PARERE PRO VERITATE

THE LEGALITY OF JOINT-ENTERPRISE CONVICTIONS IN ENGLAND & WALES

1 In 2002 I together with Peter Kelson QC (now HHJ Kelson), the late Dr David Thomas QC, Alex Dos Santos amd Jonathan Lennon succesfully argued before the then Vice President of the Court of Appeal, Criminal Division Lord Justice Rose that the conviction of Nicholas Van Hoogstraten of "joint-enterprise" verdict of manslaughter should be quashed.

2 Subsequently, aided by Geofrey Cox QC (now the Attorney General) his retrial produced a verdict on the orders of the Trial Judge at the Central Criminal Court, of not guilty of murder, manslaughter or of any other offence.

3 During and throughout the case of R -v- Nicholas Van Hoogstraten the BBC produced a documentary aired by BBC2 called "Notorious."

4 I, Dr David Thomas QC and Peter Kelson QC and many others learned in the law were expecting an immediate change of the law on the so called doctrine of joint enterprise that we had succesfully penetrated.

5 However, in their customary, usual and continued application of intellectual dishonesty both the Judiciary and the Legislators remained silent and inert for years to come.

6 On the 13 September 2014 I caused a missive to be sent to Lord Jonathan Sumption of the Sepreme Court of the United Kingdom responded to on the 17 September 2014.

7 I expressed grave concerns for the direction the law

had taken since R -v- Van Hoogstraten.

8 On the 17 December 2014 the House of Commons Justice Select Committee reported to Parliament that many people convicted of murder under the complex "laws" of joint enterprise should have been charged with lesser crimes and at best manslaughter but never murder and that the threshold for establishing culpability should be raised.

9 I had the honour, regardless of my altered habitat, in writing to the Select Committee outlining my experiences on cases that I had been involved in and particularly that of Nicholas Van Hoogstraten.

10 Normally, under the settled principles of English Law and the doctrine of 'binding precedent' the case that we had advanced and succeeded in the Court of Appeal should have been the de jure common denominator of the principle of joint enterprise.

11 A cursory review of the current and past five years of Arcbold will find no trace of the case of R -v- Van Hoogstraten.

12 What concerned me and other jurists is that since the case of R -v- Van Hoogstraten and up to 2013 over 500 are thought to have been convicted of murder on the very fascimile case that we had succeeded in the Court of Appeal in R -v- Van Hoogstraten.

13 A large part of those 500 plus convicted are young black and mixed race men. Statistics I found most alarming are that 38% of those serving long Minimum Terms for joint enterprise offences were black - 11 times the proportion in the general population and three times as many in the overall prison population.

14 My letter to the Justice Select Committee stated that

"I have grave concerns about the way the Judiciary and and the Courts interpret the joint enterprise doctrine and I use the word "doctrine" instead of laws as there is no law or Statute regarding joint enterprise."

15 The Justice Select Committee, sent me a copy of their reports stating:

" There are particular difficulties with bringing successful appeals in joint-enterprise cases. There are concerns rather, with whether the doctrine, as it has developed through case law and is now being applied, is to injustices in the wider sense, including through a mismatch between culpability and penalty."

16 The Justice Select Committee confirmed that the "Law Commission" should undertake an urgent review of the law on joint enterprise.

17 There is no "law" on joint-enterprise but only a doctrine that has been tampered by wanton members of the judiciary for the past 300 years appeasing the media and public perception of murders/killings committed with the participation passive or active of more than one party.

18 There is no law or Statute that defines joint-enterprise murder.

19 The "legal principle" or "doctrine" of joint enterprise is over 300 years old and was originally created to help authorities discourage illegal duelling by prosecuting not only the duellers but also any witnesses or spectators.

20 In essence putting the case simply a person can be held criminally liable for another's actions.

21 That position simply cannot be sustained either de jure or de facto.

22 On the 18 February 2016 came before the Supreme Court the cases of R -v- Jogee (2016) UKSC 8 and R -v- Ruddock (2016) UKPC 7 the later being an appeal from the Court of Appeal of Jamaica.

23 Those cases were able argued by Felicity Gerry QC et al but again the whole question of joint enterprise surrounded the "doctrine" which had been laid down by the Privy Council in Chan Wing-Siu -v- Regina (1985) AC 168.

24 No cases I have been able to find challanged the "law" of joint enterprise because all the settled cases made reference to the "doctrine" or the "principle".

25 Unlike the European Counterparts, English law has developed over the years by courts following the decisions of other courts. As previously stated this is the principle of binding precedent which dictates that one court is bound to follow previous decisions of other courts and better known by jurists as stare decisis - "To stand by decisions."

26 The court does not have to accept and follow everything the previous court said but only the principle going to the heart of the decision. In 1880, Lord Jessel the then Master of the Rolls at the opening of the Royal Courts of Justice said:

"The only use of authorities or decided cases is the establishment of some principle which the judge can follow in deciding the case before him."

27 To some extent great and eminent jurists also have standing in deciding cases. In Jogee/Ruddock reference was made to Professor Sir John Smith and a certain lecture he delivered involving joint enterprise.

28 In years gone by, two of the most influential jurists and their written works were "Coke's Institutes of the Laws of England" written between 1628 and 1644 by Sir Edward Coke after he had been removed from the office of Lord Chief Justice, and "Commentarie's on the Laws of England" written between 1765 and 1769 by Sir William Blackstone who was a failed barrister, but regardless he became Professor of English Law at Oxford University and after the success of "Commentaries" was appointed a judge of the Court of Common Pleas.

29 It is somewhat unsettling however, that none of the authorities cited in "Jogee/Ruddock" ever properly considered the relationship between "laws" and "doctrine or principle."

30 More alarming the manner upon which the case of Nicholas Van Hoogstraten was treated as a binding precedent. Quite the opposite, it was buried never to be uttered in the precincts of the Royal Courts of Justice.

31 In fact Lord Justice Rose made it a specific point to me with a stern warning not to mention to the press the reasons why we had succeeded in the appeal.

32 The BBC2 documentary "Notorious" carries my interview to the media simply saying that the appeal of Nicholas Van Hoogstraten succeeded but I was not able to give reasons.

33 To understand why it is important to distinguish between the "law" and "doctrine/principle" is the real key to explaining why the application of the joint enterprise phenomena is not lawful.

34 On the 15 June 1215, rebel barons forced King John to meet them at Runnymede. They did not trust the King, so he was not allowed to leave until his seal was attached

in front of him known as Magna Carta.

35 It was revolutionary in that never before had royal authority been so fundamentally challanged.

36 Hundred's of years post one clause stands out that is still relevant today as it was when King John put his seal on the Magna Carta's 63 clauses.

37 It is also the key to where the "law" failed the whole concept of joint enterprise.

38 Even in translation Chapter 39 of the Magna Carta 1215 has the capacity to make the blood race:

"39. No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by law of the land."

39 The "law" of the land not the "doctrine" or "principle" formulated by the Judiciary.

40 What is the "law" on murder?

41 The below definition is based on that contained in "Coke's Institutes" (Co.Inst. Pt III - 1797 ed - ch.7, p.47:

"Subject to three exceptions, the crime of murder is committed where a person of sound mind and discretion unlawfully kills any reasonable creature in being and under the Queen's peace with intent to kill or cause grievous bodily harm."

42 Common law also requires that the death be within a year and a day but that has been modified by the

(Year and a day Rule) Act 1996 a factor that I exposed in 2013 during my sojourn in SW18 in the cases of R -v- Barry Hillman. It seems that the Attorney General had overlooked the pre-requisite of granting leave to institute proceedings under that very Act.

43 It is sadly, a common thread that the Crown on various occasions ride roughshot over the law of the land. To cite but a few cases: R -v- Terence Smith; R -v- Debono and R -v- Carter Adams usually with the aid of an ever willing Court of Appeal.

44 A cursory look at Archbold 2015 Edition para.19.23 deals with the "Liability of secondary parties":

"There are no special <u>principles</u> relating to the liability of secondary parties to murder."

45 There is not only no special "principles" there is no law which is the pre-requisite to compliance with Chapter 39 of Magna Carta 1215.

46 Subsequent, there are many cases involving joint enterprise "liability" which is a word mostly used in the civil jurisdiction. To cite but a few:

* R -v- Powell; R -v- English (1999) 1.A.C.1
* R -v- Anderson and Morris (1966) 1 Q.B. 110, 50 Cr.App.R 216. CCA
* R -v- Rook, 97 Cr.App.R. 327 CA
* R -v- Mendez and Thompson (2011) 1 Cr.App R 327
* R -v- Lewis, Ward and Cook (2010) Crim L.R 870 CA

47 Probably the best known case was that of Derek Bentley where the joint enterprise "doctrine" was used to convict and hang Bentley for the shooting of a police officer in 1952. He did not pull the trigger but was convicted on the disputed words "Let him have it."

48 The conviction of Derek Bentley was quashed by the Court of Appeal in 1998 but it was 46 years too late to save his life.

49 In 2010, under the joint enterprise "doctrine" 17 youths were convicted of various charges relating to the murder of 15 year old Sofyen Belamouadden at Victoria Station in London, who was stabbed and battered to death.

50 There is, as stated no "law" on joint enterprise simply the "doctrine" or "principle" based upon that it is not right to help in a murder.

51 Judges throughout the time have developed the common sense "doctrine/principle" into what can only be described as feral law.

52 In his book "The Rule of Law" Tom Bingham (ex Lord Chief Justice) makes clear the role of the Judiciary and the law at page 45:

"The judges may not develop the law to create new criminal offences or widen existing offences so as to make punishable conduct of a type hithertoo not subject to punishment, for that would infringe the fundemental principle that a person should not be criminally punishable for an act which was not criminal when it was done."

53 In 1952 in order to appease the public and to deter people carrying and using guns so soon after the Second World War the case of Derek Bentley would be the guiding criteria from thence onwards.

54 In the 17 century to deter those from duelling the Authorities would prosecute spectators as well as participants.

55 The quashing of the conviction of Derek Bentley in 1998 should have sent warning signals to the judiciary

on the dangers of joint enterprise.

56 If one but only glances at the judgement in Jogee/ Ruddock, para 4-35 how complicated and convoluted settled cases from the 17 century onwards have made not only the doctrine/principle of joint enterprise but how it is, can and/or should (if ever) be applied.

57 On the 11 July 2007 Sir Menzies Campbell, then the Liberal Democrat Leader, pointed out that in the House of Commons during the past ten years there had been **382 Acts of Parliament.**

58 Out of those there included **29 Criminal Justice Acts**, and more than **3000 new criminal offences created.**

59 Professor Antony King went further to state that between 1979 and 1992 Parliament passed **143 Acts.**

60 Had it been the intention of Parliament - the only body that can create law - to perfect the "law" not the "doctrine/principle" on joint enterprise it could easily have done so.

61 It elected not to do so whilst a plethora of cases were advanced through the court system without the appropriate clarity that is required for a conviction to be sustained.

62 The Sovereignty of Parliament is sacrosanct.

63 In most other countries the constitution enacted, interpreted by the courts, is the supreme law of the land, with the result that legislation inconsistant with the constitution, even duly enacted, may be held unconstitutional and so invalid.

64 In a White Paper introducing the Human Rights Bill the then Prime Minister Antony Lynston Blair wrote:

"The Government has reached the conclusion that courts should not have the power to set aside primary legislation, past or future, on the grounds of incompatibility with the Convention."

65 The "doctrine/principle" on joint enterprise is muddled, unclear, hazy, complex, and there is no certainty or direction in its application.

66 An accused has an unalianable right to a fair trial with the right to know what he is accused and what law has been violated.

67 There can be no punishment without an accused knowing exactly what law has been broken.

68 The silence and inertia, perhaps even impotence, of Parliament to clarify the law on joint enterprise which it could easily have done, makes it clear that any form of interpretation by the courts is unfair and extremely dangerous to being arbitrary detention.

69 Magna Carta 1215 Chapter 39 is crystal clear in that no person can be punished unless that person violates the law of the land.

70 Doctrines/principles are not the law of the land.

71 For those above reasons any conviction based upon the "doctrine/principle/" of joint enterprise must be quashed as they are tantamount to arbitrary detention.

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