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IN THE HIGH COURT OF JUSTICE No. QB-2019-001456
QUEEN'S BENCH DIVISION

[2021] EWHC 3461 (QB)

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 16 November 2021

Before:

THE HONOURABLE MR JUSTICE MARTIN SPENCER

B E T W E E N :

JOHN MURRAY Claimant

- and -

SALEH IBRAHIM MABROUK Defendant

MS P. KAUFMANN QC and MR D. HUTCHEON (instructed by McCue Jury & Partners LLP) appeared on behalf of the Claimant.

THE DEFENDANT did not attend and was not represented.

JUDGMENT

(via hybrid hearing)

MR JUSTICE MARTIN SPENCER:

Introduction

1

WPC Yvonne Fletcher and PC John Murray were what you could call the salt of the earth in terms of police officers in the Metropolitan Police. Between 1981 and 1984 they worked as partners doing what is called 'community policing', focusing on developing relationships with members of the community. They were based in Covent Garden and would work with local schools, businesses and residents, and they were the first port of call if anyone in the community had any problems. They also worked together assisting new police recruits with their initial training; they would take the new recruits out on the streets and show them around. They taught the recruits the ways and means of the job.

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PCs Fletcher and Murray worked as partners and saw each other virtually every day. They developed a tight bond and became the very best of friends. Mr Murray puts it this way:

Outside of working hours, we also spent a lot of our time together, often going for drinks and dinners. We were great confidants for each other and would talk about, and give each other advice on, absolutely everything. I helped her move home (into her flat in Chelsea in 1982) and knew her fiancé well - we were involved in every part of each other's lives. Yvonne and I were a close-knit partnership, and I lost one of my closest friends on the day she died.

Mr Murray says that he felt an enormous amount of affection for her and I have no doubt that she felt the same way about him. They looked after each other and if either of them got into a bit of trouble, which would sometimes happen, they would look out for each other. They trusted each other. They were both good at their jobs and they had great respect and really cared for each other. Again, I have no doubt that their colleagues and their senior officers had great respect for them and the job which they did on a daily basis, enhancing the community they served and the reputation of the Metropolitan police at the same time.

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Tuesday, 17 April 1984 should have been no different to any other day. They paraded at 08.00 on duty at Bow Street police station and were expecting to be taking probationers out that day to learn the beats. However, the duty inspector instead asked them to go to St James's Square to help to police a demonstration which was due to take place outside the premises of the Libyan Embassy or, as it had now been termed by the Libyan regime of Col Gaddafi, the People's Bureau. They did so and went about their duties together under the control and guidance of the senior officers there. There were about 70 demonstrators who had arrived shortly after 10am and also a number of counter-demonstrators, shouting slogans at each other. Then, at about 10:20, the unthinkable happened: two windows on the first floor of the embassy were opened, Sterling sub-machine guns were pointed out of those windows and they opened fire towards the crowd of anti-Gaddafi demonstrators opposite the Bureau but also the police officers standing between the demonstrators and the Embassy. WPC Fletcher had her back to the Embassy and was standing with her arms folded. A bullet struck her just as she was turning round: it passed through her chest, exited her body and then entered and exited her left arm before lodging in her sleeve. She fell to the ground. With incredible bravery, 3 officers including Mr Murray, went to her assistance even though they thereby exposed themselves to further murderous attack. They got her to safety in Charles II street, leaving their helmets behind on the ground and leaving us with the poignant image of those helmets and Yvonne Fletcher's hat marking the spot where she fell, an iconic photograph which embedded itself into the memory of so many people at the time. She was transferred into an ambulance and taken to Westminster Hospital, PC Murray going with her. On the way, she was able to talk to him and he promised her that he would find out who had done this to her and why. Those were the last words they exchanged. She was taken

to theatre and operated on but she died on the operating table. This hearing and this judgment represents the culmination of Mr Murray's 37 year promise which he made to his dying friend and his quest for justice for Yvonne Fletcher over the intervening 37 years.

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In this judgment, I will consider matters in the following order:

(i)

The background to the events of 17 April 1984

(ii)

The events that took place on 17 April 1984;

(iii)

The investigation including the forensic evidence;

(iv)

The expert evidence of Mr Jonathan Spencer;

(v)

The legal context and the matters that need to be proved to establish liability;

(vi)

My findings in relation to the issues including my findings as to the defendant's involvement in the shooting.

First, however, I should refer to the fact that the defendant, Mr Mabrouk, has not taken part in these proceedings. The claim form was issued on 16 November 2018 when the defendant was still resident in this country. However on 9 January 2019 the defendant was excluded from the UK on the grounds that his presence here would not be conducive to the public good due to his suspected involvement in war crimes and crimes against humanity in Libya. The Particulars of Claim were served on the defendant in April 2019 and on 29 April 2019 he served an acknowledgement of service indicating that he intended to defend the claim. On 6 August 2019 he sent a letter to the court denying being involved in the murder of Yvonne Fletcher. He stated that he was in Libya and in the interests of justice would not be able to defend himself without being present in the UK. He asked for the claim to be struck out on the basis of lack of merit. By an order dated 20 August 2020, Master Davison ordered that the defendant's letter of 6 August 2019 should stand as his defence and also that service of documents should be effected by them being sent to the defendant's email address from which he had been corresponding and had been responsive. By letter dated 26 March 2021, the claimant's solicitors informed the defendant that the trial would take place for three days from 10 November 2021 and in a further letter dated 5 October 2021, the claimant's solicitors reminded the defendant of the forthcoming trial and stated:

"If the trial does proceed on an in-person basis, and you do not wish to attend the trial in person, you may be entitled to request to attend by video-link. Should you wish to do so, please let us know by Friday 15 October and we will make the necessary arrangements with the Court."

However, the Defendant did not respond to either of the letters of 26 March or 10 November, and the conclusion which I draw is that he has chosen to play no part in this trial. I therefore considered that he was voluntarily absent and that the trial could fairly proceed in his absence, and that is what has happened. I should observe, however, that I have been acutely conscious of the fact that the evidence

which Miss Kaufmann QC has presented at this hearing has not been the subject of challenge, that the witnesses called have not been subjected to cross-examination, and that it has therefore been appropriate at times to view the evidence with a critical eye, particularly bearing in mind that we have been considering events from over 37 years ago. I have also taken the view that statements made contemporaneously are much more likely to be accurate than, for example, statements made for the purposes of this trial.

The Background to the Events of 17 April 1984

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The background to the events of 17 April 1984 starts with the military coup in Libya led by Col Muammar Gaddafi in 1969 when the King of Libya was overthrown. In 1977, Col Gaddafi transformed Libya into a new socialist state called Jamahiriya or “state of the masses” whereby he remained head of both the military and also Revolutionary Committees which were responsible for policing and suppressing dissent. The British Ambassador to Libya in 1984 was Mr Richard Miles and he describes in a statement he made in 2016 how it was the Revolutionary Committees which held sway over Libyan affairs, with Col Gaddafi exercising a close control over their actions and decisions. He describes the Revolutionary Committees as follows:

“They weren't all necessarily violent criminals; they had no moral restraint on what they were doing. They were taught to consider themselves above the law and whatever Gaddafi wanted done they did. So when we came to the murder of Yvonne FLETCHER I assumed, rightly or wrongly, that the culprit, if we ever found out who he was, would not be one of the diplomats, who were relatively normal people who had been in the Government service who had come up through the establishment. It would turn out to be someone in the Revolutionary Committee because the diplomats wouldn't be given a job like that. They'd be told to do what the Revolutionary Committees told them to do but they wouldn't be given a job like carrying out a murder. That would be done by a Revolutionary Committee member. That's my assumption. Many of them were student age. A lot of them were or had been students. They were relatively well educated by Libyan standards.”

Mr Miles died in 2019, but given his knowledge and experience of Near East and North African affairs and his senior ranking in the Foreign Office, his views are to be given credence. They are also supported by the statement taken in 2012 from a Libyan who has been given the cipher N203. He describes how, in September 1979, a man called Musa Kusa, who was a high ranking member of Gaddafi's revolutionary committee, led a group that took over the Libyan Embassy in London. After their takeover they renamed the Embassy as the Libyan People's Bureau, as they did not wish to conform to the Diplomatic norms and wanted to deal directly with the people. N203 describes how the Gaddafi regime was very agitated at this time and seemed out of control. In March 1979 Gaddafi openly stated that Libyans abroad were considered not supportive of him and therefore "fair game" and that he would get them. He says that Gaddafi challenged the whole world to stop him.

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Thus, the picture emerges of a rogue state led by a man who did not tolerate dissent and who was willing to sanction the commission of acts of atrocity against dissenters both at home and abroad through his Revolutionary Committees set up with the ostensible protection of diplomatic status. One such atrocity related to Mohammed Mustafa RAMADAN, a well-known political activist at the time who worked for the BBC. He wrote directly to the Gaddafi regime in a manner that would be viewed as critical of it and whose letters were published in the Al Arab newspaper. He was shot and killed at the Regents Park Mosque in London on 11 April 1980 and it was believed that his murder was carried

out by Libyan agents. Mr Miles describes Musa Kusa then confirming that summer that Libya had carried out the killing, that the reason that Mr Ramadan and others had been killed was because they were 'Stray Dogs', anti-Gaddafi, and that they were criminals who needed to be dealt with. This led to the Government deciding that because he had made this outrageous statement and showed support for the killing, he had to be expelled which he was, along with about half the staff of the Libyan People's Bureau in London. Mr Miles, who until 1984 was Head of the Department at the Foreign Office, further describes his attempts, in vain, to persuade the Libyan authorities that they should confirm to the Rule of Law. Thus, in about 1982, he visited Libya and spoke to a Major Jalloud. He said:

"We had long sessions with JALLOUD and told him that Britain was governed by the rule of law and he said, 'This is nothing to do with Britain, these people are Libyan criminals we'll deal with them, don't worry it's not your problem'. They didn't deny it. At that time it was clear that they had murdered people, killed people, they wouldn't have called it murder. They regarded it as, I suppose you could say a judicial process. These were criminals who had to be dealt with and if they were outside Libya that was the only way to deal with them."

7

At the same time, there remained active and vocal opposition to Gaddafi among Libyans abroad, including in England, and in September 1983, there had been a demonstration outside the Libyan Embassy in St James's Square which was relatively lightly policed and which had led to confrontation and violence when the demonstrators had been attacked by pro-Gaddafi activists from within the Embassy. It is therefore understandable that, in the event of any further demonstration, the police would have wished to erect barriers and insert themselves between the demonstrators and supporters of the regime inside the Embassy to prevent direct contact, avoid any repetition of the violence that had occurred before and keep the peace.

8

Finally, as part of the background, in February 1984 it was announced that the Libyan People's Bureau was being taken over by a new Revolutionary Committee consisting of four individuals named: Maatouk Mohamed MAATOUK, Abdul Qadir AL-BAGHDADI, Omar SUDANI and Saleh Ibrahim MABROUK (the Defendant in this case).

The Events of 17 April 1984

9

The events of 17 April 1984 start with the knowledge that anti-Gaddafi factions in England had decided to organise a demonstration outside the People's Bureau on 17 April 1984. N203 describes how he was part of an organisation called the National Front for the Salvation of Libya which had been formed in 1981 and they decided to hold the demonstration to protest against the assassination of Libyans outside Libya. The demonstration was relatively well organised and planned, with those attending convening at the Scratchwood Services on the M1 and then travelling in two coaches to St James's Square. They were about 70 in all. There was fairly widespread knowledge of the demonstration, both at home and also in Libya. Moderate forces here and in Libya were clearly aware of the potential for trouble, and made efforts to get the demonstration called off.

10

So far as London is concerned, Mr Timothy Holmes was the desk officer at the Foreign and Commonwealth Office for Egypt, Sudan and Libya. He was head of section and his Head of Department was Mr Christopher Long. Mr Holmes told me how Libya was very different to other

countries in how they chose to operate: the Revolutionary Committees took over the organs of government and did not operate in the more conventional way that other countries did. He described them as having "an ambassador of sorts". On the afternoon of 16 April 1984, he was rung by a Mr Zlitni whom he described as a more conventional diplomat in his behaviour. Mr Zlitni had seen that the parking metres outside the People's Bureau had been covered and asked whether this was a sign that a demonstration would be taking place and Mr Holmes said he would make enquiries. Mr Holmes then requested the Protocol Department to contact Special Branch who were in fact unsure whether a demonstration would be taking place but were reluctant for Mr Holmes to tell the Libyans one way or the other. Mr Holmes emphasised how important it was for them to give the Libyans advance warning if a repetition of the events of the previous September were to be avoided and eventually Special Branch confirmed there would be a demonstration between 10 and 11 AM on 17 April. Mr Holmes then informed Mr Zlitni who said that this might cause trouble to which Mr Holmes responded that it was no part of our democratic tradition to ban demonstrations and the police would only do so if there was a likelihood of a breach of the peace, which was for them to decide.

11

That night, Mr Holmes was the duty officer and at around 12:40 AM he received a call from the Resident Clerk to inform him that two members of the Libyan People's Bureau had called in at the Foreign Office threatening severe consequences for relations if action was not taken to stop the planned demonstration outside the Bureau later that day. They said that if the demonstration went ahead "the People's Bureau will not be responsible for the consequences". Mr Holmes rang Mr Long and it was agreed that the Resident Clerk should do no more than tell them that their message would be passed on to the relevant authorities. The Resident Clerk was also requested to speak to Special Branch and the Home Office duty officer to inform them of the Libyan message and make it clear to them that the Foreign Office considered the Libyans to be capable of all kinds of "destructive action" and that they should bear this in mind when considering how to handle the demonstration. By "destructive action" Mr Holmes said that the Libyans were very unpredictable and although the ambassador was Mr Kuwairi, he had little effect. It was the Revolutionary Committee which ran the Bureau.

12

So far as Libya is concerned, the ambassador, Mr Miles, was out to dinner on the night of 16 April. When he got back to the embassy that night, he received a message asking him to go immediately to the Foreign Ministry, which he did. He saw 3 people including a regular foreign ministry official and someone whom he assumed was a member of a Revolutionary Committee. They gave him the very strong message that they had heard there was to be a demonstration outside the Libyan People's Bureau in London the following morning and it was "very important that it should be cancelled because if it wasn't there would be consequences". They used words to the effect that they could not be responsible if it went ahead. Mr Miles told them that their request was absurd and just as there were demonstrations outside the British Embassy in Tripoli, which were policed by the Libyan police, so could there be demonstrations outside the People's Bureau in London. However, Mr Miles said that they would not accept this: they said that this is different and he had to report it to make sure it didn't happen. Mr Miles said that they were so emphatic that he went straight back to the office and wrote an immediate telegram reporting the conversation and he subsequently discovered that the telegram had appropriately been passed on to the Home Office and to the police.

13

Thus, when PC Murray and WPC Fletcher paraded for duty at Bow Street police station at 8 AM, and were asked to go to St James's Square to help to police the demonstration, they were told by the Early Return Duty Officer, Inspector Connor, that "apparently an unknown member of staff from the Libyan embassy had contacted the Foreign Office on the evening of the 16/4/84 asking them to ban today's demonstration, otherwise there would be trouble and he would not be held in any way responsible for actions of the people inside the embassy during the demonstration." One of the officers in charge of the police deployment at St James's Square was Inspector Alex Fish . He gave evidence to the court and told me that he had been made aware that there would be a demonstration but said that they had been given very little information as to what that would entail: he said the information was very vague. However, he formed the opinion that there would be trouble as he had had previous dealings with the Bureau who were not very cooperative. However, there had of course been no indication that guns would be used or even displayed: that had not entered their minds.

14

St James's Square has a pavement outside the Embassy which is in one corner of the square; there is then the road which runs round the square; there is then a further pavement on the inside of the road adjoining the border of the square's gardens. The policing decision was to erect barriers on the road next to the inside pavement so that the demonstrators could be corralled onto the inside pavement from where they could exercise their right to demonstrate, with both the barrier and also a police presence between them and the People's Bureau itself. Mr John Sullivan was a driver/labourer for the Surveyor's Department of the Metropolitan Police and it was his job to put up the metal barriers in the Square. He, together with a Mr Devere, collected the barriers from the depot and they started to erect the barriers at about 07:30 in accordance with the plan they had been given. There was a car parked in the way which needed to be moved and Mr Sullivan spoke to a man who came out of the Bureau about getting the car moved. This man was later identified as the defendant, Mr Mabrouk. He asked Mr Sullivan why they wanted the car moved and Mr Sullivan explained that there was going to be a demonstration. Mr Mabrouk kept saying "why, why". Another person, later identified as Dr Sudani, also came out of the Bureau and said that they did not want the barriers there. It will be remembered that Mr Mabrouk and Dr Sudani were two of the four members of the Revolutionary Committee who had taken over control of the Bureau in the February. Mr Sullivan used a telephone at the Employment Tribunal, which was next door to the Bureau, to telephone his supervisor who told him to lay out the barriers regardless of what those from the Bureau was saying. Mr Sullivan returned and noticed a red and white minibus pull up outside the Bureau and he saw about 15 Arab-looking men get out and stand on the steps of the embassy. After that they kept going in and out of the embassy. Then, whilst he was laying out the barriers, Mr Mabrouk again approached him and said these words which, in my judgment, have critical importance for the issues in this case: "We have guns here today. There is going to be fighting and we aren't going to have responsibility for you or the barriers". Mr Sullivan again rang his supervisor from the Employment Tribunal. He spoke to the woman on reception there, Agnes Butler and said to her: "There's going to be aggro today. They reckon they've got shooters and everything."

15

Ms Butler made a statement to the police on 17 April 1984. She too had noticed the men entering the embassy and she said:

"It was at this time that I noticed two of this group were carrying bundles. They were about 2'6" long and wrapped in what looked like red and green tartan car blankets. I did not see any more than that

but from the way they carried them and their general appearance I felt they may have been some sort of guns.”

Ms Butler also confirmed the conversation she had with Mr Sullivan stating:

“... He said something like to me “they’re not having the barriers, there’s going to be shooters”. I said that it was funny but I thought I’d seen rifles going into the building.”

This is, in my judgment, powerful evidence: Ms Butler had independently thought that guns were being taken into the building and then she learned from Mr Sullivan that he had been told by the defendant, Mr Mabrouk, that they had guns and there was going to be fighting. It is evidence that those in charge of the Bureau were preparing to deal with the demonstration by not only bringing in counter-demonstrators by minibus, but also by bringing guns into the Bureau which they were prepared to use.

16

Mr Sullivan said that he told a police officer who was coming up the street what had been going on and that the police officer said they would sort it out. At about 08:00 he and Mr Devere returned to the depot to pick up more metal barriers and they arrived back at St James’s Square shortly after 08:30. Mr Sullivan and Mr Devere then continued to erect the metal barriers whereupon Dr Sudani came out of the Bureau and stood in their way. Mr Sullivan asked him to move, but he refused saying “we don’t want them here” indicating the barriers. There were two policemen nearby and one came up and asked Dr Sudani to move three or four times but he kept refusing repeating he was a diplomat and could not be harmed. He was then arrested. At that point Mr Mabrouk came running out of the Embassy and tried to prevent the police from taking Dr Sudani away, whereupon he too was arrested. The arrests of Dr Sudani and Mr Mabrouk are confirmed in a statement of PC David Wallace made on 17 April 1984 who stated that they were both conveyed to Vine Street police station arriving at 08:45. Thus, it is a feature of this case that, at the time of the events when Yvonne Fletcher was shot, the defendant was in custody. Importantly, PC Wallace also confirmed being told by Mr Sullivan that he had been told by one of the people who had refused to let them put up the barriers, clearly Mr Mabrouk, that “later on there would be people here with shooters”. PC Wallace said that he informed an inspector from the Diplomatic Protection Group who was on the scene of what he had been told by Mr Sullivan.

17

In the meantime, PC Murray and WPC Fletcher had travelled to St James’s Square via Vine Street police station and they manned the barriers on the corner opposite to the Bureau at about 09:30. Inspector Fish had arrived shortly before then, with Superintendent Longhurst, and together they deployed the police officers present. Superintendent Longhurst indicated in his statement made on 17 April 1984 that in view of the previous incident when occupants of the Bureau had stormed out to attack demonstrators (referring to the incident the previous September) this demonstration was to be well policed. The first coach-load of demonstrators arrived at 09:58, stopping at the junction with Charles II Street and Superintendent Longhurst boarded the coach and spoke to the organiser. They agreed to await the arrival of the second coach and it was also agreed that the demonstrators would withdraw if there was any trouble. The coach was then parked against the inner pavement by the gardens in the centre of the square; the second coach arrived just after 10:05 and parked behind the first coach. The demonstrators left their coaches at 10:15, they were shepherded into the area opposite the Bureau and behind the barriers in a curved line. As they left their coaches, they started to chant: they were about seventy in number. They stopped behind the barriers. Superintendent

Longhurst continued to the North curb of the Square and then realised that two counter-demonstrations had started, one on the corner of the Square with Duke of York Street and the other on the corner of the square with Charles II Street. It is significant that they were positioned carefully away from where they might be in the line of fire from any guns fired from the Bureau towards the anti-Gaddafi demonstrators.

18

Inspector Fish told the court that he too was aware of the counter-demonstrations and wanted to get an overview of the situation: the best place to do this was close to where PC Murray and WPC Fletcher were standing, facing the demonstrators who were inside the barrier and with their backs to the Bureau. He said he moved towards them and was then conscious of something moving at the first floor level of the Bureau: he looked up and saw the barrel of a gun pointing out of the left-hand window. Immediately, it opened fire and he became aware that some of the anti-Gaddafi demonstrators and Yvonne Fletcher had been shot. He said that it sounded to him like automatic gunfire. Superintendent Longhurst, in his statement, also describes hearing a long burst of automatic gunfire: he looked over his left shoulder from where he was standing and saw a cloud of dark grey smoke in the vicinity of the first two windows of the first floor of the Bureau. The court was later shown a video by the firearms expert, Mr Jonathan Spencer, of a Sterling Sub- machine Gun being fired and emitting a puff of dark-grey smoke from both the muzzle and also the top of the gun.

19

As the evidence later shows, shots were fired from two Sterling sub- machine guns from two of the first floor windows of the Bureau, the far left window and the next window as you look at the building. A number of witnesses saw the shooting and gave statements the same day and gave evidence to the inquest into the death of Yvonne Fletcher. I shall relate some of that evidence:

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David Robertson was a painter and decorator who was working in the vicinity of St James's Square and who had visited the National Westminster Bank on the corner of the Square with Charles II Street. He stood on the pavement about 80 yards from the Bureau watching both sets of demonstrators when he saw a man holding a gun inside a window of the Bureau. He said "There were two or three other men with him, one I think to the gunman's left and at least two others standing behind him. The window which was on the first floor was closed and was the first window to the left of the entrance as you look at it from the street. ... I said [to another man] "Fuck me, he's got a gun". Just as I said that I heard a gun being fired from the direction of the Libyan People's Bureau. It was a short rapid rat a tat tat which lasted for about 2 to 3 seconds. The time from when I saw the gunmen in the window to when I heard the gun being fired could only have been approximately 4-5 seconds. ... My immediate instinct was to duck my head and as I did so I saw what I thought was a police officer fall to the ground in front of the demonstrators who were opposite the Libyan People's Bureau.

•

PC Withy was in the Square and attached to the Diplomatic Protection Group. He was aware of someone shaking his fist and shouting from the window of the Bureau in the direction of the demonstrators. Then, to the left of the person who was waving his arm and shouting at the demonstrators, he saw a small barrel appear. He said to the Inquest: "The reason why my attention was drawn to that was because it was very sunny that day and the sun was I think glinting off the barrel, and I sort of looked up and I - more I think out of astonishment, I thought you know, the "firearm" flashed through my mind although I couldn't really believe it, I didn't think something like that would appear at a window. And there was a person just standing to the left of the person who was

waving his arms ... [he describes the person] .. I saw this barrel appear, possibly for a split second or second and then the next thing I saw it open fire, this very loud short static burst, followed by a lot of smoke, and as soon as I saw it open fire I thought he was aiming for the police because I saw the WPC fall, her falling, probably the momentum of the bullet, she fell into her colleagues, collapsing onto her colleagues. Immediately I saw them open fire I immediately turned, or I saw the barrel the man turn toward the police and I thought, my God, they're going to shoot the police who were there. And so I actually saw her fall first ..."

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Then, of course, there was Mr Murray, the claimant. He describes in his statement made on 17 April 1984 how, after he and WPC Fletcher had arrived, they had been standing on the other side of the barriers from the demonstrators who were well behaved and had been talking to them. He and WPC Fletcher had changed places a few times. Then, about fifteen minutes after the demonstrators arrived, he heard a sound like a firecracker at Chinese New Year coming from behind him. He saw people in the crowd of demonstrators diving to the ground and then he heard Yvonne Fletcher shout out, he looked over at her and saw that she was clutching her left side at the level of her abdomen with both hands. He together with two other officers, PC Rogers and PS Turner went over and attended to her. She was conscious but bleeding from her side and was lying on her back. PC Murray cradled her head in his arm. In his later statement, Mr Murray said: "I was determined to help Yvonne in any way I could. I cradled her as she lay bleeding in my arms. I promised Yvonne then that I would bring the people who done this to her to justice." She wasn't speaking and looked a blue colour. The other officers lifted up her clothing and they saw the bullet wound in her side. PC Rogers applied direct pressure to the wound whilst PC Murray and PS Turner carried her into Charles II Street and laid her on the pavement. Mr Murray was told that an ambulance had been called and whilst they were waiting for it the officers needed to resuscitate Yvonne Fletcher who had stopped breathing: eventually she started to breathe again having stopped breathing for about 15 to 20 seconds. Then the ambulance arrived and the ambulancemen put WPC Fletcher in the ambulance together with two other injured demonstrators. The officers also got in the ambulance and they all went to Westminster Hospital.

20

In his witness statement, Superintendent Longhurst paid appropriate tribute to the bravery of the officers who were in St James's Square that morning. He stated:

"The officers involved acted with considerable bravery. For a time, demonstrators were trapped behind barriers making [them] an easy target. The length of the burst made it likely that one magazine had been spent. There must have been a real fear in the officers' minds that a second burst might follow on reloading and with the targets still available. The officers were not deterred. All the injured persons that had fallen were carried or dragged to Charles II Street. These persons were attended to by police officers and eventually removed by ambulance."

This was echoed by Inspector Alex Fish in his evidence to the court. He said: "The police officers did their duty, they were courageous."

21

Upon arrival at Westminster Hospital, Yvonne Fletcher was immediately attended to by the very best medical care available. She was resuscitated and then transferred to the operating theatre where the Professor of Surgery, Prof Ellis, carried out a laparotomy. He found the abdominal cavity was filled with blood from a severe laceration to the liver and the major veins of the posterior abdominal wall

(the inferior vena cava and the hepatic vein). As Prof Ellis was attempting to repair the damage surgically, Yvonne succumbed to her injuries and died on the operating table. The cause of death was uncontrollable haemorrhage from the gunshot wound, the bullet having entered her back on the right, traversed the abdominal cavity lacerating the liver and the intra-abdominal veins, exiting the left side of the trunk and then passing completely through the left arm immediately above the elbow. The bullet in fact lodged in her sleeve, it fell out onto the floor when she was removed from the ambulance and it was eventually retrieved by one of the ambulancemen, Mr Kilpatrick. Yvonne Fletcher died as a result of a cowardly attack when gunmen armed with Sterling submachine guns opened fire from the first floor windows of the Libyan People's Bureau on unarmed and unsuspecting lawful demonstrators. Those gunmen opened fire oblivious to, and uncaring of, the risk posed to police officers going about their normal duties of attempting to keep the peace. There seems little doubt that the actions of the gunmen were orchestrated and sanctioned by Col Gaddafi who could not tolerate dissent or disagreement with his regime and who was prepared to approve murder on the streets of London even at the expense of an innocent twenty-five-year-old woman police constable whose only wish was to serve her community.

22

In that context, I wish to comment on the evidence which Mr Murray, the claimant, gave to the court concerning the guilt he felt and still feels at the death of Yvonne Fletcher. Indeed, this was echoed by Alex Fish who said: "All of us there that day shared John's guilt at what happened to Yvonne Fletcher: I could have sent her away but she insisted on remaining "with the boys" and facing whatever was to happen and she too showed immense courage." No guilt should be felt by any of those police officers who survived the events of 17 April 1984. Nobody could have foreseen the cowardly shooting of a police officer in the back and the sad fact is that Yvonne Fletcher was, in every sense of the phrase, simply in the wrong place at the wrong time. Rather than feel guilt, Mr Murray should feel proud of the way he conducted himself along with his fellow officers and of the way he did his duty.

The Investigation and Forensic Evidence

23

Following the events of 17 April 1984, there was a ten day siege of the Libyan People's Bureau before the Bureau was eventually vacated and the forensic investigation could begin. It is likely that the gunmen had already left the building on 17 April taking the guns with them. Photographs were taken of the marks and fragments found in St James's Square, of damage and bullets found on the other side of the Square at 30-35 Pall Mall which had ricocheted off the ground and, in one case, had hit the building direct. Photographs and forensic analysis was also carried out of the inside of the People's Bureau.

24

The report of Mr Brian Arnold is dated 29 October 1984. He was a firearms expert. He examined Yvonne Fletcher's clothing and found that bullet holes were present in positions which corresponded with the wounds to her body. The damage to both the body and the clothing showed that the bullet had been fired from above. He identified the bullet found on the floor of the ambulance as a 9 mm calibre round bearing the marks of a style of rifling common to several different models of pistol and submachinegun, including the Sterling submachine gun. Twelve individual 9 mm bullets were identified and they all bore marks made by the same style of rifling. Microscopic comparison of the rifling detail enabled him to divide the bullets into two distinct groups of nine and three bullets. In his opinion, it was highly probable that weapon A had fired the group of nine bullets and weapon B the group of three bullets. Mr Arnold searched the area of St James's Square for signs of bullet impacts

and ricochets which might suggest the direction from which the shots had been fired and found number of useful marks which indicated that the shots had indeed come from an upper floor of the Libyan People's Bureau, from the left end of the building as it is viewed from the front. On 30 April 1984, Mr Arnold was able to gain access to inside the Bureau and he found a spent 9 mm cartridge case on the floor in the vicinity of the far left first floor window as looking at the Bureau from the outside. This cartridge case was from French military 9 mm parallel ammunition as were all the other bullets and fragments except one. Marks made on the cartridge case when it was fired were of the type made by Sterling patent machine guns and carbines: at that time Sterling submachine guns were official Libyan military issue. Also found inside the Bureau were two pistol grips. One consisted of the metal grip frame from a Sterling with part of the plastic grip still attached; the other consisted of fragments of a Sterling plastic grip. Considerable force had been used to break the frame from the weapon and great tool marks were visible on the metal. Also recovered from the Bureau were two standard pattern Sterling thirty-four round magazines for use with carbines and machine guns, both being in good condition. Mr Arnold summarised his findings as follows:

- WPC Fletcher was struck by a single 9 mm bullet fired from above

- A Sterling submachine gun was fired

- Another weapon of the same calibre was most probably fired

- Shots were fired from the first floor window at the far left of the Bureau

- Weapon parts found in the building were compatible with the weapons used in the shooting.

25

A report dated 9 May 1984 was obtained from Mr Robin Keeley, an expert in Gunshot Residue. He, like Mr Arnold, visited the Libyan People's Bureau on 30 April 1984 and he collected samples from the ground, first and second floors which were subsequently examined in the laboratory. He referred to the 9 mm cartridge case which was found near window 1 on the first floor of the Bureau, and he identified that this contained a corrosive type of percussion primer. Gunshot residue was found on and around the windows on the far left and next left of the first floor of the Bureau as looked at from outside. His conclusions were as follows:

- Deposits of firearms discharge residues on and around windows one and two on the first floor of the Libyan People's Bureau indicate that firearms were discharged from these sites. The residues were from ammunition containing a corrosive type of primer.

- Firearms residues found on the carpet and red velvet curtain of window three (but not behind the curtains) could have been carried in circulating air from the other two windows.

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The residues found around the windows, on the bullet fragments and in the spent 9 mm cartridge case were from a corrosive type of percussion primer. Primers of this type are not often found in modern ammunition.

In his evidence to the Inquest, Mr Keeley stated that there was clear evidence that, in his opinion, weapons were fired from both the first floor windows of the Bureau, that is the far left window and the next one along.

The Expert evidence of Mr Jonathan Spencer

26

Neither Mr Arnold, nor Mr Keeley, were available to give evidence at the trial, but their investigations, reports and conclusions were reviewed by Mr Jonathan Spencer, a firearms expert, who gave evidence before the court. He first endorsed the evidence which Mr Arnold had given to the Inquest, stating that the evidence was correct. He described how the barrel of a gun may inherit defects from the instrument cutting the barrel, in which case all guns with barrels from that cutting instrument will bear the same characteristics. However, a gun will also have unique characteristics for that particular gun. He said it was a well-established technique and had been validated for many years to examine bullets and cartridges microscopically for defects and other markings which identify those bullets and cartridges as having been fired from a particular gun. He indicated that Mr Arnold's techniques and processes were standard and his findings had been validated by a second scientist. He was thus happy to accept Mr Arnold's evidence that the markings indicated that the gun which had been used to shoot Yvonne Fletcher was a Sterling submachine gun. He did not consider that the evidence of the eye (and ear) witnesses undermined Mr Arnold's evidence in any way. He confirmed that for witnesses to have seen smoke emanating from the barrel or muzzle of the gun or in the vicinity of the window from which the gun was fired was consistent with the number of rounds that have been fired. He played a video to the court showing a Sterling submachine gun being fired and smoke coming out of the gun from both the front and the top.

27

So far as Gunshot Residue (GSR) is concerned, he confirmed the findings of Mr Keeley that the area around the far left window on the first floor of the Bureau was very heavily contaminated with GSR and the next window was heavily contaminated with GSR. He indicated that Mr Keeley was a world leader on GSR at the time and he had no concerns whatsoever about Mr Keeley's evidence.

28

Mr Spencer was asked about the significance of the finding of corrosive percussion primer. He said that by the 1980s ammunition using corrosive primers had gone out of fashion, but a finding of the use of such ammunition was not wholly surprising because ammunition has a long shelf life.

29

Mr Spencer also indicated that Sterling submachine guns tend to fire upwards and to the right and for this reason they are usually fired in short bursts. He said that if the gunman was less experienced in the use of the Sterling, then it would not surprise him that bullets struck the building at 30 to 35 Pall Mall.

30

Based on the evidence of Mr Arnold and Mr Keeley, Mr Spencer stated his conclusions as follows:

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The evidence is that two guns were discharged. Gun A fired nine rounds and gun B fired three rounds (presuming that all of the bullets discharged were recovered by the police);

•

The make and manufacture of the weapons used to discharge the recovered ammunition was: Sterling submachine gun;

•

Eleven of the twelve bullets recovered were from French military ammunition these being French military 9 mm bullets with brass jackets;

•

The cartridge case found by the first floor window of the People's Bureau was a brass cartridge case from French military ammunition manufactured in nineteen sixty-seven and had been fired by a Sterling submachine gun;

•

Both the cartridge case found at the People's Bureau and the bullet found in the ambulance which had shot Yvonne Fletcher were from French military 9 mm ammunition and therefore the bullet was of the correct type to have come from the cartridge case although there was no evidence that it actually did;

•

In relation to the direction of fire and the location of the weapons fired from, taking into account the evidence of eyewitnesses, the expert evidence, the locations of bullets/fragments and the damage to buildings and other objects, Mr Spencer was of the firm opinion that two Sterling submachine guns discharged between them at least twelve bullets from the two left-most windows on the first floor of the Libyan People's Bureau with gun A firing a burst of at least nine rounds; when fired in automatic mode, the Sterling muzzle tends to climb up into the right which is one reason for firing in short bursts and may explain why an intact bullet struck the building at 30/35 Pall Mall a distance in excess of 160 yards from the Bureau.

31

I fully accept the evidence of Mr Spencer and the evidence of Mr Arnold and Mr Keeley on which it was principally based.

The Legal Context and Matters in Issue

32

The first question that arises is how this matter comes before the High Court in this manner. The claim by Mr Murray is for assault and battery, both claims being brought in tort although also, of course, criminal offences. After WPC Fletcher died, he was asked to identify her body. More than that, he was also ordered to attend the post mortem examination, despite the state of shock which he would undoubtedly have been in as a result of not just what he had witnessed but also the danger to which he himself had been exposed: his wife was 6 months pregnant with their daughter at the time and when he got home, his wife was distraught; she had received a phone call from the station saying that there had been an incident and she was very worried about him. All this would have brought home to him the narrow escape from death he had had.

33

It is trite law that tort sounds in damage, and there is good evidence of this in the form of the report from Dr Cooling that Mr Murray has, since his witnessing of the events of 17 April 1984, suffered

from a chronic post-traumatic stress disorder and a recurrent depressive disorder of at least moderate severity. Although Dr Cooling does not in terms associate these psychiatric conditions with what Mr Murray went through in 1984, I think that I can infer that this is his opinion. As stated, only some damage is necessary to complete the tort, but given that Mr Murray is not seeking more than nominal damages, it is unnecessary to make any findings as to the extent of the damage.

Assault and battery: relevant law

34

The causes of action relied on by the Claimant in this claim are in assault and battery. The distinction between the two was identified in *Collins v Wilcock* [1984] 1 WLR 1172:

“An assault is an act which causes another person to apprehend the infliction of immediate, unlawful, force on his person; a battery is the actual infliction of unlawful force on another person. Both assault and battery are forms of trespass to the person” (at 1178).

35

The substance of an assault is an act causing the reasonable apprehension of a battery. In this case, it is pleaded that the shooting by those inside the People’s Bureau, and in particular the fatal shooting of PC Fletcher, was both an assault against the Claimant and/or a battery vis-à-vis PC Fletcher: see the Re-Amended Particulars of Claim at paragraph 7. I set out my findings in this regard at paragraph 50 below.

Joint liability: relevant law

36

It is necessary to consider the law in respect of joint liability, which is relevant to the determination of whether the Defendant is jointly liable for the assault and battery, if proven.

37

At first blush, it would be natural to assume that the person responsible for the damage claimed is the person who fired the gun that killed Yvonne Fletcher. It is common ground that that person was not the Defendant, who had been present at the Embassy that morning but at the time of the shooting was in custody at Vine Street Police Station.

38

However, the doctrine of joint liability in tort may allow legal responsibility for Yvonne Fletcher’s death, and hence the loss and damage suffered by Mr Murray, to extend beyond the shooter to other people who were party to the shooting.

39

Joint liability exists in a number of different forms. As observed by Lord Toulson in the recent leading case on joint liability in tort, *Sea Shepherd UK v Fish & Fish* [2015] UKSC 10:

[19] Joint liability in tort may arise in a number of ways. Two or more defendants may act as principal tortfeasors, for example by jointly signing and publishing a defamatory document. A defendant may incur joint liability by procuring the commission of a tort by inducement, incitement or persuasion (*CBS Songs Ltd v Amstrad Consumer Electronics Plc* [1988] AC 1013, 1058, per Lord Templeman). A defendant may incur vicarious joint liability for a tort committed by an agent or employee...

40

In this case, the Claimant has pleaded the Defendant's joint liability in two ways. First, the Claimant submits that the Defendant induced, incited, persuaded or otherwise procured the acts of shooting carried out by other persons at the Embassy on the morning of 17 April. This is referred to as **procurement liability**.

41

In order to establish accessorial liability in tort by way of procurement liability, the Claimant must establish that Mr Mabrouk said or did something which "amounted to some direction, or procuring, or direct request, or direct encouragement" of the wrongful act, here being the shooting, and that this shooting was itself tortious (*Davidson v Chief Constable of North Wales* [1994] 2 All ER 597 at 604-605 (per Lord Bingham MR)). Given the conclusion I have reached that the shooting did amount to an assault and battery (see paragraph 50 below), the challenge for the Claimant is to demonstrate that the Defendant's actions reached that standard of directing, procuring, or encouraging the shooting, rather than merely facilitating it. I will say more about the evidence relevant to my determination of this issue in due course.

42

The other way in which the Claimant pleads that the Defendant is jointly liable for the assault and battery is through a form of joint liability referred to as **common design liability**. This route to liability will arise if the Defendant acted in a way which furthered or assisted the assault/battery carried out by the person who discharged the firearm and did so "in pursuance of a common design to do or secure the doing of the acts which constituted the tort" (*Sea Shepherd*, supra, at [21] per Lord Toulson).

43

In order to establish accessorial liability in tort by way of common design liability, the Claimant must establish three conditions. First, the primary tortfeasor's act must constitute a tort against the Claimant. Secondly, the Defendant must have assisted in the commission of the act by the primary tortfeasor. Thirdly, the assistance must have been pursuant to a common design on the part of the defendant and the primary tortfeasor that the act be committed.

44

Some further discussion is useful in relation to the meaning of the terms 'assistance' and 'common design'. The content of the requirement that the Defendant must have 'assisted' in the commission of the act has been explored in the case law, including in the *Sea Shepherd* case. The assistance provided by the Defendant must be material, but as Lord Sumption noted in *Sea Shepherd* (at [49]), "that means no more than it must be more than *de minimis*" or trivial assistance. A defendant will not escape liability simply because his assistance was relatively minor in terms of its contribution to, or influence over, the tortious act when compared with the actions of the primary tortfeasor. Moreover, and relevantly to the present case, a defendant may still be jointly liable notwithstanding that his assistance was indirect so far as any consequential damage to the claimant is concerned: *Sea Shepherd* at [57] per Lord Neuberger.

45

This approach to joint liability reflects the position in English law, noted by Lord Sumption and Lord Neuberger in *Sea Shepherd*, that once assistance has been established and has been shown to be more than trivial, the proper way of reflecting the degree of the defendant's contribution to the tort is through the court's power to apportion liability, and then order contribution as between the defendant and the primary tortfeasor. In the absence of substantive evidence from the Defendant in respect of

his contribution, and noting the nominal vindictory relief sought here, no contribution or apportionment analysis is necessary in the event that the Claimant is successful on liability. However, this approach to joint liability under English law invites consideration of the fact that there are other people in addition to the gunman or gunmen, including potentially the other members of the Revolutionary Committee who had control of the Libyan People's Bureau on 17 April 1984, against whom a case may be made on liability.

46

The requirement for a common design, as the term implies, is that there is a common design, as between the defendant and the primary tortfeasor, that the act constituting or giving rise to the tort—here, that is the shooting—be carried out: *Vestergaard Frandsen A/S v Bestnet Europe Ltd* [2013] 1 WLR 1556, para 34. A common design “will normally be expressly communicated between the defendant and the other person, but it can be inferred”: *Sea Shepherd* at [59] per Lord Neuberger. Lord Neuberger’s judgment helpfully refers to a passage in *Unilever v Gillette* [1989] RPC 583 at 608-609, where the Court noted that participation as a joint party “does not ...call for any finding that the secondary party has explicitly mapped out a plan with the primary offender. Their tacit agreement will be sufficient.”

47

It is also relevant to note that in respect of common design liability, liability may arise even where the common design was “conditional” or dependent on a certain eventuality: *Sea Shepherd UK*, §48 (per Lord Sumption) and §§65-66 (per Lord Neuberger). Conditional intent is nevertheless intent: *R v Saik* [2007] 1 AC 18, §5 (per Lord Nicholls of Birkenhead).

48

Two other points should be made regarding the relevant legal standards. First, there is a long line of authority warning against over-definition of the criteria pertaining to the establishment of joint liability, and over-analysis of the cases on this topic. Each case must depend on its own circumstances.

49

Secondly, and importantly, this is a civil trial. Analogies can be made, and have been made, between the ways in which civil liability mimics criminal liability, where a person can be liable as a principal, or as an accessory, or because of a criminal conspiracy. This is particularly true in circumstances where many torts can relate to acts which are also criminal. A nuanced discussion of these relationships is set out in Paul S. Davies’ ‘Accessory Liability for Assisting Torts’ (2011) 70(2) *Cambridge Law Journal* 353-380. However, setting these analogies aside, the main difference between the criminal and civil law lies in the standard of proof. For a person to be convicted of criminal offences relating to this conduct, it would be necessary for a jury to be sure of their guilt, the so-called proof beyond reasonable doubt. In the civil courts, the standard of proof is the balance of probability: I need only consider something to be more likely than not for it to be proved. Where, in this judgment, I use the expression “I have no doubt that...”, I am indicating that, although strictly unnecessary for my purposes, I consider that the matter to which I am alluding also passes the criminal standard.

Analysis and findings

50

The first question is whether the shooting of Yvonne Fletcher constituted a tort against the Claimant, Mr Murray. In my judgment, there can be no question that it did. As submitted by Miss Kaufmann QC, the pointing of the loaded weapons constituted an assault on all those within the vicinity as did each act of firing a weapon. Each such act was plainly intended to cause harm to anyone who happened to

be standing in the path of the bullet and to cause all those in the vicinity to fear that they might too be struck and injured. The use and discharge of firearms in the direction where the Claimant was standing (which struck 14 people in his immediate vicinity) caused him to fear that he too was imminently going to be shot or otherwise harmed. Additionally, I agree with Miss Kaufmann's analysis that the Claimant can recover damages for the injury he suffered as a direct consequence of the battery caused to Yvonne Fletcher. Since this is a claim for trespass to the person (an intentional tort), the specific controls on recovery by "secondary victims" do not apply to the Claimant's battery claim; it is sufficient that the Claimant suffered damage as a direct consequence of the tort against PC Fletcher. If that is wrong, though, and those criteria do apply, I consider that the Claimant meets them since

(i)

he enjoyed close ties of love and affection with PC Fletcher as her close friend and colleague;

(ii)

he was immediately next to Yvonne Fletcher when she was shot and directly witnessed the injury she suffered;

(iii)

the shot that killed her also constituted an assault against him; and

(iv)

the Claimant suffered psychiatric injury as a result of the shock of witnessing PC Fletcher's injury (as well as the fear occasioned by his fear for his own safety).

On the above basis, I make what I consider to be the relatively uncontroversial finding that those responsible for the shooting of Yvonne Fletcher also bear liability to the Claimant.

51

What, then, is the position in relation to the allegation that the Defendant, Mr Mabrouk, bears joint liability with those who actually carried out the shooting of Yvonne Fletcher for the consequences, including the damage suffered by Mr Murray? I begin my analysis of whether the Defendant is jointly liable for the assault and battery by reference to the position on the evidence in respect of common design liability. I will then consider the position on the evidence in respect of procurement liability.

52

I have already found that the first element of common design liability, namely that the act of shooting itself constituted a tort, is satisfied. Applying the test for common design liability articulated in *Sea Shepherd* as set out above, the Defendant will be liable as a joint tortfeasor if he has assisted in the commission of that tort (that is, the assault and/or battery) by another person (that is, the shooter), pursuant to a common design with the shooter that they would fire shots at the anti-Gaddafi demonstrators.

53

I am satisfied on the balance of probabilities that there existed a common design to respond to the planned anti-Gaddafi protest by using violence, and specifically by firing shots at or in the direction of, the protestors. The existence and content of this common design are established by reference to the evidence at trial in relation to the contemporaneous Libyan government structure and the operation of the Libyan People's Bureau in London, as well as the evidence about the communication of the plan to

the FCO, to the UK Ambassador in Libya, and to purported pro-Gaddafi students in advance of the shooting. I consider each of these areas in turn.

54

The witness statements given by Mr Richard Miles, who in 1984 was the British Ambassador to Libya, provide useful context for the nature of the Libyan governmental structure in place at that time. The effect of his evidence, which was corroborated by the evidence of Mr Timothy Holmes (at that time, the head of the North African section of the FCO), was that at that time, there were effectively two distinct structures to the Libyan government. One was what Mr Miles described as resembling a normal government, with bona fide diplomats and similar; the other was the so-called 'Revolutionary Committees', who answered to the revolutionary leadership, and in particular to Colonel Gaddafi.

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In effect, the real governing power lay with the Revolutionary Committees, and not with the formal pre-existing apparatus of government. The Revolutionary Committee members were primarily Gaddafi loyalists, often students and other young people. This structure existed not only in Libya, but also in respect of the former Libyan embassies overseas: the evidence of the effectively-deposed Libyan ambassador to the United Kingdom, Adem Saleh Kuwiri, was that he was relieved of his duties and of his control over the embassy—the People's Bureau—by a group of Revolutionary Committee members, including the Defendant, and that they had the authority to run the bureau. The evidence of N714, being a cipher assigned by police in the process of the criminal investigation which I adopt for the purposes of my judgment, was that this takeover had happened on Gaddafi's direct instruction.

56

Gaddafi not only enjoyed broad political support but also exercised an extraordinarily dominant level of power on a personal level. Mr Miles was struck in his ordinary diplomatic work as Ambassador by the number of people, not simply high-level but also senior to middle-ranking officials, who would discuss the personal contact which Gaddafi had had with them, and the direction that he was giving; the state of affairs was such that Gaddafi had significant, direct control over the micro-level actions of the Libyan state apparatus, such as it was.

57

The effect of this was that, as noted by Mr Holmes in his oral evidence at trial, it was entirely probable that nothing would have been done in respect of the problem of anti-Gaddafi demonstrations in the United Kingdom without Gaddafi's approval. This evidence is in alignment with the later evidence, discussed below, regarding Gaddafi's dialogue with the Defendant regarding the proposed approach to the planned demonstration.

58

Next, in assessing the existence of the common design, it is germane to consider the approach of the Libyan People's Bureau in London and its controlling Revolutionary Committee to anti-Gaddafi Libyans in the United Kingdom at that time. As I have already mentioned, in March 1979, Gaddafi openly stated that Libyans abroad who were not in favour of the regime were 'fair game', challenging the whole world to stop him. Consistently with this, in March 1980, those in control of the Embassy were responsible for the murder of a political activist working at that time for the BBC, Mohammed Mustapha Ramadan, who had spoken out against Gaddafi. In September 1983, pro-Gaddafi elements in the Embassy had stormed out of the embassy to attack anti-Gaddafi demonstrators, a matter recalled in police evidence discussing their more robust approach to the policing of the April 1984 demonstrations.

59

It is against this background and in this context that the control and actions of the Revolutionary Committee governing the People's Bureau in London in 1984 should be understood. In February 1984, it was announced by the Libyan People's Bureau that it had been taken over a small group of individuals. At least four witnesses, including Ambassador Kuwiri, N1115, N714 and N61, provided evidence that those persons included Maatouk Mohamed Maatouk, Abdul Qadir Al-Baghdadi, Omar Sudani, and the Defendant, Saleh Ibrahim Mabrouk. The evidence at trial was that this takeover reflected instructions from Gaddafi, which instructions were relayed by the Defendant to a group of pro-Gaddafi students in London, to "take over the Embassy and use the facilities, the guns, all the weapons, the money and the power of the Embassy".

60

Following the takeover, this Revolutionary Committee group had direct control over the Bureau. Witness evidence suggests that members of this group generally, and specifically the Defendant and Al-Baghdadi, were in overall command of the Bureau. Indeed, the evidence shows that the Defendant was in fact controlling the entry of perceived pro-Gaddafi students into the embassy on the morning of the shooting.

61

Against this context of control, I accept the Claimant's submission that the evidence establishes on the balance of probabilities that the Revolutionary Committee controlling the People's Bureau in London had received instructions to act in a violent manner towards anti-Gaddafi Libyans in the United Kingdom. The evidence of N714, which I accept, is that following the takeover of the Bureau by the Revolutionary Committee, the Defendant sought volunteers "to teach a lesson to anti-Gaddafi people", noting that "we"—being the Revolutionary Committee—had a 'list of targets'.

62

This approach to perceived opponents of the regime is reflected in the evidence of other attempts by the Revolutionary Committee controlling the People's Bureau to obtain information on anti-Gaddafi students, and in threats given by Matouk to a different student who had been rumoured to be anti-Gaddafi that "you can be killed here" in the United Kingdom. It should also be understood against the background of Mr Miles' evidence regarding the series of murders of anti-Gaddafi opponents in the United Kingdom and in Europe throughout the 1970s and the early part of the 1980s. These actions were described by Musa Kusa, a former head of the Libyan People's Bureau in London in 1980, that these people had been killed because they were anti-Gaddafi 'stray dogs' and therefore criminals. The attitude of the Libyan government at that time was described by Mr Miles as being that such killings had nothing to do with Britain; these people were seen by the regime as Libyan criminals to be dealt with by them, including by murder.

63

The existence and content of a plan to deal with the specific anti-Gaddafi demonstration to be held on 17 April 1984 by shooting at protestors is demonstrated by the evidence in relation to the events preceding the shooting, and by the way in which the prospect of the use of violence was communicated and foreshadowed—to the FCO in London, to the UK Ambassador in Libya, to pro-Gaddafi students in advance of the shooting, and to police on the morning of the shooting. This was not a plan hatched by one person alone. It was the Revolutionary Committee's responsibility to discharge this function, and they would have acted in consort. The evidence before the court is that only the Defendant, along with the other members of the Committee—Matouk, Al-Baghdadi and Sodani—would have had the authority to organise and direct the shooting.

64

Crucially, the existence of a coordinated plan to use violence is clear from the communications the previous evening to Mr Miles in the British Embassy in Tripoli, to the FCO in London, threatening a violent response and denying responsibility for harm in the event that the demonstration was not prevented by British police. These communications support an inference that the shooting was not merely a spur-of-the-moment decision, or rash mistake, but was deliberate and pre-meditated.

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This conclusion is buttressed by the witness evidence from students in both the pro- and anti-Gaddafi cohorts suggesting that the plan was known and had been communicated to the pro-Gaddafi students the prior evening. N714's evidence was that on the evening of 16th April 1984, he was contacted by phone by a student with pro-Gaddafi sympathies, N35, who "told me there was going to be a shooting. He was in a state of shock. He told me they said, "even if we shoot the bastards if they come out" which I took to mean the anti-Gaddafi demonstrators would be shot if they demonstrated". Similarly, the evidence of N61, who had witnessed the shooting alongside a group of pro-Gaddafi counter-demonstrators, was that another pro-Gaddafi student with the cipher N580 identified the shooter immediately after shots were fired as having been one Salah Sahli, and had added, "They were going to shoot all". These statements demonstrate that there was a common design, amongst those in effective control of the Libyan People's Bureau, to shoot demonstrators if the 17th April demonstration took place.

66

Other pieces of evidence support these conclusions. First, and relevantly for the Defendant himself having been party to the common design, is his statement to Mr Sullivan when attempting to have the barriers cleared away: "We have guns here today [and I emphasise the use of the person pronoun "we"]. There is going to be fighting and we aren't going to have responsibility for you or the barriers." This was set out in Mr Sullivan's statement to the police made on 18 April 1984, the day after the shooting, and is therefore highly likely to have been accurate. This version of the conversation, and that Mr Sullivan's evidence accurately records his identification of Mr Mabrouk's reference to the guns and fighting, is corroborated by

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the evidence of Ms Agnes Butler ("After this conversation he said something like to me "They're not having the barriers, there's going to be shooters");

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Mr David Devere ("Something else was said and then I heard him say "We have guns inside"); and

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PC David Wallace.

The combination of those statements makes it overwhelmingly likely that Mr Mabrouk said the words attributed to him by Mr Sullivan.

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These statements by Mr Mabrouk demonstrate not only his knowledge of the common design, but also his view of the inevitability of that response. "We have guns here and there's going to be fighting" is a statement confirming a plan to shoot protestors, rather than a conditional threat. When coupled with his position as one of the few leaders of the Revolutionary Committee controlling the People's Bureau,

it amounts to confirmation of the common design to fire upon the demonstrators, in which he was an active participant.

68

Secondly, the positioning of the pro-Gaddafi counter-demonstrators where each of the Duke of York St and Charles II Street meet St James' Square (and therefore out of the likely line of fire), and the fact that those counter-demonstrators had been instructed in their positioning by the leaders of the Revolutionary Committee, likewise militates against the firing upon protestors being a mere coincidence. N401, an anti-Gaddafi protestor who had participated in a number of demonstrations in St James' Square, noted that on those previous occasions (including during the 1983 protests), men had emerged from the People's Bureau to chant in favour of the Gaddafi regime and had stood directly in front of the People's Bureau. N401 recalled being struck by the fact, when protesting on 17 April 1984, that no counter-demonstrators were in the usual position in front of the People's Bureau but rather were in two groups, "...well off to either side so they could still chant against us but were not in the way when the shooting started." Again, this supports the inference that a shooting of demonstrators was both planned and had been communicated to (or at least guided the positioning of) the pro-Gaddafi counter-protestors.

69

Thirdly, in advance of the shooting, the Defendant asked N61 to collect a soldier called Jaffa from the Libyan Student Union's Ennismore Gardens residence and bring him to the People's Bureau, although N61 was not in fact successful in locating Jaffa on that morning. In the days following the shooting, N61 met Jaffa at the Student's Union; when explaining how he had tried to find him, Jaffa explained that the Defendant wanted him, Jaffa, to demonstrate "to them" how to put together and dismantle a gun. Again, this evidence supports the inference of a common design, between the Defendant and the gunman or gunmen in particular, to fire upon the demonstrators.

70

I note in relation to the identity of the gunman or gunmen that N61's evidence is that he saw Dr Sudani speaking to an individual named Salah Sahli on the night of 16 April 1984 at the Student's Union, where a number of pro-Gaddafi students had been summoned by the Revolutionary Committee in advance of the anticipated demonstration. N61 suggested that following his witnessing the shooting alongside other pro-Gaddafi counter-demonstrators, another pro-Gaddafi student with the cipher N580 identified the shooter as having been Salah Sahli. Other aspects of N61's evidence also militate in favour of Sahli having been the gunman, or one of the gunmen; the Defendant asked N61 to relay to Sahli, when he was to hand over identity documents, the message "Don't say anything even if they beat you to death". However, the evidence identifying Sahli as one of the gunmen is weak and I note that other evidence suggested one gunman having been another Libyan student in London at the time named Salah Khalifa, and that Libyan media at one stage apparently reported his responsibility for the shooting. This court is not in a position to identify the gunman or gunmen with any certainty.

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However, as I hope I have made clear, responsibility for the shooting falls not merely on the shoulders of the man or men who pulled the trigger, but also on those who assisted in the facilitation of the common design to fire on the protestors. That includes the Defendant, for the reasons set out above. The Defendant, who was notably described as having possessed "fanatical" pro-Gaddafi political views, in my judgment clearly assisted in the commission of the shooting, pursuant to the common design. The orchestration of the shooting was entirely consistent with the official functions which the Defendant had been given under the Gaddafi regime. He (together with a small number of others) was

in control of the Embassy; the weapons being harboured there and he also controlled who was permitted to gain entry. This alone would be sufficient to amount to 'assistance' in pursuit of the common design, in circumstances where he controlled the Bureau and thus permitted the shooters to enter the premises so as to position themselves in the windows in order to shoot at protestors, and he did so knowing that there would be shooting. It is for these reasons that the Defendant bears responsibility for the shooting of Yvonne Fletcher despite his absence from the Bureau at the actual time of the shooting: his presence or absence in the Bureau at the time is irrelevant to his liability because of the part he had already played and because he was a prime mover in the plan to shoot the anti-Gaddafi demonstrators and, if necessary, any police officer who was in the way.

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In my judgment, the Defendant's involvement went beyond tacit agreement. The Defendant was in fact one of the few in charge of the functions of the People's Bureau, and one of the few with the authority to oversee the shooting of the demonstrators. He had previously sought volunteers for teaching a lesson to anti-Gaddafi Libyans present in the UK. He appears to have attempted to bring a soldier to the Bureau to instruct unknown persons in the firing and dismantling of weapons, and subsequently in assisting the shooter to receive their documents and evade arrest. Even though he had been arrested prior to the commencement of the protests, whether by incident or by design, he had clearly assisted in preparations for the shooting of protestors.

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Indeed, his statements to Mr Sullivan on the morning of the shooting are instructive. He knew that guns were going to be used; he warned Mr Sullivan about their use; and he did nothing to stop the use of the guns. More to the point, from his position as one of the leaders of the Revolutionary Committee controlling the People's Bureau, he directed the pro-Gaddafi counter-demonstrators on where to stand, away from the line of fire. These actions are not merely those of a passive observer, with knowledge of the likelihood of a shooting but with no participation; they amount to active assistance in the pursuit of the common design for the shooting to take place, reflecting his apparent instructions from Gaddafi to use the guns and the power of the Embassy to target anti-Gaddafi protestors.

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On this basis, I am satisfied on the balance of probabilities that the Defendant is jointly liable for the shooting of PC Yvonne Fletcher on the basis of the doctrine of common design.

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In the alternative, and although it is not strictly necessary to determine, I am satisfied that on the balance of probabilities, these actions also amount to liability on the procurement liability basis, insofar as the Defendant's actions appear to meet the standard for inciting, persuading, inducing or otherwise procuring the acts of shooting. Miss Kaufmann QC submitted that "[i]t is inconceivable that the individuals who fired from the first floor window were not acting under his direction, instruction, inducement, incitement and/or persuasion". In my judgment, that puts it too high. This position on liability relies more heavily on inference than does the position under common design liability, for which the evidence is perhaps clearer. However, the evidence in particular in respect of the Defendant's role in directing the locations of the counter-protestors, his recruitment of volunteers to 'deal with' the anti-Gaddafi protestors, and his role in directing Jaffa to provide instructions on the use and dismantling of the gun, are jointly and separately indicative that the relevant legal standard for procurement liability has also been met, at least on the balance of probability.

The conclusion which I reach is that Mr Murray has succeeded in showing that the Defendant, Saleh Ibrahim Mabrouk, is jointly liable with those who carried out the shooting of Yvonne Fletcher for the battery inflicted upon her, for the assault inflicted on all the police officers who were put at significant risk of being shot and for the torts thereby committed against this Claimant. There will be judgment for Mr Murray and the award of damages will be precisely the sum sought by Mr Murray to vindicate his 37 year fight to bring to justice at least one of those responsible for the death of his colleague and friend, namely £1.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.