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Case No: 202401105/1879 B4
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202401271/1105 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPLICATIONS FOR LEAVE TO APPEAL
FROM THE CROWN COURT AT BRISTOL
SAINI J
T20237043

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/05/2025

Before :

THE LADY CARR OF WALTON-ON-THE-HILL
LADY CHIEF JUSTICE OF ENGLAND AND WALES

MR JUSTICE BRYAN

and

MR JUSTICE CAVANAGH

Between :

SHANE CUNNINGHAM

Applicant

CARTEL BUSHNELL

Applicant

LEO KNIGHT

Applicant

- and -

REX

Respondent

Ray Tully KC (instructed by Reeds Solicitors) for Shane Cunningham
Anna Vigars KC and Sam Jones (instructed by Reeds Solicitors) for Cartel
Bushnell
Mohammed Nawaz KC (instructed by Olliers Solicitors) for Leo Knight
Christopher Quinlan KC and Jenny Tallentire (instructed by The Prosecution
Service) for the Respondent

Hearing date : 15 May 2025

Approved Judgment

This judgment was handed down at 10.15am on Friday 23 May 2025 in Court 4.

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NOTE – THERE WAS NO RETRIAL IN THIS CASE AS THE PROSECUTION OFFERED NO EVIDENCE. ACCORDINGLY, THIS JUDGMENT IS NO LONGER SUBJECT TO REPORTING RESTRICTIONS PURSUANT TO S.4(2) CONTEMPT OF COURT ACT 1981. IT REMAINS THE RESPONSIBILITY OF THE PERSON INTENDING TO SHARE THIS JUDGMENT TO ENSURE THAT NO OTHER RESTRICTIONS APPLY, IN PARTICULAR THOSE RESTRICTIONS THAT RELATE TO THE IDENTIFICATION OF INDIVIDUALS.

The Lady Carr of Walton-on-the-Hill, CJ :

Introduction

Reporting Restrictions

1. Reporting Restrictions have been made under section 45 of the Youth Justice and Criminal Evidence Act 1999 with respect to the identification of a number of witnesses in this case whilst they remain under the age of 18. Where it is necessary to refer to any such witnesses in this judgment, they have been anonymised accordingly.
2. Reporting Restrictions were also made under the same section with respect to the three Applicants but these were then lifted following the Ruling of Saini J (“the Judge”) dated 3 May 2024 on a Media Application for an Excepting Direction. The Sentencing Remarks in this case were then recorded for broadcast by the BBC and Sky News. Shane Cunningham’s video recorded police interview has also been released for broadcast, as well as CCTV footage which shows the Applicants on a bus and Ring doorbell footage of them leaving the scene.
3. We note, at the outset, that it was argued in the proposed grounds of appeal for Cartel Bushnell (“Cartel”) that the Judge was wrong to lift the Reporting Restrictions and was also wrong to refuse an application for a stay of 7 days to allow the Applicants to challenge that decision in a higher Court (by way of judicial review). There is no statutory right of appeal against the Judge’s Ruling which was made post-conviction, and challenge to such Ruling stood to be made by way of judicial review rather than by way of appeal to this Court – see R v KL [2021] QB 831; [2021] EWCA Crim 200. The point was rightly not advanced as a separate ground of appeal and we say no more about it.
4. This judgment is subject to an order made pursuant to s.4(2) of the Contempt of Court Act 1981 postponing publication of any report of these proceedings until the conclusion of any re-trial in order to avoid a substantial risk of prejudice to the administration of justice in any proceedings.

The Applications

5. We have before us an application by Shane Cunningham (“Shane”) for leave to appeal against his conviction for murder and applications by his co-defendants, Cartel and Leo Knight (“Leo”), for leave to appeal against their convictions for manslaughter. Cartel and Leo also apply for leave to appeal against sentence. All the applications have been referred to the full court by the Registrar.
6. The Applicants were all 16 years old at the time of their conviction and sentence. Each of them is now 17 years old. The convictions arise out of the death of Mikey Roynon (“Mikey”), a 16-year-old boy who was stabbed to death at a birthday party on 10 June 2023. The Applicants were also at the party.
7. The procedural background is as follows:
 - i) On 11 December 2023, in the Crown Court at Bristol, Shane and Cartel pleaded guilty to having an article with a blade or point.

- ii) On 7 March 2024, in the Crown Court at Bristol (before the Judge) Shane was convicted (unanimously) of murder. Cartel and Leo were each convicted (by a majority of 10:2) of manslaughter as a lesser alternative to the count of murder.
 - iii) On the same day Leo was also convicted of having an article with a blade or point.
 - iv) On 3 May 2024 (again before the Judge), Cartel admitted to being in breach of a conditional discharge imposed in the Magistrates Court on 15 May 2023 for an offence of resisting or obstructing a police constable.
8. On 3 May 2024 the Judge sentenced the Applicants as follows:
- i) Shane was sentenced for the murder to detention for life at His Majesty's Pleasure, with a minimum term of 16 years' detention, less 323 days spent on remand. No separate penalty was imposed for the bladed article offence.
 - ii) Cartel was sentenced for the manslaughter to 9 years' detention, with no separate penalty for the bladed article offence.
 - iii) Leo was sentenced for the manslaughter to 9 years and 6 months' detention, with no separate penalty for the bladed article offence.

The facts in summary

9. On 10 June 2023, there was a birthday party at Eastfield Avenue in Weston, a suburb of Bath. Present were approximately 70 young people, including Mikey and the Applicants. They were all celebrating the 16th birthday of a girl at the small semi-detached house where she lived with her mother. Young people had attended the party from a wide geographical local area, including Devizes and Bristol. Many of the attendees did not know each other and the party had been advertised as an open house party on social media.
10. Earlier that evening, the Applicants and some of their friends or acquaintances had taken a bus from Devizes to Bath, and visited a McDonald's restaurant there. They then took another bus to Weston to attend the party, forming a group of eight males (the "Devizes group"). The Devizes group included a boy whom we shall call J. They arrived at the party at about 10pm. Shane, Cartel and two other boys from the Devizes group, whom we shall call Wayne and A, each carried a zombie knife concealed in their clothing. On the jury's verdict, against which there is no challenge, Leo was also carrying a knife.
11. Also at the party were boys from Bristol, including Mikey (collectively the "Bristol group"). The Bristol group also arrived by bus, but by a different route to that taken by the Devizes group. Some of the Bristol group, who split into at least two groups, also went to the party armed with substantial knives. One of the Bristol groups (which did not include Mikey), was on the same bus ride to Weston as that of the Devizes group. They did not sit near each other on the bus.
12. At the party, people congregated inside the house, over the ground floor, and outside in the garden on the decking, which was accessed through kitchen bi-fold doors and a ground floor extension folding door.

13. At some point during the party, an altercation took place in the garden when boys from the Bristol group started drawing their knives. One of the Devizes group (said by J to be a boy called Teon), then shouted “mandem come” (said by the Prosecution case to be a “call to arms”). Violence then ensued in the garden. Mikey, wearing a balaclava covering most of his face, had drawn a knife and made a swinging action in the direction of Cartel. After that, Shane inflicted a fatal single stab wound on Mikey, using the zombie knife that he had brought to the scene.
14. Shane’s knife had a blade of 25cm with a maximum width of 3cm. It passed through Mikey’s balaclava, through the back of Mikey’s neck, grazing bone, and entering the back of his mouth, severing a main artery. When it was pulled out, the knife twisted, creating a large gaping wound.
15. Mikey suffered substantial blood loss and staggered from the garden and around the house, before he eventually collapsed and died outside the front garden of the house. Despite the rapid arrival of medical assistance and the best efforts of the emergency services and his friends, nothing could be done to save him.
16. Immediately after the stabbing, another guest at the party, a girl called Stacey Davies, suffered a stab wound. It was the Prosecution case that Cartel had inflicted this wound, although this might have been inflicted by accident in the mayhem that subsequently ensued. Cartel was also said by the Prosecution to have left the party with blood on his knife. The knife which Cartel was said to have drawn in the attack was never found.
17. Distressing photographs of the scene showed spatters of blood on the walls and floor of the house which were consistent with the catastrophic injury and arterial spurting of the deceased’s blood immediately prior to his death.
18. The Prosecution case on the count of murder was that Mikey was murdered as part of a joint enterprise between the three Applicants. Shane was said to be the principal, who inflicted the fatal stab wound, and who was said not to be acting in lawful self-defence. Leo and Cartel were said to be secondary parties who wielded knives themselves which they had brought to the scene and which were not drawn in self-defence. The attacking conduct of Leo and Cartel (on the Prosecution case), each drawing their knives offensively on the decking, meant that they were not just present at the scene, but were actively encouraging and supporting Shane in the murder by their conduct and they both intended that Shane would stab Mikey.
19. Alternatively, Shane was said to be guilty of manslaughter on the basis that he acted unlawfully and intended some harm, short of very serious harm, and Leo and Cartel were both guilty of manslaughter on the basis that they encouraged or assisted Shane, but did not intend that Mikey would be killed or that serious harm would be inflicted upon him.
20. The Defence case for Shane was that he acted in self-defence of himself and others and that Mikey was the aggressor: about 40-60 minutes into the party, Shane had gone into the garden and decking area and witnessed a group of about 10 Bristol boys rushing towards his friend Cartel. He saw Mikey, who had most of his face covered with a dark balaclava, strike out with a knife towards Cartel’s head and Cartel stumbling/falling backwards. The same knife was then swung towards him and in lawful self-defence Shane inflicted the single stab wound which killed Mikey.

21. The Defence cases for Cartel and Leo were that they were not part of any joint enterprise to murder Mikey. It was also submitted that they could or should not be convicted of joint enterprise murder in circumstances in which the principal may have been acting in self-defence, even if the force used by the principal was found to be disproportionate.
22. Cartel accepted that he had a knife with him. If he did produce it, it was a defensive act when confronted by the group of Bristol boys all armed with large weapons. Leo denied having a knife with him and stated that he ran from the area as soon as the trouble began.
23. J was the sole eye-witness to the fatal stabbing to give evidence for the Prosecution. His evidence in chief was given by ABE and he gave the remainder of his evidence by live link from a remote location. None of the Applicants gave evidence in support of their defence. Both Shane and Leo were assisted by an intermediary during trial.

Submission of No Case to Answer

24. Cartel and Leo made submissions of No Case to Answer. For Cartel, it was submitted first, that there was no evidential basis upon which a jury could be satisfied that he produced a knife on the decking before the fatal stabbing; and, secondly, that Cartel could not be convicted on the basis of joint enterprise where the principal was acting in self-defence, even though his actions may not have been proportionate. For Leo it was submitted that no reasonable jury, properly directed, could convict. The evidence undermined the Prosecution's case as to knowledge, participation and intent.
25. The Judge ruled that the jury could properly convict Leo and Cartel as secondary parties to the murder. He analysed the evidence (in particular the ABE interview and cross-examination of J) and the supporting evidence. He concluded that, although this was a spontaneous outbreak of violence, there was evidence that both boys were on the decking in the immediate moments before the stabbing and that they had drawn unsheathed knives. The jury could properly find they were participating with the requisite intent and could properly reject all other possibilities.
26. The Judge also ruled that the drawing of knives was capable of amounting to supporting and/or encouraging the principal. Self-defence was a matter for the jury. In relation to Cartel, there was supporting evidence from the stabbing of Stacey Davies and in relation to Leo there was the bloodstaining and DNA evidence on his clothes and the exposed knife, as well as other supporting evidence.

PROPOSED GROUNDS OF APPEAL AGAINST CONVICTION

Shane

27. The proposed grounds of appeal are that:-
 - (1) The Judge erred in failing to direct the jury correctly on self-defence.
 - (2) The Judge erred in failing to give Shane sufficient time to consider whether he would give evidence in his own defence.

Cartel

28. The proposed grounds of appeal are that:-

- (1) The Judge erred in failing to accede to the submission of No Case to Answer.
- (2) The Judge misdirected the jury on self-defence, in that:-
 - (i) The factual basis of the Summing Up and Route to Verdict did not have the clarity which was set out in the Judge's sentencing remarks.
 - (ii) The Judge inadvertently reversed the burden of proof in relation to self-defence, when he conflated it with his joint enterprise direction in both the Route to Verdict and the written directions to the jury.

Leo

29. The proposed ground of appeal is that the Judge erred in failing to accede to the submission of No Case to Answer.

DISCUSSION OF THE PROPOSED GROUNDS OF APPEAL AGAINST CONVICTION - SHANE

Ground 1: The Judge failed to direct the jury correctly on self-defence

30. Mr Tully KC, on behalf of Shane, submits that the Judge should have removed limb 1 of the defence of self-defence from the jury (ie the subjective question of whether or not Shane believed, or may have believed, that it was necessary to use force to defend himself from an attack or imminent attack, on him or others) ("limb 1"). It is suggested that, on the evidence, this could not be a live issue, and the Prosecution should have conceded as much. The only issue should have been whether Shane's use of force was proportionate. This was on the basis that, taking J's evidence as a whole (to which we were taken in detail during the course of Mr Tully's oral submissions), J's evidence was that Shane stabbed Mikey in response to Mikey swinging his knife at Cartel. Mr Tully submits that the Judge tied his hands in his rejection of the No Case to Answer submissions, and in consequence could not remove limb 1 from the jury. It is submitted that leaving limb 1 to the jury was a significant error that renders Shane's conviction unsafe.
31. In contrast, Mr Quinlan KC, on behalf of the Prosecution, submits that the proposed ground of appeal fails to have proper regard to particular aspects of the evidence of J. J's evidence was that Mikey was not close enough to Cartel to make contact with him using his knife. There was a gap in time between Mikey swinging the knife at Cartel, and Shane stabbing Mikey. J saw Mikey swinging his knife at Cartel from the kitchen window, and J then moved to the double doors from which he saw Shane stab Mikey. It follows, Mr Quinlan submits, that a jury could conclude that Mikey was armed, that he had swung his knife towards Cartel, but that it missed, not least because they were not within touching distance, whereupon Shane stabbed Mikey not in self-defence of himself or anyone else, but out of revenge or for some other reason.
32. It is further submitted that the mere fact that a number of the Bristol boys had knives and that one of them swung his at Cartel moments before the infliction of the fatal wound does not justify removing limb 1 from the jury. Shane's actions were just as

consistent with an act of revenge or a consensual fight, and it was classically a matter that should be left to, and determined by, the jury (as the Judge did).

33. The Judge's analysis (at paragraph 23 of his Ruling) was in these terms:-

“In my judgment, it is a matter for the jury to determine the factual circumstances of the stabbing. Both questions (the subjective and the proportionality questions) remain matters for the jury. The self-defence/defence of others issue must be assessed at the moment of the fatal stabbing. On this matter, J's evidence in re-examination was, in summary, as follows:

(1) He viewed the Bristol boys swinging knives from the kitchen window. He explained “swinging” to mean taking them out of their trousers.

(2) He then saw one of the Bristol boys swing his knife in the direction of the swing chair – he demonstrated a right-handed diagonal swing from above the shoulder, down towards his waist level.

(3) At that moment, he moved from the kitchen window to the double doors. It was from the double doors that he saw SC stab MR. At that moment, he said he could not remember if MR was doing anything at all. He repeated a little later that at the moment he was stabbed he didn't know if MR “was doing anything”.

(4) Therefore, even if it was or may have been MR who swung his knife, there was a gap in time before he was fatally stabbed. The issue is whether at that moment there was any threat. That is for the jury to assess but they will be reminded of how fast moving this situation was...”

34. That being so, the Judge ruled that limb 1 was an issue for the jury to resolve.

35. We agree with the submissions advanced by the Prosecution, and the reasons given by the Judge. On the basis of J's evidence, it was classically a matter for the jury to consider whether Shane believed that it was necessary for him to act in self-defence or in defence of others, or whether, for example, he was motivated by revenge or simply choosing to take part in a fight. There was evidence that Mikey could not reach Cartel when he swung out, and there was no evidence that (for example) Mikey thereafter stepped forward or made any further offensive action before Shane stabbed him. A properly directed jury could conclude that Shane did not genuinely believe that it was necessary for him to use force in defence of Cartel or others at the time when he stabbed Mikey.

36. We reject the suggestion that the Judge tied his hands in his rejection of the submissions of No Case to Answer or that there was an impermissible “chain reaction” subsequently, whereby the Judge felt unable to remove limb 1 from the jury at the end of the trial. On the contrary, the Judge was right to leave limb 1 to the jury on the evidence before it.

37. We also reject the further submission that the Judge erred in excluding a particular extract of J's ABE interview evidence in which he expressed his opinion as to why Shane acted in the way that he did (and suggested that anyone else would have acted in the same way). The Judge rightly excluded such evidence from J's edited ABE interview as inadmissible opinion evidence.

38. Accordingly, there was no arguable error by the Judge in leaving limb 1 to the jury as he did and we refuse leave to appeal against conviction on this ground.

Ground 2: The Judge failed to give Shane sufficient time to consider whether to give evidence in his own defence

39. Mr Tully emphasises that, as was known at trial, Shane has particular vulnerabilities, specifically a history of possible ADHD and dyslexia, a speech impediment, an inability to retain information, difficulties in concentrating, and receptive and expressive language skills falling significantly below average.
40. It is said that Shane's intention had been to give evidence for his own defence. Reference is made to events at trial, and in the last two weeks of trial (Weeks 3 and 4) in particular. During the trial, Shane was housed at HMP Parc during the week (which is one and a half hours' travel to and from Bristol). Whilst at HMP Parc he was kept in solitary confinement due to staffing issues. At weekends, Shane was housed in Milton Keynes (which is two and a half hours' travel to and from Bristol). It is submitted that the net effect of these arrangements was that Shane was undertaking lengthy journeys to and from Court each day, whilst at the same time being housed in conditions characterised as sub-optimal for a 16-year-old boy accused of murder.
41. In the last two weeks of the trial, there were delays and developments which are said to have had an adverse effect upon Shane. In Week 3 the Court was unable to sit on the Monday due to a juror being ill. On the Tuesday, the Prosecution closed its case and there were the submissions of No Case to Answer. On the Wednesday there was a ground rules hearing for Shane, and there was a practice run in Court for him to give evidence. Then on the Thursday the Court was unable to sit due to the Judge's other commitments, whilst the Court was also unable to sit on the Friday because Cartel's counsel was appearing in the Court of Appeal (Criminal Division). A planned video conference between counsel and Shane on the Friday did not take place, Shane stating that he had been feeling unwell.
42. Then, in Week 4, the Court was unable to sit on the Monday as Shane and Cartel were each ill. On the Tuesday Cartel elected not to give evidence. Shane attended on that day but was said to be too unwell to be in a position to give evidence. The case was adjourned for the day to allow Shane a period of recovery (and the Judge also facilitated him being seen by a paramedic in the cells, who considered that Shane had mild flu-like symptoms but was fit to give evidence).
43. The next day (Wednesday) (over a week since the Prosecution closed its case) Shane attended and announced to his counsel team that he had decided not to give evidence. It is suggested that the delays and his illness had unsettled him.
44. The Court was informed of the matter (at around 10.10am) and time was sought for counsel to speak to Shane. The Judge allowed the request. Shane's mother was unfortunately not at Court but counsel arranged for Shane to speak with her by telephone (in the hope that she might persuade him to change his mind). They also arranged for conversations to take place between Shane and his YOT workers, and also with the intermediary. Shane did not change his mind.

45. At approximately 11.15am, Shane's counsel requested a meeting with the Judge in chambers (and in Shane's absence, but with other counsel present) in order to explore further possibilities. It is said that they had in mind inviting the Court to make direct investigations of Shane as to why he no longer wanted to give evidence, and to find out whether any special measures could address his concerns. The Judge indicated that he would sit in open court to consider the request to sit in chambers. Having done so, and heard counsel, he rejected the request.
46. The Judge then gave Shane further time (until noon) to decide whether or not to give evidence. In the event, Shane confirmed that he did not want to give evidence.
47. It is submitted that the Judge should have given Shane yet further time to consider his decision, given its importance.
48. We do not consider that there is any substance in this proposed ground of appeal. First, Shane had already had considerable time since the close of the Prosecution case (over a week earlier) to decide whether to give evidence. Secondly, it was not the role of the Judge to enter the arena and explore with Shane why he had chosen not to give evidence. That was a matter between counsel and their client. Thirdly, it was open to Shane's counsel to make submissions (in open court) on further special measures, if they had thought that would have assisted (in addition to the existing special measures that were in place (and which included an intermediary)). Fourthly, Shane's counsel had already had time with Shane that morning (and were then granted further time until noon) to help him decide whether to give evidence.
49. In all the circumstances we are satisfied that there is no proper basis on which to criticise the Judge's decision either to remain in open court or then to proceed with the trial as he did. In particular, it cannot be said that Shane was deprived of adequate time in which to consider whether to give evidence in circumstances that can be said to render his conviction unsafe.
50. We accordingly refuse Shane's application for permission to appeal against conviction on this second ground as well.

DISCUSSION OF THE PROPOSED GROUNDS OF APPEAL AGAINST CONVICTION - CARTEL

Ground 1: The Judge should have ruled there was No Case to Answer

51. Mrs Vigars KC, on behalf of Cartel, advances two arguments. First, given the change in J's evidence, there was no longer an evidential basis upon which the jury could be satisfied that Cartel drew his knife while on the decking before Shane stabbed Mikey. Secondly, it is said (as it is for Shane) that the only proper conclusion on the evidence was that Shane acted defensively. It was common ground, on the facts of this case, that there could be no path to conviction for Cartel (or Leo) as an accessory if Shane was acting in self-defence (whether proportionately or not).
52. It is said that the inconsistencies in the evidence of J, the only witness to the stabbing to give evidence, and what was submitted to be his consequent unreliability, coupled with the characterisation that the overwhelming evidence suggested aggression towards Cartel, meant that the Judge was wrong to reject the No Case to Answer submission. J

was the only witness to give an account of the stabbing before the jury. During his ABE interview, a few days after the incident, he said that, at the point Mikey was stabbed, Cartel had a knife in his hand, which was held down by his side and was pointing upwards. However at trial, he stated that the first time he saw Cartel with a knife was when Cartel ran out of the house after Mikey was stabbed.

53. In contrast, the Prosecution submits that the evidence was sufficient for the jury to be sure that Cartel had his knife out while on the decking before the stabbing. J was clear in his ABE interview (given only days after the incident) that Cartel had his knife out on the decking. It was a matter for the jury as to what they made of J's evidence as a whole. The Prosecution also refer to the fact that another victim, Stacey Davies, suffered a wound at the end of the party. J's evidence was that Cartel told J he had accidentally stabbed a girl as he left the house. It is said that it was open to the jury to reject as fanciful the suggestion that Cartel (only) took out his knife after the stabbing.
54. The Prosecution argues again that, on the question of whether or not Shane was acting defensively, this was a matter that was rightly left to the jury for determination by them. There was a gap in time between Mikey swinging the knife at Cartel and Shane stabbing Mikey. J saw Mikey swinging his knife at Cartel from the kitchen window, and J then moved to the double doors from which he saw Shane stab Mikey. It was a matter for the jury as to whether there was a threat at the moment Shane stabbed Mikey. It is clear from the jury's verdict that the jury was sure that, at the moment when he stabbed Mikey, Shane was not acting in self-defence or in defence of others.
55. We consider that the Judge was right to reject Cartel's submission of No Case to Answer. First, a reasonable jury properly directed could prefer the evidence J gave in his ABE interview over the evidence that he gave at trial. Secondly, and as has already been addressed above in relation to Shane (under ground 1 of his application), the issue of self-defence (including limb 1) was classically a matter for the jury. A reasonable jury properly directed could conclude that Shane did not act defensively, but rather by way of revenge, given that Cartel was out of Mikey's reach, and also having regard to the gap in time between Mikey swinging at Cartel and Shane stabbing Mikey.

Ground 2: In the Route to Verdict, and in his Legal Directions, the Judge inadvertently misdirected the jury

56. Mrs Vigars submits that the Judge inadvertently misdirected the jury, incorrectly reversing the burden of proof on the question of self-defence, and that in consequence Cartel's conviction is unsafe.
57. At paragraph 5 of the Route to Verdict, the Judge directed the jury to ask itself:-
"Has the Prosecution made us sure that Cartel intentionally encouraged and/or intentionally assisted Shane when Shane stabbed Mikey and that Cartel's acts were not or may not have been defensive?" (emphasis added)

(Paragraph 7 of the Route to Verdict repeated the question in materially identical terms for Leo.)
58. It is said that by the inclusion of the words "or may not", the Judge directed the jury that they could convict Cartel even if they were not sure that he did not act in self-

defence or in defence of another. This was a misdirection, because the jury could only properly convict if they were sure that Cartel was not acting in self-defence. The Judge allowed the jury to convict Cartel if they were sure only that his actions may not have been defensive. That was a misstatement of the legal position, reversing the burden of disproving self-defence.

59. It is submitted that the same error was made in paragraph 31 of the Legal Directions given to the jury (in the section on “Joint Enterprise Principals and Secondary Parties”):-

“If Cartel or Leo are proved to have done the acts said by the Prosecution to amount to assistance/encouragement to Shane, and you are sure they were not or may not have been acting defensively, you will then need to decide whether you are sure that they at the time of their acts, each had the relevant intention to kill Mikey or to cause him really serious harm...” (emphasis added)

60. It is also submitted that the same misdirection was given to the jury in paragraph 6 of further written directions that were given:-

“6. So, even if you are sure that each of Cartel and Leo had their knives out, please do not overlook the fact that the prosecution must also make you sure that Cartel and Leo were not or may not have been acting defensively when they did this. This question arises **before** the issue of their intention to kill/cause serious harm/some harm is to be considered. See Questions 5 (Cartel) and 7 (Leo) in the Route to Verdict. If the Prosecution cannot make you sure that they were not or may not have been acting defensively you must find them each not guilty of murder and manslaughter.” (underlined emphases added)

61. The Prosecution submits that Question 5 in the Route to Verdict, and paragraph 31 of the Legal Directions, are not to be construed in isolation and that their meaning stands to be evaluated and understood in the context of the Judge’s Legal Directions as a whole. It is emphasised that at paragraphs 19 and 20 of the Legal Directions the Judge gave a clear and accurate description of the burden and standard of proof:-

“As I told you at the start of the trial, it is for the prosecution to prove its case against a defendant. A defendant does not have to prove his innocence, or anything else. The prosecution bear the **burden**.

The prosecution succeeds in proving a defendant’s guilt by making you sure of it. That is the high **standard** to which they must prove their case. Nothing less than that will do.”

62. Furthermore, the Prosecution relies on the fact that the paragraph complained of in the Legal Directions (paragraph 31) immediately followed paragraph 30 in which a clear and accurate direction was given:-

“If you are sure that the relevant defendant (Cartel or Leo) did have a knife in his hand before Shane stabbed Mikey, you will also need to be sure that Cartel or Leo were at that time using such knives to intentionally assist or encourage Shane, and not holding the knives in self-defence or defence of others. So, if in holding the knives before Shane stabbed Mikey they acted defensively, or may have acted

defensively, they are not guilty of murder of manslaughter as secondary parties. Again, it is for the Prosecution to prove this was not the case.

(emphases added)

63. In addition, in the context of Shane’s position, a clear and accurate direction was also given by the Judge that it was for the Prosecution to disprove self-defence both in paragraph 33 of the Legal Directions and in Question 2 in the Route to Verdict:

“33. In this case ‘unlawfully’ means not in lawful self-defence or lawful defence of another person. Shane says he was acting in self-defence/defence of others at the time he stabbed Mikey. It is for the Prosecution to make you sure that Shane was NOT acting in self-defence and not for him to establish the contrary. You must consider the matter of self-defence/defence of another in the light of the situation which Shane honestly believed he faced. If you believe Shane was, or may have been, acting in self-defence then you must find him not guilty of murder and manslaughter. It is a complete defence and it will follow that Cartel and Leo are also not guilty of murder or manslaughter.”

(emphases added)

“2. Has the Prosecution made us sure that when he stabbed Mikey, Shane did not genuinely believe that he had to defend himself or others?”

64. We accept Mrs Vigars’s submission. We consider that the Judge, no doubt inadvertently, materially misdirected the jury in both Question 5 of the Route to Verdict and in paragraph 31 of the Legal Directions.
65. The defence of self-defence is for the Prosecution to disprove to the criminal standard, once sufficient evidence has been raised. In using the words “may not”, the directions directed the jury that they could convict Cartel (and Leo) if they were sure that Cartel and Leo may not have acted defensively. This was not the case. The jury could only properly convict Cartel and Leo if they were sure that Cartel (or Leo) was not acting in self-defence.
66. We do not consider that such errors are neutralised by what was said elsewhere (correctly) in the Legal Directions. Paragraphs 19 and 20 of the Legal Directions were standard directions as to the burden and standard of proof. Paragraph 30 was a separate paragraph to paragraph 31, and there was no suggestion that paragraph 31 was to be read as in any way subject to it. Question 5 in the Route to Verdict obviously tracked paragraph 31 of the Legal Directions, whilst paragraph 33 related to a different defendant (and different facts so far as they related to that defendant).
67. Secondly, and even more fundamentally, whilst the Route to Verdict began by reminding the jury to “remind [themselves] of the legal directions when working through these questions”, the jury were (in the normal way) specifically directed to work through the questions in the Route to Verdict, including Question 5. Thus, for example, the Judge in his oral Summing Up on 29 February stated to the jury that “...you’ll bear in mind that when you come to look at the route for verdict, which is my set of questions for you, you will need to work through each of those questions and bear in mind that the case against these Defendants does not succeed simply, for example,

if you prove that Cartel had a knife with him on the decking and it was out. There are a number of further questions that arise that you need to be satisfied about...”.

68. The misdirection in Question 5 of the Route to Verdict, and in paragraph 31 of the Legal Directions, going as they do to the burden of proof, were serious misdirections that render the convictions of Cartel (and Leo) unsafe. As Davis LJ confirmed in *R v Miah* [2018] EWCA Crim 563 at [32], “what is always required is that any Crown Court Judge gives, accurately, the appropriate and necessary legal instructions on matters requiring legal instruction; and there is nothing which is more fundamental in this regard than the requirement to give appropriate instruction as to the burden and standard of proof.”
69. The Judge was faced with a difficult drafting exercise. The legal directions were complex, and went through several different iterations. The error that we have identified crept into a later version of the draft Legal Directions and Route to Verdict. It was not identified by any counsel at the time and, indeed, was not referred to in any of the grounds of appeal as originally drafted. The fact remains that it amounts to a material misdirection of the jury in all of the circumstances of this case.
70. Accordingly we grant leave on ground 2, and allow Cartel’s appeal against conviction, quashing Cartel’s conviction for manslaughter. Whilst not expressly raised in Leo’s grounds of appeal, and without procedural objection from the Crown, we consider that the same misdirection applied equally in relation to Leo, and as such his conviction cannot stand, and we grant Leo leave to appeal, and quash Leo’s conviction for manslaughter. The misdirection has no impact upon Shane’s conviction.

DISCUSSION OF THE PROPOSED GROUND OF APPEAL AGAINST CONVICTION **- LEO**

The Judge should have ruled there was No Case to Answer

71. As set out above, the Prosecution’s case was that Leo and Cartel were part of a joint enterprise murder (or manslaughter) as secondary parties. That required sufficient evidence to prove participation with the requisite mental element. The Judge accurately described what participation means (at paragraph 11 of his Ruling on No Case to Answer):-
- “Under well-established principles participation by assisting, encouraging, or causing another to commit the crime may take different forms. It may be in the form of words and/or conduct. Mere association or presence will not of itself be enough. But if a defendant intended by association and presence to assist/encourage/cause another to commit the crime (e.g. by contributing to the force of numbers in a hostile confrontation or letting the other know he was there to provide back-up if needed) then he would be guilty (subject to proof of the requisite state of mind).”
72. At the close of the Prosecution’s case, Leo made a submission of No Case to Answer. It was said that the evidence of J positively exonerated Leo; the circumstantial evidence was insufficient to counterbalance that deficiency. A reasonable jury, properly directed, could not draw the necessary adverse inferences, in the process rejecting all realistic possibilities consistent with innocence.

73. The Judge rejected the submission. He found there was sufficient evidence for the jury to properly conclude that the blood was on the blade of exhibit 15 and Leo's hooded jacket because at the moment Mikey was stabbed, Leo produced the knife and was standing within 2 to 3 metres of Mikey.
74. He referred to the fact that when considering if there was any other explanation for the blood, the jury had to have regard to the totality of other (non-scientific) evidence. This other evidence included:-
- (1) J's evidence (J being the only eye-witness to give evidence) that Leo was in the kitchen when the "mandem come" call came and that Leo then "bolted" out of the house when a knife was produced. It was difficult to see how J's account that Leo "bolted" out of the house before Mikey was stabbed sat with the scientific evidence that Leo's clothing had Mikey's blood on it.
 - (2) W's evidence that a boy matching Leo's description was on the decking 5 minutes before the stabbing. W described a tall, skinny boy wearing Leo's clothes and "light skinned but not white". Leo, albeit white, was tall and skinny.
 - (3) The call to arms ("mandem come") and its context. Leo travelled to the party with friends who were armed. There was evidence that Leo was also armed with a knife and disposed of evidence.
 - (4) Leo's prepared statement was inconsistent with the account he gave to police when interviewed as a witness (when he lied). Specifically Leo initially:-
 - (i) said that he used a stranger's telephone to call his mum rather than his own, but later accepted that he had used his own telephone.
 - (ii) said that he met Teon when he got into his grandmother's car, but in his prepared statement he said he found Teon hiding behind a bin; and
 - (iii) did not tell the police that he had handled a knife in the kitchen.
75. The Judge reasoned that this evidence entitled a jury to reject all other possibilities and to conclude that Leo was on the decking, with his knife out, at the time of the stabbing.
76. Mr Nawaz KC, on behalf of Leo, submits that the Judge should have accepted the submission of No Case to Answer, on the basis that no reasonable jury, properly directed, could be sure that Leo was present on the decking when Shane stabbed Mikey. It was common ground that the case against Leo relied on the proposition that Leo was on the decking at the time of the stabbing.
77. Mr Nawaz lays great weight on what he submits was J's positive exoneration of Leo. When J described the events unfolding, he named Shane and Cartel, but did not mention Leo being present. J's evidence was that:-
- (1) When something began to happen outside, Leo was standing next to him in the side room;
 - (2) Leo went into the kitchen before Teon came into the side room shouting "mandem come". There is no evidence that Leo heard that call;

- (3) When J went into the kitchen to observe the events from the kitchen window, “Leo just bolt, cause he’s, he’s just chucked his drink on the floor and just bolted”. J then described the events he saw from the kitchen window. He did not see Leo involved in those events.

78. Mr Nawaz then emphasises that, where a case is based on circumstantial evidence, the question is whether a reasonable jury, properly directed, could draw the inference contended for by the Prosecution. If a realistic possibility (inconsistent with guilt) could not be excluded, proof beyond reasonable doubt could not be achieved (see *R v Walsh* [2021] EWCA Crim 825). Reference is also made to what was said by Lord Diplock in *Kwan Ping Bong v R* [1979] AC 609 at 615G/H:

“The requirement of proof beyond all reasonable doubt does not prevent a jury from inferring, from the facts that have been the subject of direct evidence before them, the existence of some further fact, such as the knowledge or intent of the accused, which constitutes an essential element of the offence; but the inference must be compelling – one (and the only one) that no reasonable man could fail to draw from the direct facts proved.”

79. It is submitted that each of the matters relied upon by the Prosecution did not give rise to the necessary inference to the exclusion of all other realistic possibilities (inconsistent with guilt). Mere possession of a knife was incapable of giving rise to an inference that Leo was on the decking at the time Mikey was stabbed. As for the disposal of the hooded jacket and knife, Leo was just 15 at the time. A reasonable jury could not rule out that Leo panicked, fearing being implicated in a stabbing and/or being found in possession of a knife (itself a serious offence). In terms of his inconsistent statements, a reasonable jury could not draw an inference that Leo lied because he was guilty. There were other realistic possibilities, such as the fact that being interviewed by the police was terrifying. As for the presence of Mikey’s blood, the forensic expert accepted in cross-examination that the evidence of airborne blood transferred to Leo’s hooded jacket and knife, as well as the contact blood staining on the sleeve of the hooded jacket and blood on Leo’s trousers, did not prove that Leo was present when Mikey was stabbed:-

- (1) Mikey moved through all the areas of the downstairs property after he was injured.
- (2) Mikey bled very heavily in the garden, side room, kitchen, front room, and front garden.
- (3) The transfer of airborne blood requires force and motion to be applied to wet blood. The transfer of airborne blood spots could have happened anywhere Mikey’s wet blood was present.
- (4) There was airborne blood and contact staining in the front room/hallway.
- (5) The force/motion that caused Mikey’s blood to land on Leo happened behind Leo, because it was mostly on his back.

80. Equally, it is said that the forensic evidence is not inconsistent with J's account. J said that Leo "bolted". In his second interview to the police (on 24 October), Leo described trying to get out of the kitchen:-
- "I was not in the garden at the time of the stabbing. I was in the kitchen when I heard screaming and people running. People began running through the back door to get out of the house via the front door. There were lots of people trying to leave so we were all squashed in the hallway trying to get out. We were all pushed up against each other. Lots of people were screaming, it was very chaotic."
81. The time during which Mikey was moving through the house, bleeding heavily, could, it is said, easily have coincided with Leo trying to leave in the mass of people and blood could have transferred to Leo during this time.
82. Thus, the overall submission for Leo is that, in light of the evidence (and what is said to be the positive exoneration of Leo by J), and even including the forensic evidence of blood stains on Leo's clothing and his knife, it was not possible to exclude the possibility that Leo was not on the decking at the time of the stabbing or when he produced his knife.
83. We do not accept these submissions. We consider that the Judge was right to find that there was a case to answer against Leo to be left to the jury. It is true that J, in his evidence, did not place Leo on the decking, but, equally, his evidence did not rule out the possibility of Leo being on the decking. It is also true that the forensic expert accepted, in cross examination, that the blood spatter evidence alone did not prove that Leo was on the decking when the stabbing took place, as he could have come into contact with the blood in the house afterwards. However, he did not exclude the possibility that the contact with blood could have taken place on the decking, and there was a considerable body of circumstantial evidence that could lead the jury to exclude other possibilities consistent with innocence and conclude to the necessary standard that Leo was present on the decking, and with his knife drawn in support of Shane, at the time of the fatal stabbing.
84. In this regard, we identify the following:-
- (1) Leo had come to the event armed with a knife, as part of a group who were carrying knives.
 - (2) Teon had come into the house shouting "mandem come" just before the stabbing and it would be reasonable for the jury to infer that Leo heard that call (in a small semi-detached house), and answered that call by "bolting" outside to the decking (as Teon did), drawing his knife in support of Shane.
 - (3) As such, and as the forensic expert confirmed, Leo would have been within the 2-3 metre range of contact with Mikey's blood.
 - (4) In the immediate aftermath of the stabbing there would have been projection spatter from arterial bleeding, and the possibility of cast-off spatter from the knife that was used, or direct contact with Mikey's wet blood itself.

- (5) Leo had blood matching the DNA of Mikey on both the back, and the front of his hooded jacket (both airborne staining and contact staining (on the right sleeve)) and blood on his trousers, and airborne blood spots on the blade of his knife, consistent with him being in the immediate proximity of Mikey (and his blood) at the time of the stabbing.
 - (6) In contrast, if Leo was “bolting” out of the front of the house (even before the actual moment of the stabbing), the overwhelming likelihood is that he would have exited the house before Mikey came through, and there would, in any event, have been no need to draw his knife in the house, or reason to get airborne spots of Mikey’s blood on the blade of his knife.
 - (7) Leo disposed of his blood-stained hooded jacket and knife immediately after the stabbing, which the jury could conclude were the guilty actions of someone in the immediate proximity of the victim at the time of the stabbing.
 - (8) In his prepared statement to the police, Leo did not say that he had drawn his own knife in the kitchen and, had he not wanted to get involved, there was no reason for him to draw his knife in the house.
 - (9) Leo said that there was a traffic jam in the house as many people (50-60) were trying to rush out of the house at the same time, which was all the more reason for him not to have his knife out of its sheath.
 - (10) If J’s evidence about Leo “bolting” was right, Leo would have had no blood on his hooded jacket or knife as he exited the front of the house.
 - (11) Leo gave inconsistent accounts between his prepared statement and in interview, and lied about taking the knife to the party. The jury would be entitled, subject to appropriate directions, to hold the lies against him.
85. Accordingly, whilst we grant leave to appeal against conviction on this ground on the basis that it is arguable, we dismiss the appeal against conviction on this ground in circumstances where we are satisfied that the Judge was right to reject the submission of No Case to Answer for Leo.
86. As we have said, however, we have allowed Leo’s appeal against conviction on the basis of a material misdirection of law to the jury.

CONCLUSION

87. This was a difficult trial concerning the fatal stabbing of a young boy, and the most serious of charges against equally young defendants, arising out of what should have been a happy occasion of birthday celebration but which turned into a tragedy for Mikey and his family. The Judge managed the trial with conspicuous fairness, care and sensitivity, including a comprehensive and accessible Summing Up. The necessary legal directions and associated Route to Verdict were far from straight forward. Regrettably an accidental, but critical, error found its way into the directions concerning self-defence and into the Route to Verdict. It was an error that no one, including leading and junior counsel, identified at the time, but it is one which renders the convictions of Cartel and Leo unsafe.

88. In the light of our findings above, we dismiss Shane's application for leave to appeal against conviction. We grant Cartel and Leo leave to appeal against conviction in relation to the self-defence misdirection, and quash their convictions as unsafe by reason of the self-defence misdirection. Otherwise, we reject Cartel and Leo's grounds for appeal against conviction.
89. In such circumstances, Cartel and Leo's applications for leave to appeal against sentence fall away.