Regina v. Mark Andrew Sharpe, David Reiss, Peter Barrat Rapaport, Ian Fardell
No: 200106655/6977/6978/047/X2
Court of Appeal Criminal Division
11 February 2003

Neutral Citation Number: [2003] EWCA Crim 871

2003 WL 21917313

Before: Lord Justice Auld Mr Justice Fulford
His Honour Judge Zucker (Sitting as a Judge
of the Court of Appeal Criminal Division)
Tuesday, 11th February 2003

Analysis

Representation

- Mr K Khalil appeared on behalf of Sharpe.
- Mr C A Bott appeared on behalf of Reiss.
- Mr P A Finnigan appeared on behalf of Rapaport.
- Mr A Stein appeared on behalf of Fardell.

JUDGMENT
LORD JUSTICE AULD:

On various dates between June and November 2001 the appellants, Reiss and Rapaport, and the applicants, Sharp and Fardell, stood jointly charged at the Crown Court at Middlesex Guildhall on an indictment including three counts of conspiracy, first to kidnap, second to rob, and thirdly falsely to imprison, all the counts arising out of the same facts. Over that period Reiss and Sharp pleaded guilty and Rapaport was found guilty of the conspiracies to rob and falsely to imprison, and Fardell pleaded guilty to the conspiracies to kidnap and to rob. On 16th November 2001 His Honour Judge Ader sentenced Reiss and Rapaport each to a total of five years' imprisonment and Sharp and Fardell each to a total of four years' imprisonment.

Reiss and Rapaport appeal against sentence by leave of the single judge and Sharp and Fardell renew their applications to appeal against sentence after refusal by a different single judge.

The prosecution case in summary was that Reiss, an American businessman, instructed Rapaport, an English certified accountant, to organise the kidnapping and/or robbery of two former English business associates, a Mr Mason and a Mrs Moore. The object was to terrify Mr Mason and Mrs Moore by threats of violence to transfer their entire interest in their English company to Mr Reiss.

The plan, which was conceived by Reiss and developed by him and Rapaport, was for Rapaport to liaise and administratively to oversee two men who, for want of a better word, we shall call “frighteners” or “heavies”, in England to terrify Mr Mason and Mrs Moore into handing over their business in that way. Reiss instructed for the purpose Fardell, whom he had recruited, and Sharp, a friend of Fardell, whom Fardell recruited at a late stage. They agreed to do what Mr Reiss asked for a joint fee of £3,000. Rapaport himself was to receive a fee of £5,000 for preparing false documentation for the enforced transfer and for the detailed organisation. It also looked as if he was to receive a further reward in the form of appointment as of company secretary of the business that was to be seized in this way.

The matters upon which the prosecution relied in more detail were as follows. Reiss, who lived and worked in the United States, owned an American based company called Affinity Membership Inc. Some time in 1990 he and Mason became business associates and they agreed that any business that Reiss with which helped Mason would be well rewarded. The arrangement continued, it was said, on an occasional basis over a number of years with no formal agreement in writing. According to Mr Mason, he was content as he was learning new aspects of the business from Reiss and at the same time making good money. He was also able to use his newly found knowledge in other deals that were quite independent of any association that he had with Reiss.

In 1998 Mason formed a company called Encore Affinity Group. This dealt with the same sort of business that Reiss's company, Affinity Membership Inc, had been involved in. Mason was the only director of the new company until the following year, 1999, when Mrs Moore became a director and shareholder. She received a third and Mason two thirds of the shares in the new company. In the two years that Mrs Moore was a director, according to her and Mason, Reiss only introduced two clients, for which he received a consultancy fee of about £100,000. According to them, Reiss was not the owner, formally or informally, or a director, of their company, Encore Affinity Group. However, he told associates of his from time to time that it was his company. Then it would be left to Mrs Moore to, as she saw it, correct that incorrect representation.

In September 2000 Reiss told Mason that he was short of money and asked him for £35,000 which Mason refused. Mrs Moore, in a letter to Reiss of 7th September 2000, made clear that his involvement in the company was purely on a consultancy basis, that it was not his company and that he was not a shareholder. The letter informed Reiss that he would only receive payment as commission for providing a client, which he had not done for a considerable time. Reiss did not reply to the letter, but as will appear he made plans. These came to light in this way.

On 23rd January 2001 Fardell and Sharp travelled to London and Fardell met Rapaport at a hotel near Rapaport's office. Rapaport gave Faradell £1,000 in advance along with a detailed instructions that he and Sharp were to travel to Richmond for a meeting that Reiss had supposedly arranged with Mr Mason and Mrs Moore. It soon became apparent to Fardell that Mason and Moore were not going to attend the meeting. He informed Rapaport of that, who in turn telephoned Reiss in the United States. As a result, Fardell received new instructions to go to the offices of Encore Affinity Group in Twickenham and to wait there until Mason and Mrs Moore emerged from the building.

In the late afternoon of that day Mason and Mrs Moore left their office in Twickenham and got into Mason's car. As they sat in the car, Sharp opened the driver's side door and removed the keys from the ignition. Fardell opened the passenger door and ordered Mrs Moore to get out of the car. In his hand Fardell held a knife, some 8 to 10 inches in length. He and Sharp then took Mason and Mrs Moore to another car and Fardell threatened them with assault unless they made things easy. He said, “Shut up. I am doing a job. I've been paid. I'm not interested in what it's about. If you keep talking, I'll push your teeth down your throat.” They ordered Mason and Mrs Moore to hand over their mobile telephones, wallets and company credit cards and drove them onto the M3 motorway and then onto the A322 towards Guildford.

They eventually parked outside a house near the village of Lightwater. Then, sitting in the car, Fardell threatened Mason and Mrs Moore saying, “We can do this the easy way, or I'll rip your fucking tonsils out”. He then opened a folder and Mason and Mrs Moore saw that it contained a coloured picture of Mason and copies of their signatures. Fardell or Sharp told them that they would have to sign some documents and that, if they did not do so, they would be punched and kicked until they did. They were told not to read the documents. Although there were attempts to hide the contents, Mason and Mrs Moore recognised some of the forms as Company House forms and resignation letters, some of which bore the name of their company, the name of another company and their home addresses. Mason and Mrs Moore signed between six and ten documents each under pressure of these threats. On a number of the documents they saw Reiss's name and address and concluded that he had arranged all this.

After Mason had signed the documents, one of the two men told him to get out of the car. He was then handed a piece of paper with a list of rules. Among them there was a rule that Mason and Mrs Moore were not to inform anyone of the incident, not to work in the same business again, not to work together again and, on the following day, to hand over laptop computers and correspondence in their company to the new directors. Fardell told Mason not to tell anyone or they would be killed — all of this in the presence and with the support, greater or less, of Sharp. Mason was then allowed to leave and Mrs Moore was released a short distance away. She ran back to where Mason had been released, but could not find him. She was able to make a telephone call to her husband who collected her. Meanwhile Mason had contacted the police.

Fardell and Sharp returned to London and joined up with Rapaport. They handed over the signed documents, company credit cards and telephones, and he gave them a further £2,000, the balance of the agreed joint payment.

The next day Reiss arrived in England and went with Rapaport to the company premises. Reiss introduced Rapaport to the staff there. He introduced him as his accountant. He informed them that Mason and Mrs Moore had resigned and that he was taking over. It seems that Rapaport had already obtained details of locksmiths and had given instructions to the company secretary to call one of them to change the locks. However, police officers arrived shortly afterwards and arrested Reiss and Rapaport. Reiss was found to be in possession of the credit cards and car keys that had been taken from Mason and Mrs Moore.

In the company's conference room the officers found that Reiss and Rapaport had set out on the table company correspondence, including forms indicating the resignation of Mason and Mrs Moore as directors, a false contract signed by them, false minutes of a meeting held on the day of the kidnap and robbery introducing Reiss and his wife as directors, a false letter detailing transfer of all monies from the company to Reiss, and false resignation letters. The officers also found and seized a copy of the "rules" that had been given to Mason and Mrs Moore the previous day and a bank mandate signed by Rapaport representing him as the company secretary.

On the table there was also a folder belonging to Rapaport which contained correspondence relating to the Affinity Group, Mason's and Mrs Moore's group, and another company, the name of which they had seen on the document the day before in the car, Fly Free Europe. This included copies of e-mails between Reiss and Rapaport dating back to December 2000, shortly after Reiss had received his letter from Mason and Mrs Moore. The e-mails detailed discussions and arrangements for Mason and Mrs Moore to be removed as directors and for control of the company and its assets to be transferred to Reiss. It also detailed the preparation of company documents, the resignation letters from Mason and Mrs Moore for signature and the rules which were called "rules of order", including a suggested threat to their families if they broke them.

The correspondence, in addition, detailed a number of people who were "to entertain Mason and Mrs Moore", saying that as a result of it they would not dare to return to the company office, that the locks of the office could be changed easily, and that, if necessary, a guard should be placed on it over night if required. There was also a reference to menacing telephone calls that would be made to Mason and Mrs Moore on the evening of the so-called entertainment to keep them distracted and concentrating on their families. The correspondence mentioned two men who would contact them and give phoney names. There were also copy messages from Rapaport discussing how the documents were to be signed and how the car keys and other property of the company could be recovered. In his paperwork he had prepared a receipt for £3,000 dated the previous day, and signed by someone called Ian. Ian was Fardell's first name. There was also a hand written note stating "1 K deposit and 2 K finish".

A month or so later, on 1st March 2001, Fardell was arrested. His mobile telephone records revealed a number of calls on the day of the kidnap, including 12 to Rapaport. His fingerprints were found on some of the documents that Mason and Mrs Moore had been forced to sign.

When interviewed, Fardell admitted his involvement in the kidnap. He accepted that the accounts of Mason and Mrs Moore were accurate, other than in relation to the knife. He denied having had any knife or other weapon on the day. He admitted that he had been paid £3,000 and that some of the money had been paid into his bank account. In fact, his bank records indicated that £1,100 had been deposited in that account on the day following the kidnap.

Fardell, having indicated an early plea of guilty, also provided the prosecution with a witness statement and gave evidence for the Crown in the case against Rapaport. In evidence he said that Reiss had instructed him by telephone that Mrs Moore in particular was to be subjected to violence, either by slamming her fingers in a

car door or by hitting her with a baseball bat, and that Mason was to receive some punches — allegations that Mr Reiss was to deny.

The appellants and applicants respectively appeal or seek to appeal their sentences as manifestly excessive. The judge, in sentencing Reiss and Rapaport each to a total of five years, said that he regarded Reiss as the prime mover and Rapaport the middle man between Reiss and the two kidnappers or robbers, Fardell and Sharp. He said that, but for Reiss's pleas of guilty, he would have imposed on him a much longer sentence. As to Rapaport, although his was a lesser role, he would receive the same sentence because he, unlike Reiss, did not have the mitigation of having pleaded guilty. As to the sentences of four years' imprisonment imposed on the actual kidnappers and robbers, Fardell and Sharp, the judge said that he gave Fardell, whose role had been more violent and threatening than that of Sharp, credit for his pleas of guilty, and for giving evidence for the prosecution against Rapaport. He sentenced Sharp to the same period, despite his lesser role, seemingly because, although he had similar mitigation for pleas of guilty, he did not have the additional mitigation available to Fardell of having given the prosecution much assistance.

Turning now to the case on appeal of each of the appellants and applicants respectively, we deal, first Reiss. The judge in sentencing him made the following references to his role in the overall matter. At page 4 of his sentencing remarks he said:

> "There came a time when there was a disagreement between **David Reiss** and the two English directors, Mason and Moore, and a letter was sent to **David Reiss** by them in September of that year …"

Then, addressing Reiss he said:

> "… and your reaction probably can be described as you were incensed. You regarded the English company as your company and you fell betrayed by Philip Mason, and you decided to retrieve the company, and you started off by taking legal advice, and you realised then that you could not achieve what you wanted within the law, and you therefore determined to do so by illegal means, and those involved kidnap, false detention and robbery."

On page 5 of his remarks he continued in relation to Rapaport, using again, in his description of the offences, the word kidnap, and saying that kidnap and force were contemplated.

At page 10 he said to **Reiss**:

> "**David Reiss**, you are 48 years old and of good character. I accept that you started with a sense of grievance, but it is clear that you determined on vengeance and you then thought up the whole scheme. You were to gain the benefit of everything taken from Mason and Moore. You also urged the use of violence and the carrying of some weapon or weapons, and it is because of you that the other three defendants were involved. But for your pleas of guilty you would be receiving a much longer sentence indeed."

Mr Charles Bott, on behalf of Reiss, has submitted that the concurrent sentences of five years' imprisonment imposed on him for conspiracies to rob and falsely to imprison were manifestly excessive under three main heads. First, Mr Bott submitted that the total sentence did not in the circumstances reflect the distinction between

the offence of conspiracy to rob, to which he pleaded guilty, and, as Mr Bott submitted, the more serious one of conspiracy to kidnap which had been left on the file.

That distinction, though somewhat artificial in the circumstances of the case, had been drawn by Reiss as the basis of his pleas of guilty, tendered and accepted by the prosecution, that abduction and prolonged detention and unnecessary violence were not part of his plan. It is said that the judge in part of his sentencing remarks that we have set out did not acknowledge that distinction.

Second, Mr Bott submitted that the judge took insufficient account of: first, Reiss's previous positively good character and many testimonials as to it before the court, including his outstanding work and achievements for prisoners and the prison service whilst a remand prisoner; second, the assistance he had given to the police; and third, his genuine remorse, as indicated in the pre-sentence report.

As Mr Bott put it, this was a rare and impressive body of mitigation which went well beyond bare reliance on previous good character and pleas of guilty.

Third, Mr Bott criticised the judge for having attached too much weight to impact statements of Mason and Mrs Moore, including their suggestion that these conspiracies had led to the closing down of their company.

Reiss is aged 49. He is a United States citizen and resident. He is clearly a man of considerable education and abilities who has achieved success in various disciplines, latterly in consultancy and marketing of discount schemes. His exceptional vigour and talents he brought to bear in improving the induction and other procedures and facilities in Wandsworth Prison while on remand.

He was undoubtedly driven by a strong sense of grievance to the extreme measures that he devised to intimidate and wrest from Mason and Mrs Moore their company. Whether that sense of grievance was justified is beside the point, given what Mr Bott has described in his submissions as the "grotesque lengths" to which he went in his careful planning and execution of these offences to get what he wanted. It may be that he did not specifically have kidnapping in mind in his carefully constructed plan, but he undoubtedly had in contemplation threats of violence, robbery and detention to achieve his aim. So much is plain from the correspondence passing between him and Rapaport to which we have referred and the very nature of the scheme as executed. This was plainly one where the utmost fear would have to be engendered in order to achieve the documentary and other compliance required of Mason and Mrs Moore.

In all those circumstances, we are of the view that, despite the basis of the plea of Mr Reiss, the distinction that Mr Bott has drawn between a conspiracy to kidnap, on the one hand, and conspiracy to rob and falsely to imprison, on the other, is artificial. There is also the point that once Reiss set this plainly violent, or potentially violent, scheme in motion, it comes ill from him to distance himself from the precise methods, or degree of conduct, which his hired hands adopted to secure his ends. We are more impressed with the strong personal mitigation in its various forms to which Mr Bott has referred us and which he has rightly emphasised.

The question is whether, in fixing on sentences of five years' imprisonment, the judge has not only failed to take it sufficiently into account, but as a result has imposed a manifestly excessive sentence. In our view, but for that strong mitigation, including the plea and assistance to the police, the sentence would inevitably have been much higher, seven years or more, whether characterised as a sentence for conspiracy to rob, falsely to imprison or to kidnap.

The circumstances here are very close to the top end of the scale for carefully planned substantive offences without violence of which Lord Lane, Chief Justice, spoke in the case of Spence and Thomas (1983) 5 Cr App R(S) 413 where he said that the sentence in such cases on conviction should seldom be less than eight years' imprisonment. There are a number of reported examples of sentences of ten years and more, admittedly for worse cases than this, but which illustrate Lord Lane's clear intention in his

formulation in Spence and Thomas that he did not intend eight years' imprisonment as a ceiling.

R v Patel (1994) 16 Cr App R(S) 136 is a case in point. It was a plea of guilty by a man of good character to detaining a man whom he believed to owe him money. He kept his victim for a short time in a locked room. He handcuffed and tied him, and threatened and cut him with a knife. A worse case than this in its short intensity, perhaps reflected by this Court's reduction of the sentence of ten years' imprisonment to one of seven years' imprisonment on a plea of guilty. Where a number of people are involved, whether in the form of conspiracy or otherwise, the offence, whether to kidnap or rob, or to imprison, is aggravated, however the aggrieved the author of the scheme may feel.

For those reasons, we dismiss the appeal of Reiss against his sentences of five years' imprisonment to be served concurrently on each the offences to which he pleaded guilty.

We turn now to Rapaport. He is aged 56. The judge in his sentencing remarks addressed him in this way:

> "Your role in this affair was the middle man. You effected the introduction of the kidnappers, I will use the word loosely, to the mastermind who was clearly **David Reiss**. You organised the documentation required for the full transfer of the company to **David Reiss's** ownership. You gave the instructions to the kidnappers and you paid them. You attended the company's premises and arranged for locksmiths. You knew perfectly well in my view what was involved, as is evidenced by the comment that you made to Ian Fardell 'Save me the gory details'. In a sense it is to your credit you did not want to know and turned your face or your brain away from the violence that you must have been aware was going to be offered, if not actually used. You received payment of around £5,000 for your work on this criminal enterprise and you hoped for further rewards and that is set out in a document that the jury were shown in your writing."

Mr Peter Finnigan, on behalf of Rapaport, submitted that the five year sentences imposed on him on his conviction by the jury for the same conspiracies to rob and falsely to imprison were manifestly excessive. He too advanced his submissions under three main headings.

First, like Mr Bott, he sought to pray in aid a distinction between conspiracy to kidnap, of which the jury acquitted Rapaport, and the other two conspiracies of which they convicted him. He referred in this connection to Rapaport's denial of precise knowledge of or contemplation of what Fardell and Sharp were going to do. However, on the main thrust of Fardell's evidence against him, the jury by their verdicts of guilty of the counts of conspiracy to rob and falsely to imprison clearly found, and the judge clearly accepted, that Rapaport must have known that, if necessary, a high degree of physical menace was to be applied.

Second, Mr Finnigan relied on the strong personal mitigation available in the case of Rapaport. He is a man of positive good previous character, a certified accountant and, like Mr Reiss, a man of some success in the commercial and property world in which he made his forte. He too was able to rely on a number of testimonials to the court speaking highly of Rapaport in his personal and professional life.

Third, Mr Finnigan suggested that in the sentences of five years, the same as those imposed on Reiss, the judge failed to differentiate sufficiently between Reiss as the instigator of the offences and his, Rapaport's, role as a middle man. In our view, the distinction relied on between Rapaport's lack of knowledge as to the kidnapping in the form of the car ride and his knowledge and participation in the conspiracy to rob and to detain them is immaterial in the

circumstances of this case when considering the level of his criminality.

The plain fact is that this man lent himself to a plan to terrorise Mason and Mrs Moore to hand over their substantial business interest to his paymaster, Reiss. Whilst he may not have known, or wanted to know, the gory details of what Fardell or Sharp may have had in mind, he knew, and this is critical, that they were going to be threatened with violence. Why else would it have been necessary to engage men like Fardell and Sharp for the task of persuasion?

The judge had the particular advantage in the case of Rapaport of having heard the evidence. He was therefore in a strong position to assess Rapaport's role and degree of relative criminality. He correctly described him as the middle man. He differentiated between Reiss, whose criminality was greater but had pleaded guilty, and Rapaport, whose criminality was less but who had fought the case, by sentencing them to the same total period of imprisonment. Notwithstanding the many testimonials as to Rapaport's previous good character, we cannot see any basis for concluding that the sentence in his case was manifestly excessive either.

We turn now to Fardell, who is aged 30, who applies for leave to appeal. The judge in his sentencing remarks said this:

> "Ian Faradell you are 30 years old. You carried the knife and you were the main person to carry out the kidnapping and effectively taking the property off them, the robbery. In furtherance of the conspiracy three factors go to your credit. First of all, there was no violence actually inflicted. Secondly, you have pleaded guilty, and thirdly you gained credit for giving evidence. I take all those factors into account on your behalf and everything that I have heard about you and in your case the sentence is one of four years' imprisonment concurrent on each of the two counts to which you have pleaded guilty."

Mr Stein, on behalf of Fardell, has submitted that the sentences of four years' imprisonment imposed for conspiracies to kidnap and to rob were manifestly excessive. He made his submissions under two main heads. First, he said that the judge took too high a starting point, or gave insufficient credit for Fardell's early pleas of guilty, his personal circumstances, the assistance he gave in giving evidence for the prosecution and for his good conduct while on remand. He suggested that for all those reasons, particularly the assistance given to the prosecution and the court, the judge should have given him — on the established authorities — a discount of between half to two thirds, nearer the two thirds end. His second submission was that the judge failed to differentiate sufficiently between Reiss and Rapaport, on the one hand, and Fardell, on the other, by sentencing him to only one year's imprisonment less than that for them, especially having regard to the help he had given the prosecution.

Fardell is an ex-soldier, who, on leaving the army after six years, became a self-employed joiner. He had one previous offence for a non-domestic burglary in 1997 for which he had been fined, so he was essentially a man of good character. At the time he was approached through an intermediary of Reiss to commit these offences he had debts that he could not repay. Although Fardell was at the lower end of these conspiracies in one sense, he was a critical and important agent of their execution, the manner of which, on some versions, was in large part left to him. He was the frightener, the masquerading hit man. He took the lead in the actual kidnapping and robbery. He carried the knife and performed his task of terror with gusto, threatening in blood curdling terms to use his weapon if Mason and Mrs Moore did not do as they were told. It is to his credit, and that of Sharp, that no violence was actually inflicted. It was not necessary, so effective were the threats of it.

In such circumstances, while Reiss was the instigator of the conspiracies and Fardell the leading agent of their execution, it is debateable whether there was much scope for differentiation between them when fixing on the starting points for their respective sentences. Both men were entitled to discounts for their pleas of guilty, though Fardell's early plea, prompting pleas from Reiss and Sharp, deserves greater recognition. He deserves a further substantial discount, as Mr Stein has submitted, for the assistance, including giving evidence in the prosecution of Rapaport, and also for the documented evidence of his public spirited behaviour while on remand in prison. Such a discount, as the authorities show, can vary from about a half to two thirds according to the circumstances.

In our view, the total sentence of four years imposed by the judge adequately reflects the need for greater discount in his case. The single judge in refusing leave said this:

> "The judge was well placed, having heard the trial, to assess the appropriate sentence and his sentencing remarks were detailed and careful. The offences involved a planned scheme to frighten, detain and rob the victims. The applicant took part in the scheme for financial gain. The judge decided that the same sentence was appropriate for the applicant and Sharp. The applicant assisted the prosecution in the trial of Rapaport, but, as against that, Sharp played a lesser role. There was no arguable error of principle here, nor was the sentence manifestly excessive."

We agree, and for those and the reasons we have given refuse Fardell leave to appeal.

Finally Sharp, who is aged 31. The judge, in his sentencing remarks, said to Sharp:

> "I should say before I pass sentence on you, that in relation to Ian Fardell and you, Mark Sharp, it has been urged upon me that neither of you are men of violence. In your case you have a history of minor crime and there is violence in that history, but I accept the submission that you are not a professionally violent man as I do of Ian Fardell. You are 30 also. You played a slightly lesser role than Fardell but to the victims it must have made no difference at all. The two of you were in it together so far they were concerned. You conspired to imprison them and to rob them. Your reward was the same as Fardell and your sentence likewise will be one of four years' imprisonment concurrent on each count to which you have pleaded guilty."

Mr Khalil submitted on behalf of Sharp that the sentences of four years' imprisonment imposed for conspiracies to rob and falsely to imprison were manifestly excessive. He relied on two main headings of submission. First, he submitted that the judge failed to accord to Sharp the lower level of role indicated in the agreed basis of his plea of guilty. In summary, that was that Sharp was not a party to the initial discussions between Rapaport and Fardell, that he had not contemplated the use of violence or that Fardell would bring a knife, that he did not personally threaten Mason or Mrs Moore and that he had not known in advance that they would be taken away in a car or that Fardell had a knife until the four of them had started on their car journey. Secondly, he submitted that the judge, in sentencing Sharp to four years' imprisonment, did not distinguish sufficiently between his role and those of Reiss, Rapaport and Fardell; the different natures of their respective roles being apparent from this judgment.

The single judge, in refusing leave, said this in respect of Sharp:

> "The agreed basis of plea indicates a lesser role in the offending on the part of the applicant. However, it also indicates his willing involvement in a scheme designed to detain the victims and intimidate them into handing over property. The applicant did not disassociate himself from the scheme and collected his fee afterwards. The judge did not err in principle in imposing the same sentence on the applicant as on Fardell. The latter had additional mitigation of having given evidence for the prosecution. The applicant had previous convictions for violence. The sentence cannot be described as manifestly excessive."

We agree. The essence of the case against Sharp was that he lent himself to a scheme, the object of which through terror was to force these two people to hand over their business to another. However much Sharp seeks to disassociate himself from the excess of Fardell, he went along with the threat of force that permeated the whole of the reason for his involvement. The whole purpose of him being there was to contribute to the strength of the threats and ensure that Mason and Mrs Moore were suitably frightened into submitting. At the very least, as the car journey and subsequent events developed, he knew that Fardell had spiked his threats at an early stage with the production of the knife. He did not disassociate himself from what occurred and he took his share with Fardell of the fee of £3,000 agreed for the job.

Whilst he may have had a lesser role than Fardell, his presence was a vital part in the execution of the conspiracies and putting fear into Mason and Mrs Moore. Unlike Fardell, he did not have the significant mitigation of having assisted the prosecution and unlike Fardell he had previous convictions for violence, some quite recent. But for those factors the judge would clearly have differentiated between them in the sentences he imposed. The parity of the sentences is, in the circumstances, a marker of lack of parity in the level of their roles in these conspiracies, but it is a consistent disposal of them by way of sentence. Mr Khalil's complaints of lack of parity with the other two appellants is similarly reflected adequately in the parity of their sentences, parity which for different reasons acknowledges their different levels of criminality and acknowledgment of it in the conspiracies as a whole.

So, for those reasons we also refuse his application for leave to appeal against sentence.

2003 WL 21917313