

FAO: Abdul Rehman  
Number: 5512856

July 2026

Dear Abdul

We are delighted to inform you that you have been awarded First Prize for your performance in Alternative Judgement stream of the final year Supervised Project. Your excellent judgment is also the overall winner in the 15-Cat Supervised Project Module.

You achieved a mark of 88%, not only the highest mark of all students in the challenging judgment submission but the highest mark of the finalist cohort in the 15-Cat project group. The award of First Prize recognises your commitment and intellect as demonstrated by your creative, thoughtful and original project.

A record of your achievement will be added to your HEAR (Higher Education Achievement Report) transcript. You will receive a cash prize of £150 in total, £50 as stream winner, and £100 as overall winner. To claim your prize please fill in the AP2 form attached to this email and send it directly to [AP2@warwick.ac.uk](mailto:AP2@warwick.ac.uk).

Please note, if you are attending the Law Graduation on 30<sup>th</sup> July, you will be presented with a formal certificate of achievement from the Head of the Law School, Professor Andrew Williams at the pre-Graduation Reception, which will be held in the Rootes Building Learning Grid, from 11.30am to 2.30am. Please let us know you are coming by filling in the webform [HERE](#)

It is a great pleasure to be the first to congratulate you on your outstanding performance in the 15-Cat supervised project module, particularly as the judgment stream is so technically and legally challenging. This double award is very well deserved! Well done and all the very best in your future endeavours.

Best wishes



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# **BKY & Ors v The King**

## **JUDGMENT OF THE SUPREME COURT**

**Warwick ID: 5512856**

**Supervisor:** 

**Total Word Count: 4999**

### **Abbreviations**

Overwhelming Supervening Event (OSE)

Accessories and Abettors Act 1861 (AAA)

Grievous Bodily Harm (GBH)

Principal Offender/s (P)

Secondary Party/Accessories/Accomplices (D)

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Hilary Term  
[2026] UKSC 16 (Fictional)  
*On appeal from: [2023] EWCA Crim 1095*

## **JUDGMENT**

### ***BKY & Ors v The King***

before

**Lord Rehman  
Lord Rizwan  
Lady Saira  
Lady Basoglu  
Lady Lammasniemi**

**JUDGMENT GIVEN ON  
2 MARCH 2026**

**Heard on 6 November 2025**

Pursuant to section 33(2) of the Criminal Appeal Act 1968,<sup>1</sup> the Court of Appeal (Criminal Division) certified that its decision in the proceedings involved a point of law of general public importance concerning the principles governing secondary liability. Permission to appeal was granted to BKY, Clayton Owen, Joe Lathan, Leighton Mayo, Blaine Sewell, AGN, and BGS. Permission was refused to Calum Maddison, Sonny Smith, and Grant Wheatley.

**Lord Rehman: (with whom Lord Rizwan, Lady Saira, Lady Basoglu, and Lady Lammasniemi agree)**

1. On 1 June 2022, following a trial at the Crown Court at Newcastle-upon-Tyne before HH Judge Jameson KC and a jury, all ten defendants were each convicted of the murder of Jack Woodley. They were sentenced to detention at His Majesty's Pleasure pursuant to section 259 of the Sentencing Act 2020.<sup>2</sup> Their appeals against conviction were heard by the Court of Appeal on 6 July 2023 and, subsequently, dismissed on 29 September 2023.<sup>3</sup>
2. The certified question in these conjoined appeals, concerning seven of the ten defendants convicted at trial, is one on which this Court has been asked to review whether the principles governing secondary liability, as restated in *R v Jogee*,<sup>4</sup> were correctly applied in the present case, particularly as to the proper meaning and relationship of participation, intent, and individual criminal responsibility in cases of group violence culminating in murder; and whether, the doctrine of Overwhelming Supervening Event (OSE) requires further clarification in the context of such cases.

### **The Facts**

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

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<sup>1</sup> Criminal Appeal Act 1968, s 33(2).

<sup>2</sup> Sentencing Act 2020, s 259.

<sup>3</sup> *R v BKY and others* [2023] EWCA Crim 1095, [1].

<sup>4</sup> *R v Jogee* [2016] UKSC 8, [2017] AC 387.

4. On the evening of 16 October 2021, Jack Woodley, aged 18, attended a festival at Houghton-le-Spring in County Durham with a group of his friends. Among those also present were the appellants. Earlier that evening, Calum Maddison had left the festival, retrieved a large knife from his home, and returned armed with it. Triggered by trivial reasons at the festival, a confrontation subsequently arose between the appellants and Woodley.
5. What followed was a fast-moving, violent attack. The video evidence showed that 84 seconds had elapsed between the initial assault and the departure of Maddison from the scene. In that short period, Woodley was repeatedly punched, kicked, and stamped upon by the group. Shouts of “get the chopper” were heard, during which Maddison drew the knife and stabbed him in the back. Woodley was subjected to a further attack after moving away from the immediate scene. Still, the post-mortem evidence established that the medical cause of death was the stab wound sustained during the earlier attack. Emergency services attended, but attempts to save Woodley were sadly in vain.
6. An innocent young life was, thus, taken needlessly. This Court offers its sincerest condolences to Jack Woodley’s family and friends, who must now find a way to carry on in his absence.

### **The Law**

7. Section 8 of the Accessories and Abettors Act (AAA) 1861 provides that:

“Whosoever shall aid, abet, counsel or procure the commission of any indictable offence ... shall be liable to be tried, indicted and punished as a principal offender.”<sup>5</sup>

The purpose of the provision is to simplify the procedure for the prosecution of secondary parties.<sup>6</sup> The governing principles of secondary liability are those established by the common law. Those principles took a ‘wrong turn’ in *Chan Wing-Siu v The Queen*,<sup>7</sup>

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<sup>5</sup> Accessories and Abettors Act 1861, s 8.

<sup>6</sup> *Jogee (n 4)* [6]; *R v Stringer* [2011] EWCA Crim 1396, [42].

<sup>7</sup> *Chan Wing-Siu v The Queen* [1985] AC 168 (PC).

subsequently endorsed by the House of Lords in *R v Powell; R v English*.<sup>8</sup> This Court corrected that error in *Jogee*.<sup>9</sup> The principles there restated govern the present appeals, and it is to their application and development that this judgment is directed.

### Participation

8. The Law Commission, in its report, accurately summarised the effect of the language of section 8 of the AAA 1861. Disregarding procuring, the statutory words aid, abet, and counsel describe, in practice, two forms of conduct; namely, the provision of assistance and the provision of encouragement.<sup>10</sup> The requisite conduct element, thus, is that D assisted or encouraged the commission of the offence by P.<sup>11</sup> Toulson LJ confirmed in *R v Mendez* that the prosecution need not prove D's conduct in a 'but for' sense; following *Attorney General v Able*<sup>12</sup> and *R v Calhaem*,<sup>13</sup> there must, however, be a 'connecting link' between D's conduct and P's act, and that conduct must objectively have constituted assistance or encouragement at the time of P's act.<sup>14</sup>
9. Contrasted with assistance, encouragement involves some form of transmission of encouragement by words or conduct, directly or via an intermediary.<sup>15</sup> Once such encouragement is communicated or manifested in a way capable of operating, or has the capacity to act on P's mind, there is no further requirement to prove that it was substantial or had any 'positive effect' on the commission of the offence.<sup>16</sup> It may have made no difference at all.<sup>17</sup>

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<sup>8</sup> *R v Powell; R v English* [1999] 1 AC 1 (HL).

<sup>9</sup> *Jogee* (n 4) [87].

<sup>10</sup> Law Commission, *Participating in Crime* (Law Com No 305, 2007) para 2.21; *Jogee* (n 4) [6]; *Stringer* (n 6) [45].

<sup>11</sup> *Jogee* (n 4) [8].

<sup>12</sup> *Attorney General v Able* [1984] QB 795, cited in *R v Mendez and Thompson* [2010] EWCA Crim 516, [2011] 1 Cr App R 10 [23]

<sup>13</sup> *R v Calhaem* [1985] QB 808, cited in *Mendez and Thompson* (n 12) [23]

<sup>14</sup> *Mendez and Thompson* (n 12) [23]; *Stringer* (n 6) [48].

<sup>15</sup> *Stringer* (n 6) [49].

<sup>16</sup> *Jogee* (n 4) [12].

<sup>17</sup> *R v Rowe, Gracia and Jalloh* [2022] EWCA Crim 27 [131].

10. Presence at the scene is not itself conclusive to constitute the defendant present as a party to the offence; *R v Coney*.<sup>18</sup> The law draws a distinction between presence as evidence from which encouragement may be inferred, and presence which itself amounts to actual encouragement. Voluntary presence is not enough unless actual encouragement is established, but presence may cross the threshold where it is accompanied by conduct which positively associates D with the offence; see *R v Clarkson*,<sup>19</sup> *R v Wilcox*.<sup>20</sup> This Court acknowledged in *Jogee* that numbers often matter, and a D's proximity within a group may fortify P. Presence is, therefore, likely to be very relevant evidence, but is not necessarily proof of encouragement; the inquiry is fact-dependent, and ultimately, a contextual question for the jury to decide.<sup>21</sup>

### Intent

11. The mental element for secondary liability is an intention to assist or encourage the commission of the offence, which requires knowledge of any existing facts necessary for it to be criminal.<sup>22</sup> Where an offence charged requires a particular intent, D must intend to assist or encourage P to act with the mens rea required for that offence.<sup>23</sup> In murder, that means an intention to assist or encourage P to kill or to cause GBH at least.<sup>24</sup> Intention, however, is not the same as desire or motive. As Devlin J correctly held in *NCB v Gamble*, aiding and abetting is proved by a positive act voluntarily done, accompanied by intention, and the “motive of endorsing” the offence is irrelevant (Slade J dissenting).<sup>25</sup> A man who sells a gun knowing it will be used for murder is capable of being an aider and abettor regardless of his indifference to the outcome.<sup>26</sup>

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<sup>18</sup> *R v Coney* (1882) 8 QBD 534, 553.

<sup>19</sup> *R v Clarkson* [1971] 1 WLR 1402.

<sup>20</sup> *Wilcox v Jeffery* [1951] 1 All ER 464, cited in David Ormerod and John Child, *Smith, Hogan, and Ormerod's Essentials of Criminal Law* (6th edn, OUP 2025) 522.

<sup>21</sup> *Jogee* (n 4) [11].

<sup>22</sup> *Jogee* (n 4) [9]; *Johnson v Youden* [1950] 1 KB 544, 546.

<sup>23</sup> *Jogee* (n 4) [10].

<sup>24</sup> *Jogee* (n 4) [28]; *R v Smith (Wesley)* [1963] 1 WLR 1200, 1205–1206.

<sup>25</sup> *National Coal Board v Gamble* [1959] 1 QB 11, 20, 25–26.

<sup>26</sup> *Ibid* 23.

12. The error in *Chan Wing-Siu* was to equate foresight with intent to assist as a matter of law.<sup>27</sup>

The correct approach, following *Jogee*, is that foresight of what P might do is evidence from which intent may be inferred, and in many cases powerful evidence, but it is not synonymous with intent and cannot by itself satisfy the mental element.<sup>28</sup> D who merely foresaw that violence might escalate to a fatal level but did not intend to assist or encourage killing or GBH, is not guilty of murder as an accomplice; illustrated in *R v Crilly*.<sup>29</sup>

13. The intent required of D may also be conditional. As this Court held in *Jogee*, it is a perfectly proper inference that D, who intended to assist in serious violence if resistance were met, held a genuine intention to assist in serious violence.<sup>30</sup> In cases of spontaneous multi-handed violence, liability does not necessarily depend on proof of agreement; it depends on intentional assistance or encouragement, conditional or otherwise. If D joins with a group which he realised is out to cause serious injury, the jury may well infer that he intended to encourage or assist the deliberate infliction of GBH.<sup>31</sup>

14. As to knowledge, D must at least know the essential matters which constitute the offence giving P's conduct its criminal character.<sup>32</sup> They need not, however, know that those matters amount in law to an offence; as Lord Goddard CJ held in *Johnson v Youden*, "ignorance of the law is no defence."<sup>33</sup> The requirement is, therefore, one of knowledge of facts, not knowledge of legal classification. Nor does it require D to know in advance every detail of P's offence. It will be sufficient, for instance, that the offence committed falls within the range of criminal conduct which D intentionally assisted or encouraged; see *DPP for NI v*

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<sup>27</sup> *Jogee* (n 4) [83].

<sup>28</sup> *Ibid* [83]–[87].

<sup>29</sup> *R v Crilly* [2018] EWCA Crim 168 [40].

<sup>30</sup> *Jogee* (n 4) [90], [92].

<sup>31</sup> *Ibid* [95].

<sup>32</sup> *Jogee* (n 4) [9]; *Youden* (n 22) 546.

<sup>33</sup> *Youden* (n 22) 546.

*Maxwell*.<sup>34</sup> Knowledge or ignorance of weapons is evidence going to D's intention, and can be highly probative evidence, but it remains evidence and no more.<sup>35</sup>

### Individual Criminal Responsibility

15. The principles stated above are not difficult to state; the difficulty lies in their application to multi-defendant violence. *R v Anwar* is one group context example of intention properly being inferred, not imputed. The Court of Appeal was right to hold that the case could go to the jury because the evidence did not rest on participation alone; it included pre-planning, coordination, a loaded shotgun, and the words "shoot him, shoot him," all of which supplied a direct evidential bridge between robbery and an intention that the firearm be used to kill if resistance required it.<sup>36</sup>

16. However, *R v Hussain* is different. I agree with its rejection of a separate "measurable contribution" requirement,<sup>37</sup> for Toulson LJ was right in *Mendez* that proof of causation would impose an impossible burden in many group cases and produce perverse results.<sup>38</sup> But I would, respectfully, caution with the reasoning in *Hussain* insofar as it treats an alleged plan to steal drugs or money as making it "unrealistic" to deny an intention to cause serious injury if required.<sup>39</sup> I would stress the case of Saddam (one of the appellants in *Hussain*). He was not at the crime scene, was not in the car outside, and the prosecution's case recorded no incriminating pre-killing instruction or message from him.<sup>40</sup> The case against him depended heavily on phone contact, and post-offence assistance to P, which is not evidence of assistance or encouragement of murder.<sup>41</sup> Yet, it was deemed sufficient to

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<sup>34</sup> *Director of Public Prosecutions for Northern Ireland v Maxwell* [1978] 1 WLR 1350, cited in Ormerod and Child (n 20) 535; *Jogee* (n 4) [14]–[16].

<sup>35</sup> *Jogee* (n 4) [98].

<sup>36</sup> *R v Anwar* [2016] EWCA Crim 551 [20]–[26].

<sup>37</sup> *R v Hussain* [2023] EWCA Crim 697 [82]–[84].

<sup>38</sup> *Mendez and Thompson* (n 12) [23].

<sup>39</sup> *Hussain* (n 37) [75].

<sup>40</sup> *Ibid* [6]–[12], [28]–[30].

<sup>41</sup> *Ibid* [47]–[50], [68]–[69].

punish him as harshly as he himself had wielded the knife, notwithstanding realistic possibilities that may have been consistent with proving his innocence.<sup>42</sup>

17. For my part, I think it would be naive not to recognise that, in multi-defendant cases, especially where the Crown narrative is framed by drugs, territory, turf war, gang association or collective hostility, the law may be applied in a way which moves too readily from context to culpability. Still, I do not regard the difficulties surrounding secondary liability as reasons to abandon or diminish the doctrine. They are real difficulties, but they do not obscure the doctrine's practical value, which has been established, especially in contexts such as *Anwar*.<sup>43</sup>
18. It follows that the concept of "joint enterprise" is not a legal term of art;<sup>44</sup> it is a label describing the factual context in which ordinary principles of secondary liability fall to be applied.<sup>45</sup> Those principles require individual proof of the conduct element and the mental element for each defendant. Guilt of crime by mere association has no proper part in the common law.<sup>46</sup> The law must neither atomise collective violence into artificial fragments nor force artificial synergies to collectivise individual guilt. Group context can be used to understand conduct, but must not be treated as a unit of guilt.
19. The standard of individual assessment in multi-defendant cases was established in *R v Smith (Wesley)* and confirmed in *R v Betty*;<sup>47</sup> the direction praised as "legally unassailable" held that several persons present at a death may properly receive different verdicts because each may possess a different guilty mind.<sup>48</sup> That standard reflects the principle, correctly identified by the Law Commission, that if D is to bear the same conviction and penalty as P, D's culpability must be at least comparable to P's.<sup>49</sup> *Davies v DPP* gives this principle

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<sup>42</sup> Ibid [87]–[88].

<sup>43</sup> *Anwar* (n 36).

<sup>44</sup> *Stringer* (n 6) [57].

<sup>45</sup> *Jogee* (n 4) [77].

<sup>46</sup> Ibid.

<sup>47</sup> *R v Betty* [1963] 3 All ER 575, cited in *Jogee* (n 4) [30].

<sup>48</sup> *Smith (Wesley)* (n 24) 1207.

<sup>49</sup> *Law Commission* (n 10) paras 1.5–1.7.

particular direction in youth group knife cases. Lord Simonds LC saw no reason why, where several boys fight another group, and one produces a knife and kills, the others should be treated as accomplices in the knife murder unless there is evidence that they intended, or at least contemplated an attack with a knife rather than a common assault.<sup>50</sup> However, if D has intentionally assisted or encouraged unlawful violence and intended nothing more than unlawful battery/common assault, a sudden escalation by P may still leave D liable for homicide. Where murder-level intent is not proved, unlawful act manslaughter reflects the culpability of intentional participation in unlawful violence carrying the objective risk of some harm; see *R v Lanning*.<sup>51</sup>

20. This individualisation is particularly important at the close of the Crown's case. In *R v Galbraith*, Lord Lane CJ held that where prosecution evidence, taken at its highest, is such that a jury properly directed could not convict, it is the judge's duty to stop the case; and equally where the evidence is of so tenuous a character that no reasonable jury could safely act upon it.<sup>52</sup> Where the case is left, the jury must be directed through a defendant-specific sequence. First, what conduct is proved against the defendant. Secondly, whether that conduct, viewed objectively in its context, constituted assistance or encouragement of the principal offence. Thirdly, what essential matters did the defendant individually know. Fourthly, whether the defendant individually intended to assist or encourage killing or really serious injury. Where the fourth question is not proven, but there is evidence on which the jury could find that D intentionally assisted or encouraged an unlawful act of violence which all sober and reasonable people would recognise as carrying the risk of some harm,<sup>53</sup> and death resulted from that violence, an alternative verdict of unlawful act manslaughter must be left.

21. Where a defendant is young or a minor, the inference from conduct to intent must be drawn with particular regard to age, maturity, speed of events, fear, peer pressure, and loyalty. As this Court recognised, young people may become suddenly embroiled in a fight and make

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<sup>50</sup> *Davies v DPP* [1954] AC 378, 401.

<sup>51</sup> *R v Lanning* [2021] EWCA Crim 450 [2]; *Smith (Wesley)* (n 24) 1205–1206; *R v Reid* (1976) 62 Cr App R 109, 112; *Jogee* (n 4) [96].

<sup>52</sup> *R v Galbraith* [1981] 1 WLR 1039, 1042.

<sup>53</sup> *Jogee* (n 4) [96].

a quick decision about whether to help their friends, swept along by events in ways that bear directly on what they individually intended.<sup>54</sup> The susceptibility and vulnerability of young defendants to fear, pressure, and the influence of others bear equally on how their lies, silences, or inconsistencies are to be evaluated, and the jury must consider whether such conduct truly evidences guilt or reflects those wider circumstances; see *R v Lucas*.<sup>55</sup> The jury must, therefore, assess a young defendant's individual intention by reference to their actual circumstances, including age and cognitive development.

### Overwhelming Supervening Event

22. I turn, now, to the doctrine of OSE. It is not a freestanding defence, nor a principle of causation as correctly illustrated in *R v Rowe*<sup>56</sup> and *R v Grant*;<sup>57</sup> rather, it is a narrow limit on attribution where D's assistance or encouragement has ceased to bear legal connection with P's offence. It asks whether D's contribution has become so spent, remote, or irrelevant that P's offence can no longer be regarded as assisted or encouraged by D.<sup>58</sup> *R v Anderson*; *R v Morris* provides a useful explanation of the doctrine, though its application there, treated by this Court in *Jogee*, is rather a "charitable view" of the facts.<sup>59</sup> *R v Reid* better indicates the doctrine's narrowness; where D joins an armed or violent confrontation, the fatal escalation of that violence will ordinarily remain within the scope of secondary liability.<sup>60</sup>

23. The proper distinction that must be made is between escalation and what may conveniently be called rupture. Escalation occurs where P carries out the kind of violence D intentionally assisted or encouraged, though by an unexpected weapon, method, or ferocity; the doctrine does not arise, see *R v Tas* and *Grant*.<sup>61</sup> Rupture arises only where P's act is so independent, or so detached in time, space, place, or circumstance; an act which nobody in D's shoes

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<sup>54</sup> Ibid [75].

<sup>55</sup> *R v Lucas (Ruth)* [1981] QB 720, 724.

<sup>56</sup> *Rowe* (n 17) [130]–[136].

<sup>57</sup> *R v Grant, Khan and Ismail* [2021] EWCA Crim 1243 [32].

<sup>58</sup> *Jogee* (n 4) [12], [97].

<sup>59</sup> *R v Anderson and Morris* [1966] 2 QB 110, 120; *Jogee* (n 4) [33].

<sup>60</sup> *Reid* (n 51) 112; *R v Tas* [2018] EWCA Crim 2603 [30].

<sup>61</sup> *Jogee* (n 4) [96]–[98]; *Tas* (n 60) [37]–[42]; *Grant* (n 57) [36]–[39].

could have contemplated might happen, and of such character as to relegate D's acts to history.<sup>62</sup> It may arise where P intentionally changes the object of the assisted offence, such as deliberately attacking a different victim, but not ordinarily where harm to another victim is accidental or where ordinary doctrines of transferred malice or constructive liability preserve the connection.<sup>63</sup> Another illustration is *R v Rafferty*, D's earlier participation in beating the victim was not operational when P later drowned him, so the drowning was a new intervening event rather than an escalation.<sup>64</sup>

24. The law should be clarified accordingly. In ordinary cases, the safeguard against over-extension is the Crown's burden to prove defendant-specific intentional assistance or encouragement of the offence charged. An OSE direction is required only where there is evidence on which a reasonable jury could find true rupture, not merely unexpected escalation.<sup>65</sup>

### **The Appeals**

25. The Crown's case at trial was that Maddison inflicted the fatal wound and that each appellant was jointly engaged in the attack on Woodley, sharing a common purpose of causing really serious injury. That was a case the jury was entitled to consider in the round, but not to determine in the aggregate. I, therefore, consider the case of each appellant in turn.

26. *Leighton Mayo*: The footage placed Mayo in the vicinity of Woodley during the attack with his hood up. By the close of its case, the prosecution no longer positively asserted that the footage showed him punching or kicking Woodley; his defence statement maintained he had tried to push Sewell away. The submission of no case to answer was refused on the basis that the evidence had to be viewed as a whole, and that Mayo was shown going to the fight with others against whom there was a prima facie case. With respect, I am unable to agree. Where the prosecution has abandoned its positive case of violence and the appellant's

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<sup>62</sup> *Jogee* (n 4) [12], [97].

<sup>63</sup> *Saunders and Archer* (1573) 2 Plowd 473, cited in Ormerod and Child (n 20) 545–546.

<sup>64</sup> *R v Rafferty* [2007] EWCA Crim 1846, cited in *Tas* (n 60) [43]–[44].

<sup>65</sup> *Grant* (n 57) [34]–[35], [39]; *Tas* (n 60) [40]–[41].

own account is that his conduct was directed against the enterprise, the established evidence taken at its highest was incapable of establishing the connecting link required between his conduct and Maddison's act.<sup>66</sup> Applying *Galbraith*,<sup>67</sup> the submission should have been accepted and the murder charge withdrawn.<sup>68</sup> Mayo's appeal is allowed. His conviction is quashed. No retrial is ordered.

27. *Joe Lathan*: Lathan gave evidence that he tried to stop the fight by pulling Woodley away and that the force he used was lawful. AGN gave evidence that he may have been attempting to stop the violence. The Court of Appeal noted that the only evidence of his direct involvement with Woodley was his own exculpatory account and AGN's agreement; the case against him was relatively thin. The prosecution was entitled to challenge why a genuine peacekeeper would hold Woodley rather than Sewell. That challenge went to the credibility of his account, not to the prior legal question; where D's conduct is directed against the enterprise, the prosecution must prove encouragement positively.<sup>69</sup> The direction addressed credibility. It did not address that question. Lathan's appeal is allowed. His conviction is quashed. A retrial is ordered.

28. *BKY*: BKY admitted punching Woodley once in the alleyway after the fatal wound had been inflicted, an act both parties agreed played no causal part in Woodley's death. That evidence may speak to his association with the group, but does not resolve what he individually intended during the main attack. The jury was not directed to consider whether the evidence, assessed by reference to his age and individual circumstances, established the intention required for murder.<sup>70</sup> BKY's appeal is allowed. His conviction is quashed. A retrial is ordered.

29. *Blaine Sewell*: Sewell admitted using unlawful force against Woodley but maintained he intended only a one-on-one fight and did not encourage further violence once others became involved. That account could properly be rejected, but rejection of it did not answer

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<sup>66</sup> See [8], [20] above.

<sup>67</sup> *Galbraith* (n 52) 1042.

<sup>68</sup> See [20] above.

<sup>69</sup> See [10] above.

<sup>70</sup> See [19]–[21] above.

the decisive question: whether his initial assault proved an intention to assist or encourage grievous bodily harm or death. The jury required a specific direction on the distinction between intending unlawful violence and intending murder-level violence, and that direction was not given.<sup>71</sup> On his own admissions, a properly directed jury would have been at least sure of intentional participation in dangerous, unlawful violence from which death resulted, and accordingly, this Court allows his appeal, quashes his murder conviction, and substitutes a verdict of manslaughter.

30. *Clayton Owen*: Owen initially denied presence but later admitted being at the scene while denying he used or encouraged violence. The evidence against him included alleged face covering and footage the Court of Appeal considered capable of showing him delivering a punch and a kick. That evidence was sufficient to require his case to go to the jury, but the footage was disputed and a lie about presence, while capable of supporting an inference of consciousness of guilt, could not by itself identify the level of violence Owen individually intended.<sup>72</sup> The jury required specific directions on his individual intention by reference to evidence particular to him.<sup>73</sup> Those directions were not given. Owen's appeal is allowed. His conviction is quashed. A retrial is ordered.

31. *AGN*: AGN was present at the scene and wore a knuckleduster, which he said he had put on out of fear for himself and for Sewell. There was evidence, disputed by him, that he participated in the violence and said, "get the chopper out", though the witness who gave that evidence was contradicted by footage disclosed at trial. That evidence was capable of proving assistance or encouragement of serious violence, but the identification evidence and the precise nature of his participation remained contested. Without resolving those contested matters individually, the direction could not properly establish the intention required for murder.<sup>74</sup> AGN's appeal is allowed. His conviction is quashed. A retrial is ordered.

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<sup>71</sup> See [19] above.

<sup>72</sup> *Lucas (Ruth)* (n 55) 724

<sup>73</sup> See [20] above.

<sup>74</sup> See [11]–[14] above.

32. *BGS*: BGS admitted attempting to kick Woodley but slipped and made no contact. He accepted there had been talk of Maddison having a knife and that others shouted, "chop him," though he said he responded "no". That evidence defeated the OSE argument. The stabbing was not a rupture from the events as BGS understood them, and this Court agrees the refusal of the OSE direction was correct.<sup>75</sup> The failure lay in the direction on individual intention. His alleged refusal, the limited nature of his physical act, and his age required careful separation between foresight of possible knife use and intention to assist grievous bodily harm or death.<sup>76</sup> That separation was not made. BGS's appeal is allowed. His conviction is quashed. A retrial is ordered.

### **Disposal**

33. The appeals of Leighton Mayo, Joe Lathan, BKY, Blaine Sewell, Clayton Owen, AGN, and BGS are allowed. Their convictions for murder are quashed. A verdict of manslaughter is substituted for Sewell pursuant to section 3 of the Criminal Appeal Act 1968,<sup>77</sup> and the matter is remitted to the Court of Appeal to pass sentence. No retrial is ordered for Mayo. Retrials are ordered for Lathan, BKY, Owen, AGN, and BGS.

34. The certified question is answered accordingly. The appeals are allowed.

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<sup>75</sup> See [22]–[24] above.

<sup>76</sup> See [19]–[21] above.

<sup>77</sup> Criminal Appeal Act 1968, s 3.

## Reflective Commentary

My reckoning with the law of complicity began, as many legal reckonings do, in the lecture halls of my first year at law school. Lord Hutton in *R v Powell; R v English* justified the law's approach to secondary liability by reference to the need to provide "effective protection to the public against criminals operating in gangs."<sup>78</sup> That justification carries within it an assumption about who commits violence, who belongs to 'gangs,' and from whom the public requires protection. It is not difficult to ask whose image Lord Hutton had in mind, and whether it bears any resemblance to the defendants secondary liability routinely assesses; defendants whose connection to the principal is often remote, whose age renders their participation deeply ambiguous, and whose prosecution rests on narratives of collective hostility rather than individual proof of guilt. To accept that uncritically felt, to me, like a quiet complicity of its own. This judgment became my attempt to address it – and in many ways, my moral reckoning with it.

In reading *R v BKY & Others*, I was struck by how both counsel and the Court of Appeal approached the case. Section 2(1) of the Criminal Appeal Act 1968<sup>79</sup> makes safety the overriding question; regardless of whether a specific trial error is identified, the conviction must be safe. In dismissing every appeal, the Court must have been satisfied that the evidence was sufficient to establish each appellant's individual participation and intention for murder. What struck me was a very limited explanation of what that evidence was. I shared Dargue's view that the emphasis on summing up rather than the sufficiency of evidence of individual intention was unfortunate.<sup>80</sup>

Occupying this 'missed opportunity' placed me in a rather unusual position.<sup>81</sup> As a barrister, I had to construct the strongest case for each appellant, but one that a judge would accept. As a judge, I had to clarify, develop, and apply the law, but in terms a barrister could argue. Both roles, however, were working towards the same end: broader considerations of justice, morality, and ethics, demanding every argument and development to be principled enough to

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<sup>78</sup> *Powell; English* (n 8) 25.

<sup>79</sup> Criminal Appeal Act 1968, s 2.

<sup>80</sup> Paul Dargue, 'Joint Enterprise Murder: A Missed Opportunity? *R v BKY and Others* [2023] EWCA Crim 1095' (2023) 87(5–6) *The Journal of Criminal Law* 439, 441–442.

<sup>81</sup> *Ibid* 439.

stand as law. I found this the most instructive part of the exercise; the discipline of holding both roles simultaneously and discovering that, at their best, they are not in tension at all.

*BKY* was, to me, a case where the justifications of the doctrine had overreached themselves. Mayo's case alone illustrated as much. The law is not an algorithm, as Lord Salmon observed in *DPP v Majewski*, "absolute logic in human affairs is an uncertain guide and a very dangerous master."<sup>82</sup> Secondary liability should resist mechanical formulations precisely because it is, at its core, a body of law concerned with human beings, their choices, their knowledge, their intentions, in circumstances that are infinitely variable and rarely clean. This is why individual criminal responsibility became the spine of my judgment. The law's legitimate concern in holding those who genuinely participate in serious violence is not in question. But that interest carries with it an equal, I would say greater, responsibility to protect those who do not. A doctrine that cannot distinguish between the two has not served justice; it has substituted convenience for it.

The significance of the individual criminal responsibility framework lies in its explicitness, in demanding individual answers to individual questions, and in making collective reasoning harder to disguise as individual assessment. The framework is my attempt to respond to a broader structural drift in criminal law, which moved away from individual responsibility and justice, and toward forms of liability grounded on pre-conceived notions of "character, dangerousness, and risk."<sup>83</sup> I was conscious, however, in writing the framework, that insisting on the doctrine at the judicial level is not the same as changing the surrounding culture. Post-*Jogee*, practitioners continue to reason from association and foresight rather than intention, producing only a "subtle shift" and replicating reasoning patterns the decision sought to displace.<sup>84</sup> Carvalho's analysis explained why; the danger formation underpinning these prosecutions, the racialised construction of the urban gang as the paradigmatic source of violence, is embedded in the institutional and cultural structures of the criminal justice

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<sup>82</sup> *DPP v Majewski* [1977] AC 443 (HL) 483–84.

<sup>83</sup> Henrique Carvalho, 'Dangerous Patterns: Joint Enterprise and the Culture of Criminal Law' (2023) 32 *Social & Legal Studies* 335, 345, drawing on Nicola Lacey, *In Search of Criminal Responsibility* (OUP 2016)

<sup>84</sup> Susie Hulley and Tara Young, 'Joint Enterprise in England and Wales: Why Problems Persist Despite Legal Change' (2025) 37(1) *Current Issues in Criminal Justice* 134, 134–135

system.<sup>85</sup> The framework, nonetheless, creates a standard that is explicit, sequential, and defendant-specific, against which failures of individual assessment can at least be identified and challenged.

I was particularly conscious that the youth direction should not infantilise young defendants, for young people must learn responsibility for the company they keep, and the risks created by group loyalty, bravado, and violence. Yet, the fact that over half of the under-16s convicted of murder between 2010 and 2024 were secondary suspects made it impossible to treat youth as peripheral,<sup>86</sup> because it suggested that children are especially vulnerable to being drawn into murder liability through another's fatal act. I included the direction because I wanted the jury to consider not only what a young defendant did, but what their age and cognitive development allowed them to safely infer from it, an avenue that is underdeveloped in criminal law.

OSE forced me to confront the boundary between principled restraint and fair attribution. Treating the use of a knife or mere escalation as automatically severing the liability of others would let OSE replace the real inquiry. After *Jogee*, liability should not be reconstructed through the old A-to-B (Parasitic Accessory Liability) movement from assisted lesser violence to homicide, but must be established directly through intentional assistance or encouragement of the offence actually committed.<sup>87</sup> At the same time, I did not think OSE could be reduced to nothing; constructive homicide still risks attributing death to a secondary party where the principal's act is insufficiently linked to the risk the secondary party set or supported, and that limiting function remains important even if it applies only rarely.<sup>88</sup> My use of the word rupture was, therefore, deliberate, as the threshold demands something more absolute; a complete tearing away of the connection between D's conduct and P's act.

This leads me to my next point: language. I believe in judgments like this, especially where people's lives and liberty rest on the outcome, accessibility is paramount; it is part of the

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<sup>85</sup> Carvalho (n 83) 345-347

<sup>86</sup> Centre for Crime and Justice Studies and APPEAL, *Joint Enterprise: A View Over Time* (April 2026), section 4.

<sup>87</sup> AP Simester and Findlay Stark, 'Overwhelming Supervening Acts – A Corrective' (2025) *Cambridge Law Journal* 345, 346–47, 364.

<sup>88</sup> Beatrice Krebs, 'Overwhelming Supervening Acts, Fundamental Differences, and Back Again?' (2022) 86 *Journal of Criminal Law* 420, 420–22, 424–25.

judgment's responsibility, for "it is no good if the hearer cannot follow..."<sup>89</sup> For the most part, I actively sought to avoid long, complex sentences, which lead to obscurity. I also tried to be precise in my wording, because legal language can be interpreted in several ways; when words become too loose, they cease to provide clarity and comfort, and instead create confusion. However, a consequence of the problem itself, this judgment has passages where the weight of authority accumulates, with cases cited to explain, distinguish, and develop, in ways that demand a reader already fluent in the landscape. This was a limitation I had to confront. Secondary liability in this area needed doctrinal clarification, and clarification required engagement with doctrine. I, therefore, tried to make the structure carry some of the burden of accessibility, stating the principle, applying it directly, and separating each appellant's position so that the reader could follow the movement from evidence to reason.

Ultimately, what drove every decision in this judgment was a desire for fairness, not procedural alone, but the deeper kind, that each person convicted had their individual culpability genuinely examined before a verdict was returned. My objective was never only *BKY*. The seven appellants were the occasion, and the individual criminal responsibility framework, and further clarifications of the law were the answer I hoped might outlast them. That ambition is easy to articulate. This exercise taught me how difficult it is to deliver. I began with a moral discomfort about a doctrine I could not accept uncritically. I end with that discomfort still intact, but with a far greater respect for the difficulty of the task I set out to perform.

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<sup>89</sup> Lord Denning, *The Discipline of Law* (Butterworths 1979) 5.

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