.

10.This was supported by : • a number of incidents of and convictions for violence as described in the summary attached hereto. • The various incidents and misconduct described by Benson himself and attributed to him in the Broadmoor records and reports and summarised in the document entitled "hearsay and bad character (psychiatric) evidence…" attached hereto.• A prolonged assessment of Benson whilst at Broadmoor.

11. The Crown referred to a number of convictions/incidents of misconduct as follows • Maidstone Crown Court 19/5/97.Robbery. • Maidstone Crown Court 5/3/99. ABH 10/7/98. Wounding 4/12/98. Additionally Benson pleaded guilty to two counts of possessing drugs with intent to supply on 4/12/98 (Amphetamine/MDMA).• Folkestone Mags 26/7/00. Common assault 3/6/00. Assault with intent to resist arrest 25/4/00.• Folkestone Mags. 28/5/03. Causing unnecessary suffering to an animal 24/3/03 .• Milton Keynes Mags. 28/5/03. Battery x 2 (22/6/02). • Worcester Crown Court 30/7/04. GBH 20/2/02 .Prison mutiny 18/6/02 –21/6/02 (20/2/02 incident). • 18/9/06 at HMP Highdown. ABH on a prison officer

12. The first report was prepared as Benson was awaiting trial for the prison mutiny. He was awaiting sentence for the assault on the prison officer on 20/2/02.

13. The reports are dated 14/7/2003 Dr O'Connell; 20/1/04 Dr Lewis who assessed Benson for suitability for admission to Broadmoor on 2/12/03 ; Dr Romanos following his conviction for prison mutiny and admission to Broadmoor on 9/3/2004 and as he was awaiting sentencing (the report is dated 6/7/04 and is based on the case conference report) ; Dr Kennedy ; Fiona Clark dated 22/7/04 ; Dr Kingham 12/ 7/04 and 29/7/04. The relevant parts of the reports and records appear in the summary of evidence attached hereto.

14. Following his release in relation to those matters it is said that on 29th January 2006 he killed Chantler. He was arrested and remanded in custody. On 20/9/06 he assaulted a prison officer Hatt by punching him in the face and on the back. It was a sustained attack lasting 5 – 10 seconds. Hatt ended up with injuries to his cheek, chin and jaw.

15. This evidence comprising the convictions and the facts relating thereto, what Benson told the various psychiatrists and their opinions was evidence of a “disposition towards misconduct” (see S98 and para 13-5 Archbold). Misconduct is defined as the “commission of an offence or other reprehensible behaviour” S112 (para 13-8 Archbold). It invites “censure rebuke or reprimand” (OED). This evidence tended to : • Show that it is unlikely that Parsons rather than Benson shot Chandler; • Support what Parsons was telling the Police; • Undermine what Benson alleged against Parsons.

By reason of the conviction of Benson, the jury plainly accepted that it was Benson who shot Chantler and so the evidence of bad character which the judge did allow in namely the convictions and other misconduct reported by Benson to the psychiatrists may have had some effect.

16. Crucially however the evidence of bad character and in particular evidence of Benson’s psychiatric condition went to support Parsons account of : • Benson pointing the gun at him at the house of Benson’s girlfriend (exhibits interview of Parsons pp 79 129 130 131 nd the night at the White Lion following Chantler’s death (pp 81-84 154 215 216 217 218)

17. This evidence had “substantial value in relation to an important matter in issue between” Benson and Parsons. One issue was whether the one rather than the other shot Chantler and how the other became, innocently it was submitted, involved. This was a brutal and irrational killing. Benson suggested that it could only have been committed by someone with good reason e.g. following a drug related dispute either involving Parsons or the Hells Angels. Parsons was entitled to submit that the psychiatric evidence plainly showed that it is more likely that it was Benson with all the characteristics of a psychopath and with the other attributes of his disordered mind who killed Chantler; that it was Benson who with those characteristics did not hesitate to take advantage of and involve Parsons as an innocent dogsbody not caring that he would gain knowledge of what Benson had done but would be so frightened of Benson that he Benson might have a degree of confidence that Parsons would say nothing against him. He instilled such fear in Parsons that even as Parsons woke up the following morning, Benson was awake and watching him. Without evidence of Benson’s psychological condition, the jury might well view Parsons’ account as simply incredible.

18. In Lowery (see page 101 and 102 of the report) counsel for one defendant was allowed to call evidence of a psychologist as to the respective personalities of the two defendants and on that evidence to invite the jury to conclude that the one was less likely than the other to have committed the killing. At page 101Lord Morris said “If in imaginary circumstances similar to those of this case it was apparent that one of the accused was a man of great physical strength whereas the other was a weakling it could hardly be doubted that in forming an opinion as to the probabilities it would be relevant to have the disparity between the two in mind. Physical characteristics may often be of considerable relevance… The evidence of Professor Cox was not related to crime or criminal tendencies: it was scientific evidence as to the respective personalities of the two accused as and to the extent revealed by certain well known tests.”

In Randall it was accepted in the House of Lords that such psychological evidence as to personalities was capable of being relevant (see paras 27 –29).

19. Whilst the Law Commissions draft bill aimed to provide for a requirement of judicial leave to adduce evidence of character, the scheme in the CJA omitted the leave requirement and in respect of this gateway Section 101(3) confers no judicial discretion to exclude (see eg Lawson at para 34)

20. It cannot be doubted that this evidence , once it was accepted that it was evidence of a disposition to misconduct was admissible at the behest of Parsons and there was no dis-

National Fathers Day Vigils to Remember All Those Who Have Died in Custody

Vigils will take place on Sunday 17th June 2012 between 12 noon to 3:00 pm

Events supported by The 'United Families & Friends Campaign' (UFFC) a national coalition of families affected by deaths in police, prison, psychiatric and immigration custody or detention.

A number of peaceful vigils will be taking place around the country on the same date and time in remembrance of fathers that have died in various forms of custody. The vigils were initially triggered by the family of Wayne Hamilton from Sheffield. Wayne, aged 24, was found dead in a Sheffield canal on 16th June 2010. He had been reported missing by his worried family on 11th June when a friend rang them to say the last time he had seen Wayne he was running off with police officers chasing him. A number of other campaigns and family groupings in other cities have replicated the use of a Father's Day event to remember those that have died in various forms of custody in the United Kingdom and as a show of national solidarity. These peaceful vigils will be taking place in Manchester, Birmingham, Central London, Brixton, Tottenham, Sheffield, Slough, High Wycombe and a number of other locations across the country. Not all are confirmed or detailed in the following.

Context to the vigils: Campaigns demanding justice for those who have died in police and other custody joined forces to launch an ambitious petition on 20th January 2012 calling for major changes in the criminal justice system. The petition demands the replacement of the Independent Police Complaints Commission with a body genuinely independent of the police, and the suspension of officers involved in deaths in custody for the duration of any investigation.

Other demands include automatic prosecutions of officers following unlawful killing verdicts and the right to non-means tested legal aid for the families of those who die. The Independent Advisory Panel on Deaths in Custody report published in 2011 states: in total, there were 5,998 deaths recorded for the 11 years from 2000 to 2010. This is an average of 545 deaths per year. Despite the fact there have been 11 unlawful killing verdicts since 1990 there has never been a successful prosecution

Family statements:

Saqib Deshmukh, Justice for Habib 'Paps' Ullah said; We have joined other campaigns that are marking Father's Day so people can understand what impact a death in custody can have on families and in particular children. Habib's own children and in particular his oldest daughter have been active in the campaign and we have worked hard to make sure that they are involved and they get the answers to why he died and see justice being done.

Tippa Naphtali, Mikey Powell Campaign & 4WardEver UK said; This has got to stop. Family campaigners need to take matters into our hands in a manner more unprecedented than anything seen before. We need to adopt intelligent and collaborative responses, working with a single vision and strategy.

Jan Butler Mother of Lloyd Butler said; My son died whilst in the 'care' of the police on 4th August 2010. You cannot change some things; you cannot turn back the clock. In life there is a certain guarantee that we all one by one will some day die, but as a mother you do not expect to bury your children first. I am going to take part and share my support with other families and friends whose loved one has died in custody - the fight goes on.

Susan Alexander, Mother of Azelle Rodney said; It is now approaching 8 years since my son Azelle Rodney was killed by the Met Police in April 2005, shot 7 times in the face, neck and back. Over the years we have cried, campaigned, walked alongside hundreds of other bereaved families and often alone seeking answers, the truth and justice. We are now entering into a public inquiry (September 2012). The Fathers Day Vigil is another opportunity to

was found guilty of riot and firearms possession with intent.

Birmingham crown court heard that the gang attacked the pub to draw police into the area and once officers arrived fired at least 12 shots from at least four handguns both at officers and at the police helicopter in what the judge described as a concerted and potentially catastrophic attack. "The purpose of all this was not to loot or to steal," said Judge William Davis. "Nor was it mind less vandalism. The purpose, the common purpose, was to behave in such a way that the police would come to the scene and then to attack the police." Davis said: "The intention was to endanger life. Although no physical injury was suffered, that was wholly a matter of luck. Had the police helicopter been struck, the consequences could have been catastrophic. There may have been no physical injury to a police officer, but the damage to the wellbeing of the city of Birmingham caused by an armed gang prepared to act in this way was grave. It is very difficult to conceive a case of this type more serious than this one." The gang began its attack on the evening of 9 August, smashing windows and throwing chairs and tables onto the pavement. The court heard that some entered the pub with petrol bombs while others threw bottles and bricks at a passing police car. When large numbers of police arrived they were pelted with bricks, steel tubes and furniture before officers heard gunshots and were forced to take cover before being given the order to retreat for their own safety.

The court heard police realised they were being shot at when they heard the windows of the building behind them being smashed by gun fire. Shortly afterwards the gang ran off and at one point a member of the group aimed a handgun at the police helicopter and fired a shot. Other members of the group then appeared to hand him more ammunition. As the attack was taking place four members of staff – two men and two women – cowered in an upstairs room of the pub. "For all but one of these defendants the position is aggravated by the fact that they were party to arson at the Bartons Arms in circumstances which put the lives of those within the public house at risk," said Davis. "The defendants were completely indifferent to the welfare of those upstairs. All they were interested in was luring the police to the area. The fact that members of staff looking on helplessly upstairs were put in real fear and no little danger meant nothing to them."

At the end of the trial Assistant Chief Constable Gareth Cann said the incident had a deep effect on his officers. "This could easily have been a murder inquiry. Officers came close to being shot and, in a worse case scenario, the helicopter could have been brought down. Thankfully officers were not injured but we can't underestimate the impact it's had on those involved."

Neil Fielding, from the West Midlands Crown Prosecution Service (CPS), said the prosecution had been "enormously challenging". "The CPS and the police have worked tirelessly together to bring the offenders to justice within a very tight timescale, both to protect the community from the threat these people posed and to ensure continuing public confidence in the criminal justice system following the events of lawlessness last August." However, Davis admitted that many of those responsible may never be brought to justice. "They may never be identified because of the poor quality of the available CCTV footage and because those involved had their faces covered."

Admin Message from MOJUK

Birnberg Peirce are currently pursuing legal action against some prison governors, who have withheld copies of Fight Racism, Fight Imperialism and 'Inside Out'. They need afidavits from prisoners who have received all copies of 'Inside Out' in 2011 and in particular the months of July and December. If you have received these copies with out hindrance from prison governors, please write to: Daniel Guedalla, Birnberg Peirce, 14 Inverness Street, London, NW1 7HJ

cretion to exclude it (See Price (2004) paras 13-34; Rafiq (2005) para17; Edwards (2005) paras 24-27 40-53; Lawson (2006) para 31-35).

21. Benson sought to avoid the introduction of this evidence by adducing evidence from a psychiatrist whose opinion that Benson was not suffering a mental disorder depended to a great extent on the question whether Benson was telling the truth when he now denied the matters which he described in some detail to others during 2003 and 2004 both to his own psychiatrist Dr O'Connell, Broadmoor psychiatrists and the author of a social history report. At least two of the treating consultant psychiatrists Dr Kingham and Dr Petch said that having considered Dr Nayanis' report, they remained of the view that the diagnosis of the many experts who were involved with Benson is accurate. To the extent that these were matters which might have to be considered by the jury they were relatively well circumscribed. Benson could not show that no jury could reasonably find the matters Parsons sought to raise to be true (see S109 at para 13-104 Archbold).

This was no more "satellite" litigation than is the determination of an issue such as diminished responsibility involving the calling of psychiatric evidence.

There is no doubt that the evidence of disposition based on matters other than previous convictions will sometimes be disputed by a defendant. It may be in his interest tactically to do so. In principle evidence does not cease to be admissible simply because the defendant disputes it; and where he does its truth or falsity is a matter for the jury to decide.

22 . Finally the evidence explained the matters at para 16 above .The convictions standing alone were inadequate and misleading in describing how Benson came to be feared and considered to be a "nutter" and might mislead the jury into believing the description of Benson to be exaggerated. The truth in part appeared in the opinion and diagnosis of the psychiatrists relied on.

23. The Crown supported Parsons' application to adduce the evidence of character including the diagnoses of the 8 psychiatrists who had reported on Benson. At para 2 of the Crown's skeleton submissions, it was pleaded that the conclusions of the psychiatrists provided evidence of a disposition to misconduct and went to establish a propensity to commit offences of violence, a fair picture of Benson's character and "an explanation which has substantial value for understanding the case as a whole including why Anthony Parsons, Martin Parsons and Tom Evans behaved as they did." The submissions in referring to Parsons' application to adduce the evidence of Benson's disorder refer in terms to it going to an important matter in issue between the defendants namely " ...whether Parsons was in extreme fear of Benson that explained his conduct after the murder".

24. The trial judge ruled as follows • That as regards the Crown's application, the reports did not go to an important matter in issue between the parties; there was a grudge between Chantler and Benson and the jury did not need psychiatric reports to analyse that; they did not need the reports to be able to understand Parsons fear of Benson because evidence of Benson's reputation had already been put in.• That the labelling of the disorder added nothing and had no real probative value •That as regards Parsons' application whilst the convictions and other misconduct were relevant and went to important matters in issue and had substantial probative value the opinions of the psychiatrists did not have substantial probative value; they were not relevant.

25. It is submitted that the opinions of the psychiatrists were plainly relevant and admissible (see in particular Lowery) and the trial judge had no discretion to exclude them at the behest of the co-defendant Benson. As between the two defendants there can be no question of holding a balance as there might be as between the Crown and a defendant.

26. Further when it came to summing the case up to the jury the trial judge pointed out as indicative of guilt the very matters which Parsons sought by this evidence to explain. Those matters were of crucial importance in Parsons' case because if the jury thought that there was no credible explanation for the matters spoken of by Parsons then it was inevitable that they would use them in the balance when deciding his guilt. The trial judge did not direct the jury that there was anything in the bad character evidence which went to support Parsons contention that the character might go some way to explaining the matters at para 16 above.

27. Manslaughter: Shortly before his arrest Parsons told the Police that after Benson returned to the car after Chantler had been killed Benson said "Its bad news something has gone wrong". He was later asked "Did you know someone was going to get hurt that night" to which he replied "Not 100% no when (he then refers to going to Benson's girlfriend's house and seeing that Benson was dressed in dark clothing). I thought something was going on. I thought he was going to get robbed or something … or hurt him stab him or something". "How were you feeling at the time?" " A bit on edge, uneasy". "Did you have anything to do with the killing of Ben Chantler". " No".

The reference to stabbing could have been a reference to two incidents which had occurred shortly before the murder the one when Chantler had been stabbed rather superficially by Benson the other when Chantler had wounded Benson. Neither involved serious injury.

Even if Parsons was aware of Benson's possession of the gun, it would have been open to the jury to conclude that he did not know that Benson intended to shoot Chantler in the head at point blank range or inflict any serious injury to him. Parsons was asked in cross-examination by the Crown whether he believed that Benson might "pepper". Chantler with shot and that presupposes the possibility that even with a shotgun, serious injury might not have been intended. In other words although with hindsight it is known that Chantler was shot in the head, the carrying of a shotgun does not inevitably mean that serious injury or death will result..

26 The judges ruling on manslaughter is attached. In it he says that the Crowns case is that Parsons drove Benson " in the full knowledge that a shooting was to take place"; that Parsons' evidence was that he had " no idea that Benson planned any harm to the victim" but that by reason of what he told the police " the intention of Parsons is of significance in the context of any potential joint enterprise ..."He was of the view that the matter was concluded by Powell and English and that if Parsons envisaged a different actus reus to that undertaken by Benson namely the "shooting of the victim in the face" then he would be not guilty of murder or manslaughter but if he realised that as part of the joint enterprise "(it) might happen as a real and substantial risk of carrying out that joint enterprise or plan" then he would be guilty of murder but if the shooting in the face was something fundamentally different from what he foresaw as a risk of the plan then he would be not guilty of murder or manslaughter. "If he envisaged the use of a gun to wing the victim or pepper him from a distance in such a way as not to cause serious bodily harm then the question for the jury is still whether or not he appreciated that there was a real risk of Benson doing what is alleged he did".

27. When it came to the summing up (para 10) the judge set out a number of issues : • Was there an agreement or plan to shoot Chantler with intent to kill or do serious harm.• If Parsons drove Benson believing that he intended some harm eg robbery, threatening with a beating, beating up, stabbing, winging with gunshot, was the shooting in the face with intent to kill or cause serious harm something which went beyond anything that Parsons had agreed or realised he might do in the course of the agreed plan as a real or substantial risk. If he

scene; whether Parsons knew that Benson had a gun and intended to use it; whether Parsons intended not death or serious injury but something less; whether he realised that Benson might use the gun to kill. In this respect the jury would have been able to take into account the psychological evidence of Bensons psychiatric condition if it had been allowed in evidence. Parsons would have been able to use that evidence in a submission to the jury that Benson's condition was such that he, Parsons, was justified when he said to the police that whilst he believed something would happen it was nothing like what Benson actually did.

33. In Coutts Lord Bingham said "The public interest is that following a fairly conducted trial defendants should be convicted of offences which they are proved to have committed and should not be convicted of offences which they are not proved to have committed. The interests of justice are not served if a defendant who has committed a lesser offence is either convicted of a greater offence exposing him to a greater punishment than his crime deserves or acquitted altogether enabling him to escape the measure of punishment which his crime deserves. The objective must be that defendants are neither over convicted nor under convicted nor acquitted when they have committed a lesser offence of the type charged. The human instrument relied on to achieve this objective in cases of serious crime is of course the jury. But to achieve it in some cases the jury must be alerted to the options open to it".

34. Reference was made to CLA 1967 which provides that " On an indictment for murder a person found not guilty of murder may be found guilty … of manslaughter ...". See also Lord Tucker in Bullard v R " Every man on trial for murder has the right to have the issue of manslaughter left to the jury if there is any evidence upon which such a verdict can be given. To deprive him of this right must of necessity constitute a grave miscarriage of justice and it is idle to speculate what verdict the jury would have reached." See also Maxwell referred to at para 50 of Coutts where Lord Ackner explained that if a judge fails to leave an alternative offence to the jury the court must consider whether the jury may have convicted out of a reluctance to see the defendant "get clean away with what on any view was disgraceful conduct". The line of authorities approved in Coutts para 56 and 61 is to the effect that save in exceptional circumstances a conviction should be quashed as constituting a serious miscarriage of justice where the judge has erred in failing to leave a lesser alternative verdict obviously raised by the evidence.

35. The prima facie test to be applied in deciding whether to grant leave to appeal is whether the court feels the need to hear the prosecution on the merits.

36. It is submitted on behalf of Parsons that by reason of the above this conviction is unsafe. Richard Barraclough QC / Edmund Burge Barrister

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Gang Jailed for Shooting at Police During Birmingham Riots Matthew Taylor, guardian.co.uk

A gang that lured police to a pub at the height of last summer's riots before opening fire on officers and even the force helicopter has been given sentences of up to 30 years. More than 40 men, mostly wearing masks or hoods, firebombed the Bartons Arms pub in Aston as the civil unrest spread from London to Birmingham in August last year. Nicholas Francis, 26, who was sentenced to 30 years and was described by the judge as "clearly a dangerous man".Jermaine Lewis, 27, was jailed for 23 years, Tyrone Laidley, 20, was also jailed for 23 years while Renardo Farrell, 20, and Wayne Collins, 25, were both jailed for 18 years. A 17-year-old, who can be named as Amirul Rehman after the judge lifted an order, was jailed for 12 years. Francis, Lewis, Laidley, Farrell, and Collins were convicted of riot, reckless arson and possession of a firearm with intent to endanger life. Rehman

nor manslaughter if he did not, even if he envisaged some harm.

In Uddin where V died from a wound to the head after a knife was produced by one defendant the others carrying bars, the man with the knife was convicted of murder the others of manslaughter. The murder conviction was quashed and a retrial ordered. There was some suggestion that the trial judge had been wrong to leave manslaughter to the jury and the principles distilled from Powell and English which had not been available at the time of the trial include the following " if the jury conclude that the death of the victim was caused by the actions of one participant which can be said to be of a completely different type to those contemplated by the others they are not to be regarded as parties to the death whether it amounts to murder or manslaughter …". The proposition that manslaughter was not appropriate in that case appears from the suggestion that those who were convicted of manslaughter were not aware of the presence of a knife. There was however no argument on that aspect of the case because those who had been convicted of manslaughter were not before the Court.

In Gilmour the Court of Appeal in Northern Ireland was dealing with a petrol bombing. The appellant who was convicted of murder pleaded that he did not intend that death or serious harm would be caused. It was argued that following Powell and English he should be convicted of neither murder nor manslaughter. The court rejected the argument and substituted convictions for manslaughter. "The line of authority …approved in Powell and English deals with situations where the principal departs from the contemplated joint enterprise and perpetrates a more serious act of a different kind unforeseen by the accessory.In such cases it is established that the accessory is not liable at all for such unforeseen acts. It does not follow that the same result should follow where the principal carries out the very act contemplated by the accessory though the latter does not realise that the princpal intends a more serious consequence from the act…the cases in which the accessory has been found not guilty of both (murder and manslaughter) all concern a departure by the principal from the actus reus contemplated by the accessory not a difference between the parties in respect of the mens rea". The court then referred to Schofield and adopted the reasoning in the case.

In Attorney Generals Reference No3 of 2004 H was acquitted after an agreement that the judge had to assume that H did not intend any harm or foresee any harm to V. It was accepted on appeal that if the trial indictment had contained a count of manslaughter to reflect the plan to frighten, H could have been convicted. In the circumstances of the trial, what the principal did was outside the scope of the parties' plan where it was contemplated that the gun would be discharged to frighten but not contemplating incidental harm.

In Rahman the appellants were convicted of murder. The appeal focussed on the way in which the Powell and English principles were applied in the case. It is of interest that at para 43 there is discussion of A-G Ref In relation to that case it is said "If in a trial the jury were sure that K did not intend to kill V because eg he deliberately shot at K's legs then the act would still have been fundamentally different from that foreseen by H. It was not the intent to kill which made the killing a fundamentally different act but the deliberate shooting at V rather than foreseen deliberate shooting not at V but to frighten V "The only reference to manslaughter in the judgment is at para 71 and the JSB direction which the court did not consider."

32. It is submitted that there is nothing in these authorities which required the judge to withdraw manslaughter from the jury. It was for the jury to decide whether this was a joint enterprise to assault Chantler; whether Parsons had played his role in setting Chantler up by getting his brother to lure him out on the pretext of buying drugs and then driving Benson to the

did so realise then in law " he is taken to have accepted the risk that Benson would use the gun and act in that way " • Was Benson's use of the gun fundamentally different from any act Parsons realised Benson might carry out.

28. The judge's directions reflect what was said in Powell and English by Lord Hutton "I recognise that as a matter of logic there is force in the argument … that on one view it is anomalous that if foreseeability of death or really serious harm is not sufficient to constitute mens rea for murder in the party who actually carries out the killing it is sufficient to constitute mens rea in a secondary party. But the rules of the common law are not based solely on logic but relate to practical concerns and in relation to crimes committed in the course of joint enterprises to the need to give effective protection to the public against criminals operating in gangs".

29. The direction and ruling fail to take into account the situation in which two defendants embark on a joint enterprise to inflict harm by one means the same actus reus in which case the jury must look at the mens rea of each defendant separately and the situation in which a different actus reus is envisaged by the defendants in which case the Powell and English direction applies

30. In murder the actus reus is the outcome or death which is, as defined by Kenny " such result of human conduct as the law seeks to prevent" although material circumstances have a role to play (see Simester Sullivan Criminal Law theory and doctrine 2nd ed p72 ; Smith and Hogan Criminal Law 10th ed pp 30 and 31). Nevertheless without a death by killing there can be no actus reus for murder. It is not necessary in this case to say that the actus reus was the shooting in the face at point blank range. The actus reus is the shooting (see Rahman infra).

31. In the 5 judge case of Smith, the Court of Appeal approved the decision of the trial judge to leave manslaughter where a number of defendants were involved in an incident at a public house. Smith was outside throwing bricks. The killer was inside with a knife which Smith knew he had. The judge directed the jury that " a person who takes part in or intentionally encourages conduct which results in a criminal offence will not necessarily share the exact guilt of the one who actually strikes the blow. His foresight of consequences may not necessarily be the same as that of the man who strikes the blow, the principal assailant so that each may have a different form of guilty mind and that may distinguish their respective criminal liability. Several persons therefore present at the death of a man may be guilty of different degrees of crime - one of murder others of … manslaughter. Only he who intended that unlawful and grievous bodily harm should be done is guilty of murder". The Court held that what happened in that case was not outside the "scope of the concerted action" so that Smith remained liable.

In Betty where the victim was knifed to death it was argued that it had to be assumed that the principal assailant was guilty of murder so that the other defendant could argue that what happened should not be guilty of manslaughter . Both were indicted for manslaughter. Again it was held that what happened was within the scope of the concerted action

In Morris the principal assailant was convicted of murder by knife , M of manslaughter, he being a party to the attack but denying knowledge of the knife. The conviction was quashed because "to say that adventurers are guilty of manslaughter when one of them has departed completely from the concerted action of the common design and has suddenly formed an intent to kill and has used a weapon and acted in a way which no party to that common design could suspect is something which would revolt the conscience of people today".

In Reid members of the IRA attacked the home of a soldier. One shot him dead. He was convicted of murder. Another said he did not intend harm; that he thought that the others were joking when he heard them talking of killing the soldier. He was convicted of manslaugh-

ter. Lawton LJ said " If men carrying offensive indeed deadly weapons go to a a mans house in the early hours of the morning for no discernible lawful purpose they must in our judgment intend to do some harm of some kind and the very least kind of harm is causing fright by threats to use them…when two or more men go out together in joint possession of offensive weapons such as revolvers and knives and the circumstances are such as to justify an inference that the very least they intend to do with them is to use them to cause fear in another there is in our judgment always a likelihood that in the excitement and tension of the occasion one of them will use his weapon in some way which will cause death or serious injury. If such injury was not intended by the others they must be acquitted of murder but having started out on an enterprise which envisaged some degree of violence albeit nothing more than causing fright they will be guilty of manslaughter". What the principal assailant did was an unforeseen consequence of the unlawful possession of the firearms (referring to Morris).

In Chan Wing Siu, all defendants were convicted of murder after none had given evidence in what was described as a classic case of a murderous venture. Manslaughter does not appear to have figured in the trial or on appeal to the Privy Council. Sir Robin Cooke said "Where a man lends himself to a criminal enterprise knowing that potentially murderous weapons are to be carried and in the event they are in fact used by his partner with intent sufficient for murder he should not escape the consequences by reliance upon a nuance of prior assessment only too likely to have been optimistic. On the other hand, if it was not even contemplated by the particular accused that serious bodily harm would be intentionally inflicted, he is not a party to murder". See also the reference to Davies v DPP. In that case there was no question of a defendant being guilty where a knife is used unless he at least contemplated the use of a knife as opposed to a common assault. It is to be noted that even in Chan Wing Siu the trial judge directed the jury that if the appellant thought that the knives would be used to do no more than frighten he would be guilty not of murder but of manslaughter. See also Hui Chi Ming where the reasoning in Chan Wing Siu was followed and where some distinction appears to be drawn between a joint enterprise to do physical injury and one where the primary object is not to do physical injury but to eg commit robbery although in Roberts, this distinction which comes from Lord Lanes' judgment in Hyde is not made and Lord Lanes views are said to be of general application. In Hui Chi Ming the trial judge left manslaughter to the jury and his directions that if the defendant was present and shared an intention that the victim should suffer some less than serious harm then he would be guilty of manslaughter were approved implicitly by Lord Lowry (see the analysis in Schofield).

In Roberts where the victim of a burglary was bludgeoned to death both defendants were convicted of murder and whilst the direction as to realisation or foresight of what the principal assailant might do was approved it is noteworthy that manslaughter was left to the jury and " the nub of the case was ..not whether the appellant realised force might be used but whether he realised only that some physical harm might be done or that really serious injury might be inflicted".

In Schofield during a robbery L used a scaffold to kill. He pleaded guilty to murder. S had a knife. S and S were convicted of manslaughter. L had a balaclava and long coat. Both S said that they thought that the victim would be threatened only. The Court drew a distinction between aiding and abetting murder and joint enterprise at page 447. They are different principles. The aider and abettor is truly a secondary party and is liable as such. Where there is a joint enterprise the allegation is that one defendant participates in the criminal act of another. You must in that case look to the state of mind of each defendant. "their individual criminal

responsibility will in such a case depend upon what individual state of mind or intention has been proved against them. Thus each may be a party to the unlawful act which caused the victims death. But one may have had the intent either to kill him or to cause him serious harm and be guilty of murder whereas another party may not have had that intent and may be guilty only of manslaughter…Provided the joint enterprise is proved in relation to the relevant acts then it is not an answer that consequences of those acts were unusual or unexpected. Even if unusual or unexpected consequences arose from the execution of the plan each participant is responsible for those consequences. In such cases the liability of an individual defendant may depend upon whether his intention at the time the act was done included an intention that the consequence should follow. A defendant who had that intention may have a more serious criminal liability than one who did not. This is because the mens rea for the more serious offence can be proved against the one but not against the other ". There follows an analysis of the various authorities above. For the conclusion see page 453.

In Powell and English the certified questions focussed entirely on whether it was sufficient for murder that the secondary party realised that the primary party might kill with the requisite intent and whether it was sufficient if the lethal act carried out by the primary party was fundamentally different from the acts foreseen or intended by the secondary party. Referring to many of the above cases including the manslaughter cases Lord Hutton said that "there is a long line of authority that participation in a joint criminal enterprise with foresight or contemplation of an act as a possible incident of that enterprise is sufficient to impose criminal liability for that act carried out by another participant in the enterprise". Whilst the answer to the first certified question was that it was sufficient there is nothing in the speeches to the effect that a jury is not entitled as a matter of law to decide as a matter of fact (1) whether when D2 took a part in whatever happened to V he was aiding and abetting the act of D1 or there was a joint enterprise by D1 and D2 to commit some assault on V (2) whether there is or is not a distinction to be drawn between the two concepts whether he realised that D1 might commit the act with the requisite intent (3) if this was a joint enterprise to assault and D2 did not realise that V might be killed with the requisite intent whether he nevertheless intended some harm in which case he is guilty of manslaughter. The second certified question simply provides an additional limb of defence in the case of murder to the extent that if the act committed by D1 is fundamentally different to that envisaged by D2 then D2 is not guilty of murder and arguably manslaughter. But this presupposes foresight of an act of a fundamentally different type to that actually carried out. See the discussion in relation to Gamble where in Northern Ireland a defendant was not guilty of murder where he envisaged a kneecapping but the primary party shot the man in the head. Lord Hutton said "a secondary party who foresees grievous bodily harm caused by kneecapping with a gun should not be guilty of murder where in an action unforeseen by the secondary party another party to the criminal enterprise kills the victim by cutting his throat. The issue (which is one of fact after the tribunal of fact has ..been directed in accordance with (Morris) whether a secondary party who foresees the use of a gun to kneecap and death is then caused by the deliberate firing of a gun into the head or body of the victim is guilty of murder is more debatable …" What Lord Hutton does not say is that if a jury concludes that D2 takes part in an assault on V and knows that a gun is involved but intends something less than serious harm and may not be able to rely on the fact that because a gun is used what happens to V is not fundamentally different to that envisaged, he is guilty of murder if he realised that D1 might use the gun with the requisite intent or neither murder