Neutral Citation Number: [2023] EWCA Crim 1095

Case No: 202202029B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT
AT NEWCASTLE-UPON-TYNE
HH JUDGE JAMESON KC
T20217333

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/09/2023

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE
MR JUSTICE FOXTON
and
SIR NIGEL DAVIS

- -

Between :

"BKY" **CLAYTON OWEN** **SONNY SMITH** **JOE LATHAN** **LEIGHTON MAYO** **BLAINE SEWELL** **"AGN"** **"BGS"** **GRANT WHEATLEY** **CALUM MADDISON**	**Appellants**
- and -	
THE KING	**Respondent**

- -
- -

P Wilcock KC for BKY; Miss C Goodwin KC for Owen; T Hedworth KC for Smith; R Woodcock KC for Lathan; A MacDonald KC for Mayo; David S Lamb KC for Sewell; Miss K Melly KC for AGN; D Singh KC for BGS; L Smith KC for Wheatley; N Lumley KC for Maddison (all assigned by **the Registrar of Criminal Appeals**)
M McKone KC and P Morley (instructed by **CPS Appeals and Review Unit**) for the **Respondent**

Hearing date: 6 July 2023

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Approved Judgment

WARNING: reporting restrictions apply to the contents transcribed in this document, as stated in paragraph 2 of the judgment. In the cases of each of the appellants referred to as BKY, AGN and BGS, there are orders under s45 of the Youth Justice and Criminal Evidence Act 1999 that no matter relating to those appellants shall, while they are under the age of 18, be included in any publication if it is likely to lead members of the public to identify any of them as a person concerned in the proceedings. In particular, in relation to each of those appellants, no report may include his name or address, the identity of any school or other educational establishment attended by him, the identity of any place of work and any still or moving picture of him.
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Lord Justice Holroyde:

1. On 16 October 2021 Jack Woodley was attacked by a group of youths, one of whom stabbed him in the back. He died in hospital on the following day. On 1 June 2022, after a trial in the Crown Court at Newcastle-upon-Tyne before HH Judge Jameson KC and a jury, these ten young appellants were all convicted of his murder. They were subsequently ordered, pursuant to s259 of the Sentencing Code, to be detained at His Majesty's pleasure. Their appeals against conviction were heard on 6 July 2023. At the conclusion of the hearing we reserved judgment and indicated that we would give our decisions and our reasons in writing at a later date. This we now do.

2. In the Crown Court proceedings, orders were made pursuant to s45 of the Youth Justice and Criminal Evidence Act 1999 prohibiting, whilst an appellant is under the age of 18, the inclusion in any publication of any matter likely to lead members of the public to identify him as a person concerned in the proceedings. At the time of the appeal hearing, three of the appellants had attained the age of 18, and the orders had accordingly ceased to apply in their cases. Other appellants were not named in the court list, but were instead referred to by randomly chosen letters of the alphabet. Following circulation of a draft of this judgment, counsel for those appellants have made written submissions in which they have contended that the orders should be continued; have indicated the views of the appellants in support of doing so; and have drawn attention to particular matters relating to individual appellants. The court has also received further representations from the media, to the same effect as representations which were made at the hearing. We have considered the submissions, and have kept in mind that the best interests of a child must be a primary consideration, and that the court must have regard to the welfare of child offenders and to the public interest in the open

reporting of crime. We have concluded that, with three exceptions, the strong public interest in open justice outweighs the arguments in favour of continuing (for what would only be a comparatively short period of time) the orders previously made. The exceptions are the three youngest appellants, each of whom is still only 16 years old. In their cases, we shall continue the existing orders and continue to refer to them by letters of the alphabet. We discharge each of the other orders made pursuant to s45 of the 1999 Act, and will refer to those appellants by their names.

The facts:

3. Where we refer to persons by their surnames alone, we do so for convenience only, and intend no disrespect.

4. Jack Woodley was aged 18 at the time of his death. On 16 October 2021 he went with a group of his friends, including Madison Conway and Josh Torode, to an annual festival held at Houghton-le-Spring, County Durham. The appellants, then aged between 14 and 17, also attended the festival.

5. The appellant Calum Maddison had at his home a large knife, with a very sharp blade some 25cm in length. He had shown it to friends earlier that afternoon and had claimed that he had previously used it to stab two people. There was evidence that he and others seemed excited and spoke about how they were going to fight someone at the festival.

6. Shortly before 9pm the appellants Maddison, Sonny Smith and Grant Wheatley left the festival for a short time. Maddison collected the knife from his home. As they returned to the festival, CCTV footage captured him showing the knife, which was in the waistband of his trousers, to his companions. He, Smith and Wheatley accepted at trial that he had done so.

7. A minor incident then occurred at the festival when Madison Conway kissed the appellant Blaine Sewell and was attacked by Sewell's former girlfriend. The two girls were separated. Jack Woodley asked one of Sewell's friends why Madison Conway had been assaulted. The youth responded by asking Woodley if he was "starting".

8. Shortly afterwards Jack Woodley and his friends left the festival. So, too, did the appellants. It was the prosecution case that the appellants had been looking for somebody to attack and used Woodley's intervention as an excuse for a fight. As they followed Woodley and his friends away from the festival, the appellants were putting their hoods up and shouting and pointing at Woodley. The appellant AGN suggested that Woodley should take part in a one-on-one fight. Woodley refused, saying he did not want to fight. Other youths accused Woodley of having a knife and patted him down. Jack Woodley was not in possession of any weapon.

9. At a location near to a public house, and close to two green electrical junction boxes, Sewell ran at Jack Woodley, punched him and seized him in a headlock. Others then joined in and punched, kicked and stamped on Woodley. Shouts of "get the chopper" were heard. Maddison drew the knife which he had brought from his home, approached Woodley and stabbed him in the back. Maddison then ran away, taking with him the knife.

10. This attack was video-recorded on a mobile phone by one of Jack Woodley's friends, and was also captured by CCTV cameras pointing outwards from within the public house. This imagery was compiled in a sequence of events chart incorporating a series of video clips which captured part of the violent incident, including the attack near the green boxes and the movements of persons before and after the violence.

11. Jack Woodley managed to move from the area near the electrical boxes to an alleyway beside the public house. He was there attacked for a second time. It was not suggested that any injuries which he sustained at this stage of events caused or contributed to his death.

12. Medical personnel were called to the scene, and Jack Woodley was taken to hospital. Sadly, efforts to save him were in vain. Post mortem examination of his body showed stab wounds to his back and hip, a defensive wound to his right index finger, fractures of his vertebrae and bruising to his eyes, neck and chest. Many of his injuries were consistent with repeated kicks and stamps. The medical cause of his death was the stab wound to his back: the pathological evidence was that the wound was 7cm deep and would have required at least moderate force.

13. Thus a young life was needlessly lost, and Jack Woodley's family and friends are left to mourn him. We offer them our condolences.

The evidence at trial:

14. The appellants were arrested and interviewed under caution. They were jointly charged with murder (count 1) and manslaughter (count 2). In January 2022, Maddison pleaded guilty to count 2. That plea was not accepted, and he stood trial with the other appellants.

15. The prosecution case was that Maddison had inflicted the fatal knife wound but that all the appellants were jointly engaged in attacking Jack Woodley near to the green boxes, using violence and/or intentionally encouraging others to use violence, and all sharing a common purpose of causing really serious injury.

16. The prosecution relied on the sequence of events chart, and adduced evidence from a number of eyewitnesses. They described a fast-moving incident, involving a number of persons wearing similar clothing and of short duration: the video footage showed that only 84 seconds passed between the initial assault by Sewell and the departure of Maddison. During that time, Jack Woodley was repeatedly punched, kicked and stamped on. In the subsequent attack in the alleyway he was again repeatedly kicked, including kicks to his head after he had fallen to the ground.

17. In addition to the knife carried and used by Maddison, the appellant AGN wore a knuckleduster.

18. There were agreed facts as to the appellants' antecedents. Smith had one previous conviction, an offence of burglary for which he was made subject to a referral order. Wheatley had on one occasion received a youth conditional caution. Maddison had in December 2020 pleaded guilty to an offence of possessing an offensive weapon, namely a large hunting knife, in a public place. With those exceptions, the appellants were of previous good character.

19. Each of the appellants denied any intention that Jack Woodley should be killed or really seriously injured. The appellants other than Maddison all denied that they had encouraged Maddison to use unlawful violence. The appellants' cases, in very brief summary, were as follows.

20. BKY, aged 14 years 11 months at the material time, initially denied using any violence. In a later police interview he continued to deny fighting with Jack Woodley before Woodley was stabbed, but admitted that he had punched Woodley in the alleyway. He did not give evidence.

21. Clayton Owen, aged 17 years 6 months, initially denied presence. His case was that he had told that lie because he was influenced by his father, who had acted as appropriate adult during the interview and had made repeated interjections. In his defence statement he admitted presence but continued to deny using or encouraging violence. He did not give evidence, but a number of character references were read to the jury.

22. Sonny Smith, aged 17 years, made no comment in interview. He gave evidence and admitted "throwing a couple of punches" at Jack Woodley. His case was that his use of force was not unlawful: that he thought there was a fight between two groups, and was helping his friends; and that in any event, such force as he used was after the fatal stab wound had been inflicted.

23. Joe Lathan, aged 15 years 9 months, made no comment in interview. He gave evidence that he had tried to stop a fight between Sewell and Jack Woodley and that the force he used in pulling Woodley away had been lawful. He said he had run away when he saw others approaching Woodley as he lay on the ground.

24. Leighton Mayo, aged 15 years 5 months, said in interview that he had done nothing wrong but otherwise made no comment. In his defence statement he said that he had seen Sewell and Jack Woodley fighting and had tried to push Sewell away. He denied using or encouraging violence against Woodley. He did not give evidence.

25. Blaine Sewell, aged 16, made no comment in interview but served prepared statements in which he admitted presence at the scene. He gave evidence, admitting that he had used unlawful force in attacking Jack Woodley, but said he had only intended to have a one-on-one fight and did not use or encourage any violence after others became involved.

26. AGN, aged 14 years 10 months, made no comment in interview but served prepared statements in which he denied that he had stabbed or encouraged anyone else to stab Jack Woodley. He gave evidence, saying that he had seen his friend Sewell fighting with Woodley and had gone over to see what was happening. He said he felt scared for himself and for his friend and had put on a knuckleduster, which he said he had taken to the festival for his own protection. He denied that he had hit anyone.

27. BGS, aged 14 years 2 months, admitted in interview that his group of friends had been attacking Jack Woodley. He had earlier heard Maddison bragging about a knife. He said that others were shouting "chop him", but he had told them "no". He admitted in interview that he had tried to kick Woodley but said he did not succeed in doing so because he slipped over. He did not give evidence.

28. Grant Wheatley, aged 17 years 7 months, made no comment in interviews but served prepared statements in which he admitted "throwing a couple pf punches to the head" but denied any involvement in the stabbing. He gave evidence, saying that the only force he used was in lawful defence of himself and Sewell. He denied knowing of any plan to attack someone that night, and said he had come across what he believed to be two groups fighting.

29. Calum Maddison, aged 15 years 2 months, initially admitted presence at the scene but denied involvement in any violence. He later admitted that was a lie. He gave evidence, admitting that he had unlawfully inflicted the fatal injury but denying that he intended to kill or to cause really serious bodily harm to Jack Woodley. He said that he had pulled out the knife to scare Woodley, and Woodley's friends, but had not intended to stab Woodley: he may himself have stumbled forward, or Woodley may have moved. The fatal wound was, he said, an accident. He denied inflicting the stab wound to Woodley's hip.

The timetable of the trial:

30. The trial began on 14 March 2022. At the outset, the judge informed counsel that he had very recently been asked to take the case, and had agreed to do so only on the basis that he would be able to take a pre-booked holiday for a two-week period from 9 May 2022. No counsel suggested that would give rise to any problem: the estimated length of the trial was such that it was expected to finish in early May.

31. Unfortunately, as the trial progressed, it suffered significant delays due to the Covid-19 pandemic.

32. The evidence was concluded on 21 April 2022. The judge gave a split summing up, giving his directions of law on 27 and 28 April 2022. The closing speeches of counsel followed. These were completed by 6 May 2022. There was then a break until 24 May 2022, when the judge delivered his summing up of the facts. The jury retired on 26 May 2022.

33. The judge's directions of law were given both orally and in writing. They were clear, comprehensive and accurate, and were appropriately tailored to the evidence and issues in the trial. For the most part, they are not challenged in any of the grounds of appeal.

34. The judge also provided the jury with a route to verdicts setting out the questions they would have to answer in respect of each appellant. This document also was accurate, full and clear. Again, its contents are not criticised. The judge explained to the jury that defence counsel would address them about the issues which were relevant to the individual cases. The judge then gave a brief summary of what he presently understood to be the issues, but added –

> "It may be that the issues you are asked to consider will be different either or in expression or in substance, and you must listen with care to the submissions on behalf of each defendant when they are made."

The challenged rulings:

35. Three rulings were made, before and during the trial, which have given rise to grounds of appeal.

(1) Mayo: application to dismiss:

36. In January 2022 Mayo applied, pursuant to paragraph 2 of schedule 3 to the Crime and Disorder Act 1998, to dismiss the charges against him. He contended that there was no evidence that he had used or encouraged unlawful violence against Jack Woodley. No witness had identified him as having done so, and he had made no admission beyond his presence at the scene. The prosecution relied on the evidence of a police officer who gave an account of the actions, shown on the mobile phone video and CCTV footage, of a person said to be this appellant. It was conceded that the officer could give admissible evidence of his opinion as to which of the appellants was shown in particular imagery, and it was accepted that this appellant had been correctly identified; but, it was submitted, the evidence purporting to explain the actions shown in the imagery was inadmissible.

37. The judge who heard that application (not the trial judge) refused it. He ruled that a jury could properly conclude that the footage showed Mayo involving himself with others in violence against Woodley after a voice could be heard saying "get the chopper out". He held that the jury could properly conclude that the appellant was not acting as a peacemaker but was encouraging or assisting in unlawful violence with the requisite intent.

(2) Mayo: submission of no case to answer:

38. At the conclusion of the prosecution evidence, Mayo submitted to the trial judge that there was no case for him to answer. He relied on the fact that he had, in interview, told the police that he had done nothing wrong. He contended that his position was stronger than it had been when he made his application to dismiss the charges, because the prosecution no longer positively asserted that he could be seen punching and kicking Jack Woodley, and had failed to produce any enhanced footage highlighting his alleged violent acts (as they had said they would do). It was submitted that the footage showed no hostile act by the appellant: it only showed him pushing Sewell away from Woodley.

39. The judge rejected the submission. He held that it was necessary to consider the evidence as a whole, not merely the specific video clips to which the appellant referred. The appellant was hooded or masked, and was shown going to the fight at the same time as others against whom there was a prima facie case of unlawful involvement. He concluded that the jury could find that this appellant was unlawfully engaged in the attack on Woodley.

(3) BGS: bad character evidence in relation to the deceased:

40. BGS alone applied, pursuant to s100 of the Criminal Justice Act 2003, to adduce evidence of bad character, including but not limited to previous convictions, in relation to Jack Woodley. It was contended that evidence capable of showing a propensity to violence was relevant and admissible because the appellant had said in interview that Woodley had been aggressive whilst at the festival, and the credibility of the appellant's account in interview was a matter in issue. It was further contended that the evidence was admissible as important explanatory evidence.

41. The judge refused the application. It was later renewed and was again rejected. The judge held that the evidence did not meet the criterion in s100(1)(a) for admission as important explanatory evidence. As to s100(1)(b), the judge noted that there had been little or no challenge in cross-examination to the evidence of prosecution witnesses that Woodley had offered no violence to anyone before he was attacked; and in any event, the appellant's case did not raise any issue of self-defence, and there was no issue to which any propensity to violence on Woodley's part would be relevant.

The summing up of the facts:

42. As we have indicated, there was a break in proceedings after counsel had made their closing speeches. The trial was resumed two weeks and one day later, on 24 May 2022, when the judge summed up the evidence the jury had heard. He began by telling the jury that, having regard to the break, it was necessary for him to remind them "reasonably fully" of the evidence. He summarised the chronology of the events the jury would have to consider; gave a very short synopsis of the legal position, which he emphasised was not a substitute for the written directions; summarised the principal factual issues; and took the jury through the contents of their bundles, referring to some of the details of the video footage.

43. The judge then turned to the oral evidence. He began as follows:

> "I am not, obviously, going to remind you of every word that every witness said: that would take far too long and it isn't necessary; but you will make your decisions, please, based on all of the evidence, and so, as I directed you a couple of weeks ago, if I fail to mention something that you recall and consider important, you give it the weight you consider it deserves. Equally, and I will extend this invitation now, if it is thought by anybody, prosecution or defence, that I have got anything wrong in my review, I would welcome corrections. Equally, if I don't mention something that a particular counsel would wish me to mention because they consider it important for you to have it in mind, then I will invite them to say so before I've concluded the review of the evidence."

44. The judge's summing up of the evidence and cross-examination of prosecution witnesses occupied the remainder of the court day and continued on the morning of 25 May 2022. He reminded the jury of the salient features of the appellants' police interviews and prepared statements. He concluded his review of the prosecution case by reiterating his invitation to any party who wished him to remind the jury of any specific evidence. He issued a similar invitation in relation to his summary, which he then began, of the oral testimony of the six appellants who had given evidence.

45. That summary occupied the remainder of the day. It continued on 26 May 2022, after the judge had dealt with some points which counsel had asked him to correct or add. The judge concluded his summing up, by giving the jury what he described as –

> "… a thumbnail sketch, and this really is a thumbnail sketch, of each defendant's case for and against, essentially, and the arguments that you have been asked to bear in mind."

46. The jury retired to consider their verdicts on the morning of 27 May 2022. They continued their deliberations on 30 and 31 May, and returned guilty verdicts against all appellants on count 1 on 1 June 2022.

47. The appellants were sentenced on 5 August 2022.

The appeals:

48. For convenience, we refer to all those before the court as appellants. Nine of them have the leave of the single judge to appeal against their convictions; and one of them, Mayo, also has leave to appeal against his sentence. The tenth appellant, Maddison, applies for an extension of time of about 8 months to apply for leave to appeal against conviction. His applications were referred to the full court by the Registrar.

The grounds of appeal against conviction:

49. All the appellants contend that their convictions are unsafe. There is a substantial degree of overlap between their grounds of appeal. BKY advances a single ground of appeal, relating to something said by the judge in relation to Josh Torode. All other appellants put forward grounds of appeal to the effect that the judge failed to deliver a balanced and impartial summing up. Five appellants combine that criticism with a ground of appeal to the effect that the break in proceedings between closing speeches and the jury's deliberations had such a prejudicial impact as to render their convictions unsafe. Wheatley contends that the judge made an unfair and prejudicial intervention at the end of his re-examination; Sewell contends that the judge intervened inappropriately during his evidence; Mayo and BGS challenge the judge's rulings to which we have referred in paragraphs 36-39 above; and Mayo further contends that there is a "lurking doubt" about the safety of his conviction.

50. Mr Smith KC, counsel for Wheatley, made initial submissions of general application (and adopted by counsel for the other appellants) in relation to the fairness of the summing up and the effect of the break in proceedings. He and other counsel then made submissions about grounds of appeal specific to their individual cases. Mr McKone KC and Mr Morley made submissions on behalf of the respondent. We are grateful to all counsel for their written and oral submissions, and for their helpful cooperation with one another in avoiding unnecessary duplication of points.

Summary of the submissions:

51. The appellants accept that the break in proceedings would not in itself give rise to a ground of appeal, particularly having regard to the difficulties encountered by the criminal courts as a result of the pandemic. They submit, however, that it is axiomatic that a summing up should be fair and balanced and should not appear to favour one side; and they further submit that the break in proceedings, coupled with the highly emotive nature of the trial, made it particularly important that the judge should make good the delay since the jury had heard the closing speeches of defence counsel. They submit that the judge failed fairly to draw the factual threads together.

52. The specific points made on behalf of individual appellants, all of which are contested by the respondent, are as follows.

53. As we have said, BKY does not join in the general challenge to the fairness of the summing up. On his behalf, Mr Wilcock KC focuses on a comment by the judge concerning Josh Torode, who had not been called as a witness (but who, unknown to the jury, had made admissions to the police of using violence during the incident). The judge observed that counsel in his closing speech had invited the jury to consider evidence given by a witness who had seen someone holding a bottle alongside the fact that Torode had not been a witness, and continued:

> "I note, incidentally, that anybody can call a witness. There's no property in a witness. Anybody can call a witness, including the defence, and I think the submission was that you should conclude that [BKY] might have been defending himself against somebody holding a bottle, but there was simply no evidence of that."

54. It is submitted that that was an unfair comment, which acquired disproportionate weight in the case of an appellant who was mentioned very little in the evidence: the judge misunderstood the point which was being made; and the judge's comment may unintentionally have undermined his directions, given (both orally and in writing) before the break, as to the burden and standard of proof.

55. Mr Wilcock accepts that in his closing speech he had commented that it was unfortunate that the prosecution had not called Torode. He explains that he merely meant that the jury did not have the full picture. He submits that he could not realistically have called Torode as a defence witness. He submits, however, that the judge's comment may have caused the jury to think that the defence could and should have called Torode as a witness, and that the jury may have held it against the appellant that he had not done so.

56. On behalf of Clayton Owen, Miss Goodwin KC submits that the judge failed properly to sum up his case, and made only a brief – and, it is submitted, dismissive – reference to a defence document which showed what were said to be the important features of the appellant's case. She further submits that the judge invited speculation as to whether this appellant had been told about the knife during a phone call at 9pm. In addition, it is submitted that the judge made inappropriate and prejudicial use of highly emotive references to the evidence and was generally dismissive of defence points. Miss Goodwin further submits that the thumbnail sketch failed properly to set out the majority of the points made on his behalf; listed questions which the appellant would probably have been asked if he had given evidence but said nothing to balance that list; and referred to the video footage without also referring to the points made about it on the appellant's behalf. She submits that in those circumstances, and given the long break between closing speeches and the factual part of the summing up, the conviction is unsafe.

57. As we have said, Sonny Smith's case was that his admitted punching of Jack Woodley was lawful, and that in any event it was after Woodley had been stabbed. On his behalf, Mr Hedworth KC notes that the appellant had not been cross-examined in terms which alleged any earlier use of violence. He echoes Miss Goodwin's submissions about emotive references to the evidence and a dismissive attitude towards points made on behalf of other appellants. He relies on the cumulative effect of the complaints of unfairness made by other appellants. He submits that the thumbnail sketch in relation

to this appellant contained prosecution points which undermined the defence, and did not sufficiently or fairly set out his case, in particular because it did not refer to the defence submissions on issues other than the time when the violence occurred. He too submits that these matters, together with the long gap between speeches and verdicts, cast doubt on the safety of the conviction.

58. On behalf of Joe Lathan, Mr Woodcock KC submits that there was no evidence that this appellant was aware of Maddison going home to collect his knife, and there was a body of evidence which showed the appellant to have been visiting shops for much of the time when others were at the festival. The only evidence of any direct involvement with Jack Woodley was the appellant's exculpatory account in his prepared statement, and the testimony of AGN, who agreed that this appellant may have been attempting to stop the violence. Against that background, it is submitted that the judge failed to give the jury the full and fair reminder of the appellant's case which was particularly necessary because of the long break.

59. Leighton Mayo challenges the rulings made in relation to his application to dismiss the charges and his submission of no case to answer. He relies on the arguments put forward in support of those applications. In particular, he contends that all the evidence was consistent with this appellant trying to prevent the attack on Jack Woodley, and that it was mere speculation on the part of the respondent to allege that the appellant pushed Sewell away so that he could himself attack Woodley. In addition, Mr MacDonald KC submits that the summing up in relation to this appellant was inadequate after the long break in the trial, and that the tone and content of the summing up generally was unbalanced and unfair. He adds that, even if there were no faults in the trial process and summing up, a lurking doubt must remain about the safety of the conviction.

60. On behalf of Blaine Sewell, Mr Lamb KC submits that the judge made two inappropriate interventions during this appellant's evidence; failed to sum up the appellant's case in a fair and balanced way; and created a significant risk of bias by focusing unduly on matters on which the prosecution relied.

61. In cross-examination this appellant appeared to admit that he might have kicked Jack Woodley if he had not been pulled away: Mr Lamb accepts that that answer might have been taken as favourable to the prosecution. The judge then intervened to ask "Do you know what you've just said?". There was the following exchange between the judge and the appellant:

> "Q: Were you about to kick Jack in the head?
>
> A: No.
>
> Q: How are you so sure?
>
> A: I don't know, I can't remember, I don't think I would.
>
> Q: Why not?
>
> A: I don't know. I might have, I might not have, I don't know.

> Q: You do realise what you've just said? I want you to think about it.
>
> A: I might have, I might not have. I don't know."

Mr Lamb submits that this intervention was not intended to be helpful, and that the judge's questions implied a degree of hostility towards the appellant.

62. In re-examination, the appellant explained that he had meant to say that when he was pulled away from Woodley "I didn't think I went to kick him but I don't know". The judge asked:

> "Q: Since you were arrested, have you thought every single day about what you did?
>
> A: Yeah, I have."

Mr Lamb submits this question suggested to the jury that the appellant had feigned a loss of memory, and was a further demonstration of judicial hostility towards the appellant.

63. On behalf of AGN, Miss Melly KC submits that the judge failed to remain impartial, failed to deal adequately with evidence of identification and failed to sum up the defence evidence in any detail or with appropriate balance. She further submits that the break in proceedings, and the judge's failure thereafter to give a proper reminder of the defence case, caused significant prejudice to the appellant. She accepts that persons at the scene named this appellant as being involved in the violence, and submits that fairness therefore required a careful reminder of the defence challenges to the quality of the identification evidence. Miss Melly makes detailed points challenging particular features of the summing up, including in relation to a prosecution witness who asserted that she had heard this appellant say "get the chopper out" but who was contradicted as to aspects of her account by other evidence, including video footage disclosed during the trial. She further complains that the judge made unnecessary references to emotive parts of the evidence, and used his thumbnail sketches as an opportunity to remind the jury of harmful evidence against the appellants.

64. In addition, Miss Melly challenges the judge's direction on identification evidence, which was as follows:

> "It is accepted that each of the defendants was present at the scene of the attack on Jack. However, some defendants assert that a witness or witnesses who have named them are mistaken in attributing specific aspects of the attack on Jack Woodley to them. Where it is not disputed that the acts which the witness is describing took place, you may in any event use the fact that someone was acting as the witness describes as evidence in the case generally, but before you could use the evidence for or against a defendant who has been named specifically as applying to him, you would have to be sure that the witness has correctly identified the person he or she saw doing the acts described.

> In each case where a witness has named a defendant the witness is relying on recognition. This is not a case of witnesses watching complete strangers and later purporting to identify them. That's why there were no identification parades, because obviously if you recognise somebody, there is no point in having an identification parade, because they're going to say 'Yes, that's the person' because you know who they are. So, it's recognition rather than identification."

65. In his submissions on behalf of BGS, Mr Singh KC refers to a passage in the summing up in which the judge mistakenly said that this appellant had admitted trying to stamp on Jack Woodley's head. Counsel had intervened at that point; but although the judge did purport to correct the error, it is submitted that he again misstated the evidence, and compounded the error by using an unhelpful analogy to explain the difference between motive and intention. Further, Mr Singh submits that the summing-up was one-sided.

66. It is further submitted that the judge erred in refusing the bad character application made by this appellant. Mr Singh argues that evidence of Jack Woodley's bad character was admissible under s100(1)(a) of the 2003 Act (because it was important explanatory evidence, in particular as to the belief amongst some appellants that Woodley was carrying a knife and the reason why he was patted down), or alternatively under s100(1)(b) (because it was of substantial probative value in relation to a matter in issue, namely the credibility of the appellant, and of substantial importance in the context of the case as a whole).

67. Thirdly, it is submitted that the judge erred in failing to direct the jury in relation to the principle of overwhelming supervening act considered by the Supreme Court in *R v Jogee* [2016] UKSC 8 at [96]. Mr Singh argues that the use of a knife by Maddison was an act fundamentally different from anything which the appellant, then just 14 years old, could have contemplated.

68. In his submissions specifically relating to Grant Wheatley, Mr Smith KC contends that the summing up was unfair and that the judge made an unfair and prejudicial intervention at the end of the re-examination of the appellant. In his final answers in re-examination, the appellant confirmed that he threw two punches because he was trying to defend Sewell, who looked as if he was in trouble. The judge then referred to evidence given by a witness who was a friend of Sewell, who had said that "it was like watching animals on a piece of meat". The judge asked the appellant whether he thought it would have been appropriate for that witness to be asked some questions in cross-examination to the effect that it really could not have looked like that. The appellant answered "Yes". Mr Smith then asked whether at the start of the incident, when the appellant was involved, it was like animals attacking a piece of meat. The appellant answered "No it wasn't".

69. Mr Smith submits that the judge's question was unnecessary and adversarial, particularly having regard to what had already been put to the witness when he was cross-examined on behalf of another appellant.

70. Mr Smith's principal complaint relates to a passage in the judge's thumbnail sketch of this appellant's case. The judge reminded the jury that the appellant had made no reference to self defence or defence of Sewell in his defence statement. He continued:

> "… you must understand that that document will have been drafted by his own legal advisers, not Mr Smith or his barristers, his solicitors, but all criminal solicitors know what self-defence is and they know that if self-defence is being alleged by a client, it goes into the defence statement. So you may take it that nobody representing Grant Wheatley believed that he was asserting self-defence when that document was served on the prosecution. You know how to address the fact that he didn't mention it there because it's in the directions. You are entitled to conclude that it's because it's something that he has made up since. It's up to you whether you think it's right to do so."

Mr Smith submits that the jury would have had the clear impression that neither the appellant's lawyers nor the judge believed that the appellant was acting in defence of another. He submits the judge's words amounted to a judicial direction to disbelieve the appellant's case.

71. On behalf of Calum Maddison, Mr Lumley KC submits that as a result of the break in proceedings, and the judge's failure to remind the jury of the appellant's case, the jury were deprived of the opportunity properly to consider count 2. He submits that the thumbnail sketch included matters adverse to the appellant, failed fairly to present the appellant's case and did not remind the jury to consider count 2. In particular, he complains that the judge quoted the appellant's description of the fatal wound as "accidental" but did not refer to the defence submission that that word, used by a young defendant in a dauntingly large court room, really meant "unintentional". Nor did the judge refer to the defence submission that the pathological evidence was consistent with an absence of intent to cause really serious injury. Mr Lumley seeks an extension of time on the basis that it was appropriate to review this appellant's position after it became known that other appellants had been granted leave to appeal, and there was then delay in being able to see the appellant in custody.

72. We have summarised the appellants' submissions very briefly, but we have considered all of the points made in writing and orally by counsel.

Mayo: appeal against sentence:

73. Mayo was ordered to be detained at His Majesty's pleasure. The judge specified a minimum term of 11 years. He indicated that the appropriate starting point, having regard to the age of the appellants, was a minimum term of 12 years. However, that had to be increased to 14 years to reflect the aggravating features of the case: a group attack; some pre-meditation; knowledge by all the appellants that one of them was armed with a knife; the use of the knife to kill; the appalling violence inflicted on Jack Woodley, who was punched, kicked and stamped on both before and after the stabbing and as he tried to get away; the terror and pain he suffered prior to death; the failure of any of the appellants to help him; the commission of the offence in public, to the horror of onlookers including children; and the fact that the attack was carried out solely for the excitement and pleasure of inflicting at least really serious injury on an innocent stranger.

74. The judge found that the only further aggravating feature in this appellant's case was his attempt to conceal his identity: he rejected a submission that the appellant had only

put his hood up at the suggestion of others. The mitigation, which necessitated a downward adjustment, was that he had become involved at a late stage; there was no evidence that he had gone to the festival intending to fight; he had no previous convictions; and there was a positive character reference. He did not appear to be either more or less mature than his chronological age. The judge concluded:

> "I consider that the mitigating features significantly outweigh the aggravating feature and the 14-year minimum term that would otherwise be appropriate should be substantially reduced. It can't be reduced as far as in the cases of those with positive mental health difficulties, but I reduce it as close to that as I feel I can."

The judge then specified a minimum term of 11 years, which was reduced to 10 years 202 days to reflect time in custody and subject to a qualifying curfew.

75. Mr MacDonald KC does not challenge the judge's increase of the starting point from 12 to 14 years. He submits, however, that the minimum term of 11 years was wrong in principle and manifestly excessive, in particular because it failed to give sufficient weight to important matters of mitigation. He argues that the only evidence of direct involvement by this appellant was that he pushed Sewell away from Jack Woodley, and that the appellant should have been regarded as in a very different position from all the other appellants, who had all used or attempted to use direct violence against Woodley. He points out that this appellant received the same minimum term as others who had been involved more actively and from an earlier stage of the attack.

The legal framework:

76. As we have indicated, the principal grounds of appeal against conviction challenge the fairness of the judge's summing up of the evidence. Some appellants also challenge what they submit were unfair comments or interventions by the judge. The relevant principles are not in dispute, and we can summarise them briefly.

77. In *R v Hulusi* (1974) 58 CAR 378 the court, citing the earlier decision in *R v Hamilton* (1969, unreported), emphasised the long-established principle that a judge must not descend into the arena and give the impression of acting as an advocate, and continued:

> "Interventions to clear up ambiguities, interventions to enable the judge to make certain that he is making an accurate note, are of course perfectly justified. But the interventions which give rise to a quashing of a conviction are really threefold: those which invite the jury to disbelieve the evidence for the defence which is put to the jury in such strong terms that it cannot be cured by the common formula that the facts are for the jury and that you, the members of the jury, must disregard anything that I, the judge, may have said with which you disagree. The second ground giving rise to a quashing of a conviction is where the interventions have made it really impossible for counsel for the defence to do his or her duty in properly presenting the defence; and thirdly, cases where the interventions have had the effect of

> preventing the prisoner himself from doing himself justice and telling the story in his own way."

78. Those principles, and the prohibition on a judge appearing to take sides, apply however implausible or fanciful a defence account may appear to be: see, eg, *R v Inns* [2018] EWCA Crim 1081 at [37].

79. As to the summing up, paragraph 3(a) of Part 25.14 of the Criminal Procedure Rules (as amended with effect from 4 April 2022) requires a judge to give the jurors directions about the relevant law and to "summarise for them, to such extent as is necessary, the evidence relevant to the issues they must decide". By paragraph 4, the directions "may include questions that the court invites jurors to answer in coming to a verdict".

80. The summing up of the facts must deal with the essentials of the case and must strike a fair balance between the prosecution and defence cases. In *R v Haddon* [2020] EWCA Crim 887 the court noted that in some older cases it had been held permissible for a judge to comment on the evidence in a way which indicated his or her own view so long as the jury were told they could ignore those opinions. The court continued, at [12]:

> "We find it difficult to reconcile that approach with the cardinal obligation that the judge should remain impartial, leaving the decisions on the facts to the jury. Indeed, we suggest it is difficult to envisage cases in which it will be appropriate or of assistance to the jury for the judge to reveal his or her personal views as opposed to providing an impartial analysis of the cases for and against the prosecution and the defence."

81. That is not to say that there is a blanket ban on a judge commenting on the evidence; but it emphasises the care which must be taken to avoid giving the appearance of advocacy on behalf of one side or the other. In *R v Merchant* [2018] EWCA Crim 2606 the court said at [15]:

> "The judge is perfectly entitled to comment on the evidence by pointing out matters which may tend to support or undermine either party's case on an issue, nor is there any requirement that a summing up should be balanced in the sense that a judge should seek to compensate for a weak case or downplay a strong one. What is vital is, first, that the judge should not trespass on the role of the jury by telling them what conclusions they should draw on matters which are for them to determine and, second, that the judge's review of the evidence should be objective and impartial and not skewed unfairly in favour of the prosecution or the defence."

82. That passage was cited in *R v Awil* [2020] EWCA Crim 1802, where the court went on to say, at [23]:

> "… the guiding principle must always be balance and fairness. An objective marshalling and presentation of the evidence is a feature of every good summing-up. Furthermore, a balanced

> presentation of the cases being advanced by the prosecution and the defence may require the judge to point out matters which support or undermine the case of either or both of the parties. It is clear that there is no blanket ban upon trial judges expressing a view based upon an analysis of the evidence which may be adverse to either the prosecution or the defence. However, careful consideration should always be given before a judge decides to express a view rather than presenting matters that support or undermine each party's case impartially for the jury's consideration and determination. What is critical is that the judge's presentation and any expression of the judge's personal view must be justifiable by reference to the twin touchstones of balance and fairness. That will involve a careful and judicious use of language."

83. We have applied those principles in our consideration of these ten appeals against conviction.

84. Counsel for the appellants were realistic in their acceptance that the break in proceedings, unfortunate though it was, would not of itself give rise to any arguable ground of appeal. The progress of the trial was delayed for reasons beyond anyone's control and gave rise to a difficulty which had not been anticipated when the trial began. In the oral submissions, the suggested significance of the break largely fell away. We agree with counsel that the length and timing of the break made it necessary for the judge to sum up the evidence in such a way as to redress any difficulties which the jury might have in recalling the issues raised during the trial and the principal points made in the speeches delivered by counsel before the break. It is clear that the judge also had that need well in mind. The issue raised by the grounds of appeal which were advanced by Mr Smith KC on behalf of all the appellants is, in essence, whether the judge succeeded in what was clearly his aim. We will address those collective submissions first, and then turn to the specific points raised by individual appellants.

Analysis – the appeals against conviction:

85. In the passage which we have quoted at paragraph 45 above, the judge made clear that the thumbnail sketches would summarise not only the case for but also the case against each appellant. It follows that there can be no legitimate criticism of this part of the summing up merely because it included reference to the prosecution case as well as the defence case.

86. Further, the thumbnail sketches have to be set in the context of the summary of the evidence which preceded them. It must be remembered that the whole of the factual summing up, not merely the thumbnail sketches was delivered after the two-week break; and the judge, in our view, was true to his word when he told the jury that it was necessary for him to remind them "reasonably fully" of the evidence. We have noted in paragraphs 44-46 above the duration of the summing up. It clearly stated the case for each appellant; and in our view, nothing in it revealed or suggested any view the judge may have held of the evidence. It must also be remembered that the jury had the written directions of law and a bundle of materials, and were able to view any of the video footage which they wanted to see again.

87. We have also noted that the judge more than once made clear that he was willing to hear any submissions by counsel as to the need to correct an error. The last of those invitations was issued at the end of the court day which preceded the jury's retirement at the start of the following morning – at a stage, therefore, where counsel had been able to reflect upon the judge's approach to the thumbnail sketches, to hear the entirety of the summing up, and to form a view as to its sufficiency. We recognise that counsel who is dissatisfied with what a judge has said in summing up may sometimes feel that the deficiencies could not realistically be made good by any suggested corrections. In such circumstances, the significance of a failure to mention at the time a point which later forms the basis of a ground of appeal will have to be assessed in that context. Where, however, the complaint is that an important matter has been omitted altogether, we can see no good reason why counsel should not mention it at once, so that the judge has the opportunity to decide whether more should be said. A failure to raise a point there and then is not, of course, necessarily fatal to a valid ground of appeal; but it is often a good indication of whether a particular omission seemed important at the time to those who were immersed in the trial and therefore well able to judge the significance of a particular point not being made. It is a striking feature of these appeals that the appellants collectively complain of what are said to be egregious failures to mention important aspects of their cases, and yet at that time very little was done to invite the judge to amplify any of what he had said.

88. Viewing the factual summing up as a whole, and not cherry-picking a word here or a phrase there, we are unable to accept that it was flawed in the ways which the appellants suggest. On the contrary, it was in our view a thorough and fair rehearsal of the evidence and issues, and was sufficient to overcome any difficulties which may have been caused by the two-week interruption of proceedings. Insofar as there were any imperfections (which we consider below), we agree with Mr McKone that they were not serious.

89. We accept that in principle a summing up in a multi-defendant case might overall be so unfair to several defendants as to call into doubt the safety of all the convictions; but such a situation is likely to be rare. In the circumstances of this case, we are not persuaded that an appellant who can identify no unfair prejudice to his own case can derive any support from criticisms of the summing up made by others.

90. We therefore reject the grounds of appeal which are advanced collectively by the appellants. We turn to the specific grounds of individual appellants.

91. BKY: This appellant's case is based on a very narrow ground. We accept Mr Wilcock's point that there were good reasons why in practice it would have been most unwise to call Torode as a defence witness; but the fact that Torode had not given evidence had been raised on behalf of the appellant and described as "unfortunate", and the judge was therefore right to explain to the jury the legal position. He did so accurately. He was also right to direct the jury not to speculate. In those circumstances, we reject the submissions that the judge may have caused the jury to hold it against the appellant that Torode had not been called as a defence witness, and/or may have undermined his earlier direction as to the burden and standard of proof. Mr Wilcock realistically accepted that if he could not succeed on those points, then his appeal was weak.

92. Clayton Owen: we have considered the various criticisms made by Miss Goodwin. In our view, the judge's references to emotive aspects of the evidence – which were very few in number – were appropriate and accurate, and no valid criticism can be made of them.

93. As to the summing up, the evidence against this appellant included evidence that he was wearing both a pom pom hat and some other form of face covering; evidence from a prosecution witness that one lad pulled out a pom pom hat when others were pulling up hoods and masks; video footage which could be said to show him delivering both a punch and a kick; and the fact that he lied in interview by denying presence. He did not give evidence and, as the judge made clear in his thumbnail sketch, his case was that there was no evidence for him to answer and therefore no need for him to give evidence. In those circumstances, we are not persuaded that fairness required the judge to say any more than he did. He was entitled to refer to some of the obvious questions which would likely have been asked if the appellant had given evidence, and it would have been wrong for him speculate about what replies might have been given. We would add that, only minutes after completing that thumbnail sketch, the judge invited counsel to make any representations which they wished to make. He was not asked on behalf of this appellant to add anything to what he had just said.

94. Sonny Smith: this appellant had been shown the knife before the stabbing, and admitted that he had used violence towards Jack Woodley and had told lies about his participation. In those circumstances, the judge's brief summary of the defence case in his thumbnail sketch was in our view accurate and sufficient. Given that the principal point made on his behalf related to the timing of his involvement, the judge was right to explain to the jury that they were entitled if they wished to consider the evidence bearing on matters such as what this appellant was doing when he left the festival with Maddison and others, and whether there was any pre-planning. We reject the submission that anything which the judge said, or omitted to say, caused unfair prejudice to the appellant. We think it significant, particularly in relation to what are now said to be important omissions, that no point was raised at the time.

95. Joe Lathan: It is submitted that the case against this appellant rested on a short section of the video footage, and that there was no other evidence capable of contradicting the exculpatory account which he gave in his prepared statement. He did, however, admit using force against Jack Woodley; and he was cross-examined by prosecution counsel about features of his account such as his evidence that he had not seen anybody kick Woodley, and his evidence that, in trying to break up the fight, he took hold only of the victim. Mr Woodcock KC realistically acknowledges that there was a case to answer (and at trial did not make any submission to the contrary), but submits that the summing up was deficient because it did not mention all the points which had been advanced in support of the appellant's case.

96. We accept that the judge did not refer to every point which Mr Woodcock made in his closing speech. He was not, however, obliged to do so; and in our view, having given a full account of the evidence earlier in his summing up, he summarised the appellant's case fairly in the thumbnail sketch. He emphasised that the appellant must be acquitted if the jury thought it possible he had told the truth in his prepared statement and his evidence, and referred to only one point made by the prosecution. We do not accept the submission that more was required, and we think it significant that the judge was not asked at the time to mention any further point.

97. Leighton Mayo: The first two grounds of appeal relate to the rulings made before and during the trial. We can address them briefly. In our view, each of those rulings was correct, essentially for the reasons given by the respective judges. There were indeed points to be made on the appellant's behalf; but they were points for the jury to consider, not reasons to prevent the case being tried at all, or to prevent it going to a jury.

98. As to the third ground of appeal, Mr MacDonald indicated that he did not really criticise the thumbnail sketch. That was entirely realistic of him. The judge prefaced his summary of the defence case by referring to the submissions "made on his behalf, you may think forcefully, by Mr MacDonald". He referred to the "perfectly proper" point made about innocent explanations for lads putting their hoods up; summarised other points which had been made; and concluded as follows:

> "And finally, he submits – and he is on solid ground here – that there is no other evidence in the case about [Mayo]. There simply isn't any, apart from what you see on lines 12 to 14, which you need to interpret in the light of your conclusions about what was going on at that time and what's led up to it. So, that's it. That's the issue in his case."

In our view, that was an accurate and fair encapsulation of the case, in circumstances where the evidence provided a narrow, but sufficient, basis for the verdict to which the jury came. This appellant can in those circumstances derive no support from criticisms made by others about the summing up of their cases.

99. Nor can the appellant derive any assistance from the submission that there is a "lurking doubt". There was in this case evidence on which the jury could properly find the appellant guilty, and none of the grounds of appeal casts doubt on the safety of that conviction. In those circumstances, we can see no basis for an appellate court to say that the jury's verdict is nonetheless unsafe. It is unnecessary in this case to explore the boundaries of "lurking doubt": it suffices to say that, at its highest, case law shows that such a ground of appeal could only succeed in "the most exceptional circumstances". This is not such a case.

100. Blaine Sewell: we reject the submission that the judge demonstrated hostility towards this appellant. The first intervention about which Mr Lamb complains was clearly intended to ensure that a young defendant, who appeared to have made a damaging admission against himself, had the chance to reflect on his answer, to say whether he really meant what he had just said, and to clarify it if he wished. The judge was right to give the appellant that opportunity, and we note that the appellant's counsel took up the topic in re-examination. As to the second intervention, we accept Mr McKone's submission that the context of the judge's question was that the appellant had said in evidence that he could not remember what others had done. The judge's question was not in our view one which he needed to ask; but we do not accept that it demonstrated hostility or caused any unfair prejudice to the appellant's case.

101. AGN: Miss Melly accepts that the summing up in relation to this appellant covered the relevant evidence, but she submits that the judge failed to pull the threads together and did not remind the jury fairly of the defence submissions. She further submits that the judge should have given a fuller direction than he did on the issue of identification, and

she explains that the second paragraph of the direction which we have quoted at paragraph 64 above was not one to which counsel had agreed.

102. In our view, the direction on identification was correct and sufficient in the circumstances of this case. The jury had heard all the evidence and were aware of the matters in respect of which this appellant, and others, asserted that they had been mistakenly identified as acting in a particular way. Those issues were straightforward, and needed no more detailed explanation than the judge gave. As to Miss Melly's other criticisms of the summing up, skilfully made though they were, we are not persuaded that the appellant suffered any unfair prejudice.

103. BGS: we consider first the grounds of appeal which relate to matters arising before the summing up. We can do so briefly.

104. The application to adduce bad character evidence in relation to Jack Woodley was rightly refused. No such evidence was necessary to enable the jury properly to understand other evidence in the case. It was therefore not admissible pursuant to s100(1)(a). Nor could it meet the criteria for admissibility pursuant to s100(1)(b): there was no issue of self-defence or defence of another in this appellant's case; neither he nor any other appellant asserted any prior knowledge of Woodley's previous convictions; and before the attack on Woodley began, it had been confirmed that he was unarmed. We reject the submission that evidence of Woodley's bad character could have substantial probative value in relation to the credibility of the appellant's assertion in interview that others were saying that Woodley had a knife.

105. The submission that the judge should have directed the jury as to overwhelming supervening event was also rightly rejected. Quite apart from the prosecution evidence against him, this appellant said in interview that there had been talk of Maddison having a knife; that he had not seen a knife, and did not believe that Maddison had one; and that he had urged Maddison to get rid of a knife if he did have one. He also said that when they were walking away from the festival, others were shouting "chop him" but he was saying "no". In the light of those assertions, young though the appellant was, it is impossible to say that nobody in his shoes could have contemplated the violent use of a knife by Maddison.

106. Turning to the summing up, the appellant had said in interview that he went to kick Woodley, "and it would have been a stamp", but he slipped and did not make contact. If he had made contact, he said, it would have been to Woodley's back, not his head, "because someone was like covering his head". As part of his summing up, the judge took the jury to the appellant's interview transcripts, which the jury were able to take with them when they retired. Unfortunately, when giving his thumbnail sketch, the judge by error referred at one point to the appellant "attempting to stamp on Jack's head". Counsel immediately, and rightly, intervened to correct the error. There was the following exchange:

> "Judge: Sorry, not the head. You are quite right. He was being held in a headlock. That's why he couldn't stamp on his head. That's what he explained and so he was aiming, I am sorry, for the body. Thank you – stamp on Jack, but not on his head because he was being held in a headlock.

> Counsel: Your Honour, he didn't say that was the reason he stamped on his back. He said at the time there was a headlock and he tried to stamp on the back.
>
> Judge: Yes, the part that he could see.
>
> Counsel: He didn't say anything like 'Were it not for the headlock, I would have stamped on the head'.
>
> Judge: Yes, thank you. Thank you. Right, so there is it. That's the situation …"

107. It was unfortunate that the judge made that initial error, but we reject Mr Singh's surprising submission that the judge was deliberately unfair and was dismissive of counsel's correction. The exchange which we have quoted led to a correct summary of the appellant's account in interview, which in any event the jury were able to read whilst considering their verdicts.

108. We similarly reject the criticism which Mr Singh makes of the judge's explanation of the distinction between motive and intention. We agree with Mr McKone that the judge was justified, in the circumstances of this appellant's case, in addressing this distinction. The analogy which he used may not have been particularly helpful, but it caused no unfair prejudice to the appellant.

109. Grant Wheatley: with respect to the judge, the question which he asked after the appellant's re-examination was inappropriate. Even if a witness understands the concept of putting the defence case (which many witnesses, particular those who are young, will not), it is not for the witness to comment upon what questions should have been asked by counsel. We do not, however, think that this question caused undue prejudice to the appellant, particularly in the light of Mr Smith's ability to respond to it by asking a further question. Mr Smith was in our view realistic in not pressing this aspect of his appeal.

110. Again with respect to the judge, we accept that the passage which we have quoted at paragraph 70 above could have been better expressed. We reject, however, the submission that it amounted to a direction to the jury to disbelieve the appellant and took away the appellant's defence. We agree with Mr McKone that the judge was entitled to explain the nature of a defence statement, so that they could understand and evaluate the important point made by the prosecution about the appellant's failure at that stage to mention self-defence. In our view, the judge did no more than that. It would have been better if he had said that the jury could assume that the appellant's legal representatives did not <u>understand</u> him to be asserting self-defence at the time when the document was drafted; but taken in its context, the judge's use of the word "believed" did not suggest that the appellant's representatives disbelieved the appellant's case at trial.

111. Calum Maddison: the issue in this appellant's case was as to his intention and, unfortunately for him, the evidence against him was very strong: he stabbed his unarmed victim in the back with a ferocious weapon which he had gone home to collect a few minutes earlier. His earlier bragging about previous stabbings (whether true or not), his subsequent cleaning of the knife and his clothes, and his lies in interview and

in his prepared statement all added to the case against him. In those circumstances, we are not persuaded that it could have helped this appellant for the judge in his thumbnail sketch to give a fuller exegesis of the case against and for him. The judge accurately summarised the defence case. No criticism can be made of his reference to the appellant's statement that the stabbing was accidental: that was an appropriate encapsulation of his evidence that he only meant to display the knife as a deterrent, and did not intend it to make any contact with Jack Woodley. The judge accurately summarised the defence submission that the jury should take into account the facts that the knife had only entered to a depth of seven centimetres, not its full depth; that the force required did not need to be more than mild; and that the pathological evidence alone allowed for the other wound to have been sustained by Jack Woodley at some earlier time.

112. In short, this appellant has in our view no ground for complaint about deficiencies in the summing up of his case. It was no doubt for that reason that no request was made at the time for the judge to say more than he did, and no application was made for leave to appeal until counsel became aware of the general grounds of appeal raised by others.

113. For those reasons, we are satisfied that all of the convictions are safe. It follows that, in the case of Maddison, no purpose would be served by granting an extension of time.

Analysis – the appeal against sentence:

114. In his sentencing remarks relating to Mayo, the judge correctly identified the aggravating and mitigating factors. It is apparent that he also had well in mind the need to treat this appellant fairly in relation to other appellants, taking into account points of similarity and dissimilarity in their respective positions. The sole issue is whether the minimum term of 11 years was within the range properly open to him. Notwithstanding Mr MacDonald's impressive submissions, we conclude that it was. It was a stiff sentence for a young appellant who had become involved in the violence later than others; but the judge had heard all the evidence and was in the best position to assess culpability, and we cannot say that the sentence was manifestly excessive.

Conclusions:

115. For those reasons, we refuse the applications by Maddison for an extension of time and for leave to appeal. We dismiss all the appeals against conviction. We also dismiss Mayo's appeal against sentence.