

**The King**

**-v-**

**(1) M**

**(2) L**

**(3) R**

**The 4<sup>th</sup> Defendant was acquitted**

**(5) C**

**Sentencing Remarks of Mr Justice Fraser**

**Birmingham Crown Court**

**15 February 2023**

1. I remind everyone in court that reporting restrictions apply in this case due to the age of the defendants, all of whom are aged 16 years and younger. Earlier today I rejected an application by the Press Association to make what is called an “excepting direction” under section 45(5) of the 1999 Act, which would have had the effect of lifting the existing order. This means that the existing order remains in force, so “no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings”.
2. These sentencing remarks are being made available in writing immediately after I have handed down sentence, and will also be placed on the Judicial Office website. In those, because of the reporting restrictions, the names of the defendants will be replaced with the initial of their surname, so the first defendant will be M, the second defendant L, the third defendant R and the fifth defendant C. The fourth defendant was acquitted of all the charges. In court, however, I will of course use the defendants’ actual names. These sentencing remarks are regrettably lengthy but that is because there are four defendants to be sentenced, aged only 14, 15, 14 and 13 at the date of the offences, and aged 15, 16, 14 and 14 at the date of conviction, and each sentence must be carefully explained given your ages so everyone in court understands how and why they were reached.
3. M, on 18 January 2023 you were unanimously convicted of murder by the jury after a lengthy trial. The person you murdered is Mr Ian Kirwan. The jury also convicted you of a separate offence of possession of a bladed article, namely a knife, in a public place.

They acquitted all of your co-defendants of charges both of murder and manslaughter, but convicted three of you, L, R and C, of violent disorder. L had pleaded guilty before the trial to the charge of possession of a bladed article, a knife, in a public place.

4. M was 14 years old at the time of the murder and turned 15 during the interval between Christmas and New Year during the trial itself. This makes him 15 at the date of both conviction and sentence. L was 15 years old at the date of the offences, and had his 16<sup>th</sup> birthday the day before the jury were sent out to start considering their verdicts. This makes him 16 at the date of both conviction and sentence. R was 14 years old at the time of the offence and turned 15 one week after the jury returned their verdicts and convicted these four defendants. This makes him 14 at the date of conviction and 15 at the date of sentence. C was 13 years old at the time of the offence and had his 14<sup>th</sup> birthday in November during the trial. This makes him 14 at the date of conviction and also sentence. All I am going to say about the other defendant who was acquitted on all three counts is that he was only 15 years old at the time the offences were committed.
5. All of the defendants were therefore young teenagers when the offences took place and when M murdered Mr Kirwan on 8 March 2022.
6. The court is well aware of the separate legal considerations that must apply when such young people commit crimes and are tried for them, and if convicted then sentenced for them. Part of the reason that this trial took so long was the need to make allowances for the welfare of such young defendants, and their inability to concentrate for long periods, as well as other matters such as unavoidable absences through illness of participants in the trial. Additionally, each of M, L and R all have agreed diagnoses of different mental conditions, which I will come to in due course. I pay tribute to the commitment of the jury to this case, which continued for a number of weeks well in excess of what they were expecting, including it going on into 2023.
7. I also state now that on all matters of fact where I am required to make a finding of fact relevant to sentencing, I do so by applying the criminal standard of proof and I only make such findings when I am satisfied to that standard so that I am sure.
8. On 8 March 2022 shortly after 7.00pm in the early evening in Redditch, M murdered Mr Ian Kirwan, a 53 year old man who was entirely law-abiding, by stabbing him in the heart with a 12" kitchen knife. This killing took place in a supermarket car park. None of the defendants knew Mr Kirwan, nor before that evening had they ever met him before. The knife used to kill him was discarded in the immediate aftermath and later found, with the assistance of a police dog, in a drain in Lodge Road in Redditch. It was put in the drain by M shortly after the murder on the suggestion of one of the other defendants in an attempt to dispose of evidence. That is a subject to which I shall also return. The knife was taken from the kitchen of L's mother, earlier that day, by L.
9. Mr Kirwan's murder is a tragedy, and so utterly senseless that it defies description. It is also a stark reminder, if society were to need one, of the danger of young people carrying knives with them as a matter of routine, or deciding to take knives with them to intended confrontations with other youths. In a case in the Court of Appeal just after these defendants were born, *R v AM* [2009] EWCA Crim 2544 the then Lord Chief Justice referred to the dangers of carrying knives and said that this message was not new. He referred to a case of *R v Povey* [2008] EWCA Crim 1261 from the year before,

when he was the President of what was then the Queen's Bench Division when he had said:

[3] Every weapon carried about the streets, even if concealed from sight, even if not likely to be or intended to be used, and even if not used represents a threat to public safety and public order. That is because even if concealed, even if carried only for bravado, or from some misguided sense that its use in possible self-defence might arise, it takes but a moment of irritation, drunkenness, anger, perceived insult or something utterly trivial, like a look, for the weapon to be produced. Then we have mayhem and offences of the greatest possible seriousness follow, including murder, manslaughter, grievous bodily harm, wounding and assault. ....

10. He also referred to offences of this type as “reaching epidemic proportions”. If that was the situation in 2008 and 2009, it appears to be even more so now. During the period of this trial, the media have been reporting fatal stabbings on a depressingly regular basis. This case demonstrates once again the danger of young people carrying knives. I shall refer later to the specific provisions in terms of starting points for minimum terms in cases of murder that have been set down by Parliament, with the recent amendment to Schedule 21 of the Sentencing Act 2020, when I come to pass sentence upon M.
11. So often sentencing remarks focus, as they must, on the defendants' features and characteristics relevant to sentence. I am going to start these remarks by concentrating on Mr Kirwan. He had led a blameless life. He was 53 years old when he was murdered and he worked as an artificial intelligence engineer for Jaguar Land Rover. He used to work in Coventry, but from the time of the Covid pandemic onwards, he had been able to work from home and that had continued. He had been together with his wife Lyndsey Anne Blythe for 20 years. He was a loving husband, friend and uncle, and was also a talented musician who would help and teach others. He had also, as an adult when he was 38 years old, been diagnosed with Attention Deficit Hyperactivity Disorder or ADHD. His wife explained that this would affect his concentration, and also as a result he would often miss social cues. He would also sometimes leave his phone or wallet in places and have to retrace his steps to find items.
12. The court has heard a victim personal statement from Mr Kirwan's wife, Lyndsey Anne Blythe, who gave agreed evidence in the trial. It is a moving statement. His murder has had a very detrimental effect upon her, and also upon his sister Shiv. The two of them had just celebrated 20 years of being together and had been planning on adopting a child in 2022. She described him as “a wonderful person who was full of love, kindness and generosity”, someone who would always care for and support his family and friends. She cannot bring herself to travel the train route used by the defendants that day, and she does not feel safe, and feels that she will never recover.
13. To the family and friends of any murder victim a criminal trial such as this one must seem a sterile and cold process, seemingly ignoring the impact upon those affected by the untimely and violent death of a loved one, who in this case had done nothing more controversial than going to the shops to buy an item that would cost a couple of pounds. He never came home, and died on the floor of a supermarket, murdered by a teenager for no reason at all, surrounded by strangers, who tried their best to help him. No sentence passed can ever put that right, or bring Mr Kirwan back.

14. The defendants' trip to Redditch was one that was plainly criminal in intent from the beginning, and I find that as a fact. The jury were not told that there were messages passing between M and another youth, not a defendant, before 8 March 2022 about a plan to go to Redditch to deal in drugs, and how these should be split into small bags. Nor were they told about other messages which referred to a plan to go and beat up a youth there. They did hear evidence from R about an argument with some youths there over Snapchat, which resulted in a challenge to the group to "come down Redditch then". R checked with his friend N that he was going to take his knife, or "shank". When he was told by N that he was not, R told him that meant that he would "get shanked", and that he, R, was going to take his. I cannot find, given the jury's verdicts, that this is what R did, and there was only fleeting evidence of it, namely a slim object shown in his hand during the confrontation with Mr Kirwan. However, I find that M knew that knives were to be taken there to be available as weapons should they need to be used. This is clear from what he said in interview when put together with the evidence given by L in court, that when required, M asked the group for the knife. L told the court he always carried a knife. His friends and associates must have known this and would certainly have known that he had one that day. Knowledge within the group of defendants of the presence of knives is also demonstrated by the phrase "back it out" being said during the confrontation, which means take out the knife. As C said rhetorically in his police interview, why would anyone say "back it out" unless there was a knife?
15. A number of members of the group took weapons; L admitted that he had in his evidence, and said that he always carried a knife for protection. Another member of the wider group, J, stole a wrench from a nail bar when he was in Redditch, and this was plainly so it could be used as a weapon. Not only was everyone in the larger group of 11 determined to go to Redditch to cause trouble, or as one defendant told the police in interview "terrorise the place", but they were all dressed in dark clothing, with face masks or balaclavas to hide their identities, and some with their hoods up. This was also done in an attempt to intimidate the public and anyone they came across. M admitted to the police in interview that he knew that the others were planning to go to Redditch to "stain", which means rob or steal. I find that M intended to attempt to deal in drugs that day, and also confront other youths. The fact that the messages he was directly involved in concerning drugs were limited and within a period of only about two days before the murder; and that his attempt to do so may have been amateurish and ill-thought out, does not matter. Ms Bahra KC for M has urged upon me that there is no evidence that M read the Snapchat messages in a group of which he was a member. However, the messages in which he was directly involved make it clear to me that this was his intention that day.
16. The group's journey to Redditch on the train from Selly Oak, whilst waiting at the platform, on the train and walking through Redditch town centre, including storming en masse into the nail bar and stealing items including the wrench, abusing members of the public and seeking a confrontation, was all indicative of the general plan. When the group reached Asda, it split into two, with the six older teenagers going into the store to steal or rob, according to M's police interview, and plainly also going to cause trouble generally, as recounted in the evidence. The five younger ones, the defendants, went into the public lavatories in Asda. They had never met Mr Kirwan before.

17. Mr Kirwan and his wife had that day been looking after a friend's foster child. This is an example of the sort of caring person he was. He went to the hardware store B&Q that evening, when he had finished work, in order to buy a new light switch. B&Q is adjacent to Asda. He used the public lavatory in Asda whilst he was at the retail park. Whilst he was in those lavatories, the five defendants came in and began to behave in an extremely anti-social fashion. This was part of the reason the whole group of 11 had gone to Redditch in the first place, to cause trouble. They banged on the cubicle door, shouting at Mr Kirwan to get out, and also made other remarks such as R saying he was going to urinate on the floor. They then left the lavatories, leaving him in the cubicle.
18. It was Mr Kirwan's fatal misfortune that as he left Asda he came across that group of five again, waiting for their other friends who were making trouble elsewhere in Asda, confronting customers and being required to leave by a security guard. To the distress of those affected by Mr Kirwan's murder – his wife, his family and friends, all of whom have conducted themselves with great dignity throughout, and wore yellow, his favourite colour – was added at the trial the additional insult of having to listen to his reputation being attacked by some of the defendants, who relied upon self-defence. It was said, particularly by R and C, that Mr Kirwan had attacked R as the smallest in their group, punching and using obscene language towards them, and that this was why the confrontation unfolded, and justified their violence towards him.
19. I find that all Mr Kirwan did outside the supermarket when the defendants were by the trolleys was to admonish them for their troublemaking and anti-social behaviour in the lavatories. I reject the evidence of those defendants who gave evidence who said he attacked and punched R. Not only is there no independent corroboration of such an attack from any independent eye witness, but R did not mention this to the police at the time after his arrest, and undoubtedly would have, had it been true. It is also contrary to the evidence of the expert pathologist Dr Kola, who found no offensive injuries on Mr Kirwan's hands. I give limited weight to the photographs produced during the trial by R during his evidence of the injury to his head. Not a single question was put on his behalf to any police officer about that. Nor was the photograph taken immediately after the incident, but when he was arrested nearly 48 hours later and after the defendants had between them taken steps to dispose of evidence, a subject to which I shall also return. I do not consider, that because the jury rejected the prosecution's case on joint enterprise and acquitted the other defendants of murder and manslaughter, this must mean that they accepted the case of self-defence by R and C.
20. A member of the public telling them off was all the defendants needed, given the reason they had gone to Redditch and the fact they were primed to cause trouble. What happened during the confrontation with Mr Kirwan is almost all captured on CCTV, apart from the very beginning. M, R and C were the most involved. They surrounded Mr Kirwan, attempted to intimidate him, and comments were made such as "if you want trouble, you can have trouble", "who does this guy think he is?" and "back it out". Lyndsey Anne Blythe explained in her agreed evidence at trial that if Mr Kirwan felt under threat his arms would go out; and if someone went to hit him he would use his arms or legs to block them so he would not get hurt. That is what happened here. In summary, a fight or scuffle broke out. One eye witness said that there was nowhere that Mr Kirwan could go, although he appeared to be trying to take himself out of the situation. But he could not do so. M, R and C attacked him.

21. L had a knife with him anyway, and this is clearly shown on the CCTV of the train journey, although it is hidden in his waistband for all save a few seconds of footage. He pleaded guilty to having it in a public place and there is no dispute he took it to Redditch.
22. There is a difference in the evidence concerning how M came to have that knife in his hand. He told the police that L handed it to him. L told the court that M asked around the group for the knife, and took it from his waistband, but that he, L, was happy for him to take it. I find that M knew a knife had been taken, and when he needed one he simply asked for it, and L made it available to him by lifting up his jacket. M took it from him.
23. M, having taken the knife from L, moved forwards towards a retreating Mr Kirwan and used the knife to stab him a single time directly in the heart. Mr Kirwan was trying to move away from the group when this happened. One eyewitness demonstrated the stabbing motion in her evidence from the witness box. I find that M intended to kill Mr Kirwan when he did this. That intention is clearly made out, in my judgment, from the way and the speed with which he moved towards Mr Kirwan; the size of the knife; the nature of the stabbing motion; the force used; and the location upon Mr Kirwan's body where he stabbed him, directly in the chest. Additionally, there could be no realistic alternative to Mr Kirwan's death given these cumulative features.
24. Mr Kirwan ran a few steps back into Asda, fatally stabbed. C chased after him, shouting at him, until a female member of the public admonished him and he ran off to join the others, who were all running off, back to the train station. Mr Kirwan would die on the floor of the supermarket a little later, notwithstanding the immediate attempts of members of the public to help him, and the paramedics when they arrived. The emergency services took every possible measure they could to save him from the catastrophic effects of being stabbed, with force, directly in the heart. I reject C's self-serving evidence that he was running after Mr Kirwan to see how he was, evidence which is totally far-fetched and incapable of belief.
25. Two members of the group did not take direct part in the group attack on Mr Kirwan. One was the 4<sup>th</sup> defendant who was acquitted; the other was L, who had moved a little distance away, after the knife he had been carrying had been taken by M.
26. The defendants then ran to the train station, the knife used to kill Mr Kirwan being dropped in a drain on the way. They caught a train which just happened to be there at just the right moment for them to make their escape. They took a convoluted route home, having left the train at Longbridge rather than Selly Oak so they did not get "boxed in" by the police. R disposed of the gloves he had been wearing in the lavatory on the train; C took his clothes to his aunt's house; cell-site data shows numerous calls and messages between them. There is no credible explanation for any of this, other than discussions about attempting to dispose of evidence and getting their story straight. Text messages not shown to the jury all showed consternation during the day of 9 March 2022 when they found out that M had been arrested. In fact he was taken to the police station by his mother, but the messages show hot debate about who may have "snitched" and given them all away. All four of those convicted in this trial either "lost" their phones or sent them away, or had the relevant apps deleted. R used his mother's phone, and Snapchat was deleted on that a few hours after his arrest; it is not known by whom.

M told the police he had lost his phone. L said he had lost his too, and went away from his home address somewhere else for a number of days. I quote from C's interview with the police, who said his phone was "long gone" and when asked about this by the officer said "why am I gonno not going to hand myself [in] and my phone am I? It doesn't make sense" and that his phone was "ain't got rid of but it's just out of the way. So it's out of the way". I find there was a plan by all of these four to make sure that the police did not obtain any evidence from their phones, in particular messages about their trip to Redditch, what had happened there, or what steps should be taken to cover matters up.

27. Only M has been convicted of murder and the other three of violent disorder, with L also having pleaded guilty to possession of a bladed article. I must be careful to consider the correct sentence in each of your cases separately; your involvement was different, your ages are different, and your personal circumstances and mental disorders are different. I shall sentence those of you convicted of violent disorder first, and then sentence M for murder at the end.
28. I have regard to two particular sentencing guidelines. The first is Sentencing Children and Young People – Overarching Principles and Offence Specific Guidelines for Sexual Offences & Robbery" ("The Children's Sentencing Guideline"). The Children's Guideline has appended a Sexual Offences guideline, and a Robbery Guideline; however, there is no offence specific guidance for children and young people available for violent disorder. The second is that for Sentencing Offenders with mental disorders, developmental disorders, or neurological impairments ("The Mental Disorders Guideline") which applies to three of you, but not to C. There are also offence specific guidelines to which I refer below.
29. The Children's Guideline makes it clear that when sentencing children or young people the court must have regard to the principal aim of the youth justice system (to prevent offending by children and young people); and the welfare of the child or young person.
30. The seriousness of the offence will be the starting point, but the approach to sentencing must be individualistic and focused on the child or young person, as opposed to offence focused. The sentence should also focus on rehabilitation where possible. The court should also consider the effect the sentence is likely to have on the child or young person (both positive and negative) as well as any underlying factors contributing to the offending behaviour.
31. A custodial sentence should always be a measure of last resort for children and young people and in any event a custodial sentence may only be imposed when the offence is so serious that no other sanction is appropriate.
32. Violent disorder is not what is called in the Sentencing Act a "grave crime" and this has an effect upon the sentences available given the young age of the three of you convicted of that offence.
33. The Court will apply Part Four paragraphs 2 to 7 of the Children Guideline, when assessing the seriousness of the offence, and Part Four paragraphs 4.8 to 4.10 when assessing the age and maturity of the child or young person.

34. The need to proceed in that fashion is evident from Part Six. Paragraphs 44 and 45 provide:

6.44 In determining whether an offence has crossed the custody threshold the court will need to assess the seriousness of the offence, in particular the level of harm that was caused, or was likely to have been caused, by the offence. The risk of serious harm in the future must also be assessed. The pre-sentence report will assess this criterion and must be considered before a custodial sentence is imposed. A custodial sentence is most likely to be unavoidable where it is necessary to protect the public from serious harm.

6.45 Only if the court is satisfied that the offence crosses the custody threshold, and that no other sentence is appropriate, the court may, as a preliminary consideration, consult the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

35. Pre-Sentence Reports were ordered in this case for all four of the defendants. This is a mandatory requirement, when sentencing someone below the age of 18, by reason of sections 30 and 31 of the Sentencing Act 2020, before forming the opinion that the seriousness threshold for discretionary custodial sentences has been crossed.

*L*

36. You were 15 at the time of the offences and 16 years old at conviction and sentence. You have one conditional youth caution for an identical offence of possession of a bladed article from 2019, having actually taken a knife to school and hidden it in a bush. You are also to be sentenced for two offences, violent disorder of which you were convicted by the jury, and having pleaded guilty, possession of the knife that was used to murder Mr Kirwan. I do not accept that the reason you carried a knife was because you had been the victim of a robbery when you were younger. There is no evidence that this was reported to any adult, a teacher or even the police, at the time, and when you were found with a knife at school you did not tell anyone that story at the time. Your explanation then was that you carried a knife because you were having nightmares, something that was in the Agreed Facts. Nor was this reported to Children's Services either. The author of the Pre-Sentence Report says that they "question the legitimacy of this claim"; having seen you give evidence in court, I disbelieve your explanation.
37. You have agreed diagnoses of Autistic Spectrum Disorder or ASD, and ADHD. The court had a report from Dr Furtado for the trial itself, which was agreed evidence, and now has a Pre-Sentence Report. You are also mildly dyslexic and asthmatic. I have fully considered all of the material put before me for the purposes of sentence. You have witnessed domestic violence at home when young, and your mother obtained both Restraining and Non-Molestation Orders to try and prevent this happening. You were excluded from school for possession of the knife in 2019, but this exclusion was challenged and overturned and you returned to that school. You were then excluded again, this time for possession of cannabis. You have used cannabis regularly prior to the offence, for a period of about two years. You were in alternative education provision at the time of the offence where your attendance rate was 45%. You have been in custody since April 2022 and your engagement with education in custody has been far from ideal, as was your behaviour during the trial as you regularly declined to engage with arrangements to bring you to court promptly. You are seen as potentially



vulnerable to criminal exploitation in the future. You maintain that you are innocent of the offence of which you were convicted by the jury.

38. In my judgment the offence of violent disorder is a serious offence that passes the custody threshold. The incident involved the murder of an innocent member of the public, although of course I recognise that you were acquitted of both murder and manslaughter. The level of harm caused was of the highest, death of a person, and given the circumstances, was likely to be high in any event.
39. You were 15 at the time of the offence but you are now 16 years old. It is not necessary to find that you are what is called a persistent offender in order to pass the sentence that I now pass upon you. I take account of the fact that there are two offences for which you must be sentenced. The more serious of the two in my judgment is that of violent disorder. I am going to explain what sentence would be passed upon an adult, and then explain how I am going to sentence you, given your age. I bear in mind that custody must be a sentence of last resort for a defendant of your age, and that of your co-defendants. These offences are so serious that the custody threshold is passed. I note the recommendation in the Pre-Sentence Report that consideration is given to a community disposal but the author also recites at her paragraph 5.12 that “the likelihood of [you] committing a further specified offence, is likely. Any such offence is likely to be violent or aggressive in nature.” Your counsel Mr Bradley KC points out that given your time served on remand, even a custodial sentence in the maximum period would see you released very soon.
40. In addition to the two guidelines to which I have referred above, for the offence of possession of a bladed article, under the Definitive Guideline for Bladed Articles and Offensive Weapons I categorise this as Culpability A (as the knife is a bladed article; it is also a highly dangerous weapon) and Harm 1 (risk of serious disorder, added to which the circumstances in which it was actually used, including the death of Mr Kirwan). For an adult that would give a starting point of 1 year 6 months’ imprisonment, with a range of 1 year to 2 years 6 months. The maximum sentence for the offence for an adult is 4 years’ custody.
41. It is an aggravating factor that this offence took place as part of a group, in the context of the group endeavour to go to Redditch to commit an offence or offences, and the attempts to conceal your identity by wearing a mask. There is also your previous youth conditional caution for the same offence, and the attempt to dispose of and conceal evidence after the offence in which you were engaged.
42. Your personal mitigation includes your mental conditions and home background. I have carefully considered the reports into you, but I conclude that although you suffer from ASD and ADHD, they have minimal impact upon your culpability. I consider that there is an element of bravado to your carrying of a knife, but I also am of the view that your carrying of the knife on this occasion was specifically as part of the group plan to have a knife or knives available should it be required. You were effectively the weapon carrier, or one of them.
43. You have also pleaded guilty to this offence at an early stage and are entitled to the appropriate credit. Were this crime to be committed as an adult, I would place it slightly above the top of the range for Category 1A offence and impose a term of 3 years, which

would be reduced to 2 years for your plea of guilty. There is a statutory minimum for a second offence of this kind, but your youth caution does not count and you were below the age of 16 when you committed the offence, so it does not apply.

44. Turning to the sentencing guidelines for violent disorder, I would place this offence into Culpability A, because of the intention to use a highly dangerous weapon, namely the 12" kitchen knife, and thereafter your involvement in an incident with a serious act of violence, namely the murder of Mr Kirwan. Your participation fell short of the prosecution's case on joint enterprise, but you allowed M to take the knife and as you explained to the court, you were happy for him to have it. I reject your explanation that you thought he would only use it to scare Mr Kirwan. There was significant planning of unlawful activity, as you and others had originally planned to go to Redditch for the same purpose on 7 March 2022, the day before. This plan was only abandoned, I find, because not enough of you came to Selly Oak to catch the train; as a group, all of those present on 7 March 2022 decided that more associates were needed in order to accomplish your aims. The journey was therefore postponed 24 hours.
45. In terms of harm, I find that it is appropriately categorised as 2. For an adult therefore, for Category A2 the starting point would be 3 years with the category range being 2 to 4 years.
46. Aggravating factors are the location, namely the busy public place, the background to the group arriving there (including behaviour on the train, the journey through Redditch, and behaviour inside Asda), the wearing of masks to disguise your identities, and the attempts to dispose of evidence (which succeeded in respect of your phone). The mitigating factors are your age and lack of maturity, and your mental disorders. Your mental disorders played an insignificant part in your offending but they cannot be ignored.
47. If you were an adult, the sentence that I would pass for this offence is 4 years in custody. However, paragraph 6:46 of the Children Guideline states the following:  
"When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15."
48. Applying that approach, I would reduce the period for the offence of possession of a bladed article by reducing the sentences by one half, which would reduce them down from 2 years for an adult to 1 year in custody; and that for violent disorder would also be reduced by one half from 4 years down to 2 years.
49. What this means is that an extended sentence is not available in your case. This is because, although violent disorder is an offence specified in Schedule 18 to the Sentencing Act 2020, as set out in paragraph 2.4 of the Children's Guideline, a sentence under the dangerous offender provisions can only be imposed if:
  1. the child or young person is found guilty of a specified violent or sexual offence; and
  2. the court is of the opinion that there is a significant risk to the public of serious harm caused by the child or young person committing further specified offences; and
  3. a custodial term of at least four years would be imposed for the offence.

50. I find that there is a significant risk in your case of causing harm by committing further specified offences. However, there is also a requirement under section 255(1)(e) of the Sentencing Act that the appropriate custodial term must be “at least 4 years”. As I have explained above, a period of custody of four years for the violent disorder would not be imposed here, and therefore an extended sentence is not available.
51. That means given your age, all I could pass upon you by way of a custodial sentence would be a Detention and Training Order or DTO. A DTO is limited in the maximum term that can be imposed of 24 months and the excess of time above that is remitted if the combination of two or more orders comes to a period longer than 24 months. Therefore, even were I to pass the maximum period of DTO you would be released very shortly from custody in any event. There is a community disposal available to me which has a far greater chance of preventing re-offending by you, and that is recommended in your Pre-Sentence Report.
52. I have also borne in mind paragraph 6:47 of the Children Guideline which provides a further salutary warning about the effects, even of short custodial sentence, and disruption to “education and/or training and family relationships and support which are crucial stabilising factors to prevent re-offending.”
53. The recommendation is a Youth Rehabilitation Order with Intensive Supervision and Surveillance in this instance. That is the Order that I am making, confident in two things. Firstly, it represents the best chance of you avoiding re-offending. Secondly, if you breach any provision of it you will be returned to the court and sentenced again.
54. The YRO with ISS is made in the term of 36 months with the following requirements:
1. Duration of Order, 36 Months
  2. 36 Month Supervision Requirement
  3. Extended Activity Requirement – 180 days.
  4. Curfew Requirement between 7.00pm and 7.00am for six months
  5. Electronic Monitoring Requirement – Six Months
  6. Programme Requirement – 5 days
  7. Prohibited Activity Requirement
    - (a) Not to contact the victim’s families directly or indirectly, by social media, phone, mobile or texts in any respect whatsoever for the duration of the Order.
    - (b) Not to have any contact whatsoever with M, R and/or C, directly or indirectly, by social media, phone, mobile or texts in any respect whatsoever for the duration of the Order.
  8. Exclusion Requirement  
You are prohibited from entering the area of Redditch as defined by the map attached to your Pre-Sentence Report for a period of 3 months.
55. I also order forfeiture and destruction of the knife.

R

56. You were 14 at the time of the offence and conviction, and are now 15 years old. You have no prior convictions, reprimands or cautions. You were best friends with M and attended the same specialist school as him at the time, which is for pupils who have been excluded from mainstream education. There you were violent from time to time, including attacking teachers, and your friend M would sometimes copy your bad example.
57. You have agreed diagnoses of ASD and ADHD. You also have a very low IQ and a diagnosis of Conduct Dissocial Disorder. You have been taking medication for ADHD since you were 7. I have had a Pre-Sentence Report for you and there was also agreed evidence during the trial on your behalf from Dr Shami and Dr Champaneri about these conditions, and your general cognitive functions and impaired processing skills. I have also re-read the report on you by Mrs Robson, who was your intermediary throughout the whole of the trial. She was instrumental in assisting you during the trial.
58. You were involved in the confrontation but I have not found to the necessary standard that you had a knife in your hand during the attack on Mr Kirwan, as I have explained. The legal directions given on joint enterprise means that possession or knowledge of a weapon is only one factor that the jury had to consider when considering joint enterprise. I am sure that you were not acting in lawful self-defence at any time. All that Mr Kirwan did was to speak to your group about your behaviour.
59. For the offence of violent disorder I would place this offence into Culpability A, because you were involved in an incident with a serious act of violence, which led to the murder of Mr Kirwan, although of course you were acquitted of that charge. Your participation fell short of the prosecution's case on joint enterprise. There was significant planning of unlawful activity, as you and others had originally planned to go to Redditch for the same purpose the day before. This plan was abandoned for the reasons I have already explained, and the journey was postponed 24 hours.
60. In terms of harm, I find that it is appropriately categorised as 2. For an adult therefore, for Category A2 the starting point would be 3 years with the category range being 2 to 4 years.
61. Aggravating factors are the location, namely the busy public place, the background to the group arriving there (including behaviour on the train, the journey through Redditch, and behaviour inside Asda), the wearing of masks, and the attempts to dispose of evidence (which succeeded in respect of the deletion of material on your phone). The mitigating factors are your age and lack of maturity, and your mental disorders, which played some part in your offending and in my judgment they were factors in terms of reducing your culpability. Your home background is a troubled one and the Pre-Sentence Report gives a wealth of detail about you. You have had to cope with your ADHD and ASD, the influences of a negative peer group, substance misuse, poverty, low expectations, low income, offending and knife culture. Perhaps inevitably, you have been excluded from mainstream school.
62. Although the Pre-Sentence Report concludes that you have been assessed as posing a high risk of re-offending, for the same reason that I have explained at [50] to [51] above, an extended sentence is not available in your case.

63. If you were an adult, the sentence that I would pass for this offence is 4 years in custody. However, paragraph 6:46 of the Children Guideline states that the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17, and allow a greater reduction for those aged under 15. I also take account of paragraph 6.48 of the Children Guideline which states “there is an expectation that custodial sentences will be particularly rare for a child or young person aged 14 or under. If custody is imposed, it should be for a shorter length of time than that which a young person aged 15 – 17 would receive if found guilty of the same offence.” I would therefore apply a reduction to that of greater than one half.
64. There is however a recommendation in the Pre-Sentence Report that you are suitable for a YRO with an Intensive Supervision and Surveillance requirement (ISS). Your counsel Mr Garcha KC urges that upon me, as a feasible and far more constructive alternative to the other disposals available. The ISS requirement is now available as you are now 15. I have carefully considered the different options available in your case and I am persuaded that this is the one most likely to avoid further offending on your part. I therefore accept the recommendation in that report.
65. I therefore pass such an order upon you for a duration of 24 months with the following requirements:
1. Supervision Requirement – 24 months
  2. An Extended Activity Requirement – 91 days at Band 1 which consists of 25 hours per week. The core elements which will be included in the ISS plan, which are both Education and Knife and Knife Culture Awareness programme.
  3. Electronic Monitoring Requirement - 3 months
  4. Curfew Requirement for 3 months between the hours of 7.00pm and 7.00am.
  5. Programme Requirement – 5 days, namely the Victim Awareness programme
  6. Prohibited Activity Requirement
    - (a) Not to contact the victim’s families directly or indirectly, by social media, phone, mobile or texts in any respect whatsoever for the duration of the Order.
    - (b) Not to have any contact whatsoever with M, L and/or C, directly or indirectly, by social media, phone, mobile or texts in any respect whatsoever for the duration of the Order.
  7. Exclusion Requirement. You are prohibited from entering the area of Redditch as defined by the map attached to your Pre-Sentence Report for a period of 3 months.
66. You must be aware that any failure to comply with any requirements of this Order will result in your being returned to the Crown Court, and the Order could then be revoked and you could be re-sentenced. If that were to happen, you would have thrown away and wasted this opportunity to place your life on a more positive track than it has been so far.
67. A remand to local authority accommodation under section 91(3) of the 2012 Act is neither a remand in custody for the purposes of section 240ZA of the 2003 Act nor a remand on bail for the purposes of section 240A of the 2003 Act and section 325 of the Sentencing Code. If I were passing a custodial sentence, the fact that you have been subject to a qualifying curfew while remanded to local authority accommodation until

now would attract the relevant credit, and the court would reduce such a sentence as though a direction under section 240A or 325 had been given. Given I have imposed a YRO with an ISS, such credit does not arise.

C

68. You are the youngest of these defendants, being only 13 at the time of the offence, and 14 years of age at the date of both conviction and sentence. You have no prior convictions reprimands or cautions. There is no evidence that you were armed on that day or that you took a knife with you to Redditch.
69. Your circumstances are different to the two other defendants I have already sentenced. Firstly, you are the youngest, and were only 13 when the offence was committed. Secondly, you did not have a weapon yourself, and there is no basis for a finding that you knew weapons were to be taken.
70. For the offence of violent disorder I would place this offence into Culpability B, because you did not use or intend to use a knife. Your participation fell short of the prosecution's case on joint enterprise and although you chased Mr Kirwan after he had been stabbed, this was an act of immaturity on your part. You should reflect upon that act on your part – abusing a man who had been fatally stabbed. There was significant planning of unlawful activity as I have already explained.
71. In terms of harm, I find that the offence in your case is appropriately categorised as 2. For an adult therefore, for Category B2 the starting point would be 2 years with the category range being 1 to 3 years.
72. Aggravating factors are the location, namely the busy public place, the background to the group arriving there (including behaviour on the train, the journey through Redditch, and behaviour inside Asda), the wearing of masks, and the attempts to dispose of evidence including your phone. The mitigating factors are your age, lack of maturity, and personal background. Your home background too is exceedingly troubled, and again the Pre-Sentence Report has given me a great deal of information. You have had to deal with significant domestic abuse at home, your mother has mental health issues of her own and as the report says:  
“There is evidence of quite extreme violence, threats of violence, emotional abuse, manipulation and control.”
73. You have already smoked cannabis on a regular basis and have even been given cannabis to smoke by adults in your life who should have known better. You have been known to Birmingham Children's Services for some time, and have been subject to Child Protection and Child in Need Plans previously and before this offence.
74. Although the Pre-Sentence Report concludes that you have been assessed as posing a high risk of re-offending and causing serious harm to others, for the same reason that I have explained above, an extended sentence is simply not available in your case.
75. If you were an adult, the sentence that I would pass for this offence is 3 years in custody. That would be reduced due to your age in any event, beyond the figure of one half, and I also take account of paragraph 6.48 of the Children Guideline which states “there is

an expectation that custodial sentences will be particularly rare for a child or young person aged 14 or under. If custody is imposed, it should be for a shorter length of time than that which a young person aged 15 – 17 would receive if found guilty of the same offence.”

76. I would therefore apply a reduction to that and arrive at a figure of 12 months, were I to impose a custodial sentence.
77. However, you are still only 14 years old and custodial sentences for defendants of that age are particularly rare. Your age also means that regardless of my analysis above, due to your younger age, I can only impose either a DTO upon you, or a YRO with ISS, if you are a persistent offender. I must therefore consider whether you are.
78. In January 2022 you were arrested for two offences of assault occasioning actual bodily harm, even though these did not proceed to trial. Both of these were assaults at school against teachers. In October 2021 you were part of a group that assaulted a security guard and a taxi driver, which did not lead to a conviction but was addressed through the Child in Need Plan that you were under at the time. You had also threatened your mother with a knife inside the family home in 2021. You have been the focus of attention by the relevant authorities for a period of time of about 2 years, and on a number of occasions.
79. In your case, and taking account of all of the circumstances, I do categorise you as a “persistent offender”, even though this is your first conviction. To be fair to Mr Kane KC, he does not seek to persuade me that it would be wrong in principle so to categorise you, and realistically accepts that it is a finding I am entitled to make.
80. The Pre-Sentence Report that has been prepared for you recommends a YRO with an Intensive Supervision and Surveillance requirement (ISS). Such a disposal is possible in your case, even though you are only 14, because I have found that you are a persistent offender.
81. Your counsel Mr Kane KC urges that recommendation upon me, as a feasible and far more constructive alternative to the custodial disposals available. I have carefully considered the different options available in your case and I am persuaded that this is the one most likely to avoid further offending on your part. I therefore accept the recommendation in that report.
82. I therefore pass such an order upon you for a period of 24 months with the following requirements:
1. Supervision Requirement – 24 months
  2. An Extended Activity Requirement – 91 days at Band 2 which consists of 20 hours per week.
  3. Electronic Monitoring Requirement - 3 months
  4. Curfew Requirement for 3 months between the hours of 7.00pm and 7.00am.
  5. Programme Requirement – 5 days, namely the Victim Awareness programme
  6. Prohibited Activity Requirement
- (a) Not to contact the victim’s families directly or indirectly, by social media, phone, mobile or texts in any respect whatsoever for the duration of the Order.

(b) Not to have any contact whatsoever with M, L and/or R, directly or indirectly, by social media, phone, mobile or texts in any respect whatsoever for the duration of the Order.

7. Exclusion Requirement. You are prohibited from entering the area of Redditch as defined by the map attached to your Pre-Sentence Report for a period of 3 months.

83. As with L and R, you need to be aware that any failure to comply with any requirements of this Order will result in your being returned to the Crown Court, and the Order could then be revoked and you can be re-sentenced. If that were to happen, you would have simply wasted this opportunity. It is entirely up to you what you do from here. The Pre-Sentence Report notes that you are heavily influenced by the negative elements of youth culture and youth violence, including the concept of “street respect”. Hopefully the experience of these past months standing trial on a murder charge have cured you of that.
84. Finally, to the three of you, who were all acquitted of murder, I have only this to say. If you continue with the lifestyle that you had before 8 March 2022, associating with other teenagers who are criminally minded, who carry knives themselves or persuade others to carry them, and who allow yourselves to be influenced by criminal types and who engage in the type of behaviour that led to Mr Kirwan’s murder, one of two things is likely to happen to you. You will either find yourselves back in the Crown Court as defendants once again in a murder trial; or you may end up as victims yourselves, seriously injured or even killed. The direction in which your lives go from here is in your hands, and your hands alone. If any of you breach any element of the complex orders I have passed upon you today, you will be brought back to court and re-sentenced.

*M*

85. I turn finally therefore to sentence the defendant convicted of Mr Kirwan’s murder, M. You were only 14 at the time of the murder and 15 years when you were convicted and when you are sentenced.
86. Under section 259 of the Sentencing Act 2020, there is only one sentence available in law for a defendant who is under 18 years of age and convicted of murder, and that is detention at His Majesty’s Pleasure. Section 324 of the same Act makes clear that this is a life sentence. I must fix the minimum term that you will serve before you can be considered for release by the Parole Board. This does not mean that you will necessarily be released at that point.
87. In order to do this, I turn therefore to paragraph 5A of Schedule 21 of the Sentencing Act 2020 as amended by the Police, Crime, Sentencing and Courts Act 2022. These amended provisions of the 2020 Act apply to any person convicted on or after 28 June 2022. Had the offender been 18 or over he would have been subject to paragraph 4(1) of Schedule 21 if he took weapons to the scene intending to commit an offence and having them available to use as weapons which he then used in committing the murder. The starting point prior to adjustment for aggravating and mitigating factors would be 25 years’ custody for someone over 18. By the amended provisions in paragraph 5A the appropriate starting point for someone aged 15 or 16 in such a case would be 17 years’ custody, and for someone such as you, M, who was aged only 14 the starting



point for taking a knife to the scene would be 13 years' custody. Otherwise, the starting point would be 8 years.

88. I have therefore first to decide which paragraph of the Schedule to apply, as a result of deciding whether you took a knife to the scene intending to commit an offence or having it available to use as a weapon which you then used to commit the murder. I find that the facts of this case do indeed amount to you, M, taking a knife to the scene. This is for the following reasons.
89. There was plainly a plan to take weapons, including knives, to Redditch. There was also a plan, directly shown by your messages, to engage (or attempt to engage) in drug dealing whilst there. You knew that knives were available because as soon as the confrontation with Mr Kirwan started, you asked for the knife and you took it from L. You did this so you could attack Mr Kirwan with it. To hold otherwise, on all the facts of this case, would be contrary to common sense, and would also mean that an offender could avoid the higher starting point by simply arranging to have a weapon carried to the scene by someone else. I consider that the provisions for taking a knife to the scene to commit an offence, and then using that knife to murder Mr Kirwan, apply in your case.
90. That means the starting point prior to adjustment for aggravating and mitigating factors is 13 years. There are the following aggravating factors. The trip to Redditch was in the context of planned criminality, namely the drug dealing, an intended confrontation with youths from there, and also to intimidate and frighten the public and cause disorder. You were in a group, and in the car park you attacked a lone individual, in a public place where other people were simply trying to do their shopping. You all wore masks to hide your identities. After the murder, you disposed of evidence by putting the knife down the drain and disposing of your phone. Intending to kill Mr Kirwan is not an aggravating factor but it means there is the absence of a mitigating factor that there was no such intention. All the aggravating factors together would justify a significant adjustment upwards from the starting point to a term of 18 years.
91. Your young age is taken into account by the starting point in the amended provisions of paragraph 5A of Schedule 21. In terms of mitigation, I have to decide the extent to which your responsibility was affected by your mental conditions, and also the other personal mitigation that you have. The attack on Mr Kirwan was not pre-meditated but you went to Redditch prepared to become involved in offending including violence, and to use a knife if necessary. There was evidence at the trial of your ASD and ADHD and your low IQ. However, the jury must have accepted the evidence of Dr Church for the prosecution given their guilty verdict. His diagnosis was that you had under-performed at some of the tests, but also that the real explanation for your behaviour was what is called Conduct Disorder. The reasons for this are rooted in your background, with significant parental criminality, drug dependency and poverty, including these conditions which went undiagnosed for most of your young life. You witnessed domestic violence when very young, and had been excluded from mainstream schooling a total of 31 times. You first came to social services attention when you were only 3, when a neighbour saw you trying to cook your own supper. You were subject to a Child Protection Plan in 2011. You are assessed in the reports as being vulnerable and easily led. You are also doing very well in custody.

92. Your culpability is lessened by your neurological conditions somewhat which I have taken fully into account. I have read all the wealth of material submitted on your behalf by those representing you, including by all the experts, and the Pre-Sentence Report. Taking all of these factors into consideration, and arriving at the least minimum term that is commensurate with the offending, I reduce that figure of 18 years back down to one of 14 years.
93. I therefore sentence you, M, to be detained at His Majesty's Pleasure with a minimum term fixed as I have explained in the period of 14 years less time on remand, which I am told is 331 days. If that total is incorrect, it can be corrected administratively. Given the nature of this sentence, I impose no separate penalty on the count of possession of a bladed article.
94. 14 years is the minimum time you must serve in detention prior to the Parole Board considering you for release, and even if you are released, you will remain on licence for the rest of your life.