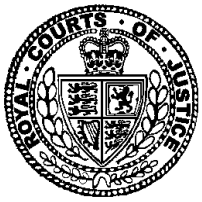

Neutral Citation Number: [2025] EWCA Crim 52

Case No: 202301449 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT WOLVERHAMPTON
THE HONOURABLE MRS JUSTICE STACEY, DBE
T20227141

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/01/2025

Before :

LORD JUSTICE HOLGATE
MR JUSTICE BRYAN
and
THE RECORDER OF MANCHESTER
(HIS HONOUR JUDGE DEAN KC)
(Sitting as a Judge of the CACD)

- -

Between :

REX	**Respondent**
- and –	
SCOTT GARRINGTON	**Appellant**

- -
- -

Timothy Hannam KC and Jason Aris (instructed by **Registrar of Criminal Appeals**) for the **Appellant**
Mark Heywood KC and Andrew Wallace (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date : 13 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 3pm on 27 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE HOLGATE :

1. On 30th March 2023 in the Crown Court at Wolverhampton before Stacey J the appellant was convicted unanimously of murder (count 1), possession of a prohibited firearm (count 5), two counts of having an article with a blade (counts 7 and 8) and perverting the course of public justice (count 9). No verdict was taken on the alternative offence of manslaughter (count 2). The appellant was acquitted of count 4 (wounding with intent to do grievous bodily harm) and count 6 (possession of an imitation firearm with intent to cause fear of violence).

2. On 12th June 2023 the appellant was sentenced for the murder to imprisonment for life with a minimum term of 22 years less 385 days spent on remand and to concurrent terms of 7 years on count 5 and 18 months on each of counts 7, 8 and 9. He appeals against conviction with the leave of the Full Court ([2024] EWCA Crim 1133).

3. The co-accused on the indictment, Ravi Talware and Kevin Waldron were convicted of the murder of John Jones and Jayden Palmer, Ethan Bell and Sukhraj Sanghera were convicted of his manslaughter.

An overview of the prosecution case

4. In the evening of 25th February 2022 Talware, Palmer, Bell and Sanghera were driven by Waldron in a stolen Renault Laguna to 38 Caslon Crescent, Stourbridge, the home address of brothers John and Sebastian Jones and their father David Jones.

5. John Jones, a heroin addict, owed Talware, a drug dealer, £175. Talware and his group entered the property. Talware was armed with a sawn-off shotgun, whilst Palmer, Bell and Sanghera were together armed with two large knives and an imitation Glock pistol. Talware ran upstairs and shot John Jones in the chest once, killing him instantly.

6. Downstairs, Palmer, Bell and Sanghera confronted Sebastian Jones with the knives and the Glock, to prevent him from going to his brother's aid. He was stabbed four times by one or more of them. These defendants and Talware then left the property and were driven by Waldron, who had remained in the Renault outside, away from the scene. Subsequently, the Renault was set on fire.

7. The prosecution case against the appellant was that he played a supporting role, in that he was involved in the preparation for the violence, he provided a base from which others could change their clothing and set out for the attack, and he assisted co-defendants at meeting points before they went to the victim's home. He waited by the getaway car for them to return and he was involved in setting fire to the Renault.

8. The prosecution relied upon a Sequence of Events prepared by Mr Spencer Jenkins (a police employee who had formerly been a police officer) and also upon a Timeline. Mr Jenkins spent more than 700 hours reviewing all the footage obtained from over 300 cameras. He identified from the CCTV footage a number of profiles of persons said to have been involved in the events shown and which he compared with stills of the defendants in order to identify profiled persons. These identities were agreed save for profile 1 ("P1"), which the prosecution said was Talware, and profile 3 ("P3"). which they said was the appellant. Mr Jenkins did not identify P2.

9. The appellant lived at 45, Bridgnorth Road, Wollaston, Stourbridge. On 25th February 2022 between 1pm and 1.24pm, P3 was seen in CCTV footage outside a house at 1, Romilly Close, in the vicinity of 45, Bridgnorth Road. Mr Jenkins compared that footage with custody photographs of the appellant taken on his arrest in May 2022.

10. In his report Mr Jenkins acknowledged that the custody photographs were front facial whereas the CCTV had been taken from a higher position. But he stated that both sets of images showed a light skinned older male, with hair consistent as to colour, style and length and heavy age lines on the face. However, the clothes worn on 25 February 2022 would have prevented any tattoo on the neck, such as the appellant's, from being visible. Mr Jenkins said that, comparing the custody photographs and the CCTV images on 25 February of P3, there were no inconsistent features to exclude them being one and the same person, the appellant.

11. In cross-examination, Mr Jenkins was asked about limitations of this CCTV footage for the purpose of identifying P3 as the appellant from his custody photographs. He said:

> "I am satisfied that there is sufficient there for me to be able to say there is (sic) consistent features that I can't exclude him from being one and the same."

12. Mr Jenkins accepted that the quality of the CCTV footage from later that day had not been good enough to enable him to identify the appellant as P3. But Mr Jenkins maintained that that material was nevertheless of sufficient quality to enable him to say that P3 was the same person throughout his analysis in the Sequence of Events of what took place on 25 February.

The ground of appeal

13. Mr Timothy Hannam KC, who appeared on behalf of the appellant in this appeal and with Mr Jason Aris at trial, submitted at the close of the prosecution's evidence that there was no case for the appellant to answer. In particular, the evidence of Mr Jenkins that the CCTV footage of P3 around 1pm on 25 February and the custody images were consistent, did not amount to a positive identification of the appellant as P3 and so was insufficient to satisfy the criminal standard of proof. He also submitted that the Crown had failed to prove that the images of P3 in CCTV footage of the events that evening related to the same person as was shown in footage at 1pm. Further, he relied upon 3 evidential matters which were said to contradict the purported identification.

14. The judge rejected the submission of no case to answer in a ruling which set out her reasoning in some detail.

15. The appellant then elected not to give evidence. His case was that he was not P3. He had not been involved in any joint enterprise of the other defendants.

16. In giving judgment on the grant of leave by the Full Court, Males LJ said it was arguable that the evidence of Mr Jenkins went no further than to say that the images of the appellant on arrest were consistent with profile 3 in the CCTV footage, rather than providing positive identification of him as that person. If so, there was an issue as to whether that evidence amounted to identification falling within [19(iii)] of *Attorney General's Reference No. 2 of 2002* [2002] EWCA Crim 2373; [2003] 1 Cr. App. R. 21.

However, the court accepted that there were other strands of evidence pointing to the appellant's involvement in the offences, including that he was in contact with co-defendants and was seen with them close to his home address at relevant times. These were matters which would need to be considered at the hearing of the appeal.

17. In *Attorney General's Reference No.2 of 2002* Rose LJ said this at [19]:

> "In our judgment, on the authorities, there are, as it seems to us at least four circumstances in which, subject to the judicial discretion to exclude, evidence is admissible to show and, subject to appropriate directions in the summing-up, a jury can be invited to conclude that the defendant committed the offence on the basis of a photographic image from the scene of the crime:
>
> (i) where the photographic image is sufficiently clear, the jury can compare it with the defendant sitting in the dock (*Dodson and Williams*);
>
> (ii) ….. ;
>
> (iii) where a witness who does not know the defendant spends substantial time viewing and analysing photographic images from the scene, thereby acquiring special knowledge which the jury does not have, he can give evidence of identification based on a comparison between those images and a reasonably contemporary photograph of the defendant, provided that the images and the photograph are available to the jury (*Clare and Peach*); …."

A summary of the prosecution's evidence

18. In order to put into context, the judge's ruling and the issues on this appeal, it is necessary to examine other parts of the prosecution's evidence, much of it taken from the telephone and ANPR evidence in the Timeline and the analysis by Mr Jenkins of the CCTV footage in the Sequence of Events. We are grateful to Mr Andrew Wallace for the helpful summary of that material in the Respondent's Notice.

19. At around 4pm on 25 February 2021 Waldron, who lived with his girlfriend Charlotte Jenkins at the appellant's home in Bridgnorth Road, was seen near that address.

20. At 5.31pm Talware parked a stolen Range Rover Evoque in King Street near Romilly Close and then walked past 1, Romilly Close towards Bridgnorth Road carrying a holdall.

21. At 5.55 pm the three younger co-defendants, Bell, Palmer and Sanghera gathered on the High Street in the town centre. Between 5.50 and 5.55 there were several unsuccessful calls from Bell's phone to the phones of Waldron and Charlotte Jenkins. But at 6.07pm a telephone call was made from the appellant's phone to Bell's phone lasting about 1 minute.

22. At 6.22pm Talware and P2 walked from the direction of 45, Bridgnorth Road towards 1, Romilly Close followed by P3. All three carried bags. P3 was wearing trainers with

the white strip which had been seen in the CCTV footage of the same profile at around 1pm. In front of 1, Romilly Close P3 pushed clothing into a bag held by P2. Talware and P2 then walked off with bags towards King Street where the Evoque had been parked. P3 ran back towards Bridgnorth Road. A minute or so later P3 returned into Romilly Close on a bicycle, moving towards King Street.

23. At 6.27pm the Evoque was driven away from King Street towards Bridgnorth Road. The car travelled to a secluded, rural location at Pine Meadows bridle path, arriving there at 6.34pm. P3 reached this same location on his bicycle two minutes later. He then carried bags and items from the Evoque in two or three trips into nearby woodland. Talware and P2 remained standing by the Evoque. They then got into the car and drove away. P3 walked his bicycle into the woods. He re-emerged without it at 6.37pm and stayed by the bridle path.

24. The Evoque was driven via the High Street to arrive at Armstrong Close at 6.51pm. This was near both to Palmer's home and the road where the stolen Renault Laguna had been parked.

25. The Evoque and the Laguna were driven back to the Pine Meadows bridle path arriving there at 7pm. The cars contained Talware, Waldron, Bell, Palmer and Sanghera. P3 emerged from the wood and walked to the cars, interacting with the occupants. He appeared to be holding clothing. P3 walked back into the woods and came out with bags and his bicycle. These bags and clothing were placed in the back of the Laguna, followed by P3's bicycle.

26. At 7.07pm P3 got into the Laguna and then both that car and the Evoque were driven to another rural location, Gibbet Lane, arriving there at 7.14pm.

27. The Laguna left Gibbet Lane at 7.21pm. It was the prosecution's case that the appellant's five co-defendants were in that car at that stage, a point which, according to their verdicts, the jury accepted. There is no issue for the purposes of this appeal about whether, at the close of the prosecution's case, that had been a permissible inference. The prosecution said it was also a reasonable inference that P3 remained at Gibbet Lane with the Evoque.

28. The Laguna arrived at 38 Caslon Crescent at about 7.25pm and the killing then took place. At 7.28pm the Laguna was driven back to Gibbet Lane, arriving just before 7.31pm. The Evoque left Gibbet Lane just before 7.32pm, pausing close by in Whittington Hall Lane. The Laguna was set on fire at about the same time. Mr Daniel McConville, an eyewitness, who saw what happened when the Renault arrived, said that the men involved all seemed to know their roles and what they were doing. It all seemed well executed and disciplined.

29. It was the prosecution's case that the Evoque was driven to Wolverhampton carrying the five co-defendants. By 8.34pm they were at Talware's home. Thereafter, they went their separate ways.

30. Mr. Jenkins said that at 9.03pm P3 could be seen walking through Romilly Close towards 45, Bridgnorth Road. He was wearing blue trainers with a white sole consistent with those seen on P3 in the footage outside 1, Romilly Close at around 1pm.

31. At 9.18pm and 10:30pm the appellant's phone was used unsuccessfully to call Talware's phone.

The submission of no case to answer

32. Before the judge, Mr Hannam accepted that the evidence of Mr. Jenkins identifying the appellant as P3 was admissible under [19(iii)] of *Attorney General's Reference (No 2 of 2002)*. Thus, the defence accepted that it did amount to a form of identification evidence. But he submitted that it did not establish to the criminal standard that Mr Garrington was P3, because of the lack of what he referred to as a positive identification of the appellant. Mr. Hannam submitted that the appellant therefore had no case to answer, relying upon both limbs in *R v Galbraith* [1981] 1 WLR 1039 in the alternative.

33. It is apparent that at that stage Mr Hannam's criticism of the evidence of Mr Jenkins was not that it did not amount to identification evidence at all, but rather that the witness had not said that he was sure about identifying the appellant as P3. In other words, this went to his level of confidence in identifying the appellant in the CCTV footage. This was, in effect, a submission that the identification was of poor quality (see below the discussion of *R v Turnbull* [1977] QB 224).

34. Mr Hannam then submitted that there was insufficient evidence to show that the images between 6.22pm and 9.03pm, said to be of P3, were of the same person throughout.

35. Counsel also relied upon evidence which he said contradicted the identification of the appellant as P3. In fact, his submission relied in part upon what he referred to as a *lack* of evidence, namely CCTV evidence to show P3 travelling from Romilly Close to Pine Meadows bridle path or from Gibbet Lane back to Romilly Close, or that P3 was present at Gibbet Lane when the Laguna was set on fire. Routes between Romilly Close and the two rural locations were well-covered by CCTV and the footage had been reviewed at length. This indicated that the appellant had never left his home address. Furthermore, Charlotte Jenkins had given evidence that Waldron's phone often did not work and he would then sometimes use the appellant's phone. She also said that when she returned to the appellant's home at around 7.30pm or 8pm on 25 February 2022 he was already there.

36. Lastly, Mr. Hannam submitted that even if the prosecution proved that P3 was the appellant, there was insufficient evidence to prove to the criminal standard that he was a party to the joint enterprise alleged against the other defendants with the requisite *mens rea*.

The Judge's ruling

37. The judge recorded the acceptance by the defence that Mr. Jenkins' identification evidence was admissible in accordance with [19(iii)] of the *Attorney Generals' Reference No 2 of 2002*. Consistent with that concession, she said that Mr Jenkins had identified the appellant as P3. The witness had been satisfied that the jury could conclude that they were the same person. Mr Jenkins had also been very clear that there were no features in any of the photographs which were inconsistent with the identification of the appellant as P3.

38. The judge then addressed three areas in the evidence which Mr Hannam had relied upon to establish "contradictions and inherent implausibility in the identification evidence". She said that the absence of CCTV evidence showing P3 moving between Romilly Close and Pine Meadows bridle path or between Gibbet Lane and Romilly Close, or showing P3 in the vicinity of the fire did not necessarily contradict the prosecution's case. Rather these were matters for the jury to consider. The same was true of the other points raised in support of the submission of no case to answer. The limitations of the CCTV footage of the burning of the Laguna had to be seen in the context of all the other evidence from which the jury could infer that P3 and the appellant were one and the same person.

39. The judge stated that, on the authorities, the test was whether a reasonable jury *could* make adverse findings against the appellant, not whether it was *obliged* to do so.

40. The prosecution case was based upon the movements of the appellant and the other defendants, the use of mobile phones, positioning from cell site evidence and the absence of any usage of mobile phones by any of the defendants before and after the killing.

41. Having examined the evidence as a whole the judge concluded that a reasonable jury, properly directed, could conclude, not necessarily would conclude, that the appellant was P3 and that he was involved in a supporting role, preparing for the attack, providing a base, looking after items used in the attack, supplying a change of clothing and assisting and encouraging in the destruction of the Laguna. It could properly be inferred that the appellant had the necessary knowledge and intent. A reasonable jury could reject all realistic explanations consistent with innocence. There was therefore a proper case to be left to the jury on all the counts with which he was charged.

The appellant's submissions

42. We are grateful to all counsel for their written and oral submissions.

43. Mr. Hannam accepted that the judge correctly directed herself on the relevant tests to be applied for the joint enterprise case alleged against the appellant and for deciding the submission of no case to answer.

44. Before the judge, Mr. Hannam had accepted that Mr. Jenkins' analysis of the CCTV footage was admissible at the trial, including his purported identification of the appellant as P3 in the footage at around 1pm on the day of the killing. He had submitted that that identification did not itself satisfy the criminal standard of proof. But at the hearing before us, Mr. Hannam submitted that because of the way in which his report had been phrased (see [10] above), the evidence of Mr. Jenkins had not amounted to an identification of the appellant at all, and so did not fall within [19(iii)] of the *Attorney General's Reference No.2 of 2002.* Even so, he did not go on to submit that that evidence should have been excluded.

45. Mr. Hannam then submitted in the alternative that the judge's analysis of the evidence contradicting any identification had been incorrect. He focused on the material relating to the later stages of the Sequence of Events. The footage did not give a direct view of Gibbet Lane and so it was not possible to identify from that material any profiles, including that of P3. The prosecution had simply invited the jury to infer that P3 had

remained at Gibbet Lane with the Evoque when the Laguna had left for Caslon Crescent and was still there when the Laguna returned and was set on fire. Yet the eyewitness, Mr. McConville, gave a description of the person who appeared to light the fire, which did not resemble P3.

46. Mr. Hannam submitted that the evidence of Charlotte Jenkins, that the appellant was already in his home when she returned that evening, combined with the lack of any CCTV footage of the appellant returning to his home, showed that he had not been at the fire in Gibbet Lane.

47. Then, working backwards, Mr. Hannam referred to the absence of any CCTV footage showing P3 travelling between Romilly Close and Pine Meadows bridle path. He added that the two calls from the appellant's phone at 6.24pm, each lasting 3 seconds, indicated that he was not riding the bicycle through Romilly Close as seen on the footage. The prosecution's suggestion that 45, Bridgnorth Road had been a rallying point did not implicate the appellant because that address was also where Waldron lived. The phone call made from the appellant's phone to Bell at 6.07pm could have been made by Waldron.

48. At one point, Mr. Hannam submitted that the inferences the prosecution asked to be drawn against the appellant were not inevitable conclusions.

49. For all these reasons, there had been no case for the appellant to answer. However, if the court should reject those submissions, Mr. Hannam did not pursue the further contention that there was insufficient evidence to go to the jury on the appellant's alleged participation in the joint enterprise and *mens rea.*

Discussion

50. The case against the appellant depended substantially upon the identification of him as P3. We therefore begin with the well-established principles in *Turnbull*. If this court should decide that there was a case for the appellant to answer, Mr Hannam made no criticism of the way in which the judge directed the jury on identification, including the warnings which had to be given. Indeed, no criticism was made of any part of the judge's legal directions or summing up of the evidence, or of the way in which the case was left to the jury for them to consider and decide.

51. *Turnbull* also set out the approach to be taken to submissions of no case to answer where a case depends wholly or substantially upon identification evidence. Where the court concludes that the quality of that evidence is good, the jury can safely be left to assess its value, even if there is no other evidence to support it ([1977] QB at p.229A-B). But where the quality of identification evidence is poor, as for example where it depends solely upon a fleeting glance or a longer observation in difficult conditions, the case should be withdrawn from the jury unless there is other evidence to support the correctness of that identification [1977] QB at p.229H to p.230A).

52. Thus, even where the court considers that identification evidence crucial for establishing a defendant's guilt to be poor, there is no principle requiring the case to be withdrawn from the jury without more. Instead, the issue of whether he has a case to answer will depend upon whether there is any supporting evidence and, if there is, the judge's assessment of that evidence, applying the principles in *Galbraith*.

53. The appellant was incorrect in submitting to the judge that the prosecution was required to show that Mr. Jenkins' comparison of CCTV footage and custody photographs identified the appellant as P3 to the criminal standard of proof. That would be contrary to *Turnbull* and general principle. Instead, the issue here was whether the prosecution's evidence, taken as a whole, entitled a reasonable jury to find the appellant guilty on one or more of the counts alleged against him.

54. There was no dispute that by virtue of the substantial time he had spent in looking at and assessing the CCTV footage together with contemporary photographs of the defendants, Mr. Jenkins had gained special knowledge and skills to be able to (a) explain what the CCTV showed to have taken place, (b) distinguish different profiles of persons and (c) identify those persons. Although Mr Hannam suggested to Mr. Jenkins, and he accepted, that the quality of the CCTV footage for the evening of 25th February 2022 was insufficient to enable him to identify the appellant as P3, that was not suggested for the footage at around 1pm that day.

55. We note that when the judge summed up the evidence of Mr Jenkins to the jury, she referred to part of the cross-examination dealing with the appellant's tattoo on the right side of his neck. Counsel had sought to undermine the use of the CCTV footage in Romilly Close to identify the appellant as P3 by saying that it did not show the tattoo. The judge's summary of Mr Jenkins' response was that there was limited detail on this point, in that it was not clear whether the footage showed that P3 had no tattoo, or whether P3 had a tattoo which could not be seen because of clothing. Thus, the witness concluded that this factor did not justify excluding the appellant as P3. No objection was taken to the judge's summary of this part of the evidence. Consistently with Mr Jenkins' report (see [10] above) and with the exchanges in cross-examination on the transcript, the summing up fairly explained the context in which the passage quoted at [11] above appeared.

56. Mr. Jenkins' opinion was that there were a number of points of consistency between the images of P3 and of the appellant and no inconsistency between them. In our judgment, he put forward those points of consistency as positive, and not simply neutral, indicators of the appellant's identification. The defence did not suggest any contra-indications. Although the witness's report did not positively say that he could identify the appellant as P3, on a fair reading, that was the overall effect of his evidence. That was the purpose of it being given in the trial. No other purpose has been suggested.

57. No authority was cited to us to the effect that an opinion of the kind given by Mr Jenkins should not be treated as identification evidence and admissible in accordance with *Attorney General's Reference No 2 of 2002*. As a matter of principle we see no justification for taking that approach.

58. It was because the parties and the judge treated Mr Jenkins as having identified the appellant as P3, that the jury were given legal directions based on *Turnbull* as to how they had to approach that identification evidence. The directions included the usual warnings to ensure that the jury was aware of the need for caution and to ensure the fairness of the appellant's trial.

59. The defence did not attempt to have the comparison evidence of Mr Jenkins excluded because it was irrelevant to identifying the appellant as P3. Even if, contrary to our view, that evidence were to be treated as not amounting technically to identification

evidence, it nevertheless formed part of the substantial circumstantial evidence against the appellant which, as we will explain, a reasonable jury could accept proved that the appellant was P3 and guilty of the offences alleged against him.

60. The issue of identification was ultimately a matter for the jury to assess. Plainly this was not a case where the witness said that he was sure from his comparison of the images that the appellant was P3. Even if he had done so, the jury would still have been directed to exercise caution about any such opinion and, taking other relevant evidence into account, would have been entitled to take a different view of his comparison between the CCTV footage and custody photographs. Similarly, where, as in the present case, a witness makes a weaker comparison between a person in CCTV images and the accused, the jury is entitled to decide how much weight to give to that identification, along with any other evidence supporting, or undermining, the proposition that he was the same person.

61. In her ruling the judge accepted that the CCTV footage was not of sufficient quality to enable the jury to make a comparison with the appellant in the dock, (as in [19(i)] of *Attorney General's Reference No.2 of 2002*). In due course she gave a clear direction to the jury to that effect. Accordingly, the challenge to the ruling that the appellant did have a case to answer turns upon the evidence said to support or contradict the identification by Mr Jenkins, including the circumstantial evidence.

62. The well-known principles upon which the courts determine submissions of no case to answer were set out in *Galbraith* at [1981] 1 WLR 1042 B-D:

> "How then should the judge approach a submission of "no case"? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there *is* evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

63. In *R v Jabber* [2006] EWCA Crim 2694 Moses LJ stated at [21] that for a jury to draw an inference adverse to a defendant from a combination of factual circumstances necessarily does involve their rejection of all *realistic* possibilities consistent with innocence. That statement has sometimes been misunderstood by advocates to mean that a judge cannot reject a submission of no case to answer unless he or she is satisfied that *any* reasonable jury would reject all realistic innocent explanations of that evidence.

Similarly, the appellant was incorrect to suggest that the prosecution had to show that any jury would inevitably draw the adverse inferences for which they contended.

64. Instead, the true test for there being a case to answer is whether *a* reasonable, *not all* reasonable juries, could, on one possible view of the evidence, be entitled to draw adverse inferences against the defendant, rejecting all realistic possibilities consistent with his innocence. The focus should be on what a reasonable jury could do, rather than on what it could not do. If a judge concludes that a properly directed and reasonable jury could on one possible view of the evidence, taking the prosecution case at its highest, reach adverse inferences sufficient to convict the defendant, then the case must not be withdrawn from the jury; the trial must continue (*G and F v R* [2012] EWCA Crim 1756 at [29] to [36]). In the present case the judge correctly directed herself in accordance with the above principles.

65. We would only add that in an appeal against conviction, this court will usually focus on whether there was in fact a case for the appellant to answer, and whether the conviction was safe, rather than on any issue or analysis to do with the sufficiency of the reasons given in the judge's ruling (Simon LJ in R v *Chauhan and Croft* [2019] EWCA Crim 1111; [2019] 2 Cr. App. R. 27 at [21] to [23]).

66. Having reviewed all the relevant material, we are in no doubt that the prosecution adduced sufficient evidence upon which a reasonable jury could properly convict the appellant of the offences alleged against him. There was undoubtedly a case for the appellant to answer. We reach that conclusion for a combination of reasons. In doing so, we agree with Mr Heywood for the Crown that it is essential to consider the overall effect of the prosecution's evidence against the appellant, rather than to look at individual episodes in the Sequence of Events and Timeline in isolation.

67. The images of P3 (at around 1pm on 25 February 2022) with which Mr Jenkins compared the custody images of the appellant, were taken from footage of P3 when he was visiting 1, Romilly Close, a location close to 45, Bridgnorth Road and when he was walking towards his home at 1.26pm. The CCTV footage also showed the design of P3's trainers, which Mr Jenkins described.

68. At 5.31pm Talware, who went on to kill Mr Jones only 2 hours later, parked the stolen Evoque near to Romilly Close and walked towards the appellant's home carrying a holdall. At 6.07pm the appellant's phone called Bell's phone for about 1 minute. The appellant's phone connected to a mast which served an area which included the appellant's home. This was a call made to a co-accused during the run up to the attack and around the time when Talware was in the same area as the appellant. Indeed, at 6.22pm Talware, P2 and P3 walked from the direction of 45, Bridgnorth Road to 1, Romilly Close carrying bags.

69. While the others were leaving Romilly Close, P3 went back towards 45, Bridgnorth Road and then only a couple of minutes later cycled back through Romilly Close and on to Pine Meadows bridle path. P3 wore clothing similar to that worn by him at the same location at 1pm.

70. It is significant that these preparatory activities with Talware and P2 took place not long before the killing by Talware at a location close to the appellant's home. That location,

together with the use of the appellant's phone, support the identification of the appellant as P3 (see by analogy *R v Barker* [2021] EWCA Crim 603 at [29] to [30]).

71. Following the killing, a person identified by Mr. Jenkins as P3 returned to Romilly Close at 9.03pm and walked towards the appellant's home. At 9.18pm and 10:30pm the appellant's phone was used unsuccessfully to contact the phone of Talware. Again, the location at which P3 was sighted at 9.03pm and this usage of the appellant's phone, this time following the shooting, supports the identification of the appellant as P3.

72. In between these two episodes, the prosecution was also able to rely upon evidence that P3, who had cycled from the direction of the appellant's home after assisting Talware and P2, met those defendants shortly afterwards at Pine Meadows bridle path and Gibbet Lane and continued to help them. At one point both P3 and the bicycle were transported in the Laguna. That was only 10 minutes or so before the killing and just under 20 minutes before the car was set on fire.

73. These ongoing activities of P3, including his interaction with other defendants and use of the bicycle, amounted to evidence that P3 was one and the same person throughout the relevant events, which was sufficient to be left to the jury for them to assess. The fact that P3 and his bicycle were shown in the CCTV footage at 6.23pm a short distance from the appellant's home, and a short while after P3 had run off in the direction of Bridgnorth Road to collect the bicycle, also provided significant support for the identification of the appellant as P3.

74. If a reasonable jury were to accept the prosecution's case thus far, they would also be entitled to treat these matters as linking P3 with the person who returned to Romilly Close at 9.03pm and walked towards the appellant's home, and used the appellant's phone to try to contact Talware,

75. When matters are seen properly in context and in the order in which events occurred, it makes no sense to begin, as Mr Hannam did, with the CCTV footage in the vicinity of Gibbet Lane after all the preparatory activities and the killing had been concluded. That footage was mainly relevant to count 9, namely setting fire to the Laguna as an act tending and intended to pervert the course of justice. The jury were directed that they could only consider count 9 if they were sure that Talware had murdered Mr. Jones. Only Talware, Waldron and the appellant were charged with count 9. There was an obvious interest in destroying evidence to do with the murder, by making sure that the Laguna was set on fire.

76. The relevant CCTV camera was at some distance from Gibbet Lane and so the footage did not allow for *any* of the participants, not just P3, to be identified. But a reasonable jury would have been entitled to find that the appellant was P3 and had been carried with his bicycle in the Laguna from Pine Meadows bridle path to Gibbet Lane. The prosecution adduced evidence sufficient to be left to the jury that the co-defendants had gone to the murder scene and then returned to Gibbet Lane. They could have inferred that the appellant remained with the Evoque at Gibbet Lane whilst the others went to the home of Mr Jones, just as he had previously remained at the bridle path with items used for the attack, whilst Talware and P2 went off to meet up with the other defendants and to collect the Laguna.

77. We do not consider that the points relied upon by Mr. Hannam as contradicting the prosecution's case, whether taken individually or collectively, undermined that case so that the judge ought to have ruled that there was no case to answer. Instead, these were all points upon which the appellant was able to rely as arguments in counsel's speech to the jury for them to assess. They included Mr. McConville's description of the person who set fire to the Laguna and the absence of any CCTV footage capable of identifying any of the profiled persons at Gibbet Lane.

78. There appears to have been no explanation for the absence of any CCTV footage showing P3 moving between Romilly Close and Pine Meadows bridle path. On the other hand, there was footage showing P3 interacting with Talware and P2 in Romilly Close and then at 6.23pm cycling along Romilly Close in the direction of King Street and the Evoque. That car left King Street at 6.27pm and arrived at the bridle path at around 6.34pm. A person identified as P3 arrived on a bicycle at that very location two minutes later and interacted with Talware and P2. A reasonable jury would be entitled to conclude that it would be too much of a coincidence if the person who arrived on a bicycle at the bridle path at 6.36pm, and had dealings there with Talware, P2 and the Evoque, was a different person from the P3 who, only a short while beforehand, had similar dealings in Romilly Close with the same two people (who also used the same car), before leaving on a bicycle. The jury would be entitled to give weight to those matters and not to the absence of CCTV footage of any journey by P3 between the two locations. If they reached that position, a reasonable jury could also give no weight to the absence of CCTV footage to deal with P3's movements between Gibbet Lane and Romilly Close after the killing.

79. Seen in context, Charlotte Jenkins' evidence that the appellant was at home when she returned there at around 7.30pm or 8pm was not necessarily inconsistent with the prosecution's case against him. The appellant's submissions on this point were a matter of argument to be left to the jury to consider.

80. The fact that Waldron lived at the appellant's home and sometimes used his phone does not support the ground of appeal. Waldron was 10 years younger than the appellant. There was no suggestion that the P3 who went to and from Romilly Close and Bridgnorth Road between 1pm and 6.23pm, and who interacted with Talware and P2, looked like Waldron. There was no evidence that Waldron in fact used the appellant's phone on 25 February 2022. Indeed, the analysis in the Respondent's Notice at para. 5 (vii) to (xviii) and lines 213, 221-223, 224, 238, and 284-287 of the Timeline indicate that it was not Waldron but the appellant who was using his own phone that day. In any event, the suggestion that Waldron, rather than the appellant, could have used the appellant's home and his phone to assist in the attack on Mr. Jones were simply matters of argument for the defence to raise before the jury. They gave no support to the submission that the appellant had no case to answer.

81. The jury would have been entitled to conclude that the calls to Bell and Talware from the appellant's phone before and after the killing were made by the appellant. In that event they could also have treated the absence of any calls or texts from that phone between 6.24pm and 8.40pm as providing further substantial support for the prosecution's case.

Conclusions

82. For these reasons we conclude that the judge was correct to reject the submission of no case to answer and to leave the case against the appellant to the jury. We also conclude that his convictions are safe. Accordingly, the appeal against conviction must be dismissed.