

SUPREME COURT OF QUEENSLAND

CITATION: *R v TAZ; R v SED* [2023] QSC 292

PARTIES: **R**
v
TAZ
R
v
SED

FILE NO: Indictment No 1731 of 2021

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 21 December 2023

DELIVERED AT: Brisbane

HEARING DATE: 4 December 2023; 5 December 2023; 6 December 2023; 7 December 2023; 11 December 2023

JUDGE: Cooper J

VERDICT: **TAZ guilty of murder.**
SED not guilty of murder but guilty of manslaughter.

CATCHWORDS: CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – MURDER – INTENTION TO KILL OR CAUSE SERIOUS NON-FATAL INJURY – where the two defendants were each 14 years old at the time of the alleged offence – where a friend of the deceased offered to sell the defendants cannabis – where a disagreement arising from the deal occurred in or near a toilet block – where the defendants followed the boy who sold them the cannabis from the toilet block for some distance – where the boy who sold the cannabis walked passed the deceased and handed him a knife – where the deceased approached the defendants with the knife and knuckledusters – where one of the defendants stabbed the deceased in the chest – where the defendants were charged with murder – where the trial proceeded by a judge sitting without a jury – whether the defendant’s actions in stabbing the deceased were in self-defence – whether the defendant’s actions in stabbing the deceased were as a result of provocation – whether the defendant’s actions in stabbing the deceased were by compulsion – whether the defendant’s actions in stabbing the deceased were unlawful – whether the defendant who inflicted the stab wound intended to at least

cause grievous bodily harm – whether the involvement of the defendant who did not inflict the stab wound makes him criminally responsible by aiding, enabling or encouraging him or that the stabbing was a probable consequence of an unlawful common purpose

Criminal Code (Qld), s 7, s 8, s 24, s 31, s 245, s 246, s 268, s 271, s 272, s 273, s 291, s 293, s 300, s 302, s 303, s 304, s 576, s 615, s 644

Evidence Act 1977 (Qld), s 21A, s 93A

R v Dayney (No 1) (2020) 10 QR 638, cited

R v Dayney (No 2) [2023] QCA 62, cited

R v Gray (1998) 98 A Crim R 589, cited

R v Kerr [1976] 1 NZLR 335, cited

R v Saxon [2020] QCA 85, cited

R v Vidler (2000) 110 A Crim R 77, cited

R v Wilmot (2006) 165 A Crim R 14, cited

Stingel v The Queen (1990) 171 CLR 312, cited

COUNSEL: C M Cook for the prosecution
P J McCafferty KC, with A I O'Brien and L E Gamble, for the defendant, TAZ
J Robson for the defendant, SED

SOLICITORS: Office of the Director of Public Prosecutions (Qld) for the prosecution
Jones & Associates for the defendant, TAZ
Legal Aid Queensland for the defendant, SED

Introduction

- [1] TAZ and SED are charged on indictment with the following offence:
- “That on the thirteenth day of March, 2020 at Redcliffe in the State of Queensland, [SED] and [TAZ] murdered ANGUS RICHARD BEAUMONT.”
- [2] Both defendants pleaded not guilty.
- [3] The defendants were both 14 years old on 13 March 2020. The deceased, Angus Beaumont, was 15 years old.
- [4] The trial commenced on 4 December 2023 without a jury after orders to that effect were made pursuant to s 615 of the *Criminal Code*.
- [5] Section 615B(1) of the *Criminal Code* provides that, in a trial by a judge sitting without a jury, the judge must apply, so far as is practicable, the same principles of law and procedure as would be applied in a trial before a jury. If a statute or the common law requires information, a warning or an instruction to be given to the jury in particular circumstances, the judge in a trial by a judge sitting alone must take that

requirement into account if those circumstances arise in the course of the trial.¹ The judge may make any findings or give any verdict that a jury could have made or given if the trial had been before a jury, and any finding or verdict of the judge has, for all purposes, the same effect as a finding or verdict of a jury.² The reasons for the verdict must include the principles of law that the judge has applied and the findings of fact on which he or she has relied.³

Overview

- [6] Angus died from a stab wound to his chest. He suffered that wound during an altercation with the defendants at about 8:10 pm on 13 March 2020. He passed away a little over an hour later.
- [7] The altercation occurred near the entrance to a carpark adjacent to the Redcliffe Museum on Anzac Avenue in Redcliffe. During that altercation, both defendants were armed with a knife. Angus was also armed. He wore knuckledusters and he held a knife given to him a few moments before the altercation by his friend, SJ.⁴
- [8] Earlier that evening, Angus had met up with SJ and two other friends, ST and NM.⁵ SJ had a number of knives and the set of knuckledusters in his backpack along with about 10 grams of cannabis.
- [9] There were two interactions between Angus' group and the defendants on the evening of 13 March 2020, before the fatal altercation occurred.
- [10] The first interaction took place around 7:43 pm. Angus and his group left the Redcliffe McDonald's and walked south along the footpath of Oxley Avenue away from Anzac Avenue. At the same time TAZ rode a bike with SED positioned on the handlebars north along the same footpath towards Anzac Avenue. The groups crossed paths opposite the 7-Eleven service station on the corner of Oxley Avenue and Anzac Avenue. SJ asked the defendants if they wanted to buy some cannabis. SED indicated that they wanted to buy a stick of cannabis.⁶ He said that they needed to get the money for the transaction from a friend. The two groups then separated for a time.
- [11] The second interaction occurred shortly after 8:00 pm. SED had called his friend NH,⁷ and arranged for him to bring the money for the transaction to the Redcliffe skate park on Oxley Avenue. When NH arrived at the skate park he gave \$25 to SED. The defendants and NH then went to meet Angus' group to buy the cannabis. That transaction occurred outside a toilet block near the skate park. SED paid \$25 to SJ. After receiving the cannabis, the defendants and NH went inside the toilet block to weigh it.

¹ *Criminal Code* s 615B(2)(a).

² *Criminal Code* s 615C(1).

³ *Criminal Code* s 615C(3).

⁴ SJ was 16 years old on 13 March 2020.

⁵ ST and NM were both 15 years old on 13 March 2020.

⁶ Although the prosecution opened the case on the basis that a "stick" was about 1.5 grams of cannabis, the evidence was that it was an amount of about 1.8 grams. Nothing turns on this difference.

⁷ NH was 17 years old on 13 March 2020.

- [12] When TAZ came out from the toilet block he approached Angus' group. The prosecution case is that TAZ pulled out his knife and demanded that SJ give the defendants the remaining cannabis in his backpack. The defendants contest the prosecution's case about what took place when TAZ came out from the toilet block. What is clear is that SJ and the others in his group backed away from the defendants before running from the area.
- [13] Angus and SJ initially ran in the same direction. ST and NM went another way. The defendants followed SJ and Angus. SJ and the two defendants quickly outran Angus. After he had trailed SJ and the defendants for some distance, Angus turned back in the direction he had come from. He then met up with ST and made his way to Anzac Avenue.
- [14] The defendants continued to follow SJ along a walking path which passed behind the museum before joining the footpath along Anzac Avenue. SJ turned left and walked in an easterly direction along Anzac Avenue towards Angus and ST. The defendants continued to follow SJ. Angus walked towards SJ and as they passed each other at the entrance to the museum carpark, SJ handed Angus a large knife. The fatal altercation then occurred between Angus and the defendants.
- [15] Parts of the events described above were captured on CCTV footage which was in evidence, including footage of the altercation between Angus and the defendants. That footage appears to show TAZ swing his knife at Angus' chest before Angus grabbed his chest and fell forwards to the ground.
- [16] At the trial, there was no dispute that Angus died because of the stab wound to his chest or that the wound was inflicted by a knife used by TAZ.

The case against TAZ

- [17] The particulars of the charge against TAZ are:
- “[TAZ] stabbed Angus Richard Beaumont. When he stabbed him, he had at least an intention to do grievous bodily harm.”
- [18] By s 291 of the *Criminal Code*, the killing of another is unlawful unless it is authorised, justified or excused by law.
- [19] Section 293 of the *Criminal Code* provides that a person kills another if the person causes the death of that other “directly or indirectly, by any means whatever”. Section 300 provides that unlawfully killing another is a crime “which is called murder or manslaughter, according to the circumstances of the case”. Section 302 defines “murder” by prescribing the circumstances in which an unlawful killing constitutes murder rather than manslaughter.
- [20] The particulars provided by the prosecution in the case against TAZ raise the circumstance prescribed by s 302(1)(a) of the *Criminal Code*, namely:
- “302(1) Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say—
- (a) if the offender intends to cause the death of the person killed or that of some other person or if the offender intends to do to the

person killed or to some other person some grievous bodily harm;

...

is guilty of *murder*.”

- [21] This means that in the case against TAZ, the elements of the offence of murder are:
- (a) Angus is dead.
 - (b) TAZ caused Angus’ death.
 - (c) TAZ killed Angus unlawfully.
 - (d) TAZ intended, at the time he killed Angus, to kill him or to do him grievous bodily harm.
- [22] As already noted, the first two elements were not in dispute at the trial.
- [23] The critical issues in deciding whether TAZ is guilty of murder are:
- (a) whether TAZ’s actions were unlawful; and
 - (b) whether, at the time he struck the fatal blow, TAZ intended to cause grievous bodily harm to Angus.
- [24] In considering the question whether the prosecution has proved beyond reasonable doubt that the killing of Angus was unlawful, I must determine whether the prosecution has excluded beyond reasonable doubt that the killing of Angus by TAZ was either self-defence against an unprovoked assault (s 271(2) of the *Criminal Code*), self-defence against a provoked assault (s 272 of the *Criminal Code*) or aiding in self-defence (s 273 of the *Criminal Code*).
- [25] If I am satisfied that the prosecution has proved the third and fourth elements of the offence of murder beyond reasonable doubt, I must also consider whether the partial defence of provocation (s 304 of the *Criminal Code*) is available to TAZ.
- [26] Manslaughter will be established where the prosecution proves beyond reasonable doubt an unlawful killing (the first three elements of the offence of murder) but do not prove the circumstances which make the unlawful killing murder (the fourth element): see ss 300 and 303(1) of the *Criminal Code*.
- [27] By s 576 of the *Criminal Code*, manslaughter is an alternative verdict on a count of murder. A person charged with murder may be convicted of manslaughter on the count of murder if manslaughter “is established by the evidence”: see s 576(1) of the *Criminal Code*.
- [28] If I am satisfied that the prosecution has proved the elements of manslaughter beyond reasonable doubt, but not the additional mental element of intent required to establish the offence of murder, I must consider whether the prosecution has excluded beyond reasonable doubt the defence of compulsion (s 31 of the *Criminal Code*).

The case against SED

[29] The particulars of the charge against SED articulate the prosecution case on two bases:

“1. [SED] aided, enabled or encouraged [TAZ] to murder Angus Richard Beaumont by doing the following:

- pursuing [SJ] while he and [TAZ] were armed.
- being deliberately present at the scene on Anzac Avenue, in company with [TAZ], while they were armed.
- moving towards and attempting to injure Angus Richard Beaumont.

2. [SED] engaged with [TAZ] in the common unlawful purpose of armed robbery.

In the course of the common unlawful purpose, [TAZ] stabbed Angus Richard Beaumont, with the intention of causing at least grievous bodily harm.

[TAZ]’s action, with that intention, was a probable consequence of engaging in the common unlawful purpose.

The death of Angus Richard Beaumont was caused by [TAZ]’s act.”

[30] Those particulars raise the party provisions of the *Criminal Code*, namely s 7(1)(c) and s 8.

[31] The issues as to the application of s 7(1)(c) are:

- (a) if SED aided TAZ, whether he did so intending to help him to commit the offence of murder;
- (b) whether SED had actual knowledge or expectation of the essential facts of the offence of murder, including TAZ’s state of mind.

[32] The issues as to the application of s 8 are:

- (a) whether SED and TAZ had a common intention to pursue the unlawful purpose of an armed robbery of SJ;
- (b) whether TAZ stabbed Angus in the prosecution or furtherance of the common purpose of an armed robbery of SJ;
- (c) whether TAZ’s stabbing of Angus was of such a nature that it was a probable consequence of the prosecution of the common purpose of an armed robbery of SJ.

Principles governing the trial

[33] The burden rests on the prosecution to prove the guilt of the defendants. The defendants are presumed innocent and there is no burden on either of them to establish their innocence. The defendants may be convicted only if the prosecution establishes

that they are guilty of the offence charged or some other offence of which they may be convicted on the indictment.

- [34] For the prosecution to discharge its burden of proving the guilt of a defendant of an offence, it is required to prove, beyond reasonable doubt, that the defendant is guilty of that offence. This means that to convict I must be satisfied beyond reasonable doubt of every element of the offence charged and, in the case against SED, the basis of his criminal responsibility for it. If I am left with a reasonable doubt about the guilt of a defendant, my duty is to acquit; that is, to find that defendant not guilty. If I am not left with any such doubt, my duty is to convict; that is, to find the defendant guilty. Proof beyond reasonable doubt is the highest standard of proof known to the law. It may be contrasted with the lower standard of proof that is required in a civil case where matters need only be proved on the balance of probabilities. That is, the case must be proved to be more likely than not. In a criminal trial the standard of satisfaction required for conviction is much higher; the prosecution must prove the guilt of each defendant beyond reasonable doubt.
- [35] I have not been influenced by public opinion about these offences in general, or in this particular case, nor what I might expect public opinion to be about any particular verdict I might return.
- [36] I have dismissed all feelings of sympathy or prejudice: whether it be sympathy for, or prejudice against, either of the defendants or anyone else including the deceased, his parents, his family, or his friends. I have approached my duty dispassionately, deciding the facts upon the whole of the evidence.
- [37] I have not drawn any adverse inference because the defendants have been charged with murder and are in custody on remand. I have not drawn any adverse inference from the fact that the defendants were guarded while in the dock. That is a daily occurrence in a criminal court.
- [38] Although I have found that the defendants purchased cannabis from SJ prior to the fatal altercation, I have not reasoned from that fact to finding that the defendants were the sort of persons who would commit the offence charged.
- [39] From the cross-examination of a number of prosecution witnesses it was apparent that they had given evidence at a previous trial. The fact that there was an earlier trial is irrelevant. I have not drawn any inference adverse to the defendants because there was a previous trial. I have considered the case upon the evidence placed before me during this trial and that evidence alone.
- [40] I have decided the case on the evidence which has been presented to me in court and only that evidence. That evidence consists of the testimony of the witnesses that I have heard, the exhibits and the formal admissions that have been made. I have not taken into account any outside information or other outside influence. I have not made my own enquiries or investigations about the case or anyone connected with it.
- [41] I have approached the task of reaching a verdict on the basis that I may accept evidence in whole or in part. It is for me to decide whether I accept the whole of what a witness says or only part of it or none of it. I have accepted or rejected such parts of the evidence as I have thought fit. It is for me to decide whether a witness is telling the truth and correctly recalls the facts upon which he or she has testified.

- [42] In this case, I have drawn inferences from proven facts. That is, I have used evidence circumstantially by using facts, which I accepted as having been proved, in an indirect or circumstantial way as pointing to the existence of another fact.
- [43] I have approached the drawing of inferences on the basis that any inferences must be reasonable ones drawn from the evidence. I have not engaged in speculation or conjecture to fill in any gaps in the evidence, but it is up to me to decide whether I accept particular evidence and, if I do, what weight or significance it should have.
- [44] I have drawn inferences bearing in mind that where there are reasonable inferences consistent with guilt and reasonable inferences consistent with innocence, I must not draw an inference consistent with guilt. Further, I must not convict either defendant based on inferences unless I have excluded beyond reasonable doubt any reasonable inference consistent with innocence. Guilt must be the only rational inference. These principles are an incident of the burden of proof which rests upon the prosecution.
- [45] Neither of the defendants gave evidence or called other people to give evidence on their behalf or otherwise produced evidence. That was their right. The defendants were not obliged to add to the evidence of the prosecution. The fact that a defendant did not get into the witness box and give evidence is not evidence against him. It does not constitute an admission of guilt by conduct. Nor may it be used to fill in any gaps in the prosecution case. It proves nothing at all. I have not assumed that, because each defendant did not give or call evidence, that adds in some way to the case against him. I have not considered it at all in deciding whether the prosecution has proved its case beyond reasonable doubt. The fact that the defendants did not give evidence does not make the prosecution's task any easier. It does not change the fact that the prosecution is responsible for proving the guilt of the defendants beyond reasonable doubt.
- [46] One of the witnesses, Mr Heggie, gave evidence by audio-visual link. I have not given his evidence any more or less weight or drawn any inferences against either defendant because the evidence was given in that way.
- [47] Dr Phillips, a forensic pathologist, gave opinion evidence as an expert witness. The ordinary rule is that witnesses may only give evidence about facts and not express their opinions. An exception to the general rule is that persons qualified to express some opinion in a particular area of expertise are permitted to do so on relevant matters within the field of their expertise. Dr Phillips' expertise was not challenged. She was clearly qualified to give opinion evidence as to:
- (a) the injuries she observed on Angus;
 - (b) the medical effect of those injuries upon Angus;
 - (c) the cause of those injuries; and
 - (d) the cause of Angus' death.
- [48] The fact that witnesses such as Dr Phillips are referred to as experts does not mean that their evidence must automatically be accepted. I am the sole judge of the facts and I am entitled to assess and accept or reject any such opinion evidence as I see fit. It is up to me to give such weight to the opinions of expert witnesses as I think they should be given, having regard in each case to the qualifications of the witness and

whether I thought them impartial or partial to either side and the extent to which their opinion accords with whatever other facts I find proved. It is up to me to decide what weight or importance I give to their opinions or indeed whether I accept their opinions at all. It is important to remember that an expert's opinion is based on what the expert witness has been told of the facts. If those facts have not been established to my satisfaction, the expert's opinion may be of little value.

- [49] When SED was located by police on 15 March 2020, he made a statement before he was cautioned. A recording of that statement was tendered as part of the prosecution case against SED. The question for me in this trial is whether I am satisfied of the guilt of each defendant on each charge on all the evidence placed before me, which, in the case of SED, includes his statement to police.
- [50] What SED said in his statement to police may only be used in the case against him. I have only acted on statements made by SED if I am satisfied that the statements are true and accurate.
- [51] Two of the prosecution witnesses, ST and NM, were children at the time they were spoken to by police about the relevant events. Their conversations with police were electronically recorded and the electronic record was tendered under s 93A of the *Evidence Act 1977* (Qld). The electronic record formed part of their evidence-in-chief. The receipt of the evidence of children in this way is routine. I have not given it disproportionate weight and have not considered it without also considering the cross-examination of each of those witnesses.
- [52] The s 93A evidence, and the recording of SED's statement to police at the time of his arrest, was accompanied by transcripts of the recordings. Those transcripts are an aid only. They are an unknown person's opinion about what the witness said. It is what I saw and heard which is evidence. If I heard something which differed from the transcript, then it is my view which has prevailed.
- [53] In estimating the weight to attach to the evidence of ST and NM, I have had regard to all of the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of their s 93A evidence, including whether the statements made during their s 93A evidence were made contemporaneously with the occurrence of the facts to which they related—in this case, most of the statements were made on the night of the incident and in the following few days—and whether either child witness had any incentive to conceal or misrepresent the facts. In this case, both ST and NM accepted that the version of events they first gave to police was inaccurate in important respects. ST said this was due to her wish to avoid SJ getting into trouble for selling cannabis. NM said it was because of the effect which epilepsy has upon his memory, as well as the distressed emotional state he was in after Angus' death. I have taken those matters into account in considering the s 93A evidence.
- [54] ST and NM are important witnesses in this case. I have approached the task of reaching a verdict bearing in mind the need to scrutinise the evidence of each of them with great care before arriving at a conclusion of guilt. That is not to say that I cannot act on the evidence of either of ST or NM. But I have only done so if I was convinced of its truthfulness and accuracy. In scrutinising ST's evidence, I have borne in mind her conduct in the immediate aftermath of the fatal altercation in removing knuckledusters from Angus' hand, hiding SJ's backpack found to contain knives and in (admittedly) lying to police. In scrutinising NM's evidence, I have borne in mind

his evidence as to the effect his epilepsy has upon his memory and the defendants' submissions about the trouble NM has in understanding what effect the condition has upon his memory.

- [55] Pursuant to an order made under s 21A of the *Evidence Act 1977* (Qld), NM gave his evidence at the trial via video link from a room that was separate from the courtroom. When he gave his evidence there was a support person sitting in the room with him, and no other person, in conformance with the court order. I have not drawn any inference as to the defendants' guilt based on the way NM gave his evidence at the trial. I have not treated NM's evidence as having any increased or decreased probative value, nor have I given that evidence any greater or lesser weight, because of the way it was given.
- [56] The cross-examination of ST was interrupted due to a medical issue for which she attended hospital. It recommenced when ST was able to return to court to finish giving her evidence. I have not drawn any inference from that interruption of the cross-examination. I have not treated ST's evidence as having any increased or decreased probative value, nor have I given that evidence any greater or lesser weight, because of the interruption of her cross-examination.
- [57] The prosecution submitted that I should have regard to post-offence conduct as evidence of consciousness of guilt. Before using post-offence conduct as indicative of the defendants' guilt, I must first find that the defendants acted in the ways relied upon by the prosecution because they knew they were guilty of the offence charged and not for any other reason. I must remember that people do not always act rationally and that conduct of this sort can often be explained in other ways: for example, as the result of panic, fear or other reasons having nothing to do with the offence charged. Before evidence of post-offence conduct can assist the prosecution, I would have to find not only that it was motivated by a consciousness of guilt on the defendants' part but also that what was in their minds was guilt of the offence charged, not some other misconduct. It is only if I reach the conclusion that there is no other explanation for the post-offence conduct that I may use that finding as a circumstance pointing to the guilt of the defendants, to be considered with all the other evidence in the case.
- [58] Finally, although the defendants have been tried together, each is entitled to have his case decided solely on the evidence admissible against him. In this case, apart from things said by each defendant to police when they were located—which are only admissible in the case against the defendant who made the statement—the evidence presented by the prosecution was admissible against each of the defendants.
- [59] I have given the cases against each defendant and for each defendant separate consideration. I have separately considered the evidence admitted in relation to each defendant and have returned separate verdicts in respect of each defendant.

The evidence

- [60] The following witnesses were called to give evidence in the prosecution case:
- (a) Detective Sergeant John Fleming;
 - (b) Detective Senior Constable Andrew Childs;
 - (c) Senior Constable Andreas Winnington;

- (d) Senior Constable Kylie O'Sullivan;
- (e) Senior Constable Anthea Johnston;
- (f) NH;
- (g) ST;
- (h) NM;
- (i) Daniel Craig Heggie;
- (j) Keiron Cundy;
- (k) Blaine Vette;
- (l) Lachlan Robertson;
- (m) SJ; and
- (n) Dr Bianca Phillips.

[61] A number of exhibits were also received in evidence. All were tendered by the prosecution. These included:

- (a) maps of the area where the events occurred;
- (b) CCTV footage of the events;
- (c) a number of still images taken from the CCTV footage;
- (d) photographs of a bike located by police at a house where TAZ's father lived approximately 2.3 kilometres from the skate park;
- (e) a photograph of a \$20 note found in SJ's possession when he attended Redcliffe police station after the events;
- (f) photographs taken of each defendant by police in March 2020;
- (g) photographs taken by police of relevant locations around the area of the skate park: a bus stop on Oxley Avenue; the toilet block where the defendants and NH weighed the cannabis; the amphitheatre near the youth centre; and the carpark entrance area where the fatal altercation occurred;
- (h) a photograph of the knuckledusters Angus was wearing during the altercation;
- (i) photographs taken by police of the location where backpacks that SJ and ST had with them that evening were found, as well as the contents of those backpacks;
- (j) a large knife located by police in SJ's backpack;
- (k) the recording of a statement made by SED to police when he was arrested;
- (l) recordings of things said by TAZ when he was located and taken into custody;
- (m) an extract of text messages sent between SED and an associate shortly after the incident;
- (n) recordings of conversations which ST and NM had with police;

(o) signed police statements made by NM.

[62] Pursuant to s 644 of the *Criminal Code* admissions of fact were made. At the commencement of the trial, the following admissions of fact were made:

- “1. Those depicted in the CCTV footage on 13 March 2020 are accurately referred to by name.
2. On 13 March 2020, Angus Beaumont left home at about 3.30pm.
3. Police records indicate:
 - a. At 8.10.43pm on 13 March 2020, [ST] called 000.
 - b. At 8.12.25pm on 13 March 2020, Kieron Cundy called 000.
4. At 8.22pm on 13 March 2020, Queensland Ambulance Service (QAS) arrived at the scene. Queensland Police were already on the scene when QAS arrived. Paramedics cut Angus Beaumont’s jacket and shirt off and attempted to treat him.
5. At 8.28pm Angus Beaumont was transported by ambulance from the scene.
6. At 8.30pm the ambulance arrived at the Redcliffe Hospital Emergency Department where Angus Beaumont received further treatment.
7. At 9.14pm Angus Beaumont was declared deceased.
8. Angus Beaumont’s body was transported to Queensland Health Forensic and Scientific Services in Brisbane where a postmortem examination was performed by Dr. Bianca Phillips on 15 March 2020.”

[63] The following further admissions of fact were made before the prosecution closed its case:

- “1. [SED] was born on [redacted] May 2005. On 15 March 2020 Youth Justice recorded his height as 158 centimetres and weight as 46.6 kilograms.
2. [TAZ] was born on [redacted] December 2005. On 15 March 2020 Youth Justice recorded his height as 171 centimetres and weight as 59.6 kilograms.
3. Senior Constable Barry Horne arrived at the scene about 8.15 pm on 13 March 2020. Soon after this he approached and spoke to the witnesses [ST], [SJ] and [NM], who were together. He was the first police officer to speak to them. Their conversation was recorded on the officer’s camera.⁸

⁸ He spoke to [NM] alone approximately 8 minutes into his recording. Part of this conversation became exhibit 41.

4. According to records from the Queensland Ambulance Service (QAS), at 8.33pm QAS received a call in response to [NM] suffering a seizure. The ambulance arrived on the scene at 8.41pm and [NM] was triaged at the Caboolture Hospital at 9.40pm.
5. In May 2022 [NM] attended the Director of Public Prosecutions' Brisbane office. During the conference, he was taken through his written statement dated 14 March 2020. Mr Cook's clerk at the time made the following summary: '*[NM] said he remembers this differently. [NM] said the defendants asked how much [SJ] had, then [SJ] opened up his bag and showed them. Then the defendants said they were going to get some money from their mate's place.*' The note of the conference does not record any further detail being sought from or provided by [NM] concerning [SJ]'s bag.
6. There are no police records which indicated that [NM] had previously provided the information which is summarised at [6] (sic, [5]).
7. On 3 June 2022, [NM] gave evidence at the first trial of this case. In his evidence he was not directly asked and did not otherwise say anything about the knives being in a different section of [SJ]'s bag to the cannabis.
8. On 16 March 202 (sic, 2020) [NH] spoke to police. He took part in a video recorded interview with them that day before he completed and signed his written statement. In that interview the following occurred:

... Question from the police officer: 'Is [SED] standing next to you when you weighed it?'

Answer from [NH]: 'Yeah he was standing next to me for a couple of seconds and ran out'

Question from the police officer: 'Is that when you hear the screaming?'

Answer from [NH]: 'Yeh'

Question from the police officer: 'Okay, but before you hear the screaming, before [SED] runs out, do you and [SED] have any conversation when you are in the toilet together?'

Answer from [NH]: 'No. He was like 'it better weigh up properly' and then ran out.'
9. On 2 June 2022, [SJ] gave evidence in the first trial of this case. His cross-examination included:

Q: All right. Did you show them your cannabis?---A: No.

Q: Did you show them your bag?---A: No.

...

Q: Did you talk to them about how much cannabis you had?---A: No.

...

Q: Well, the truth of the matter is, you never saw the little one (with reference to the defendant [SED]) with a knife at any time, did you?---A: No.

...

Q: After you came across these other boys on the side of the road, across from 7-Eleven, when you first had that conversation with them – after you came across them, at any stage after that, before police arrived, did you have any knives in your hand?---A: Yes.

Q: What knife was it?---A: Had the black switchblade in my hand.”

- [64] Those admissions were sufficient proof of the facts stated therein, without the need for further evidence of those facts.

CCTV footage

- [65] The CCTV footage commences with footage from the McDonald’s near the intersection of Anzac Avenue and Oxley Avenue in Redcliffe. Angus and his group arrived there shortly before 7:00 pm on 13 March 2020. They purchased food and ate it at a table outside the restaurant. Both SJ and ST can be seen wearing black backpacks. ST’s backpack is distinguishable due to the white “Adidas” logo on the front pocket. The group were at McDonald’s for approximately 45 minutes.
- [66] After leaving McDonald’s, CCTV footage from cameras at the 7-Eleven service station on the corner of Oxley Avenue and Anzac Avenue shows Angus’ group walking south down Oxley Avenue away from Anzac Avenue. TAZ can be seen riding a bike towards Angus’ group from the opposite direction with SED on the handlebars. The two groups begin to interact as they pass each other. Footage taken from a traffic camera operated by the Department of Transport and Main Roads at the intersection of Anzac Avenue and Oxley Avenue records this first interaction commencing at about 7:43 pm.
- [67] At about 7:45 pm members of Angus’ group begin to cross Oxley Avenue towards the 7-Eleven. Angus’ group does not cross completely at that stage but returns to the same side of Oxley Avenue where they had met the defendants. There then appears to be some further engagement between the two groups. Angus’ group then crosses Oxley Avenue to the 7-Eleven. The traffic camera records this happening at about 7:47 pm. Footage from a CCTV camera at the 7- Eleven shows the defendants remaining on the footpath furthest from the service station and then, when Angus’ group crossed over to the 7-Eleven, moving off south along Oxley Avenue back in the direction they had first come from.
- [68] CCTV footage taken from a camera located at the skate park on Oxley Avenue shows NH arriving by car at about 8:01 pm. He gets out the front passenger door. The driver remains in the car. NH walks northwards through the skate park towards the

adjacent youth centre. He meets the defendants at the northern end of the skate park at about 8:04 pm. NH can be seen passing something to SED. SED can be seen carrying a satchel type bag at his left hip, with the strap over his right shoulder. TAZ does not have a bag with him. The defendants and NH move north away from the skate park towards the youth centre.

- [69] There is other evidence that the drug transaction occurred near a toilet block attached to the youth centre building. The transaction was not captured on any CCTV footage.
- [70] CCTV footage taken from a camera located outside the toilet block shows the defendants and NH entering the toilet block together. The internal light of the toilet block appears to be off when they enter and does not appear to be turned on during the period the defendants and NH are inside.
- [71] After about 10 seconds, TAZ is shown emerging from the toilet block alone. His right hand is visible as he leaves the toilet block and he does not appear to be carrying anything in that hand. His left hand remains obscured as he walks away from the toilet block due to the angle from which the CCTV footage was captured. TAZ remains outside the toilet block for about 10 seconds. In that time, he walks less than 5 metres away from the toilet block before he turns around to face the toilet block, pauses briefly and then returns inside. As he returns to the toilet block his left hand remains obscured, appearing to be in the left pocket of his shorts.
- [72] About 10 more seconds pass, then TAZ comes out again and walks away from the toilet block. The CCTV timestamp when he leaves the toilet block the second time is 8:06:48 pm. As he leaves the toilet block TAZ's left hand is visible. He does not appear to be carrying anything in that hand.
- [73] SED is then shown leaving the toilet block about 13 seconds after TAZ at 8:07:01 pm. By that time SED has been in the toilet block with NH for 42 seconds. SED moves in the same direction as TAZ, but appears to be running. As he emerges from the toilet block his left hand is near the top of his bag on his left hip. He then brings that left hand to meet his right hand before he passes out of camera's view.
- [74] NH is shown leaving the toilet block about six seconds after SED at 8:07:07 pm. He moves in the same direction which TAZ and SED had moved, but at a slower pace than SED. As he leaves the toilet block he is holding his phone and the light on his phone is on.
- [75] CCTV footage taken from a camera above the amphitheatre at the youth centre, located on the other side of a wall from the toilet block, shows members of Angus' group beginning to walk backwards for a few steps at 8:06:58 pm. After several seconds (8:07:02 pm), one of the group turns and begins to run away from the area of the toilet block with two others following. The fourth person, which appears to be ST, does not immediately run with the others. Although the images are not clear, when the footage is slowed it appears to show that SJ was the first to run from the area outside the toilet block and that the defendants then run past ST and chase after the other members of Angus' group. After ST walks out of view, NH walks from behind the wall separating the toilet block and the amphitheatre (8:07:13 pm) and eventually sits down on a seat at the amphitheatre (8:07:46 pm).

- [76] The next available CCTV footage was captured by two cameras located near buildings situated between the youth centre and the museum. Those cameras face northwards towards Anzac Avenue. The first covers only a small section at the southern end of the carpark outside the museum. The positioning of the second camera means it covers most of the carpark. Those cameras both capture SJ running across the southern end of that carpark. He is followed closely by TAZ who appears to be only a couple of metres behind. SED then follows at a greater distance, perhaps five metres behind TAZ. Angus can be seen trailing at a further distance, something closer to 10 metres behind SED. At the point where SJ passes out of view in the footage from the second of these cameras, the timestamp is 8:07:33 pm.
- [77] Footage from the second of the cameras shows that, as he reaches the southern end of the carpark, Angus slows to a walk. He raises his hands out wide in a gesture which suggests that he is either unable to see where SJ and the defendants have run or is unable to keep up with them any further. He looks around as he walks to the far side of the carpark and then turns and walks back in the direction he had come from. As he walks back, he can be seen pointing in the general direction of the intersection of Anzac Avenue and Oxley Avenue. The time stamp when he passes out of view from the second camera covering the carpark is 8:07:53 pm.
- [78] The CCTV compilation later returns to footage from the first of the cameras capturing the small section of the carpark. It shows Angus walking back in the direction of the amphitheatre and meeting up with someone who appears to be ST. The two of them walk in a northerly direction towards Anzac Avenue. CCTV footage taken from a bus travelling in a westerly direction along Anzac Avenue appears to show three people dressed similarly and otherwise matching the appearance of Angus, NM and ST at a bus stop on Anzac Avenue to the west of the entrance to the museum carpark. The time stamp on the footage when the bus passes the bus stop is 8:08:24 pm.
- [79] After SJ runs through the southern end of the carpark, he comes to a walking path which travels in a north-easterly direction along a creek, passing behind the museum. The footage shows that when he reaches the walking path, SJ turns left and proceeds along it towards Anzac Avenue. TAZ and SED continue to run after him, however by this stage the pace of all three boys is beginning to slow.
- [80] As SJ moves along the path away from the defendants and passes behind the museum, the footage shows him looking back towards TAZ and holding his right hand up in the air. SJ then appears to put that hand into his backpack. As he does this, TAZ slows to a walk. SED continues to follow a short distance behind TAZ and has also slowed to a walk. When the footage between 1:11:13 and 1:11:17 of the CCTV compilation is slowed and viewed frame by frame, it appears to show TAZ holding an object in his left hand which reflects the light from a streetlamp. As TAZ passes underneath that streetlamp his left hand is no longer visible as he appears to put it in the pocket of his shorts, or perhaps his hoodie. When SED approaches the same streetlamp, he appears to be carrying something in his right hand.⁹
- [81] At this point the CCTV compilation proceeds to footage from a camera located just past the streetlamp referred to in the previous paragraph. SJ has slowed and can be seen walking backwards, having turned back to face towards TAZ a second time. He appears to be holding a thin object in his right hand. He passes that object to his left

⁹ CCTV compilation at 1:11:23.

hand and runs his right hand through his hair. SJ's gestures back to the defendants during this part of the chase appear to be attempts to appease or placate the defendants.

- [82] As TAZ walks into the frame from the left (CCTV compilation at 1:11:52 to 1:11:53), he now appears to be carrying a long thin object in his right hand. SJ continues along the path to the point where it meets the footpath along the southern side of Anzac Avenue. The defendants continue to walk after him. By the time they reach the front of the museum, SED has drawn level with TAZ. The CCTV compilation then shifts to footage taken from a camera positioned on the southern footpath of Anzac Avenue facing back along the path being travelled by SJ and the defendants. That footage captures some of the same events referred to in the last three paragraphs but from further away. As SJ proceeds past the front of the museum building towards the Anzac Avenue footpath he appears to close his backpack as he continues to walk away from the defendants.¹⁰ As the defendants continue to walk behind SJ both of SED's hands are visible. He does not appear to be holding anything in either of his hands. TAZ's right hand is visible and he does not appear to be holding anything in that hand. TAZ's left hand appears to be held inside the pocket of his hoodie.¹¹
- [83] The critical CCTV footage was taken by the second camera referred to in [76], located at the southern end of the museum carpark facing north towards the carpark entrance. The footage taken from that camera shows SJ walking west along Anzac Avenue after he had turned off the walking path. The timestamp on the footage when he reaches the entrance of the carpark is 8:09:05 pm, about 90 seconds after the same camera had captured him running through the southern end of the carpark. Angus can be seen walking east along Anzac Avenue from the direction of the bus stop. SJ walks past Angus on a traffic island which divides the carpark's entry lane and exit lane. As he does so he appears to hand something to Angus. After SJ passes Angus, the defendants can then be seen reaching the entrance to the carpark from the same direction as SJ. At this point they are about the width of the entry lane from where Angus is standing. SJ stands still while Angus takes three paces towards the defendants. As he does so, he appears to be holding a large knife in his right hand, but he keeps both his hands by his sides.
- [84] When Angus steps towards them, the defendants pause briefly and appear to take a small step back. However, before Angus finishes taking his third step, both defendants move towards him. SED moves faster than TAZ. Angus takes two steps backwards as SED moves level with him, positioned to his right side. TAZ is in front of Angus. He appears to be holding a knife in his left hand as he moves towards Angus.
- [85] Angus then takes three steps towards TAZ. TAZ responds by moving backwards to maintain about a metre distance between them. As that happens, SED moves quickly towards Angus from his right. Angus turns to his right to face SED. He kicks out at SED and swings his right arm, holding the knife, in SED's direction. While Angus' attention is on SED, TAZ moves forward quickly and swings his left arm towards Angus' chest. Angus then reaches for his chest with his left hand before falling forwards towards the ground.

¹⁰ CCTV compilation at 1:13:12.

¹¹ CCTV compilation at 1:13:26 to 1:13:31.

- [86] As Angus begins to fall to the ground SED turns away from him and moves several paces away from the carpark entrance. At the same time TAZ continues to move towards Angus. SED stops and turns back towards the carpark entrance appearing to wait for TAZ. TAZ follows after SED and the two appear to touch hands briefly at waste level before running from the carpark in the direction of the amphitheatre. NH, who can be seen riding the defendants' bike from the southern end of the carpark at the time of the altercation, turns around and rides out of the carpark in the direction of the amphitheatre.
- [87] As the defendants and NH depart, SJ can be seen placing his backpack on the ground near Angus. He then appears to reach down and pick something up from the ground close to where Angus is lying and then returns to his backpack.
- [88] NH and the defendants meet back at the amphitheatre. NH returns the bike to TAZ. Before the defendants leave the area, NH appears to take something from his bag and give it to SED at the amphitheatre.
- [89] NH then leaves the defendants and runs back across the skate park to the car which he had arrived in. The car leaves as soon as NH returns to it.
- [90] In the meantime, the defendants ride towards and then across Oxley Avenue, turning north and travelling past the 7-Eleven service station and then across Anzac Avenue.

NH's evidence

- [91] In his examination-in-chief, NH gave evidence that he had known both SED and TAZ for a couple of years before the events on 13 March 2020. At that time, NH owed SED a "quarter", or 7 grams, of cannabis. That quantity of cannabis was worth about \$100.
- [92] On the afternoon of 13 March 2020, NH was visiting a friend who lived close to the Redcliffe skate park. While he was there, SED called NH to tell him that he was coming to Redcliffe and wanted to get some of the drugs which NH owed to him.
- [93] NH then received a second call from SED who told him that there were some people at the skate park that NH could "get on" from: that is, purchase cannabis. SED wanted NH to give half of what he might purchase to SED to reduce the debt NH owed him. SED and NH discussed purchasing a "stick" of cannabis for \$25 from the people at the skate park. SED asked NH to bring money to the skate park. NH's evidence was that a stick was about 1.8 grams of cannabis.
- [94] When NH left to go to the skate park, he took \$25 with him to pay for the cannabis as well as a set of digital scales. He used scales to weigh cannabis every time he bought it to ensure he was not getting less than he had paid for. He did not bring any weapons with him to the skate park.
- [95] NH had a friend drive him to the skate park. He estimated that they arrived within five minutes of the second telephone call from SED. Consistently with the CCTV footage, NH said that to the best of his knowledge his friend remained in the car from the time NH got out until the time he returned to the car about 10 minutes later.

- [96] NH said he walked through the skate park and met SED. TAZ was with SED, although NH was not aware before he got to the skate park that SED and TAZ were together. NH gave the \$25 he had brought with him to SED. He was shown a still image taken from the CCTV footage which shows him together with SED and TAZ at the northern end of the skate park. He said he thought that was when he gave the \$25 to SED. After he gave the \$25 to SED there was no further discussion about money that night.
- [97] NH said the person who supplied them with the cannabis was not anyone he knew or could remember seeing before. His evidence was that the drug transaction took place a couple of metres away from the toilet block. Otherwise, he could not remember what happened during the transaction. He could not remember if there were other persons with the supplier. He could not remember who was handed the cannabis by the supplier.
- [98] Eventually the cannabis was given to NH. NH said that he went into the toilet block to weigh it on his scales. He took it out of the plastic bag it had been supplied in and placed it on the scales which he positioned on a bench in the toilet block. The digital screen on the scales showed that the cannabis weighed 1.8 grams.
- [99] NH said he thought SED went into the toilet block with him, but he was unable to say whether TAZ was also there. He said there was no discussion while he was in the toilet block weighing up the cannabis.
- [100] While he was inside the toilet block NH heard some yelling outside but did not hear the specific words being yelled. He did not know who was yelling. At the time NH heard the yelling SED ran out of the toilet block. NH did not know where TAZ was at that point in time. After SED ran out NH came out of the toilet block and saw that everybody had gone. He put the cannabis back in the plastic bag and took it with him. He went to a seat in front of the adjacent amphitheatre and sat down and waited.
- [101] After sitting for about 3 or 4 minutes, NH heard yelling coming from his right. He heard words to the effect of “come on cunt” being yelled but he did not know who was yelling. He did not recognise the voice. He then rode the bike which TAZ had previously been riding in the direction of the yelling because he thought that was where SED and TAZ could have been.
- [102] As NH rode towards the area where he heard the yelling coming from, he saw SED and TAZ running towards him. NH then turned the bike around and rode back towards where he had been sitting at the amphitheatre. As NH rode back towards the amphitheatre he heard TAZ say, “I stabbed him, bro”.
- [103] When he reached the amphitheatre, NH gave the bike back to TAZ. He went to the stage so that he could divide the cannabis and give half to SED because he owed him. NH saw TAZ and SED ride off and then he ran back through the skate park to his friend’s car.
- [104] NH said he did not see anyone with any weapons that night.
- [105] In cross-examination, NH said that in the time from when he met SED and TAZ until they ran away from the toilet block he was with at least one or the other of them. He confirmed that over that period: nothing was said by either of them about weapons;

nothing was said by either of them about threatening anybody; and nothing was said by either of them about stealing anything. He never saw SED and TAZ discussing something secretly between themselves during that period.

- [106] NH recalled previously telling police that the cannabis which was given to him “looked pretty bad at the start, but then it weighed up properly.” He accepted that he told police that because it was the truth; that before he weighed it, NH was concerned that the cannabis appeared to be underweight just from the look and feel of it.
- [107] As to the yelling or commotion he heard when he was in the toilet block, NH agreed that he understood that it might have been TAZ who was yelling and possibly also the people who had supplied the cannabis. He said that he could not remember what words were yelled. NH also could not remember SED saying anything to him before he ran out of the toilet block. He agreed with the suggestion that the yelling or commotion took him by surprise because nothing that had gone on before he went into the toilet block led him to believe that sort of thing would happen. He agreed that, from his observation of SED when he ran out, the yelling or commotion also seemed to take SED by surprise. He agreed that SED did not appear to be waiting for any signal from anybody outside the toilet block. He said that he had not finished weighing up the cannabis until after SED had left the toilet block.
- [108] NH acknowledged that, in a statement he provided to police, he described SED as having a squeaky voice. He agreed that he said that because, at the time of the incident, SED had a distinctive high-pitched voice. He agreed that SED’s voice was quite different to TAZ’s voice and that it was easy to tell their voices apart. Later in the cross-examination he was asked questions about the voice he heard yelling “come on cunt” while he was waiting at the amphitheatre and which caused him to ride over in the direction of that yelling. It was suggested to NH that, because he knew SED and TAZ and knew their voices, the fact that he didn’t recognise the voice which yelled “come on cunt” meant that it was not either of their voices which he heard. Initially he responded to that suggestion by saying that he couldn’t remember. Mr Robson then reminded NH of evidence which he gave at the first trial on 31 May 2022. At that time, NH had agreed: that he did not recognise the voice; that he didn’t know what was going on when he heard someone say the words; and that it was probably fair to say that the voice wasn’t SED or TAZ because he recognised their voices. He agreed he gave that evidence at the first trial because it was the truth.
- [109] NH was played part of the CCTV footage which showed him leaving the toilet block after SED had run out. He agreed that footage showed that he had a mobile phone in his hand and that the torch light on the phone appeared to be on. He further agreed that the reason the torch light was on was because there was no light in the toilet block.¹²
- [110] NH was then asked about the statement which TAZ made to him as they returned to the amphitheatre after the incident. He said that he recalled part of the statement he provided to police, when he was asked about what TAZ had said: “[TAZ] said to me, ‘I think I stabbed him’”. He then agreed with the suggestion that it was possible that the words TAZ actually said to him as they left the carpark and returned to the amphitheatre were “I think I stabbed him, bro”.

¹² SC Winnington, the officer from the scenes of crime unit who took photographs of the toilet block after the incident, was not able to recall whether the internal light in the toilet block was working.

ST's evidence

- [111] ST was SJ's girlfriend at the time of the incident and they remained in a relationship at the time of the trial. After the incident, ST spoke to police at the scene along with SJ and NM. During that conversation ST said that she was sure that three people who approached her group all had knives.
- [112] ST then took part in four recorded conversations with Senior Constable Christopher Serchen at the Redcliffe police station. The recording of each of those conversations was tendered.
- [113] The first recorded conversation took place between 9:06 pm and 10:24 pm on the night of the incident on 13 March 2020. During that first conversation, ST began by giving a version of events in which she described her group having come from the 7-Eleven, crossing Oxley Road and sitting at a bus stop for about five minutes. SC Serchen asked her if she saw or heard anything unusual while she was sitting at the bus stop. ST told him she hadn't. She said her group was then walking to the skate park when three people approached them with knives. She said this happened when the group was about to walk past the amphitheatre stage. She said two of the people with knives approached SJ, coming straight at him.
- [114] ST gave a description of the three people who approached the group. Based on those descriptions, she referred to TAZ as person 1, to SED as person 2 and to NH as person 3.¹³ By the time she gave those descriptions and started explaining what each of the three people did she said that she had not seen the third person with a knife.
- [115] ST said she didn't know if the three people came out of the toilet block or along the pathway next to the toilet block. She said TAZ had a knife with a four-inch handle and a six-inch blade while SED had a smaller knife with a three-inch handle and a four-inch blade. She saw TAZ pull his knife out of the waistband of his pants or his pants pocket, hold that knife flat out in front of him at about belly height and walk towards SJ. She saw SED hold his knife down by his side. She saw TAZ lunge at SJ's gut with the knife. She heard TAZ make a demand for SJ to give him something. SJ backed away and the knife did not reach him. ST's group then ran.
- [116] ST said the group did not all run in the same direction. NM ran towards the skate park. SJ and Angus ran towards the bridge on the other side of the museum and were followed by TAZ and SED. NH remained at the toilet area. ST went towards the stage area of the amphitheatre. She lost sight of Angus and SJ, as well as TAZ and SED who were following them. She then came out and walked through the museum carpark and waited at the top of the carpark. She then saw Angus and SJ coming from the main roadway¹⁴ with TAZ and SED still following about 5 metres behind. When Angus and SJ got to about where she was standing at the top of the museum carpark Angus turned around. Angus said something like "fuck off" to TAZ and SED and then tried to have a swing at them but missed and tried to kick them but missed again. She saw TAZ and SED holding knives at that time. She saw TAZ try to swing with the knife in his left hand towards Angus' right side but not make contact. She saw

¹³ Although ST was asked and answered questions about "person 1" and "person 2" or the "taller boy" and the "shorter boy", I have set out her evidence in these reasons by reference to TAZ and SED.

¹⁴ I understood this to be a reference to Anzac Avenue.

SED yell out at Angus and jump around trying to intimidate him. She didn't see SED swing his knife at Angus.

- [117] ST said that she did not see Angus get stabbed. After seeing Angus attempt to punch and kick TAZ and SED, she looked over towards SJ briefly. When she looked back towards Angus, she saw him falling to the ground. She then saw blood on the blade of TAZ's knife. She saw TAZ and SED run straight towards the skate park.
- [118] Towards the end of the first conversation, SC Serchen asked ST if she had seen TAZ or SED earlier that night, before the incident occurred. ST said no. SC Serchen also asked if there was anything that they hadn't spoken about which ST thought was important. ST said that she didn't think there was.
- [119] When the first recorded conversation concluded, ST remained at Redcliffe police station.
- [120] The second conversation took place between 11:39 pm and 11:50 pm on the same night. From police inquiries, SC Serchen had become aware of the existence of the knuckledusters. After the first recorded conversation had concluded, but before the second recorded conversation commenced, SC Serchen had asked ST about the whereabouts of the knuckledusters. In response to that inquiry, ST produced the knuckledusters from her pocket and said that she had forgot about them. The second recorded conversation then commenced.
- [121] After confirming SC Serchen's account of what had taken place between the first and second recorded conversations, SC Serchen asked ST to tell him about the knuckledusters and how they came to be in her pocket. ST said the knuckledusters belonged to SJ. She said she took them off Angus' right hand once he had fallen to the ground after he had been stabbed. She put them in her pocket after taking them off Angus' hand. She didn't see Angus put the knuckledusters on. The first time she saw the knuckledusters was when she found them on Angus' hand.
- [122] After ST had answered questions about the knuckledusters, SC Serchen asked her whether anything had changed from her earlier account of the group's movements before going towards the amphitheatre and being confronted by three people. In response ST said, when the group was near a bus stop on Oxley Road, TAZ and SED came past them. NH was not there at that point. TAZ and SED spoke to SJ and NM but that ST didn't listen to what was being said because she had her AirPods in. Her group and TAZ and SED then went to the toilet block area. TAZ and SED went into the toilets and her group waited outside. They were in the toilets for about a minute and then came out and she saw TAZ pull out his knife. SED had his knife out as well. TAZ and SED then chased her group. ST said that the version of events she had given in the first conversation after TAZ pulled out his knife and the chase began was correct. When SC Serchen asked her why she had not mentioned her group meeting TAZ and SED before moving over to the toilet block she said she did not know. She confirmed that there was nothing else SC Serchen would need to know about that earlier meeting. She said she did not know why TAZ and SED had gone into the toilet block.
- [123] The third conversation occurred in the very early hours of 14 March 2023, although the precise time was not noted. ST was still at Redcliffe police station at that time. The third conversation began with SC Serchen explaining to ST and another person—

apparently SJ—that he needed to speak to them about a backpack. After ST was taken to a separate room, SC Serchen told her that police had seen footage which showed SJ giving her a bag and ST walk off with it.

- [124] It appears that ST had become aware by this third conversation that Angus had died. She was more distressed during the third recorded conversation than she had appeared during the previous two. She was reluctant to answer SC Serchen's questions and made repeated requests to be allowed to go home. SC Serchen explained that police were investigating a murder.
- [125] Eventually ST explained where she had tried to hide her backpack and said she did that because she didn't want her things to be stolen. She said she thought there was just one backpack. She described the personal items that were in her backpack.
- [126] SC Serchen then explained to ST that the footage showed SJ having the backpack and that he had put something in it. ST said she didn't know what SJ had put in the backpack.
- [127] The fourth conversation took place between 6:07 pm and 6:31 pm on 14 March 2020, the day following the incident. During that conversation ST said she was not aware of any weapons that Angus, SJ or NM might have had, except for the knuckledusters which she first saw when she went to help Angus. She said she didn't think any of those boys had knives. She said she did not see Angus with any weapon, other than the knuckledusters, either before or after the incident. Otherwise, ST largely confirmed things she had already said to SC Serchen in the earlier conversations.
- [128] In her examination-in-chief, ST gave evidence about what she had said to police during her recorded conversations with SC Serchen.
- [129] As to the first recorded conversation, ST said she didn't know Angus had been killed when that conversation took place. She said her description during that first conversation of the chase involving two teenagers with knives was the truth. She said her description during that first conversation of the incident in which Angus was stabbed was the truth. She said she did not tell the police everything during the first recorded conversation. She said her statement that she had not seen TAZ and SED before the interaction where they pulled out their knives was a lie.
- [130] As to the second recorded conversation, ST said her statement to SC Serchen about the group's interaction with TAZ and SED at the bus stop across the road from the 7-Eleven was the truth. She said she didn't know what led to the first interaction with TAZ and SED. Although she didn't hear much of the conversation during that first interaction, she knew that SJ had cannabis and she became aware of the drug deal when the group started going down towards the toilet block. She said she didn't see the drug deal occur but that the chase she described to SC Serchen began about a minute afterwards.
- [131] As to the third conversation, ST said that, in addition to her backpack which she spoke to SC Serchen about, she also hid SJ's backpack. She identified SJ's bag from a photograph shown to her. She said she was aware that SJ had cannabis and a few knives in his backpack but explained that she told SC Serchen during the third recorded conversation that she didn't know of any weapons that Angus, SJ or NM had because she didn't see SJ take any knife out.

- [132] In cross-examination, ST said she had smoked cannabis with Angus, NM and SJ at the Redcliffe showgrounds earlier in the afternoon. Each of them had one or two cones through a water pipe. She said she did not think that the cannabis had affected her perception of later events.
- [133] As to her earlier statements to police, ST accepted that when she first spoke to police at the scene she said she was sure that all three persons who approached the group had knives. She accepted that statement wasn't true and that she knew it wasn't true when she made it. She said she was trying to tell police what happened quickly and got confused. ST also made concessions about a similar statement she made during her first conversation with SC Serchen not being true.
- [134] ST also accepted that, although SC Serchen asked her during their first conversation to tell him everything about Angus getting stabbed and to start at the beginning, she didn't say anything about the group's first interaction with the defendants near the bus stop on Oxley Avenue or the second interaction outside the toilet block. She accepted that her statement that she did not see or hear anything unusual when the group was at the bus stop on Oxley Avenue was not true. She accepted that she made the statement about not having seen the defendants earlier in the night knowing that it was a lie. She accepted that her statement about not being sure where the people came from—the toilet block or the pathway next to the toilet block—was a lie, and she knew it was a lie when she said it. She accepted that she had tried to be vague about that topic because if she told the truth—that the defendants had come out of the toilet block—she might have to talk to the police about what they had been doing there. She said she was trying not to talk about the drug supply.
- [135] ST accepted that when she was speaking to police after the incident, she understood the serious nature of the police inquiries into Angus having been stabbed and that information about the first two interactions with the defendants was critical for the police to get a proper understanding of what had happened. She accepted that, notwithstanding that awareness, she deliberately did not provide that information to the police. She accepted that as the night went on it became apparent to her that the police knew that she was not being completely honest and that she was frustrating the police efforts to get to the bottom of what happened. She accepted that, despite that awareness, she continued to lie to police. She said she did so because she was scared that if police found out that SJ had been selling cannabis he would get in trouble and might end up being kicked out of home.
- [136] ST accepted that her statement about having seen Angus running with SJ followed by TAZ and SED was false. She was unable to explain why she made that statement when it wasn't true.
- [137] ST accepted that she lied when she answered questions about her and SJ's bags during her third conversation with SC Serchen. She lied about: how she got SJ's bag; how many bags she had hidden; where she had put them; why she had hidden the bags. She denied she hid the bags because she didn't want the police to know about the knives. She said she did it because she didn't want SJ to get caught selling cannabis.
- [138] As to members of her group having any weapons, ST said she never saw SJ, NM or Angus with a knife. She rejected the suggestion that between the first and second interactions SJ distributed weapons to NM and Angus. She said that wasn't possible because, if it happened, she would have seen it.

- [139] As to what occurred outside the toilet block following the drug transaction, ST said TAZ and SED came out of the toilet block towards her group with knives. She did not recall SED running out of the toilet block after TAZ yelled “They’re strapped”. She said both TAZ and SED walked out of the toilet block. She said TAZ and SED reached her group at the same time. She said they “asked for the weed or the bag or something”. TAZ then held a knife out to SJ’s gut and her group ran. Later in cross-examination she accepted that the only words she heard spoken were “Give us ...” and that those words were spoken by TAZ.
- [140] ST rejected the suggestion that SED did not have a knife in either of his hands when he came out of the toilet block. She agreed that she gave a different answer—that she didn’t know and couldn’t remember—when that question was put to her at the first trial, and that her answer at the first trial reflected the state of her memory when she gave that evidence. She said that she was recalling a lot more now than she had at the first trial a year ago.
- [141] ST said that during the interval between the interaction outside the toilet block and when she got up to Anzac Avenue she heard SJ call out something like “We can give you your money back” or “Just take the money back”.
- [142] As to what happened at the entrance to the carpark, ST said when SJ came along Anzac Avenue, followed by TAZ and SED, Angus passed SJ, approached TAZ and SED and yelled at them something like “Fuck off”, or “Go away”, or “Leave us alone”. She didn’t hear Angus say the words “come on cunt”.
- [143] ST rejected the suggestion that SJ gave Angus the large hunting knife from his bag when they passed each other. She said she did not see Angus holding a knife during the altercation. She said Angus never had a knife.
- [144] ST agreed that when Angus confronted TAZ and SED, they were walking. At one point during the cross-examination ST agreed that, throughout the course of what transpired after Angus confronted TAZ and SED, nothing was said by either of those boys. Shortly afterwards she said she was not sure about that.
- [145] ST said she was sure that SED had a knife in his hand during the altercation with Angus, but he was holding it down by his side. He was not swinging it at Angus. She accepted that she gave different evidence at the first trial about whether SED was holding a knife during the altercation. At one point during her evidence at the first trial she had said she was not 100 per cent sure if SED did or didn’t have a knife, just that he might have been holding one. At another point during the first trial, she had said she didn’t know whether SED had a knife during the altercation. Nevertheless, she adhered to her evidence at this trial that she was now certain about that matter. She said she didn’t remember it properly when she gave evidence at the first trial.

NM’s evidence

- [146] NM spoke to police about the incident shortly after they arrived at the scene. That conversation occurred on the footpath of Anzac Avenue near the entrance to the museum carpark. A recording of that conversation was tendered. NM was asked whether three kids came from the carpark towards his group on the footpath. His answer was that he didn’t remember well but that he saw one of them pull out a huge knife. NM was then asked when he first saw the three kids. He answered: “Just

around here” and indicated towards the entrance of the carpark. NM was then asked whether he heard the kids say anything. He answered that they said: “Give us your shit” and then he ran towards McDonald’s.¹⁵ He said he didn’t see the stabbing. Shortly afterwards, he received a call from SJ telling him that Angus had been stabbed and he returned to the scene.

- [147] About 10 minutes after NM spoke to police at the scene, he had an epileptic seizure and was taken to Caboolture Hospital. Senior Constable John Milnes spoke to him at the hospital later that night. A recording of that conversation was tendered. In that conversation NM spoke again about: his group being approached; the people who approached them taking out knives; and one of those people saying, “Give us your shit”. SC Milnes asked if NM knew who the people that approached them might be or if he had ever seen them before. NM responded to those questions by shaking his head.
- [148] NM had a third conversation with Sergeant Ross Hutton at the hospital later the same night. A recording of that conversation was tendered. In that conversation NM said that three people walked up to his group when they were on Anzac Avenue near the museum carpark, pulled out a large hunting knife and said, “Give us your shit”. In this third conversation NM also said that, when the people who approached them pulled the knife on the group, SJ gave a knife to NM just before they all started running.
- [149] On 14 March 2020, the day after the incident, NM met with Sergeant Hutton at Caboolture police station to prepare a written statement. That written statement was tendered. In that statement, NM said that after leaving McDonald’s his group went to a bus stop on Oxley Avenue. He recalled two kids rode past, with one riding and the other sitting on the handlebars. SJ called out to them causing them to stop and asked something like “Do you need bud?”. He recalled the smaller boy answering something like “Yeah, can we get a stick? We will just head up to our mate’s place to get the money. He lives up near Sydney Street”. The kids then rode off south on Oxley Avenue towards Sydney Street. NM said his group waited at the bus stop for 5 to 10 minutes before the smaller boy returned and said something like, “Come down so we can weigh it up”. The group followed the smaller boy down to the skate bowl area. As they walked down, SJ handed NM a silver knife which NM placed in his pocket. The smaller boy took the group near the toilets and said to SJ, “Can I get a stick, my mates are inside waiting to weight it up”. SJ gave him a small plastic bag which contained a stick of cannabis. The smaller boy took the bag into the toilets. NM said that the two boys then came out of the toilets with a third boy. He said that, on walking out of the toilet, the boy who rode the bike pulled out a large hunting-style knife which he held at his waist, pointing at SJ, and said, “Give us your buds”. NM said he then ran towards Oxley Avenue and up to McDonald’s. NM also said that the previous evening, before the incident occurred, all four of his group had attended the Redcliffe showgrounds where they had smoked a small amount of cannabis. He said the amount he smoked had hardly affected him.
- [150] On 16 March 2020, NM met with Detective Senior Constable Benjamin Costelloe at the Redcliffe police station to prepare an addendum statement. That addendum

¹⁵ In cross-examination, NM said that he returned to and went into McDonald’s. DS Fleming said in cross-examination that there was no CCTV footage of NM back at McDonald’s after the incident outside the toilet block near the youth centre.

statement was tendered. It did not address the events which occurred during the first interaction with the defendants at the bus stop on Oxley Avenue or the events which occurred outside the toilet block during the second interaction with the defendants following the drug transaction. In that addendum statement, NM said he had been diagnosed with a neurological issue which can affect his working memory. He referred to having had seizures in the past.

- [151] On 12 June 2021, NM took part in an interview with Senior Constable Adam Tuckey at Redcliffe police station. A recording of that interview was tendered. NM was asked questions about the group's consumption of cannabis earlier in the evening and how it affected his memory. He said that he was sober by the time the incident occurred. NM was then asked whether anyone in his group was holding a weapon of any kind at or around the time of the drug transaction. He said he was holding a silver throwing knife, but he wasn't intending to use it. SJ was holding a small silver knife as well. He said that, during the cannabis sale, he held the throwing knife up his sleeve. He dropped the throwing knife from his sleeve into his hand when he saw TAZ pull out a big knife and then he turned around and ran.
- [152] In his examination-in-chief, NM was asked about the evidence he gave in his statement dated 14 March 2020 about the first interaction his group had with the defendants at the bus stop on Oxley Avenue. He expanded on that evidence by saying the defendants had asked SJ how much cannabis he was selling, or how much he could sell, and SJ then opened his backpack and showed the defendants the cannabis he was carrying. NM said he didn't think SJ showed the defendants the knives that were in his backpack because those knives were in different section of the bag. He said it was after SJ had shown the defendants the cannabis in his backpack that the smaller boy said they would go to their mate's place to get the money.
- [153] NM also said that, just before the drug transaction occurred, SJ gave him the silver throwing knife and Angus some knuckledusters while they were standing on the grass field in front of the amphitheatre waiting for the defendants to return with the money for the drug transaction.
- [154] NM said that when the drug transaction took place in front of the toilet block, he was standing to the right of SJ, within arm's reach. He said when he saw the boy produce the hunting-style knife, he was about a metre away from the boy. NM repeated his evidence that, when the boy produced the knife, he said, "Give us your buds". He then instinctively dropped the knife he was carrying down from his sleeve into his hand without having any intention of using it. After he had dropped the knife into his hand, he heard the boy who made the demand for the buds yell, "They're strapped" while turning around to his friends. He then ran in the opposite direction towards the 7-Eleven.
- [155] In cross-examination, NM said his epilepsy mostly affects his memory recall in proximity to seizures. He accepted its effect might be that he could forget about something that had happened and it could leave his memory a little bit blurry or patchy so that, while he could have a patch of a memory, something might be cut out. He confirmed it would not lead him to remember something that didn't happen.
- [156] NM accepted the version he gave to police at the scene—that three males approached his group near the entrance to the carpark and said, "Give us your shit"—was false. He attributed his giving that false information to the onset of symptoms leading to his

seizure. He described his state of mind during such symptoms as being “not completely there mentally” and “a bit out of it”.

- [157] NM accepted that his statement to Sergeant Hutton about when SJ gave him a knife—after SJ had seen one of the boys pull out a knife—was false. He attributed that to the effect of the seizure he had experienced earlier that night. He said that when he spoke to Sergeant Hutton, he had only recently woken up from the seizure. He was still trying to figure out and process what had happened. He did not accept that the statement he made to Sergeant Hutton amounted to a false memory.
- [158] NM accepted that answers he gave to Sergeant Hutton the following day when his statement was prepared were not accurate. Those answers concerned when SJ gave NM a knife and whether NM ever brought that knife out. He explained that was because he was emotional following Angus’ death and in a foggy state of mind.
- [159] As to his evidence about SJ having shown the boys the cannabis in his bag, NM maintained he remembered that it happened but accepted it was a vague memory.
- [160] NM accepted that when SJ gave NM a knife prior to the drug transaction, he also offered Angus a knife. Angus didn’t want a knife at that time. He wanted SJ’s knuckledusters.
- [161] As to his evidence about what was said by the boy who pulled the knife when he came out of the toilet block, NM accepted that his differing accounts—initially “Give us your shit” and later “Give us your buds”—reflected a level of uncertainty in his memory about what the boy said. He then accepted that, based on that uncertainty, at best his evidence could be taken as being that the boy with the knife asked for something which SJ had.
- [162] As to what took place outside the toilet block, NM said he only saw one of the boys outside the toilet with a knife. He said he now cannot remember SJ pulling out a knife outside the toilet block, but he accepted that, shortly after the incident, he typed a post in a group chat which read “Then they all started yelling, ‘He’s strapped up’ when [SJ] pulled a knife”.

SJ’s evidence

- [163] Although the prosecution properly called SJ to give evidence, he claimed to have no recollection of, or knowledge of, the events the subject of the trial.
- [164] The sum total of his evidence during examination-in-chief was that he knew Angus as a friend from school. He was also friends with ST and NM. On the afternoon of 13 March 2020, the four of them were “around Redcliffe”. He had a bag of drugs¹⁶ and some knives.¹⁷ He sold some drugs that night to two people at the skate park. He had not previously sold drugs to those two people. The purchasers gave him money.¹⁸ He had more drugs with him that night than the amount he sold to the two purchasers in the skate park. He was in the vicinity of the toilets at the skate park that

¹⁶ He was not sure of the quantity he had with him that night.

¹⁷ He was not sure of the number of knives he had with him.

¹⁸ He was not sure of the amount they gave him, nor was he sure of the quantity of drug he sold to them.

night.¹⁹ He knows the museum building.²⁰ He had his bag with him at the time CCTV footage shows him walking on the path behind the museum. He recognised the area around the entrance to the museum carpark when shown CCTV footage and was able to identify himself in that footage. He acknowledged that the CCTV footage showed him walking past Angus near the carpark entry. He identified the two people shown in the CCTV footage walking behind him when he passed Angus near the entry of the carpark as the two people involved in the drug deal that night. Angus was stabbed in the skate park. He was close to Angus when he was stabbed.

- [165] In cross-examination, SJ said that he did not have any actual memory of saying anything, hearing anyone else say anything, doing anything or seeing anyone else do anything during any of the following:
- (a) the first interaction when his group came across two other boys;
 - (b) the period between that first interaction and the second interaction between his group and the two boys, now joined by a third boy, outside the toilet block in the skate park;
 - (c) the second interaction outside the toilet block;
 - (d) the period between the second interaction and the third interaction involving at least Angus and the two other boys near the carpark entrance on Anzac Avenue;
 - (e) the third interaction near the carpark entrance on Anzac Avenue;
 - (f) the period after Angus was injured and before he left the scene.

Other witnesses

Daniel Heggie

- [166] On the evening of 13 March 2020, Mr Heggie was at his campervan parked across the creek which runs behind the museum. Around 8:00 pm he heard loud voices and some sort of argument. He heard the words “Give us” and then something to do with money. He said it was something like “Give us your money” or “You owe me money” but he didn’t know what exactly was said.
- [167] Mr Heggie then saw a larger person walking along the footpath with two smaller people walking behind him. They were walking towards Anzac Avenue and then turned left and walked along Anzac Avenue in front of the museum. He said he would have gone and intervened, but it looked like whatever was happening was over.
- [168] Not long after, Mr Heggie heard a loud yell or scream coming from the direction the group seen walking towards Anzac Avenue had travelled. He described it as an alarming noise that made him get up and run over to where the noise had come from. It did not take him long to reach the entrance to the carpark, perhaps as little as 20 seconds. When he got there he heard someone say, “My friend’s been stabbed” and saw a boy lying face down on the ground. He rolled the boy over and saw knuckledusters on his hand. He could not remember which hand the knuckledusters were on.

¹⁹ He did not remember anything that happened there.

²⁰ He did not remember whether he went near the museum building that night.

Blaine Vette

- [169] On the evening of 13 March 2020, Mr Vette was at the Redcliffe skate park with his friend Mr Robertson. He saw two young males off to the side of the skate park. He did not have any interactions with them. About 20 minutes after he noticed those two young males, he saw a third male walk past him at the skate park and meet up with the two young males.
- [170] Sometime later, he heard swearing coming from the direction of the youth centre near the skate park. He said that the words “fuck” and “cunt” were repeated but he couldn’t make out anything else. He saw people running on the field near the amphitheatre but couldn’t recall which direction they were running. He saw the third male who had previously walked past him in the skate park run straight back past him in the direction he had previously come from.

Lachlan Robertson

- [171] Mr Robertson was at the skate park on the evening of 13 March 2020 with Mr Vette and saw two people standing by the stairs of the youth centre. A third person walked past him and Mr Vette to meet up with the two near the youth centre. He also recalled the third person running back past him and Mr Vette.

Kieron Cundy

- [172] On 13 March 2020, Mr Cundy was living at 66 Anzac Avenue, Redcliffe which is located on the opposite side of the road and slightly to the west of the entrance to the museum carpark. That evening, after he had driven back home from the shops, he got out of his car and saw some kids arguing or shouting on the other side of Anzac Avenue. He heard swearing—the “F-word”—but didn’t pay much attention to what was being said. When he got to his front door, he heard a girl scream. He turned around, looked back across Anzac Avenue and saw two people running towards the youth centre and the skate park.
- [173] Mr Cundy crossed the road and saw a boy lying on the ground. He rang emergency services. Another person was already there attempting to provide assistance. Mr Cundy saw that the boy lying on the ground had knuckledusters on his right hand. The police arrived a short time later. Mr Cundy subsequently saw that the knuckledusters had gone from the boy’s hand.

Items located by police

- [174] Police located the backpacks belonging to SJ and ST in a garden bed in front of the museum, some distance from the entrance to the carpark where the fatal altercation occurred.
- [175] In the main compartment of SJ’s backpack, police located items which included a large hunting knife with a wooden handle, a switchblade knife with a black handle and the silver throwing knife which NM identified as the knife SJ gave to him while the group waited for TAZ and SED to get the money for the drug transaction. Police also found a \$5 note in that main compartment.

- [176] Within a separate compartment of SJ's backpack—most likely the front pocket—police located items which included a clipseal bag containing cannabis. The cannabis was packaged in smaller clipseal bags. The police recorded the weight of the cannabis found in SJ's backpack to be approximately 8 grams.
- [177] DS Fleming said in his cross-examination that his inquiries led him to conclude that, at the time he was stabbed, Angus was holding a knife of similar size to the large hunting knife found in SJ's backpack.
- [178] When SJ attended the police station after the altercation, he was found to have a \$20 note in one of his pockets. I have already addressed the circumstances in which ST was found to be in possession of the knuckledusters.

Medical evidence

- [179] Dr Phillips conducted the post-mortem examination of Angus' body on 15 March 2020. Upon that examination, she measured Angus' height as 191 cm and his weight as 87 kg.
- [180] Dr Phillips observed an obvious stab wound on the left side of Angus' chest. She measured that wound as being 28 mm long on the skin and as having a depth of 137 mm. The wound track passed through the skin, through the muscles of the chest wall, through the anterior pericardium surrounding the heart, directly through the heart itself, through the aorta on the far side of the heart, ending in tissue behind the aorta.
- [181] Dr Phillips concluded that the stab wound caused Angus' death. Her opinion was that the stab wound involved the application of at least moderate force. She considers any sharp force injury that penetrates the skin to be of moderate force because the elasticity of the skin making it difficult to penetrate that layer. Once the blade or implement goes through the skin there is very little resistance to further penetration unless it impacts with a bone. If Dr Phillips observes injury to a bone she would consider it to have been caused by severe force. On this examination, Dr Phillips did not observe injury to a bone which could be definitively attributed to the stab wound.
- [182] Dr Phillips gave evidence that sharp force injury to organs and associated blood vessels located in the chest cavity around the heart (the aorta, the inferior and superior vena cava, the lungs and the blood vessels associated with the lungs) and in the torso (the aorta, the inferior vena cava, the liver and kidneys and blood vessels associated with those organs, and the spleen) could cause death. She also said that sharp force injuries to major blood vessels in the neck (the carotid artery and the jugular veins) or the airway could also cause death.
- [183] In cross-examination, Dr Phillips accepted that one of the factors which might affect the amount of force required to inflict the stab wound would be if two people were moving towards each other.
- [184] Dr Phillips also observed blunt force injuries to Angus' face, comprising abrasions over the forehead, the bridge of the nose, the upper aspect of the left chin, the upper right chin and underneath the chin as well as a bruise underneath the chin. Dr Phillips described these facial injuries as collapse-type injuries consistent with Angus having fallen.

[185] There were also bruises on the back of the third, fourth and fifth fingers on the right hand. Dr Phillips said that it was possible that those injuries were the result of Angus having fallen on bitumen or concrete while wearing the knuckledusters. In cross-examination, she agreed that the bruising on the fingers of the right hand was not aligned. She accepted that this suggested that there could have been two blunt force applications to the right hand.

Arrest of the defendants

[186] At about 10:44 am on 15 March 2020, DS Fleming and other police officers attended an address at Crestmead based on information that SED might be there. The police did not locate SED at that address.

[187] The police then received further information that led them to an address at Kingston. SED lived at that address with his mother and his older brother. DS Fleming and the other officers travelled to that address to arrest SED. They arrived there at about 1:27 pm. DS Fleming activated a recording device when he arrived.

[188] Police located SED in a bathroom in the upstairs part of the residence. It appeared to DS Fleming that SED had just finished showering. He wasn't wearing any clothes but had a towel around him. SED became agitated when the police would not allow him to close the door of the bathroom to get dressed without the police being present.

[189] As DS Fleming attempted to caution SED, SED commenced talking over the top of him. That conversation was recorded and an extract from it in evidence.

[190] During the extracted part of the recorded conversation SED commenced by stating that a person had come up with a large knife and his mate²¹ defended himself. He said: "they ripped us off".²² Angus' group offered to sell him and TAZ cannabis. They needed cannabis so they bought it. Angus' group under-weighed the cannabis.²³ In response, he and TAZ told them to "give our shit back". Angus' group pulled out knives and he and TAZ pulled out their knives. He and TAZ chased Angus' group. They weren't planning on using their knives but just "want our shit back because we got a weed addiction mate." He then referred to the "big guy" having "pulled out the knives". He asked DS Fleming whether the police searched the bag.²⁴ He said that there were "knives all through the bag, drugs through their bags". He referred to Angus' group walking home from McDonald's and he and TAZ having met them while riding up to the corner. Angus' group asked, "do you need on?" and he and TAZ "needed on".²⁵ A friend²⁶ came and gave him the money they needed to buy the cannabis. They came up to the toilet block to weigh the cannabis, but it didn't weigh up. He and TAZ went back out of the toilet block and said something to Angus' group to the effect of "what the fuck give us our money back". He said "he pulled out a knife, big one".²⁷ He said "we pulled out our knives, why do you think we're

²¹ I understood this to be a reference to TAZ.

²² I understood this to be a reference to Angus' group.

²³ I understood this to be a reference to SJ having provided SED and TAZ a lesser quantity of cannabis than they had paid for.

²⁴ I understood this to be a reference to the bag carried by SJ.

²⁵ I understood this to be a reference to SJ's offer to sell cannabis and the defendant's wish to buy cannabis.

²⁶ I understood this to be a reference to NH.

²⁷ In the context of the statement, I understood this to be a reference to SJ pulling out a knife.

carrying them”. He and TAZ chased “him”.²⁸ SJ said something to him and TAZ to the effect of “I’ll give the money back. I’ll give the money back, just stay there”. He and TAZ were walking four metres away from SJ. SJ had said words to the effect of “I need to go to my girlfriend to get my money”. He referred to SJ having ripped off the money from him and TAZ. He said he and TAZ continued to walk up to SJ. He then said: “then this, that, August, or whatever,²⁹ he walked up to him, they exchanged, from the bag, pulled the knife out of a case, and then just launch at my mate and my mate just stepped back, bang, and then the guy dropped the knife and then fuckin, he just collapsed.” He said: “It’s a self-defence act”.

[191] At about 10:40 am on 15 March 2020, DSC Childs attended an address at Logan Central with other police. The house was linked to TAZ’s mother. Police located TAZ in a bedroom in the house. He was cautioned and, sometime later, transported to Redcliffe police station. DSC Childs recorded his interactions with TAZ from the time he arrived at the house until he transported him to the police station. The full recording, lasting some two and a half hours, was not tendered. Two extracts from that recording were tendered.

[192] It was submitted for TAZ that, on the first of those recordings,³⁰ the following can be heard:

TAZ: “Have you talked to my bro? I thought he was gonna kill me.”

His mother: “Hey, he could have got at you aye. Just don’t even go there. I can’t, I can’t keep. He’s sorted alright. Yep, he’s sorted them actually yep.”

[193] It was submitted that this was a conversation in which TAZ asked his mother whether she had spoken to SED and then expresses that “I thought he was gonna kill me”, with the reference to “he”, in context, being a reference to Angus. It was submitted that his mother’s response “he could have got at you aye” is consistent with that.

[194] Although the quality of the recording is poor and it is difficult to hear what TAZ says, upon listening to the recording on exhibit 20 at a sufficiently high volume, I was able to hear the statements set out in [192] above. I accept the submission that TAZ’s reference to “he” was a reference to Angus. I also accept that TAZ’s statement to his mother is admissible evidence of his state of mind at the time he stabbed Angus.

[195] It was submitted for TAZ that, on the second recording,³¹ he can be heard telling his mother that he was scared. Although I was able to hear some things said by TAZ or his mother to police on that second recording, I was unable to understand anything said by TAZ to his mother. Even at the highest volume, I was unable to hear TAZ say anything about being scared.

[196] DSC Childs gave evidence that, during the course of his interactions with TAZ that day, TAZ said he was left-handed.

²⁸ Based on the CCTV footage I infer this was a reference to SJ.

²⁹ I understood this to be a reference to Angus.

³⁰ Exhibit 20.

³¹ Exhibit 45.

[197] In cross-examination, DSC Childs agreed that when he arrived at the house he spoke to TAZ's father. TAZ's father told DSC Childs that he had received legal advice he should just wait for police to come. He said that he disagreed with the advice but had followed it. DSC Childs also agreed that when police were at the house TAZ assisted in identifying what he was wearing at the time of the incident and where that clothing was located at the house.

Counsels' submissions

Submissions of the prosecution

[198] Mr Cook submitted I should consider the issues for determination in the following order:

- (a) self-defence;
- (b) intent;
- (c) the partial defence of provocation (if I find that the prosecution has proved the elements of unlawfulness and intent beyond reasonable doubt);
- (d) compulsion (if I find that the prosecution has proved the element of unlawfulness beyond reasonable doubt, but not intent);
- (e) SED's involvement as a party to TAZ's conduct.

[199] As to self-defence, Mr Cook submitted the evidence which raises the various forms of self-defence relates to events from the point where SJ handed a knife to Angus adjacent to the entry of the carpark on Anzac Avenue and Angus took three steps towards the defendants. There is no evidence of an assault by Angus prior to that point.

[200] Mr Cook submitted that, as the evidence raises both forms of self-defence, the prosecution must exclude each of them by negating one of the elements for each form of the defence. If the prosecution failed to do that, I would find the defendants not guilty of murder and manslaughter.

[201] Mr Cook submitted I should find on the evidence that, when Angus took three steps towards the defendants, he said words to the effect of "fuck off" in an attempt to get the defendants to stop their pursuit of SJ. Angus cannot have said words to the effect of both "fuck off" and "come on cunt". Mr Cook submitted I should find that the defendants were the aggressors, not Angus, and I should infer that it was one of them who said something like "come on cunt". He submitted I should find beyond reasonable doubt that Angus did not assault either of the defendants, which would exclude all forms of self-defence.

[202] As to self-defence against an unprovoked assault,³² Mr Cook further submitted I would find beyond reasonable doubt that:

- (a) an assault by Angus on the defendants was not unlawful because Angus acted in response to a prior assault on him by the defendants;

³² These submissions were made on the basis that I was not satisfied beyond reasonable doubt that Angus did not assault either of the defendants. I have not set out Mr Cook's submissions on s 271(1) of the *Criminal Code* because the defendants accepted it could not apply in this case.

- (b) the defendants provoked an assault by Angus by reason of their pursuit of SJ and their conduct in continuing to approach him and Angus while they were armed with knives;
- (c) the nature of Angus' conduct, taking three steps forward with the knife by his side while saying words to the effect of "fuck off" to attempt to get them to cease their pursuit of SJ, was not such as to cause reasonable apprehension of death or grievous bodily harm, as evidenced by the defendants' choice not to cease their pursuit of SJ and go back the way they had come when they had the opportunity to do so;
- (d) TAZ did not actually believe on reasonable grounds that he could not otherwise save himself, or SED, from death or grievous bodily harm other than by using the force he used in circumstances where the defendants could have, but did not, cease their pursuit of SJ and go back the way they had come but instead moved towards Angus and attacked him together.

[203] As to self-defence against a provoked assault,³³ Mr Cook submitted I would find beyond reasonable doubt that:

- (a) the assault by Angus was not of such violence as to cause reasonable apprehension of death or grievous bodily harm (see [202](c) above);
- (b) the assault by Angus did not induce TAZ to believe on reasonable grounds that it was necessary for his preservation, or SED's preservation, from death or grievous bodily harm to use the force he did (see [202](d) above);
- (c) the force TAZ used was more than was reasonably necessary to save them from death or grievous bodily harm in circumstances where the defendants could have, but did not, cease their pursuit of SJ and go back the way they had come but instead moved towards Angus and attacked him together;
- (d) the defendants first began the initial assault with intent to at least do grievous bodily harm, such intent being apparent from the time when, after taking one step back upon seeing Angus armed with the knife, they moved towards him and attacked him together;
- (e) TAZ endeavoured to at least do grievous bodily harm to Angus before the necessity of so preserving himself or SED arose because, in circumstances where the defendants were the aggressors, there was no necessity to preserve themselves;
- (f) TAZ did not decline further conflict before the necessity of preserving himself or SED from death or grievous bodily harm arose, and did not quit or retreat from it as far as was practicable in circumstances where the defendants could have, but did not, cease their pursuit of SJ and go back the way they had come but instead moved towards Angus and attacked him together.

[204] As to intent, Mr Cook submitted I would find beyond reasonable doubt that, when he stabbed Angus, TAZ intended to cause at least grievous bodily harm based on:

³³ These submissions were made on the basis that I was not satisfied beyond reasonable doubt that self-defence against an unprovoked assault was excluded.

- (a) the evidence of Dr Phillips as to the composition of the body in the area where TAZ struck Angus with his knife;
 - (b) the depth of the stab wound and the organs that were damaged;
 - (c) the force that TAZ used to inflict the stab wound;
 - (d) CCTV footage showing TAZ continued to attack Angus after he had delivered the fatal blow.
- [205] As to the partial defence of provocation under s 304 of the *Criminal Code*, Mr Cook submitted I would not be satisfied on the balance of probabilities that Angus' words ("fuck off") and conduct (taking three steps with a knife by his side) would cause an ordinary 14-year-old to lose his self-control and respond by stabbing Angus with the intent to at least cause grievous bodily harm.
- [206] As to compulsion under s 31 of the *Criminal Code*, Mr Cook submitted the defence is excluded for the same reasons given in addressing self-defence.
- [207] As to SED's criminal responsibility under s 7(1)(c) of the *Criminal Code*, Mr Cook submitted that, based on the CCTV footage of SED's movements during the fatal altercation, and on SED's statement to police in which he refers to both he and TAZ having knives with them that night and having taken them out in front of the toilet block, I would be satisfied beyond reasonable doubt that:
- (a) by his conduct, SED aided TAZ to strike Angus with his knife;
 - (b) when he acted that way, SED intended to aid TAZ to strike Angus with his knife;
 - (c) at that time, SED knew or expected that TAZ would use his knife to strike Angus;
 - (d) at that time, SED knew or expected that TAZ intended to at least cause grievous bodily harm to Angus.
- [208] As to SED's criminal responsibility under s 8 of the *Criminal Code*, Mr Cook submitted that I would find beyond reasonable doubt that SED, in chasing SJ, did not act in the exercise of an honest claim of right to recover the money paid to SJ.
- [209] He submitted I would find beyond reasonable doubt that, before the stabbing, the defendants had the common intention to prosecute the unlawful purpose of armed robbery against SJ. This submission was based on: things said by SED in his statement to police as to his need to obtain cannabis; evidence of NH as to SED's first telephone call earlier in the afternoon or evening; things said by SED in his statement to police about drugs and knives through the bag; evidence given by NM that SJ showed the defendants the cannabis in his backpack when the drug transaction was arranged; evidence that SED had to arrange for NH to come with money to pay for the stick, and the inference that the defendants were unable to pay for any additional quantity of cannabis.
- [210] Mr Cook submitted I would then be satisfied beyond reasonable doubt that once the defendants embarked on their quest to rob SJ while they were armed, TAZ's act of unlawfully killing Angus with intent to at least cause grievous bodily harm occurred

in the prosecution of the common purpose of robbing SJ while armed and was a probable consequence of the prosecution of that purpose.

[211] As to the evidence of the defendants' touching hands immediately after Angus had collapsed to the ground, Mr Cook submitted I would find that they slapped hands to congratulate each other and I could consider that evidence in determining whether the prosecution has:

- (a) excluded self-defence;
- (b) established the mental element of intention for the offence of murder;
- (c) established SED's criminal responsibility under s 7(1)(c) for aiding TAZ;
- (d) established SED's criminal responsibility under s 8 based on a common intention to prosecute an unlawful purpose.

[212] As to the defendants departing the scene, Mr Cook submitted that the prosecution relied upon that as both post-offence conduct indicating a consciousness of guilt and a circumstantial fact in the case overall.

Submissions for TAZ

[213] Mr McCafferty KC submitted it was necessary for me to consider three critical issues:

- (a) what happened at the toilet block;
- (b) what happened during the chase from the youth centre to the museum;
- (c) what happened at the entrance to the carpark on Anzac Avenue.

[214] As to the events at the toilet, Mr McCafferty KC submitted I should find (or at least be satisfied that I cannot discount the reasonable possibility) that SJ or NM were the first to present knives at the toilet block and, therefore, I should reject the prosecution's assertion that the defendants were engaged in the prosecution of an armed robbery. He submitted the evidence was incapable of establishing the prosecution case of armed robbery beyond reasonable doubt. Instead, the more likely hypothesis is that the defendants believed they had been ripped off and, in those circumstances, demanded their money back from SJ. SJ's response was to produce a knife and run. The defendants chased SJ to get their money back.

[215] As to the events during the chase, Mr McCafferty KC submitted that, based on the CCTV footage and the evidence of Mr Heggie, I should find that as SJ and the defendants approached the rear of the museum tensions lowered, each of them slowed from a run to a walk, SJ said words to the effect that he would give the defendants their money back, and all parties put their knives away.

[216] As to the events at the entrance to the carpark, Mr McCafferty KC submitted the prosecution has not excluded either form of self-defence beyond reasonable doubt and has not proved beyond reasonable doubt that TAZ intended to at least cause grievous bodily harm.

[217] As to self-defence against an unprovoked assault, Mr McCafferty KC submitted the CCTV footage and evidence of ST that she did not see the defendants with knives

until they were close to Angus means the prosecution cannot exclude the hypothesis that it was Angus who first brandished a weapon on Anzac Avenue. He also referred to evidence that Angus moved towards the defendants aggressively and yelled. He submitted that, based on the evidence of NH, Mr Vette and Mr Robertson, it could not be excluded that Angus said something like “come on cunt”. On that basis, Mr McCafferty KC submitted the prosecution has not excluded the hypothesis that Angus unlawfully provoked the assault by TAZ. Mr McCafferty KC further submitted that Angus’ larger stature, his actions in coming aggressively at TAZ and SED while armed and inviting them to fight gave rise to a reasonable apprehension of death or grievous bodily harm. The prosecution could not exclude beyond reasonable doubt that, faced with what he was seeing Angus do to SED, TAZ had reasonable grounds for believing that he could not preserve SED or himself otherwise than by acting as he did. The suggestion by the prosecution that the defendants should have turned and run away was a submission made in hindsight and which failed to account for the defendants’ young age and lack of maturity.

- [218] As to self-defence against a provoked assault,³⁴ Mr McCafferty KC submitted Angus’ response to the then unarmed defendants was out of all proportion to any threat they were offering. He submitted the prosecution cannot exclude beyond reasonable doubt that: any assault by TAZ prior to Angus advancing towards the defendants was not an assault begun by TAZ with intention to kill or do grievous bodily harm to Angus or to anyone else; or that TAZ did not endeavour to kill or do grievous bodily harm to Angus or to anyone else before the necessity of preserving himself or SED arose. Further, he submitted that when Angus approached the defendants TAZ initially hung back, only acting when Angus started kicking and swing with his knife at SED. Accordingly, the prosecution could not exclude beyond reasonable doubt that TAZ declined further conflict and quitted and retreated from it as far as practicable. Finally, he submitted that Angus’ assault was such as to cause a reasonable apprehension of death or grievous bodily harm and to induce TAZ to believe, on reasonable grounds, that it was necessary for him to use force of the kind he used.
- [219] As to intent, Mr McCafferty KC submitted that, having regard to TAZ’s age and the situation he was faced with, the prosecution had not proved the existence of the necessary intention beyond reasonable doubt. He submitted TAZ’s conduct was an act done in defence even if the statutory defences of self-defence are found not to apply and the prosecution cannot exclude beyond reasonable doubt an intention to repel Angus without forming a specific intention to cause grievous bodily harm. Further, he submitted the suggestion that a 14-year-old in TAZ’s position formed any intention at all is contrary to the ordinary experience of dealing with 14-year-old boys who have a habit of not thinking things through, but instead acting impulsively and on instinct.
- [220] As to post-offence conduct, Mr O’Brien submitted that the CCTV footage does not permit a conclusion that the defendants touched hands, or alternatively that they touched hands deliberately. He submitted the prosecution’s suggestion that the CCTV footage depicts a “congratulatory slap” is speculation.

³⁴ These submissions were made on the basis that I was satisfied beyond reasonable doubt that self-defence against an unprovoked assault was excluded.

- [221] As to the defendants' conduct in departing the scene, Mr O'Brien submitted that conduct could not be used as evidence of a consciousness of guilt, whether of murder or manslaughter, because that conduct was equally explained by:
- (a) a desire to avoid retribution from Angus' friends;
 - (b) a desire to avoid being spoken to by police;
 - (c) the fact that they had been involved in a physical altercation;
 - (d) the fact that they had purchased cannabis;
 - (e) the fact that they had knives in a public place.

Submissions for SED

- [222] Mr Robson adopted the submissions made on behalf of TAZ and argued that, because of the matters raised by TAZ, I would hold a reasonable doubt about TAZ's guilt of both murder and manslaughter.
- [223] Mr Robson submitted I should accept SED's statement to police at the time of his arrest as an honest account: it was unrehearsed, unembellished and unsanitised.
- [224] As to the prosecution's reliance upon SED's reference in that statement to there being "knives all through the bag, drugs through their bags" as evidence of his knowledge of the contents of SJ's backpack, Mr Robson submitted that SED's words are equally explicable as hyperbole informed by the circumstances of SED's overall interactions with SJ and his friends.
- [225] Mr Robson submitted the effect of SED's account, if I accepted it, would be to exclude the application of s 7(1)(c) and s 8 to SED's involvement in the altercation with Angus. However, I do not have to be satisfied that the exculpatory statement is truthful and accurate before acting upon it. If I consider that the statement might be true, then this will also raise a reasonable doubt about guilt.
- [226] As to the application of s 7(1)(c), Mr Robson submitted that, in circumstances where the prosecution case was that TAZ's intent to do grievous bodily harm to Angus only materialised in the moments prior to the fatal blow, the prosecution has not established to the requisite standard that, if SED relevantly aided TAZ, he did not do so unwittingly. That is, the prosecution has not excluded beyond reasonable doubt that SED did not know that TAZ was going to strike Angus in the manner he did or that he would decide to strike Angus with a specific intent.
- [227] As to the application of s 8, Mr Robson submitted:
- (a) there was no direct evidence of the defendants having a common intention to steal drugs from SJ;
 - (b) on a proper consideration of the evidence, it is at least a reasonable possibility that TAZ's demand of SJ outside the toilet block was for the return of the money the defendants had paid for the cannabis;
 - (c) in any case, SED was still in the toilet block when TAZ made his demand of SJ and was not involved in, or aware of, that demand;

- (d) even if the prosecution could establish a joint plan to steal from SJ, the evidence demonstrates that tensions between the groups had subsided after the initial pursuit such that the plan was not continuing in the moment when TAZ struck the fatal blow;
- (e) the prosecution has not excluded, beyond a reasonable doubt, the effect of SED's statement to police that when he and TAZ pulled their knives out and chased SJ they were not planning on using their knives, meaning that the kind and degree of violence contemplated by any common purpose to commit armed robbery was not such as to make murder or manslaughter a probable consequence of the joint plan.

Factual findings

- [228] It was not in dispute that Angus' group first interacted with the defendants that night when they passed each other on Oxley Avenue. Nor was it in dispute that during this first interaction SJ asked the defendants if they wanted to purchase cannabis and an agreement was reached that the defendants would purchase a stick for \$25 which they needed to get from a friend (NH).
- [229] What was in dispute in relation to this first interaction is whether SJ showed the defendants the amount of cannabis he was carrying in his backpack. In arguing for such a finding, the prosecution relied on the evidence of NM during his examination-in-chief that, at this first interaction, the defendants asked SJ how much cannabis he was selling, or how much he could sell, and that SJ then opened his backpack and showed the defendants the cannabis he was carrying (see [152] above). It also relies on the references in SED's statement to police that Angus' group had "knives all through the bag, drugs through their bags" (see [190] above).
- [230] Ultimately, I am not persuaded that this evidence provides a sufficient basis for me to find that SJ showed the defendants the cannabis that he was carrying in his backpack. NM made no mention of this to police when he spoke to them in hospital or when he provided his statement the day after the incident. He described his present memory of this occurring as being "vague" (see [159] above). As to SED's statement, I accept his reference to drugs and knives in the bag can be explained on the basis that, from the overall circumstances of his interactions with SJ and his friends, he would have been aware that SJ had a quantity of drugs and knives in his backpack. That knowledge is not necessarily reflective of him having seen into SJ's backpack and seen a greater quantity of cannabis than the defendants agreed to buy.
- [231] As to the distribution of weapons by SJ to his friends after the first interaction, but before the drug transaction, I accept NM's evidence in cross-examination that when SJ gave NM a knife he also offered Angus a knife but Angus did not want to take a knife at that time (see [160] above).
- [232] As to weighing the cannabis after the drug transaction occurred, I find that the defendants received 1.8 grams of cannabis, the quantity which they had paid SJ for. This was the quantity which was shown on the digital scales used by NH to weigh the cannabis (see [98] above).
- [233] I find that the light in the toilet block was not working when NH and the defendants went inside the toilets to weigh the drug. NH used the torch on his phone to provide

light to allow him to take the cannabis out of the bag it was sold in and weigh it. SED stood next to NH as he weighed the cannabis.³⁵

- [234] I find that, before NH weighed the cannabis, the look and feel of the bag handed to him caused him to be concerned that the quantity of cannabis supplied by SJ was underweight (see [106] above). From this fact, I infer that SED and TAZ were also concerned at the time they went into the toilet block that they had not received the quantity of cannabis they had paid for.
- [235] I find that after TAZ left the toilet block the second time, he approached SJ and demanded that SJ give him something. I do not accept that the evidence of NM—that TAZ said “give us your shit” or “give us your buds”—is a sufficient basis to find that TAZ demanded SJ give him the rest of the cannabis he was carrying in his backpack. NM’s concession in cross-examination that at best his evidence could be taken as being that TAZ asked for something which SJ had (see [161] above) leads me to conclude that it would not be safe to find TAZ demanded SJ give him the rest of the cannabis. Likewise, ST retreated from her evidence that the defendants “asked for weed or the bag or something” and ultimately accepted that the only words she heard spoken when the defendants came out of the toilet block was “Give us ...” (see [139] above).
- [236] Instead, I find that the more likely hypothesis is TAZ demanded that SJ give back the money which the defendants had paid for the cannabis. This is consistent with Mr Heggie’s evidence about hearing an argument involving a demand for money (see [166] above). It is also consistent with TAZ being concerned that the cannabis was underweight and not having become aware that the drugs had, in fact, weighed up. TAZ was not in the toilet block for the whole time that NH was weighing the drugs. I accept NH’s evidence that he had not finished weighing up the cannabis until after SED had left the toilet block (see [107] above). TAZ left the toilet block before SED.
- [237] I find that at about the time he demanded SJ give back the money, TAZ pulled out his knife. At about the same time, TAZ saw that SJ was also holding a knife. Upon seeing that, TAZ yelled out words to the effect of “They’re strapped” (see [154] and [162] above). This occurred while SED was still in the toilet block.
- [238] I find that SED ran out of the toilet block when he heard TAZ yell words to the effect of “They’re strapped” (see [100] above). Based on my finding that SED left the toilet block before NH finished weighing up the cannabis, I am satisfied that SED was not aware that the cannabis had weighed up when he left the toilet block.
- [239] I find that SED had a knife with him that night. His statement to police included an admission that he pulled that knife out at a relevant time. From the fact that SED left the toilet block suddenly when he heard TAZ yell words to the effect of “They’re strapped”, and the movement of his left hand shown in the CCTV footage of him leaving the toilet block (see [73] above), I infer that SED pulled his knife out when he ran from the toilet block and chased after SJ together with TAZ.
- [240] I find that TAZ and SED chased SJ through the southern end of the carpark onto the walking path to the rear of the museum. Each of them slowed from a run to a walk as they reached the path. TAZ and SED continued holding their knives when they

³⁵ See paragraph 8 of the second list of admissions at [63] above.

followed SJ along that path. I am satisfied that the items that the defendants can be seen carrying in the CCTV footage as they walk past the streetlamp are their knives (see [80] and [82] above).

- [241] I accept the evidence given by ST (see [141] above) and the reference in SED's statement to police (see [190] above) that during this part of the chase SJ said words to the effect that he would give the defendants their money back. This statement is consistent with SJ's actions when he turned backwards to face the defendants (see [80] and [81] above). That SJ did not in fact give back the money, by dropping it for the defendants to pick up, is explained by a desire on his part to retain the proceeds of his cannabis sale despite the threat the defendants continued to pose.
- [242] I find that as the defendants emerged from behind the museum, they put their knives out of sight. On the CCTV footage, it appears that TAZ continues to hold his knife in his left hand in his pocket (see [82] above). I infer from the fact that SED's hands are visible and cannot be seen carrying anything, that he put his knife into the bag on his left hip.
- [243] However, I do not accept that this conduct indicates things had calmed between the defendants and SJ. Mr Heggie's evidence—that he did not go over and intervene when he saw the defendants following SJ because it looked like whatever was happening was over (see [167] above)—has to be understood in the context that Mr Heggie had not witnessed the defendants pull out their knives at the start of the chase and is unlikely to have appreciated from the distance he was observing events that the defendants were armed with knives as they continued to follow SJ at walking pace behind the museum. That the defendants chose to put their knives out of sight as they moved towards a well-lit footpath along a major road is not surprising. It is not an indication that they no longer posed any threat to SJ as they continued to follow him.
- [244] I find that, as they passed each other on the traffic island at the entrance of the carpark, SJ handed Angus the large hunting knife which police later found in the backpack hidden by ST. Angus held this knife in his right hand as the defendants approached the entrance to the carpark. Angus was larger in stature than both defendants.³⁶
- [245] Angus took three steps towards the defendants before stopping. When he took those steps, Angus kept his arms down by his side. He did not raise the knife towards the defendants.
- [246] When he stepped towards the defendants, Angus yelled loudly at them. I am satisfied that he yelled words intended to get the defendants to disengage from any further interactions with SJ and the rest of the group: words to the effect of "fuck off". ST's evidence in this regard (see [116] and [142] above) receives some support from Mr Cundy's evidence (see [172] above). I accept this part of ST's evidence.
- [247] I accept NH's evidence that he heard someone yell the words "come on cunt". However, I find that Angus did not yell those words. Angus did not invite the defendants to fight him. Angus' earlier refusal to take a knife when SJ distributed weapons (see [160] above) is inconsistent with him wanting to engage in the type of altercation which unfolded at the entrance to the carpark. More importantly, my

³⁶ See the defendants' height and weight in paragraphs 1 and 2 of the second list of admissions at [63] above and Angus' height and weight at [179] above.

assessment of Angus' demeanour from the CCTV footage is inconsistent with this part of the defendants' case. Nothing in Angus' demeanour at the entrance of the carpark, before the defendants moved towards him and engaged in the fatal altercation, indicates that he was inviting the defendants to fight. To the contrary, his movements and his demeanour are consistent with him trying to get the defendants to leave.

- [248] From the fact that TAZ ultimately used his knife to stab Angus, I infer that he pulled that knife back out by, at the latest, the time that the defendants paused briefly as they approached the entrance of the carpark (see [84] above). I infer that SED pulled his knife out from his bag at about the same time. I draw that inference from the fact that SED had a knife with him that night, and his admission in his statement to police that when confronted by someone armed with a knife he responds by pulling out his own knife.³⁷ On this basis, I am satisfied beyond reasonable doubt that SED was armed during the fatal altercation. In reaching that conclusion it was not necessary for me to rely only on the evidence of ST (see [145] above). Consequently, the inconsistencies between ST's evidence at this trial and at the first trial have no bearing upon my conclusion.³⁸
- [249] I find that, upon pausing briefly as they approached the entrance to the carpark where Angus was standing, the defendants had an opportunity to disengage from further conflict with Angus or SJ. This is something identified in hindsight, but that is true for all criminal trials—the participants' actions must be analysed after the relevant events have concluded. It does not mean that the opportunity did not exist at the time the events occurred. I also accept that the defendants' actions should not be assessed as if they had the benefit of safety and leisurely consideration. However, that does not mean that the circumstances were such as to prevent the defendants from recognising the opportunity for them to break off and disengage from further conflict.
- [250] Bearing those things in mind and taking account of the defendants' young age and lack of maturity, I nevertheless infer, from the fact that the defendants paused as they approached the entrance to the carpark, that they saw Angus was armed and recognised that they had a choice whether to continue to advance and engage with him. Rather than take the opportunity to disengage from further conflict and return to where NH was waiting with the cannabis, the defendants instead chose to pull their knives out and to advance aggressively on Angus. Based on my viewing of the CCTV footage of the altercation, I find that it was the defendants' advance towards Angus, after their brief pause, which instigated the fatal altercation. The defendants were the aggressors in that altercation.
- [251] I do not accept Mr McCafferty KC's submission that during the altercation TAZ hung back, and only acted when Angus started kicking and swinging with his knife at SED. TAZ advanced towards Angus at the same time as SED. Angus' attention was initially upon TAZ. Angus moved back three steps while looking at TAZ as TAZ moved closer. Angus then made two large strides towards TAZ, without raising his knife, causing TAZ to move back but not to disengage from the fight. It is at that point SED moved quickly towards Angus from his right. This drew Angus' attention away from TAZ to SED. As soon as Angus turned to face SED, and before Angus

³⁷ “[H]e pulled out a knife, big one. We pulled out our knives, why do you think we’re carrying them” (see from [189] above).

³⁸ These inconsistencies were set out in a document handed up during Mr Robson's address (MFI-R).

commenced kicking or swinging his arm at SED, TAZ began advancing quickly towards Angus again in the movement which would culminate in the fatal strike.

- [252] As I have already noted, it was not in dispute at the trial that TAZ delivered the blow which led to Angus' death. I do not accept that this could be described, as Mr McCafferty KC did, as a "glancing" blow. That description is inconsistent with the evidence of Dr Phillips that the knife penetrated Angus' chest to a depth of 137mm. Angus was not moving towards TAZ when TAZ stabbed him in the chest. At that point, Angus had turned to his right to face SED.
- [253] I also do not accept Mr McCafferty KC's submission that, once the threat posed by Angus had stopped, TAZ stopped. The CCTV footage shows that as Angus was falling forward towards the ground, TAZ lunged at him again. I was unable to determine from the CCTV footage exactly what he was seeking to do as he lunged, but the mere fact of him continuing to advance on Angus as he fell is inconsistent with the suggestion that TAZ stopped once the danger had passed.

Findings as to post-offence conduct

- [254] After Angus had fallen to the ground, the defendants did not make any further move towards SJ or his backpack. They moved away from the carpark entrance in the direction of the amphitheatre. SED moved away first, with TAZ a few steps behind.
- [255] I find that, as SED moved away from the entrance of the carpark he turned, waited briefly, and extended his hand at waist level towards TAZ. When TAZ reached SED, he touched his hand before the defendants left the carpark. I find that the actions of the defendants in touching hands were deliberate. However, I do not infer that, by this action, the defendants were congratulating each other for TAZ having stabbed Angus. The defendants had been engaged in a brief but violent fight. Angus had been armed with a knife and had swung that knife towards the defendants, albeit ineffectually. In my view, the defendants' actions in the immediate aftermath of the fight are equally consistent with them confirming to each other that they were not injured during the fight. On that hypothesis, I could not use the conduct for any of the purposes proposed by the prosecution (see [211] above). Accordingly, I have not relied on that aspect of the post-offence conduct for any purpose in my reasoning.
- [256] As to what TAZ said to NH as they returned towards the amphitheatre (see [102] and [110] above), I find that TAZ used words amounting to a positive statement that he had stabbed Angus: words to the effect of "I stabbed him bro". Having regard to the nature of the fatal strike depicted on the CCTV footage, the depth to which TAZ's knife penetrated Angus' chest and the state in which Angus was left lying face down on the ground as the defendants left the carpark, it seems to me that TAZ cannot have been in any doubt that he had stabbed Angus.
- [257] As to the issue of flight, I accept that the only aspect of the defendants' conduct which could be characterised as flight was departing the scene where the fight occurred. In my view, this conduct is equivocal in the sense that it can be explained by matters that are not reflective of a consciousness of guilt, not least the prospect of further violent conflict with SJ if they had remained at the scene. Accordingly, I have not relied on that conduct as post-offence conduct demonstrating consciousness of guilt.

[258] In the case against SED, the prosecution also relied on a text message he sent to an associate at about 8:30 pm the day after the incident. In response to a message which raised the prospect that police did not know who was involved, SED stated:

“I hope so but if I don’t get caught it’s a miracle.”

[259] I am not satisfied that statement can only be explained by consciousness of guilt of the offence charged. In circumstances where the defendants’ case is, as SED said to police at the time of his arrest, that TAZ acted in self-defence, the statement can be explained by a wish not to be the subject of what SED considered to be an unjust accusation. Again, I have not relied on SED’s conduct in sending the text message as post-offence conduct demonstrating consciousness of guilt.

Reasoning to verdict for TAZ

First element: death

[260] There was an admission that Angus is dead.³⁹

[261] By s 644(1) of the *Criminal Code*, that admission is sufficient proof of that fact without other evidence. I therefore find the first element of the offence of murder proved beyond reasonable doubt.

Second element: cause of death

[262] Having regard to the medical evidence that Angus’ death was caused by the stab wound to his chest, and the CCTV footage which shows that he suffered that wound as the result of a blow struck by TAZ, I find the second element of the offence of murder proved beyond reasonable doubt.

Third element: unlawfulness

[263] The *Criminal Code* provides for the defence of self-defence by ss 271, 272 and 273. Section 271 addresses self-defence against an unprovoked assault. Section 272 addresses self-defence against a provoked assault. Section 273 addresses actions which aid in the self-defence of another person.

[264] The criminal law does not only punish; it protects as well. It does not expect citizens to be unnaturally passive, especially when their safety is threatened by someone else. Sometimes an attacker may come off second best but it does not follow that the one who wins the struggle has committed a crime. The law does not punish someone for reasonably defending himself or herself.

[265] TAZ does not have to satisfy me that self-defence applies. The prosecution must exclude or negate all forms of the defence beyond reasonable doubt to satisfy me that TAZ acted unlawfully.

[266] If the prosecution cannot exclude beyond reasonable doubt the possibility that the killing of Angus occurred in self-defence, as the law defines it, then that is the end of the case in relation to TAZ. His use of force would be lawful and I must find him not guilty.

³⁹ Paragraph 7 of the first list of admissions: see [62] above.

- [267] The law of self-defence is drawn in fairly general terms to cover any situation that may arise. I have to apply it to the particular facts of this case. No two cases are exactly alike, so the results depend heavily on common sense and community perceptions.
- [268] If the violence of the attacker is such that the person defending himself reasonably fears for his life or safety, then the justifiable, or lawful, level of violence which may be used by the person attacked in self-defence will be greater also.
- [269] The level of violence in self-defence that is justifiable, or lawful, depends on the level of danger created by the attacker and the reasonableness of the defendant's reaction to it.
- [270] In assessing TAZ's state of mind I have to assess, looking at all the circumstances of the case, the level of physical menace that I think Angus was actually presenting before the fatal force was used by TAZ. I must bear in mind that a person defending themselves cannot be expected to weigh precisely the amount of defensive action which may be necessary. Instinctive reaction and quick judgment may be essential. I should not judge TAZ's actions as if he had the benefit of safety and leisurely consideration.
- [271] There is no burden on TAZ to satisfy me that he was acting in self-defence. The burden remains on the prosecution at all times to prove beyond reasonable doubt that TAZ was not acting in self-defence; that is, was acting unlawfully.

Self-defence against an unprovoked assault

- [272] Section 271 provides:

“271 Self-defence against unprovoked assault

- (1) When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for the person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.
- (2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person can not otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.”

- [273] Section 271(1) is excluded unless the force used is not intended, and is not such as is likely to cause death or grievous bodily harm.

- [274] Grievous bodily harm is defined in s 1 of the *Criminal Code* as follows:

“grievous bodily harm means—

- (a) the loss of a distinct part or an organ of the body; or

- (b) serious disfigurement; or
- (c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.”

- [275] I am satisfied beyond reasonable doubt that the force used by TAZ was at least likely to cause grievous bodily harm to Angus. Consequently, s 271(1) cannot apply here. The submissions for TAZ properly accepted this and expressly disavowed any reliance upon s 271(1).
- [276] In considering whether s 271(2) operates to excuse the killing, I must consider whether the prosecution has established beyond reasonable doubt any of the following:
- (a) Angus did not unlawfully assault TAZ; or
 - (b) TAZ provoked the assault by Angus; or
 - (c) the nature of Angus’ assault was not such as to cause reasonable apprehension of death or grievous bodily harm; or
 - (d) TAZ did not believe, on reasonable grounds, that he could not otherwise preserve himself from death or grievous bodily harm than by acting as he did.
- [277] It is the belief of the person making defence that the defence is necessary which is relevant. There must be reasonable grounds for the person to hold that belief, but s 271(2) does not require that force used be objectively necessary.⁴⁰
- [278] The first matter is whether TAZ was unlawfully assaulted by Angus. If I conclude that Angus did not first unlawfully assault TAZ, a defence under s 271(2) is not open.
- [279] Section 245 of the *Criminal Code* defines “assault” to include a bodily act or gesture by which a person threatens to apply force of any kind to another in circumstances where the person making the threat has an actual or apparent present ability to implement the threat. By s 246(1) of the *Criminal Code*, an assault is unlawful unless it is authorised or justified or excused by law.
- [280] I am satisfied beyond reasonable doubt that Angus’ initial actions—taking three steps towards the defendants while holding the knife down by his side and yelling at the defendants to “fuck off”—did not amount to an assault on TAZ. He was not threatening to apply force to TAZ when he did that. He was seeking an end to the confrontation.
- [281] The only assault by Angus on TAZ came after TAZ and SED had pulled their knives out and advanced aggressively towards Angus, forcing him to retreat three steps. The two large steps Angus then took towards TAZ was an assault. However, this was an assault made in response to the aggressive advance by TAZ and SED with their knives drawn: itself an unlawful assault. In circumstances where I have found that Angus did not invite or challenge the defendants to fight, I am satisfied beyond reasonable

⁴⁰ *R v Gray* (1998) 98 A Crim R 589; *R v Vidler* (2000) 110 A Crim R 77; *R v Wilmot* (2006) 165 A Crim R 14; *R v Saxon* [2020] QCA 85.

doubt that he did not provoke the defendants' aggressive advance. I am further satisfied beyond reasonable doubt that Angus' response to that aggressive advance did not go beyond what was reasonably necessary for him to make effectual defence against the assault by TAZ (in the company of SED). Angus did not use force against TAZ that was intended or was likely to cause death or grievous bodily harm to TAZ. This means that the assault of TAZ by Angus (two large steps taken during the fight) was lawful by reason of s 271(1). Accordingly, I am satisfied beyond reasonable doubt that TAZ was not unlawfully assaulted by Angus before TAZ struck the fatal blow with the knife.

[282] That conclusion means that the defence under s 271(2) is not open to TAZ. Nevertheless, I will explain my reasons for also concluding that the prosecution has excluded the defence in at least two other ways.

[283] I am satisfied that the prosecution has proved beyond reasonable doubt that TAZ provoked Angus' assault.

[284] Section 268(1) of the *Criminal Code* defines "provocation" to mean any wrongful act or insult, of such a nature as to be likely, when done to an ordinary person, to deprive him of the power of self-control, and to induce him to assault the person by whom the act or insult is done or offered.

[285] It has been suggested that I should treat Angus' assault on TAZ as unprovoked unless I am satisfied beyond reasonable doubt that the assault was provoked by TAZ.⁴¹

[286] In the circumstances of this case, I am satisfied beyond reasonable doubt that TAZ's actions in pulling his knife out and advancing aggressively towards Angus in company with SED was a wrongful act of such a nature as would cause an ordinary person in Angus' position to respond as he did. That is, I am satisfied beyond reasonable doubt that TAZ provoked the assault by Angus.

[287] I am also satisfied beyond reasonable doubt that there were not reasonable grounds for any belief on TAZ's part that he could not preserve himself from death or grievous bodily harm other than by stabbing Angus. That is because TAZ, along with SED, were the aggressors in the fight with Angus. Before the defendants' aggressive advance towards him, Angus sought to end the confrontation by yelling at them to "fuck off". He only fought when TAZ and SED rejected the opportunity to disengage from further conflict and return to where NH was waiting with the cannabis. As one of the aggressors, it remained open to TAZ to simply break off from the altercation and leave Angus and his friends alone. Based on Angus' actions before the defendants advanced aggressively towards him, I am satisfied beyond reasonable doubt that there were not reasonable grounds for TAZ to believe that, if he disengaged from the fight, Angus would pursue him and continue to threaten him or SED with the hunting knife.

[288] I am therefore satisfied that the prosecution has excluded beyond reasonable doubt self-defence under s 271(2).

⁴¹ *R v Kerr* [1976] 1 NZLR 335, 342.

Self-defence against a provoked assault

[289] I turn then to self-defence under s 272 of the *Criminal Code*. That section provides:

“272 Self-defence against provoked assault

- (1) When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults the person with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce the person to believe, on reasonable grounds, that it is necessary for the person’s preservation from death or grievous bodily harm to use force in self-defence, the person is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.
- (2) This protection does not extend to a case in which the person using force which causes death or grievous bodily harm first begun the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself or herself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.”

[290] There are four elements of a lawful defence to a provoked assault under s 272:

- (a) the person making defence unlawfully assaulted the deceased or provoked an assault from them;
- (b) the response from the deceased was so violent as to cause reasonable apprehension of death or grievous bodily harm;
- (c) the person making defence believed, on reasonable grounds, that it was necessary, in order to preserve himself from death or grievous bodily harm, to use force in self-defence;
- (d) the force in fact used was such as was reasonably necessary for the preservation of the person making defence from death or grievous bodily harm.

[291] There are then three qualifications in s 272(2). The defence will not operate:

- (a) if the person making defence first began the assault with intent to kill or to do grievous bodily harm to the deceased; or
- (b) if the person making defence endeavoured to kill or to do grievous bodily harm to the deceased before the necessity of so preserving himself arose;
- (c) unless, the defendant declined further conflict, and quitted it or retreated from it as far as was practicable, before the necessity to preserve himself from death or grievous bodily harm arose.

- [292] As the submissions for TAZ accepted, that the third clause in s 272(2) provides a qualification to the operation of s 272(1) has been established by Court of Appeal authority which is binding on me.⁴²
- [293] In considering the application of s 271(2), I have already found beyond reasonable doubt that, by advancing aggressively towards Angus with his knife drawn (in company with SED), TAZ unlawfully assaulted Angus and provoked Angus' assault upon him.
- [294] Therefore, for the prosecution to exclude the defence under s 272, it must satisfy me beyond reasonable doubt of any one of the following:
- (a) the assault from Angus in response to TAZ's advance was not of such violence as to cause reasonable apprehension of death or grievous bodily harm; or
 - (b) the assault by Angus did not cause TAZ to believe, on reasonable grounds, that it was necessary, for his own preservation from death or grievous bodily harm, to use the force he in fact used in self-defence; or
 - (c) the force TAZ in fact used was more than was reasonably necessary for TAZ to preserve himself from death or grievous bodily harm; or
 - (d) TAZ first began his initial assault with intent to kill or to do grievous bodily harm to Angus; or
 - (e) TAZ endeavoured to kill or to do grievous bodily harm to Angus before the necessity of preserving himself from death or grievous bodily harm arose; or
 - (f) TAZ did not decline further conflict with Angus before the necessity to preserve himself from death or grievous bodily harm arose and did not quit it or retreat from it as far as was practicable.
- [295] It is for the prosecution to satisfy me beyond reasonable doubt that self-defence does not apply. There is no burden on TAZ to satisfy me that he was acting in self-defence, or to establish any one of the matters I have outlined above. To negate the defence, the prosecution must prove, beyond reasonable doubt, any one of the matters mentioned above.
- [296] For the reasons I have already set out in considering the application of s 271(2) (see [287] above), I am satisfied beyond reasonable doubt that there were not reasonable grounds for any belief on TAZ's part that he could not preserve himself from death or grievous bodily harm other than by stabbing Angus.
- [297] For the same reasons, I am satisfied beyond reasonable doubt that the force TAZ used when he stabbed Angus was more than was reasonably necessary to preserve himself from death or grievous bodily harm.
- [298] Finally, in circumstances where TAZ and SED declined the opportunity to disengage from conflict with Angus before the fight began (see [249] and [250] above), I am satisfied beyond reasonable doubt that the third qualification in s 272(2) operates here.

⁴² *R v Dayney (No 1)* (2020) 10 QR 638; *R v Dayney (No 2)* [2023] QCA 62.

[299] I am therefore satisfied that the prosecution has excluded self-defence under s 272 beyond reasonable doubt.

Aiding in self defence

[300] Section 273 provides:

“273 Aiding in self-defence

In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself or herself against an assault, it is lawful for any other person acting in good faith in the first person’s aid to use a like degree of force for the purpose of defending the first person.”

[301] If SED was facing an assault by Angus that would cause reasonable apprehension of death or grievous bodily harm on SED’s part then TAZ is able to avail himself of s 271(2) and s 272 as those sections would have applied to SED, provided TAZ acted in good faith.

[302] The operation of s 273 requires consideration of the application of the self-defence provisions in s 271(2) and s 272 to SED. The submissions for TAZ stated, without elaboration, that this includes consideration of s 24 of the *Criminal Code* to the extent it applies to SED.

[303] Section 24 provides:

“24 Mistake of fact

- (1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.
- (2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.”

[304] TAZ’s submissions do not identify what honest and reasonable but mistaken belief SED held. This might be reference to a belief on SED’s part that the cannabis supplied by SJ was underweight. However, the existence of such a belief would not have justified or excused SED’s conduct in pulling his knife out and engaging in the fatal altercation with Angus. I cannot see how s 24 has any application to SED which bears upon the application of s 271(2) and s 272 to SED or the operation of s 273 in the case against TAZ.

[305] I turn then to consider the application of s 271(2) and s 272 to SED.

[306] As to s 271(2), for the same reasons set out at [280] above, I am satisfied beyond reasonable doubt that Angus’ actions before SED (along with TAZ) advanced aggressively towards him did not amount to an assault on SED. Subsequently, by kicking out and swinging the hunting knife at SED, Angus did assault him. However, this was done in response to the unlawful assault by SED and TAZ in advancing aggressively towards Angus and SED then coming at Angus again from his right-

hand side. Angus did not provoke the defendants' advance towards him (see [281] above). SED and TAZ were the aggressors. I am satisfied beyond reasonable doubt that Angus' response to SED's assault did not go beyond what was reasonably necessary for him to make effectual defence against it. Although Angus kicked and swung the knife at SED, these actions did not lead to the application of any force to SED. That is, Angus' kicks and swings did not connect with SED. Angus did not use force against SED that was intended or was likely to cause death or grievous bodily harm to SED. This means that the assault of SED by Angus was lawful by reason of s 271(1). Accordingly, I am satisfied beyond reasonable doubt that SED was not unlawfully assaulted by Angus. That conclusion means that the defence under s 271(2) would not have been open to SED.

[307] For the same reasons set out in considering the application of s 271(2) to TAZ's conduct (see [283] to [286] above), I am satisfied that the prosecution has proved beyond reasonable doubt that SED provoked Angus' assault.

[308] I am also satisfied beyond reasonable doubt that there were not reasonable grounds for any belief on SED's part that he could not preserve himself from death or grievous bodily harm other than by stabbing Angus. That is for the same reasons I gave in considering the application of s 271(2) to TAZ (see [287] above).

[309] I am therefore satisfied that the prosecution has excluded beyond reasonable doubt that self-defence would have been available to SED under s 271(2).

[310] As to s 272, for the reasons I have already set out in considering the application of s 271(2) to TAZ (see [287] above), I am satisfied beyond reasonable doubt that there were not reasonable grounds for any belief on SED's part that he could not preserve himself from death or grievous bodily harm other than by stabbing Angus. For the same reasons, I am satisfied beyond reasonable doubt that the use of force by SED to stab Angus would have been more than was reasonably necessary to preserve himself from death or grievous bodily harm. Finally, in circumstances where TAZ and SED declined the opportunity to disengage from conflict with Angus before the fight began (see [249] and [250] above), I am satisfied beyond reasonable doubt that the third qualification in s 272(2) would have operated to prevent the defence from applying in SED's favour if he had stabbed Angus.

[311] I am therefore satisfied that the prosecution has excluded beyond reasonable doubt that self-defence would have been available to SED under s 272.

[312] In circumstances where self-defence would not have been available to SED, I am satisfied that the prosecution has excluded aiding in self-defence under s 273 beyond reasonable doubt.

Conclusion on unlawfulness

[313] The prosecution having excluded beyond reasonable doubt self-defence pursuant to s 271(2) and s 272, and aiding in self-defence pursuant to s 273, I am satisfied beyond reasonable doubt that in causing Angus' death, TAZ did so unlawfully.

Fourth element: intention

- [314] The fourth element of murder pursuant to s 302(1)(a) of the *Criminal Code* is that when TAZ stabbed Angus he had at least an intention to do grievous bodily harm. Whether the killing of Angus by TAZ constitutes murder or only manslaughter will depend upon whether or not the mental element of intention is proved beyond reasonable doubt and, if it is, whether the defence of provocation operates to reduce what would be murder to manslaughter.
- [315] The mental element of intention is the extra element required to prove an unlawful killing constitutes the offence of murder. If it is not proved beyond reasonable doubt an unlawful killing would only be manslaughter. Having found that TAZ's actions unlawfully killed Angus, element four requires that the prosecution prove beyond reasonable doubt that, in so acting, TAZ intended to, at least, cause some grievous bodily harm to Angus. It is not for TAZ to prove anything.
- [316] I have set out the definition of grievous bodily harm at [274] above.
- [317] "Intention" carries its ordinary meaning. A person intends to cause grievous bodily harm if that is what the person meant to do.
- [318] In considering whether TAZ actually held such an intention, I will be drawing an inference from facts which I find established by the evidence concerning TAZ's state of mind. Intention may be inferred or deduced from the circumstances in which TAZ acted and from TAZ's conduct before, at the time of, and after TAZ's actions. Whatever TAZ has said about his intention may also be considered for the purpose of deciding whether he held the requisite intention at the time he acted as alleged.
- [319] While I can have regard to earlier and later events in considering whether the requisite intention existed, I should appreciate it is not necessary for the prosecution to prove the intention was held for a long time before TAZ's allegedly fatal actions or that the intention lingered afterwards. The time at which TAZ must be proved to have held at least the intention to do grievous bodily harm is the time at which he committed the act causing death.
- [320] For the element of intention to be proved I must be satisfied beyond reasonable doubt that in acting as he did TAZ actually held at least the intention to cause grievous bodily harm to Angus. Nothing less will suffice. What if I think the evidence may support more than one inference, so that there are competing potential inferences on this issue? There may be the guilty inference, that TAZ held the intention to do grievous bodily harm. There may also be inferences consistent with innocence, such as TAZ only holding an intention to defend himself, to repel Angus or holding no particular intention at all about what would result from his actions. In such a situation it is essential not only that the evidence is strong enough to sustain the guilty inference but that it is the only remaining inference, that is, that all inferences consistent with innocence have been excluded beyond a reasonable doubt. This merely reflects the prosecution's obligation to prove the element of intention beyond a reasonable doubt. It will not have done that if there lingers a real possibility TAZ held no particular intention to do harm in acting as he did, or if he did, that the harm intended was something less than an intention to do at least grievous bodily harm.

- [321] If I am not satisfied beyond reasonable doubt that TAZ had the requisite intention at the time of his alleged actions, then I would acquit TAZ of murder. In that event, having been satisfied beyond reasonable doubt of all the first three elements, I would convict TAZ of manslaughter.
- [322] If, however, I am satisfied beyond reasonable doubt that when TAZ stabbed Angus he at least intended to cause grievous bodily harm, then I may find TAZ guilty of murder. For that purpose, the question is not whether TAZ meant to stab Angus, but whether in stabbing Angus, TAZ intended to cause him grievous bodily harm.
- [323] Mr McCafferty KC's submissions on the element of intent (see [219] above) proceeded from the footing that TAZ was faced with an unexpected and emergent situation in which he and SED were being attacked and threatened by someone who was much larger and armed with knuckledusters and a large knife. As set out at [245] to [250] above, having viewed the CCTV footage I have found that Angus did not attack the defendants. He sought to get them to disengage from any further interactions. It was the defendants who advanced on Angus and instigated the fatal altercation.
- [324] I have considered what TAZ said about his state of mind in the first recording from his interactions with DSC Childs:⁴³ that he thought Angus was going to kill him. That evidence is not consistent with my viewing of the CCTV footage where TAZ and SED can be seen to be the aggressors in the fight with Angus. I do not accept that TAZ's conduct in stabbing Angus was an act of defence, whether in the sense of the statutory defences of self-defence or otherwise. TAZ did not stop his aggressive engagement with Angus after he had stabbed him. He lunged towards him again as Angus fell forwards towards the ground. Even taking account of TAZ's age at the time of the fight and his lack of maturity, I do not accept that his conduct in stabbing Angus was merely an attempt to repel Angus, done without any thought as to the consequences.
- [325] The CCTV footage shows that TAZ moved quickly and decisively once Angus' attention shifted away from TAZ and onto SED. TAZ advanced on Angus and stabbed him while Angus was facing towards SED. His strike with the knife to Angus' chest was swift and deliberate. Dr Phillips' evidence regarding the nature and location of the stab wound, and the force required to inflict that wound, also supports an inference that TAZ had at least an intention to do grievous bodily harm. Having regard to these matters and taking account of TAZ's young age and lack of maturity, that is the inference I have drawn. In my view, it is the only rational inference that can be drawn from the circumstances I have referred to.
- [326] I am satisfied that the prosecution has established beyond reasonable doubt that in causing Angus' death, TAZ did so having at least the intention of doing grievous bodily harm to Angus.

Partial defence of provocation

- [327] TAZ raises the partial defence of provocation pursuant to s 304 of the *Criminal Code*.
- [328] Section 304 provides as follows:

⁴³ Exhibit 20.

“304 Killing on provocation

- (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for the person’s passion to cool, the person is guilty of manslaughter only.
- (2) Subsection (1) does not apply if the sudden provocation is based on words alone, other than in circumstances of an exceptional character.”

[329] The law recognises that a person may be killed in circumstances where the defendant was so provoked by something done by that person as to lose the power of self-control, such that this provides an explanation for his actions which should be taken into account.

[330] Under our law if a person acts under provocation, the person is not guilty of murder but is guilty of manslaughter only. Provocation is therefore something which operates only as a partial defence, not a complete defence, because it reduces what otherwise would be a verdict of murder to one of manslaughter.

[331] In this context, provocation has a particular legal meaning. It consists of conduct which causes a loss of the power of self-control on the part of TAZ and which might have caused an ordinary person to lose the power of self-control and to act in the way in which TAZ did.

[332] The content and gravity of the provocative conduct must be understood and assessed from the viewpoint of the particular defendant.⁴⁴ With that assessment of the victim’s conduct towards the defendant, what must then be considered is whether the conduct was something which could or might deprive an ordinary person of the power of self-control and cause the defendant to do what he or she did. In any case where the defendant may be considered immature, by reason of his or her youthfulness, it is appropriate to attribute the age of the defendant to the hypothetical ordinary person in the objective test, or in other words, to apply the test to a hypothetical ordinary person of the defendant’s age.⁴⁵

[333] There are three questions of fact that are involved here. They are:

- (a) was there any provocation by Angus towards TAZ?
- (b) was TAZ actually provoked by Angus?
- (c) was TAZ acting, whilst provoked, when he did the act by which Angus was killed?

[334] The onus is on a defendant to prove that the partial defence of provocation applies. TAZ must satisfy me that, more probably than not:

- (a) there was provocation by Angus towards TAZ;

⁴⁴ *Stingel v The Queen* (1990) 171 CLR 312 (*Stingel*), 326.

⁴⁵ *Stingel*, 331.

- (b) TAZ was actually provoked by Angus;
- (c) TAZ was acting, while still provoked, when he did the act by which Angus was killed.

[335] As to the first question, I have to consider what TAZ argues was the provocation by Angus. In this case, the provocation identified by Mr McCafferty KC was Angus taking the knife from SJ and walking towards the defendants with a large hunting knife and knuckledusters, aggressively approaching them and inviting them to fight. In considering whether the prosecution has excluded self-defence under s 271(2) I have found that Angus' conduct in taking three steps towards the defendants and yelling at them to "fuck off" was not an unlawful assault. Angus sought to have the defendants disengage from further conflict with him and his friends. The defendants were the aggressors. It was their conduct which instigated the fatal altercation.

[336] I do not accept that Angus' conduct might have caused an ordinary 14-year-old boy to lose the power of self-control and to pull his knife back out and advance aggressively on Angus. In my view, at the point the defendants paused briefly and took a small step back as they came to the entrance to the carpark, an ordinary 14-year-old boy in TAZ's position would have taken the opportunity to heed Angus' words and leave the area without any violent engagement with Angus. I am not satisfied that TAZ has established on the balance of probabilities that there was any provocation by Angus towards him. The partial defence of provocation is therefore not available.

[337] The defence of compulsion does not extend to the offence of murder: see s 31(2) of the *Criminal Code*.

Conclusion on the case against TAZ

[338] The prosecution having satisfied me beyond reasonable doubt of each of the four elements to prove murder founded upon an intention to kill or do grievous bodily harm, I find TAZ guilty of the murder of Angus Richard Beaumont.

Reasoning to verdict for SED

[339] Having found TAZ guilty of the offence of murdering Angus, I must consider whether SED is also guilty of that offence under either s 7(1)(c) or s 8 of the *Criminal Code*.

Aiding, enabling or encouraging

[340] Section 7(1)(c) of the *Criminal Code* relevantly provides:

"7 Principal offenders

- (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

...

- (c) every person who aids another person in committing the offence; ..."

- [341] The prosecution alleges that SED aided, enabled or encouraged TAZ to murder Angus by:
- (a) pursuing SJ while SED and TAZ were armed;
 - (b) being deliberately present at the scene on Anzac Avenue, in company with TAZ, while they were armed;
 - (c) moving towards and attempting to injure Angus.
- [342] Section 7(1)(c) makes each person who intentionally aids another to commit an offence guilty of that offence. It is not only the person who actually does a criminal act (or makes a criminal omission) who may be found guilty of an offence. Anyone who aids—that is, assists or helps or encourages—that person to do it may also be guilty of the same or a less serious offence if they did it for the purpose of, or with an intention to, aid.
- [343] Proof of aiding involves proof of acts and omissions intentionally directed towards the commission of the principal offence by the perpetrator, and proof that the defendant was aware of at least the essential matters constituting the crime in contemplation. To aid means to assist or help.
- [344] The prosecution does not need to prove that the person who actually committed the offence has also been convicted. It is enough if the prosecution proves, not necessarily the identity of the perpetrator, but that there was a principal offender or perpetrator, and proof of the commission of an offence by that someone, and that the defendant aided that person to commit it. The prosecution must prove that that other perpetrator was guilty of committing the offence by evidence which is admissible against the defendant.
- [345] The prosecution must prove that the defendant knew that the type of offence which was in fact committed was intended; but not necessarily that that particular offence would be committed on that particular day at that particular place. It is not enough if the prosecution proves the defendant knew only of the possibility that the offence might be committed.
- [346] I may find SED guilty of the offence of murder only if I am satisfied beyond reasonable doubt of the following four matters:
- (a) TAZ murdered Angus;
 - (b) SED in some way assisted TAZ to murder Angus;
 - (c) SED assisted with the intention of helping TAZ to murder Angus;
 - (d) when SED assisted TAZ, he knew that TAZ intended to do grievous bodily harm to Angus.
- [347] SED can be found guilty of murder only if I am satisfied beyond reasonable doubt that, when SED did the acts said to have given assistance, he did so intending to help TAZ cause the death of Angus knowing that TAZ intended to cause grievous bodily harm to Angus. If I am not satisfied that SED knew that TAZ intended to cause grievous bodily harm to Angus, or if I have a reasonable doubt about it, then I must find SED not guilty of murder. If I am not satisfied of each of these matters beyond reasonable doubt, but on the evidence am satisfied beyond reasonable doubt that SED

did acts or made omissions for the purposes of enabling, aiding or encouraging TAZ to unlawfully assault Angus, then the prosecution would not have satisfied me beyond reasonable doubt that SED is guilty of murder on the basis of s 7(1)(c). In that event SED may be guilty of manslaughter, subject to defences under s 23(1) of the *Criminal Code*.

[348] Section 23(1) provides:

“23 Intention—motive

- (1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for—
- (a) an act or omission that occurs independently of the exercise of the person’s will; or
 - (b) an event that—
 - (i) the person does not intend or foresee as a possible consequence; and
 - (ii) an ordinary person would not reasonably foresee as a possible consequence.”

[349] Before I could find SED guilty of manslaughter, relying on s 7(1)(c), the prosecution must satisfy me beyond reasonable doubt that:

- (a) SED did the acts said to have given assistance for the purpose of assisting TAZ to unlawfully assault Angus;
- (b) he did those acts with the intention to enable, aid or encourage TAZ to unlawfully assault Angus;
- (c) he had actual knowledge that TAZ intended to unlawfully assault Angus; and
- (d) that the nature of the unlawful assault that he intended to enable, aid or encourage was such that Angus’ death was either actually foreseen by him or reasonably foreseeable by an ordinary person in his position.

[350] A defendant may assist or aid another by giving actual physical assistance in the commission of an offence, but it is not necessary for the prosecution to show actual physical assistance. Wilful encouragement can be enough, certainly if the defendant intended that the perpetrator should have an expectation of aid from the defendant in the commission of the offence. Where the prosecution alleges aiding by encouragement, such as from the presence of the person charged at the commission of the offence, the prosecution must prove both that the person charged as an aider actually encouraged the perpetrator in the commission of the offence, such as by presence at the scene; and also that the person charged intended to encourage the commission of that offence by his or her presence. Voluntary and deliberate presence during the commission of a crime without opposition or real dissent may be evidence of wilful encouragement or aiding.

[351] I have already found that TAZ murdered Angus.

- [352] I am satisfied beyond reasonable doubt that, by his actions during the fatal altercation, SED aided TAZ in striking Angus with the knife. It was SED's actions in coming at Angus from his right, drawing Angus' attention away from TAZ, which provided TAZ the opportunity to move towards Angus and strike him with the knife before Angus was able to react.
- [353] From the facts I have found at [248] to [250] above, I infer that from the point at which the defendants advanced aggressively towards Angus (after briefly pausing), SED: intended to engage in the fight with Angus while armed with a knife; was aware TAZ was similarly engaged while armed with his own knife; had actual knowledge that TAZ would use his knife to strike Angus if the opportunity arose. Those are the only rational inferences I can draw from the circumstances of the fight as I have found them to be based upon my consideration of the evidence. I am therefore satisfied beyond reasonable doubt that, when SED moved towards Angus and drew his attention away from TAZ, he intended to aid TAZ in striking Angus with the knife and had actual knowledge that TAZ intended to strike Angus with the knife.
- [354] However, I am not persuaded that there is a sufficient basis to infer that SED was aware TAZ would strike Angus in the chest using the force which he did or that, when he struck, TAZ intended to at least do grievous bodily harm to Angus. I am not satisfied that the prosecution has excluded beyond a reasonable doubt the hypothesis that TAZ's decision to strike Angus in the chest with the force that he used was made spontaneously and without the actual knowledge of SED. Accordingly, I am not satisfied beyond reasonable doubt that, when SED aided TAZ, he intended to help TAZ cause the death of Angus knowing that TAZ intended to cause grievous bodily harm to Angus. The prosecution has not satisfied me beyond reasonable doubt that SED is guilty of murdering Angus based on s 7(1)(c).
- [355] From the findings I have made at [352] to [353], I am satisfied that the prosecution has proved beyond reasonable doubt that SED:
- (a) through his actions during the fight, aided TAZ to unlawfully assault Angus;
 - (b) did the acts for the purpose of aiding TAZ to unlawfully assault Angus;
 - (c) did the acts with the intention to enable, aid or encourage TAZ to unlawfully assault Angus; and
 - (d) had actual knowledge that TAZ intended to unlawfully assault Angus.
- [356] From that point, I may find SED guilty of manslaughter if I am satisfied beyond reasonable doubt that the nature of the unlawful assault that he intended to aid was such that Angus' death was either actually foreseen by him or reasonably foreseeable by an ordinary person in his position.
- [357] Having regard to the size of the knife which TAZ must have used to stab Angus⁴⁶ and the fact SED was aware that TAZ was armed with such a knife, I am satisfied beyond reasonable doubt that the nature of the unlawful assault SED intended to aid—striking with a knife capable of causing significant sharp force injuries in the context of a dynamic fight—was such that Angus' death was reasonably foreseeable by an ordinary 14-year-old boy in SED's position. While I am not satisfied that the

⁴⁶ Based on the fact the stab wound had a measured depth of 137 mm.

prosecution has established that SED had actual knowledge that TAZ would strike Angus in the chest, I am satisfied it should have been apparent to SED from the circumstances of the fight that a blow of that sort was likely to be struck. An ordinary 14-year-old boy would reasonably foresee Angus' death to be the result of such a blow.

- [358] Accordingly, I am satisfied that the prosecution has established beyond reasonable doubt that SED aided TAZ in the unintentional killing of Angus and is guilty of manslaughter based on s 7(1)(c) of the *Criminal Code*.

Common unlawful purpose

- [359] It remains for me to consider whether the prosecution has established that SED is guilty of murder based on s 8 of the *Criminal Code*. That section provides:

“8 Offences committed in prosecution of common purpose

When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”

- [360] If two or more people plan to do something unlawful together and, in carrying out the plan, an offence is committed, the law is that each of those people is taken to have committed that offence if it is the kind of offence likely to be committed as the result of carrying out that plan.

- [361] For the prosecution to prove SED guilty relying on s 8, I must be satisfied beyond reasonable doubt:

- (a) that there was a common intention to prosecute an unlawful purpose (and I must consider carefully and in detail what was the alleged unlawful purpose, and what its prosecution was intended to involve);
- (b) that murder was committed in the prosecution or carrying out of that purpose (and I must consider carefully what was the nature of that actual crime committed);
- (c) that the offence was of such a nature that its commission was a probable consequence of the prosecution of that purpose.

- [362] A great deal depends on the precise nature of any common unlawful purpose, proved by the evidence in the light of the circumstances of the case, particularly the state of knowledge of SED. It is SED's own subjective state of mind as established by the evidence, which decides what was the content of the *common* intention to prosecute an unlawful purpose. That common intention is critical because it defines the restrictions on the nature of the acts done or omissions made which SED is deemed by the section to have done or made.

- [363] When considering what any common intention was, and what was any common unlawful purpose, I must consider whether I am satisfied beyond reasonable doubt that SED agreed to a common purpose:

- (a) that involved the possible use of violence;
- (b) to carry out a specific act; or
- (c) that involved inflicting some physical harm on Angus.

[364] The prosecution case against SED under s 8 is that he engaged with TAZ in the unlawful common purpose of armed robbery of SJ.

[365] As defined in s 409 of the *Criminal Code*, robbery involves a person stealing anything and, at or immediately before or immediately after the time of stealing it, using or threatening to use actual violence to any person in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen.

[366] I am not satisfied beyond reasonable doubt that SED and TAZ had a common intention to pursue the unlawful purpose of armed robbery. I have not accepted the prosecution case that, outside the toilet block, TAZ demanded SJ give him the cannabis which remained in his backpack. Instead, I have found that the more likely hypothesis is that TAZ demanded SJ give back the money which the defendants had paid. In any event, SED remained in the toilet block when TAZ made his demand. There is no direct evidence, and no sufficient basis to infer, that TAZ's demand (if it had been for the cannabis in SJ's backpack) formed part of some common intention held by SED and TAZ to prosecute an armed robbery.

[367] Accordingly, the prosecution has not satisfied me beyond reasonable doubt that SED is guilty of murder based on s 8.

Compulsion

[368] Having determined that SED is criminally responsible under s 7(1)(c) for the offence of manslaughter, I must consider whether the prosecution has excluded beyond reasonable doubt the defence of compulsion provided for in s 31 of the *Criminal Code*. That section provides:

“31 Justification and excuse – compulsion

- (1) A person is not criminally responsible for an act or omission, if the person does or omits to do the act under any of the following circumstances, that is to say—
 - ...
 - (c) when the act is reasonably necessary in order to resist actual and unlawful violence threatened to the person, or to another person in the person's presence;
 - (d) when—
 - (i) the person does or omits to do the act in order to save himself or herself or another person, or his or her property or the property of another person, from serious harm or detriment threatened to be inflicted by some person in a position to carry out the threat; and

- (ii) the person doing the act or making the omission reasonably believes he or she or the other person is unable otherwise to escape the carrying out of the threat; and.
- (iii) doing the act or making the omission is reasonably proportionate to the harm or detriment threatened.”

[369] The defence under s 31(1)(c) has three elements:

- (a) actual violence was threatened to the defendant or to another person in the defendant’s presence; and
- (b) the violence threatened was unlawful; and
- (c) the act done by the defendant was reasonably necessary in order to resist the threatened violence.

[370] The defence under s 31(1)(d) has four elements:

- (a) a threat was made of serious harm or detriment to the person or property of the defendant or another person; and
- (b) the person making the threat was in a position to carry it out; and
- (c) the defendant reasonably believed he or she or the other person was unable to escape the carrying out of the threat other than by the act alleged;
- (d) the doing of the act was reasonably proportionate to the harm or detriment threatened.

[371] There is no burden on SED to prove the defence applies. The burden rests upon the prosecution to exclude the application of the defence. To do that the prosecution must prove, beyond reasonable doubt, that at least one of the necessary factual circumstances elements was not present.

[372] The mere existence of a potential opportunity to render the threat ineffective by some alternative action is not determinative of whether an act is reasonably necessary. Matters of degree are involved, and I should consider how apparent and realistic the potential opportunity was in light of all of the circumstances in weighing up whether the act was reasonably necessary to resist the threatened violence.

[373] There might be a question as to whether, in considering the application of the defence to SED, the “act” referred to in s 31(1) is the act of TAZ as principal offender (stabbing Angus) or the acts by which I have found SED aided TAZ in the unintentional⁴⁷ killing of Angus (engaging in the fight together with TAZ). It is not necessary for me to address that question because, whatever act is considered, I am satisfied that the prosecution has proved beyond reasonable doubt that the defence does not apply to SED.

[374] As to the defence under s 31(1)(c), for the reasons set out at [280] to [281] and [306] I am satisfied that the prosecution has proved beyond reasonable doubt that the violence which Angus threatened to both TAZ and SED was lawful. Further, for the

⁴⁷ In SED’s case for the reasons set out at [339]–[358].

reasons set out at [287] and [308] I am satisfied the prosecution has proved beyond reasonable doubt that neither TAZ's act in stabbing Angus nor SED's act in engaging in the fight together with TAZ was reasonably necessary to resist the violence which Angus threatened. Accordingly, the defence under s 31(1)(c) does not apply to excuse either TAZ's act, for which SED is criminally responsible under s 7(1)(c), or SED's acts of aiding which render him criminally responsible.

[375] As to the defence under s 31(1)(d), for the reasons set out at [287] and [308] I am satisfied that the prosecution has proved beyond a reasonable doubt that there were not reasonable grounds for:

- (a) TAZ to believe that he, or SED, was unable to escape the threat of harm other than by him stabbing Angus; or
- (b) SED to believe that he, or TAZ, was unable to escape the threat of harm other than by him engaging in the fight together with TAZ.

[376] Accordingly, the defence under s 31(1)(d) does not apply to excuse either TAZ's act, for which SED is criminally responsible under s 7(1)(c), or SED's acts of aiding which render him criminally responsible.

Conclusion on the case against SED

[377] I find SED not guilty of the murder of Angus Richard Beaumont.

[378] I find SED guilty of the unlawful killing of Angus Richard Beaumont; that is, guilty of manslaughter.