



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2026] HCJAC 21
HCA/2025/346/XC

Lord Justice Clerk
Lady Wise
Lady Carmichael

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

APPEAL AGAINST CONVICTION AND SENTENCE

by

STACEY BALFOUR

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Ross KC; J Brannigan; Collins and Co Defence Lawyers
Respondent: E Campbell (Sol Adv) AD; the Crown Agent

10 June 2026

Introduction

[1] On 2 May 2025 both the appellant and her co-accused Cameron Woods were convicted of murder by a jury at the High Court of Justiciary at Glasgow. At an adjourned

diet on 24 June 2025, the trial judge sentenced the appellant to life imprisonment with a punishment part of 16 years.

[2] The appellant accepts that the judge was correct to direct the jury in line with the decision and reasoning of a full bench on joint criminal responsibility for murder:

Gardiner v HM Advocate [2024] HCJAC 44, 2025 JC 114. She challenges her conviction on the ground that the judge erred by directing the jury to reconsider an earlier incompetent verdict of guilty of culpable homicide. She argues that the judge ought to have recorded that initial verdict as one of acquittal. She also maintains that the judge failed to provide sufficient clarity in response to questions posed by the jury. She challenges her punishment part as excessive.

[3] The charge stated:

“(003) on 23 July 2023 at Maxwellton Court, Paisley you CAMERON WOODS and STACEY BALFOUR did assault Robert Fisher...and did repeatedly stab him on the head and body with a knife or other similar implement whereby he was so severely injured that he died on 27 July 2023 at the Queen Elizabeth University Hospital, Glasgow, and you did murder him.
you CAMERON WOODS did commit this offence while on bail, having been granted bail on 24 April 2023 at Glasgow Sheriff Court and 25 April 2023 at Paisley Sheriff Court.”

The prosecution case was that Mr Woods repeatedly stabbed and murdered the deceased and that the appellant bore joint criminal responsibility by acting in concert with him.

The evidence

[4] The jury heard from fourteen witnesses and facts were established in two joint minutes of agreement. The first established that paramedics attended at 0747 hours on 23 July 2023 in the general area of Maxwellton Court and found that the deceased had sustained two stab wounds to his chest. He was taken to hospital by ambulance. It was

found he had suffered a penetrating wound to his left lung and another to his heart. He died in hospital at 1244 hours. The joint minute also established the clothing worn by the appellant and Mr Woods when they were arrested by police officers and that a knife and key were found in possession of Mr Woods. The appellant accepted in her evidence that these items were hers. They were forensically examined. A second joint minute established that the appellant and Mr Woods were the people speaking in recorded phone calls on 4 August 2023 and 11 March 2024 and the transcript of their conversations. In her comprehensive report, the judge set out the evidence of each witness in detail.

[5] Leona Fisher is the deceased's sister and the partner of Damian McDowell. On 23 July 2023, she, Mr McDowell, Mr Woods, the appellant and the deceased were all drinking alcohol together in her flat at Maxwellton Court in Paisley. The atmosphere in the group was fractious. Mr Woods had brought a large knife, but she took it from him and placed it underneath where she was sitting. At one point, the appellant produced a pink "fake key" which concealed a small knife and said she had bought it for £15.00. Things calmed down for a while, but then everyone started to argue. Mr Woods and the deceased started to argue head-to-head. Ms Fisher tried to stop them, but the appellant punched her in the face which started a fight between her and the appellant. When they had finished fighting, Ms Fisher noticed that Mr Woods and the deceased had left the flat. She described herself as being "really drunk". The next thing she could remember was being outside in the street and seeing the deceased on the ground covered in blood. She could not recall seeing a weapon being used during the fighting in the flat. In cross-examination she accepted that neither the appellant nor Mr Woods had threatened anyone in the flat with the knives they had displayed and that the deceased was trying to cause trouble by starting arguments over nothing. The appellant was "very drunk" during the incident.

[6] Stuart McAndrew worked as a delivery driver for a takeaway on Maxwellton Street, Paisley. He explained that on 23 July 2023 he saw a man (the deceased) stumble into the takeaway shop from the direction of the Maxwellton Court high flats. He was covered in blood and said that he had been stabbed, tried to walk back outside, but fell on the pavement. The man's sister arrived. Mr McAndrew phoned an ambulance and paramedics arrived promptly.

[7] Various police officers spoke to apprehending, interviewing and taking statements from the appellant and Mr Woods. PC Adam Whitehead spoke to arresting Mr Woods and the appellant on 23 July 2023 as they were running along a cycle path a short distance away from Maxwellton Court, shortly after emergency services were called. On searching Mr Woods, he discovered a small pink key concealing a folding knife in his trouser pocket.

[8] PC Aleksandra Cisowska described stopping the appellant on the cycle path who, along with Mr Woods, had started running away. The appellant was compliant, did not seem unduly intoxicated and there was no difficulty in communicating with her. She had blood marks on her hands, face and clothing. She was cautioned but treated as a witness.

[9] In her witness statement, the appellant said that she and Mr Woods had been drinking in the flat at Maxwellton Court with Ms Fisher, Mr McDowell and the deceased. She said that Mr McDowell had been showing off a large knife, that she had argued with Ms Fisher and that Ms Fisher had assaulted her. The appellant said that the deceased had tried to fight with Mr Woods and Mr McDowell, that she tried to stop the fight, but that Ms Fisher punched her in the face. She said that Mr McDowell and the deceased left the flat together while she and Mr Woods ran down the stairwell of the building.

[10] On 24 July 2023, DC Karen Smith took a further statement from the appellant who explained how she knew the various people in the flat and how she and Mr Woods came to

be there. She said that Mr McDowall and the deceased kept going outside to fight and that Ms Fisher had removed a knife from Mr McDowall's clothing so it would be a "fair fight". She said that when she got home, she realised that she no longer had a pink key knife which she had bought online and had displayed to the others in the flat.

[11] Rachel Brown, forensic biologist, described a "drip trail" of the deceased's blood in the stairwell of the Maxwellton Court flats. Blood from the deceased, Mr Woods and Mr McDowall was found in Ms Fisher's flat. The appellant's blood was found in an area of heavy contact bloodstaining on one of the arms of a sofa in the flat. Ms Brown examined a small pink locking knife with a blade about 50mm long. There was bloodstaining on the knife, from the deceased and Mr Woods. DNA from each of the appellant, Mr Woods and the deceased was detected on the handle of the knife. In the appellant's case it was likely to come from skin cells. Blood present on Mr Woods' clothing came from the deceased.

[12] The appellant's clothing bore blood from the deceased, Mr Woods and the appellant. The findings could be explained by the appellant being close to a force acting on Mr Woods' wet blood and being in contact with the deceased whilst the deceased was bleeding. Accordingly, the findings permitted the inference that the appellant had been close to, or involved in, an assault on the deceased, and in contact with him whilst he was bleeding. The deceased was bleeding before he left the flat.

[13] Dr Julia Bell, pathologist, explained that the cause of death was a stab wound to the heart. It appeared that the deceased had been stabbed twice in the chest. He had also sustained another stab wound to his chest, and two stab wounds to his lower back. The pink knife could have caused the deceased's injuries. He had also sustained injuries to his head, face, arms and hands. It is apparent from speeches at trial and submissions in the appeal that the appellant had a stab wound to his cheek and several incised wounds caused

by a knife to the left side of his face and to the back of his head. Wounds to his arms were consistent with defensive injuries sustained if the deceased put his hands up to shield himself from a knife.

[14] The jury saw CCTV footage seized and compiled by the police. It showed the arrival of the appellant and Mr Woods at Maxwellton Court; the deceased stumbling downstairs and exiting through the building's fire door; the appellant and Mr Woods coming down the building's internal stairwell; the appellant and Mr Woods exiting the building; Ms Fisher and the appellant in an altercation; and the appellant and Mr Woods heading towards a cycle path.

[15] DC Gary Bruce also spoke to audio recordings of calls between Mr Woods and the appellant during Mr Woods' time in prison on remand. The judge reports that during the calls Mr Woods made admissions to killing the deceased, although he denied murder. The following exchange between the appellant and Mr Woods was also recorded:

Mr Woods: ... my lawyer was saying the day, he's like that, I hink we should take this aw the wae ye. Because he's chased you's (*sic*) doon the stairs efter you's vacated the premises, you's got tae that door that was stuck before you pulled the knife oot. He thinks ah'll get acquitted and I'll walk straight oot the door. I'll maybe dae nine month on remand, a year on remand or whatever, but he thinks I'll walk

Appellant: Aye but my, what's your lawyer saying cause my dad said they might, ehm during the trial they might hingmy me cause I had that, cause it was mine.

Mr Woods: Aye, they maybe, they maybe bring you up, aye.

Appellant: Will, will, will, I not get charged for carrying?

Mr Woods: Naw obviously, cause she told the polis it was her knife. Naw they'll no charge you babe, don't be silly. Stacy they're no goanna worry about whose knife it wis cause it wis me that hud it in ma pocket anyway.

Appellant: Obviously but it's a bright pink knife.

Mr Woods: Aye I know but listen it was me that had it in my pocket and I hawnded it to the coppers. So even though you said it was your knife, it was me that had it in my possession. Just because you said it's your knife and you took it up tae that hoose, it was me that hud it when the polis came. Do you know whit a mean? That's like you having drugs, geein them tae me.

The appellant's evidence

[16] Mr Woods did not give or adduce evidence. The appellant did, explaining that she was 24 and the mother of a primary school age child. Her relationship with Mr Woods started at the beginning of 2023.

[17] On 23 July 2023, Mr Woods had been invited to Mr McDowell and Ms Fisher's flat. The appellant assumed she was also invited. She knew the deceased and got on well with him. She also knew Ms Fisher. She did not know Mr McDowell very well. When she and Mr Woods arrived at the flat, Mr McDowell, Ms Fisher and the deceased were there. The deceased was quite intoxicated and said he had been sick. The others were "a bit drunk". The deceased and Mr McDowell were arguing, and Ms Fisher was trying to calm things down. The appellant explained that she had bought a pink key knife a month or so before the incident on a TikTok site offering self-defence items for women. She kept the knife on her house-key chain. She did not recall displaying the pink knife in the flat but accepted that she must have done so if Ms Fisher had told the police that she had. She described becoming very warm in the flat, removing her fleece and borrowing a T-shirt from Ms Fisher. Her keys and the knife were still in the pocket of her fleece when she removed it.

[18] At one point, the appellant became involved in a fight with Ms Fisher. The appellant said that her hair was pulled and she could not dispute that she may have punched Ms Fisher. She had been "very drunk" and could not remember much of what went on in the flat, leaving it, or encountering the police on the cycle path. Her next memory was of

being in the police station. She had no memory of the incident in which Mr Fisher was killed. When she spoke to Mr Woods on the telephone he was talking about what might have happened, but she had no memory of what he was suggesting.

[19] In cross-examination, the appellant was adamant that she could not recall how the fatal wound to the deceased had been inflicted. She did not recall handing the pink knife to Mr Woods and she did not know how it came to be in his possession.

Speeches

Crown

[20] The deceased had been the victim of an assault in which he was stabbed and cut repeatedly in a frenzied and murderous attack by Mr Woods using the pink knife brought by the appellant. The jury should find that the appellant was involved in the attack, had knowledge of the knife used to inflict the fatal blow and was acting in concert with him. When the altercation between the deceased and Mr Woods began, the appellant punched Ms Fisher in the face, preventing her from splitting the fight up and allowing Mr Woods to continue his attack. The appellant had brought the knife to the flat, and the jury could conclude that she was aware that it had come to be in Mr Wood's possession since the knife must have been detached from the house-key chain, either by her, or by Mr Woods who then returned the keys to her. The jury were reminded of the prison telephone call, during which there was discussion of the knife used to stab the deceased and an analogy drawn with the "giving" of drugs to someone. It certainly demonstrated that she knew that the knife Mr Woods had used was hers. In any event, the forensic evidence allowed the jury to infer that the appellant had been involved in or was close to the assault on Mr Fisher. The appellant had lied to the police by attempting to blame Mr McDowell for attacking the

deceased and by claiming to have no recollection of what had occurred. The CCTV footage showed that there were almost four minutes when the appellant and Mr Woods were alone in the flat with the deceased.

Mr Woods

[21] The jury should find that Mr Woods had stabbed the deceased in self-defence. The deceased had been intoxicated, aggressive and the author of his own misfortune. The Crown had failed to prove what had occurred in the flat. It was open to the jury to acquit Mr Woods by reason of self-defence, or, at most, convict him of culpable homicide based on provocation.

The appellant

[22] The Crown were stretching the evidence too far. The appellant had made some poor decisions, particularly her purchase and possession of the small pink knife, but there was no evidence that the appellant knew that the knife was being used by Mr Woods in his attack on the deceased or that she was involved in the attack. There was no evidence of how Mr Woods came to have her knife.

The judge's charge

[23] The judge directed the jury on how to treat circumstantial evidence. She directed that should they believe the appellant's account, or if it left them in reasonable doubt of her guilt, they would acquit her. The verdict signals that the jury rejected the appellant's account.

[24] The judge defined both murder and culpable homicide before giving conventional directions on both antecedent and spontaneous concert, using typical examples including:

“Suppose one person in a group of three picks a fist fight with someone in the street. If the two others in the group then join in punching the other person, they would also be guilty of assault by punching after each of them joined in...

Suppose the initial attacker unknown to the others had a knife and stabbed the other person. All three would be guilty of assault by punching, but only the first would be guilty of assault by stabbing. And that is because using the knife was not expected by the others. But if the other two saw the knife was being used or must have known that was being used and continued punching the other person, they would also be guilty of assault by stabbing because they had accepted that escalation of violence in the joint criminal purpose.”

[25] A little further on she explained:

“ The essence of the crown case ... as I understand it, is this. That the first accused Mr Woods wielded a knife which he used to inflict the fatal wound on the deceased Robert Fisher. And the crown case, as I understand it, is that the second accused Ms Balfour acted in concert with Mr Woods. And is jointly responsible for his act because she participated in the attack upon Mr Fisher knowing that the knife was being used. The Advocate Depute in her speech set out the reasons why she argued that you could be satisfied of that (emphasis added).

Counsel for Ms Balfour, Mr Ross, said in his speech that no such conclusion can be drawn...”

[26] If the jury were satisfied that there was a joint attack on the deceased, that Mr Woods used a knife intending to kill him or with wicked recklessness and that the appellant knew or must have known that the knife was being used and continued the attack, they could find both accused guilty of murder. She explained on antecedent concert:

“If people acting in concert have reason to expect that a weapon will be used... and in this case, as I understand it, it is suggested by the Crown that ... it is open to you to infer that [the appellant] must have foreseen that the knife may be used to cause serious injury. If you do so conclude ... the appropriate verdict would be guilty of murder.”

[27] She then explained on spontaneous concert:

“Where the crime is spontaneous, acts done that are known or must have been known to others who then continue their participation are the responsibility of

everyone involved. Acts outwith the knowledge of the other participants are the responsibility only of those who committed them. So for example, if an accused person is part of an assault by kicking or punching but had no reason to anticipate the use of a knife or some other weapon and stopped or disassociated themselves, you could convict that accused of no more than assault, irrespective of whether you found any other accused guilty of murder." (emphasis added)

[28] The judge concluded her directions on concert as follows:

"In this case, if you thought Mr Woods was the inflictor of the fatal blow and wasn't acting in self-defence but lacked the intent or wicked recklessness needed for murder, you could convict him only of culpable homicide. In that event, if you consider [the appellant] knew, must have known or that for her it was foreseeable that Mr Fisher would be killed, then [the appellant] would be guilty of culpable homicide if she actively associated herself with the joint purpose by word or by action (emphasis added).

If an accused person participates in a less serious common criminal purpose and had no reason to anticipate the use of serious violence in the course of which the deceased died, you could convict that accused of no more than assault, irrespective of whether another accused is found guilty of culpable homicide..."

Jury questions, initial verdict and additional directions

[29] During their deliberations, the jury posed three questions for the judge:

- (i) Is "accessory to murder" an option, or does it have to be "not proven", "guilty", "not guilty"?
- (ii) If [the appellant] was present, and it was her knife, is that "acting in concert"?
- (ii) If [the appellant] was aware her knife was being used to stab [the deceased], is that acting in concert?

[30] The judge explained:

"Now, the words "accessory to murder", they're just not something which feature in Scot's law in the verdicts which are open to you in Scot's law. If your verdict for any accused is guilty of the charge of murder, you would say guilty. And I explained to you, you have the power to make deletions. If your verdict was one of guilty of culpable homicide, you would say guilty of culpable homicide. And if your verdict was one of acquittal, you would say either not proven or not guilty dependent upon what you have decided." (emphasis added)

She then repeated, almost *verbatim*, the directions already given on concert.

[31] After further deliberation, the jury indicated that they unanimously found Mr Woods guilty of murder, and by a majority found the appellant guilty of culpable homicide. This purported verdict was not recorded.

[32] The judge and parties agreed that the verdict returned was incompetent. It was not open to the jury to return differentiated homicide verdicts where the Crown case was based on concert: *Gardiner*. The Advocate Depute submitted that the appropriate course was to provide the jury with additional directions and to instruct them to deliberate further: *Goldie v HM Advocate* [2020] HCJAC 9, 2020 JC 164. Senior Counsel for the appellant submitted that the verdict ought to be recorded as an acquittal, since the jury had indicated they were not satisfied beyond reasonable doubt of the appellant's guilt of murder.

[33] Whilst the Crown and appellant considered that the judge should accept Mr Woods' verdict of guilty to murder, his counsel disagreed and proposed that the whole verdict was inconsistent with the judge's directions and incompetent. It had been open to the jury to convict both of murder and both of culpable homicide.

[34] The judge considered that by their purported verdict the jury revealed a misunderstanding of concert. The verdict was self-contradictory and was inconsistent with her directions. It was not a competent verdict. She did not consider that the jury's purported verdict of guilty of culpable homicide for the appellant was only capable of being interpreted as one of acquittal of the appellant. The jury had appeared to indicate that they were satisfied that the appellant bore criminal responsibility for the killing of the deceased. The appropriate course was to explain why their verdict was incompetent, give further directions on concert and then invite them to consider their verdict in respect of both accused.

[35] The judge considered it better to allow the jury to reconsider the whole verdict when something fundamental had gone wrong. She noted that the appellant acknowledged that if all verdicts were open to both accused, the appellant could properly be convicted of culpable homicide if that should be the verdict for Mr Woods. Having considered *Goldie* and the court's review of earlier cases on problematic verdicts, she resolved that she should give further directions explaining why the verdict was incompetent and on concert.

[36] When the judge gave further directions, first in response to jury questions and then in response to the incompetent verdict, she consistently directed that in order to convict the appellant of murder they must be satisfied that she knew or must have known that Mr Woods was using a knife and continued her participation in the attack on the deceased.

Note of Appeal

[37] Whilst the judge was correct to hold the jury's original verdict incompetent standing the decision and reasoning in *Gardiner*, the judge ought to have directed the jury to confine their further deliberations to whether their verdict was one of not guilty or not proven since the initial verdict indicated the jury's clear rejection of the Crown's case that the appellant was guilty of murder art and part. In redirecting them, the judge ought to have made it more clear to the jury that no fewer than eight of their number required to be in favour of convicting the appellant on a charge of murder before they could convict her of murder.

[38] Secondly, the judge's response to the jury questions was inadequate. The second and third jury questions ought to have been answered firmly in the negative prior to the judge repeating her earlier directions on concert. The judge's omission served only to confuse the jury and led to a miscarriage of justice.

The judge's response

[39] In addition to explaining her reasoning as narrated at paras [34] and [35] above, the judge reports that everyone agreed that the issue was concert and that she stated that she would repeat her directions on it. She considered that doing so would provide the answer to the second and third questions without the risk of misleading and confusing the jury by attempting "yes" or "no" answers.

Appeal submissions*Appellant*

[40] The jury's questions showed they had misunderstood parts of the judge's directions and that the jury sought to attach some guilt in law to the appellant for bringing the knife to the flat but in the absence of any active participation in the murder of the deceased. Rather than simply repeating the directions already given, the judge ought to have emphatically explained why that approach was wrong. She ought to have directed the jury that if they were only satisfied that the appellant had been present and that her knife was the murder weapon, as was posed in question (ii), that fell short of what was required for a finding of guilt art and part. The position was the same in respect of question (iii). The judge should have expressly directed that simply being aware that her knife was being used by Mr Woods fell substantially short of what was required for a conviction.

[41] The jury's initial verdict for Mr Woods was competent and ought to have been recorded as such. It was clear that the jury had rejected the Crown's invitation to convict the appellant of murder. In those circumstances, the judge should have directed the jury to resume deliberations for the sole purpose of determining whether the verdict should be one of not proven or not guilty.

[42] In the alternative, it had been made clear by their initial verdict that not less than eight jurors had rejected the Crown case. In redirecting them, the judge ought to have made it more clear to the jury that no fewer than eight of their number required to be in favour of convicting the appellant on a charge of murder.

[43] This point was not pressed in the appeal hearing and is groundless as the judge made it plain that there required to be eight votes for a guilty verdict and once the jury had determined that what Mr Woods had done was murder there was only one guilty verdict available if the jury found that the appellant was acting in concert with the appellant: guilty of murder. Counsel for the appellant did not invite the jury to convict the appellant of culpable homicide or assault, he invited them to acquit. The judge did not direct the jury that a verdict of assault was available in respect of the appellant. Whilst the appellant had given notice of an intention to seek leave to add a third ground of appeal, senior counsel no longer wished to do so given the content of the judge's supplementary report and the Crown's additional written submissions.

Crown

[44] There was no error in the judge's response to the jury's questions. Directions, including additional directions, ought not to be considered in isolation. The original directions were clear, accurate and explained the relevant issues that the jury required to consider when assessing whether the appellant had acted in concert with Mr Woods. One of the examples given was particularly pertinent. Given the clear original directions, there was no need for the judge to state expressly that mere presence or involvement in earlier assaults was not enough: *Sim v HM Advocate* [2016] HCJAC 48, 2016 JC 174 [33].

[45] In any event, the additional directions given by the judge were sufficient to answer the jury's questions. The judge made it clear to the jury that if they were satisfied that there was a joint attack on the deceased and that the appellant knew or must have known that the knife was being used and continued in the attack regardless, they could find the appellant guilty of murder art and part. It was clear to the jury what was required to find the appellant guilty of murder.

[46] The judge did not err by refusing to record the original verdict as one of acquittal. It indicated that the jury were satisfied that the appellant had acted in pursuance of a common criminal purpose which involved the use of a weapon and of which serious injury or death was a foreseeable consequence but that she lacked the necessary intent for murder. The verdict of guilty for culpable homicide, unlike that in *Kerr v HM Advocate* 1992 SLT 1031, indicated that it was the jury's intention to convict the appellant. The judge's approach is supported by appellate guidance in cases where there was an obvious intention to convict rather than to acquit: *Took v HM Advocate* 1989 SLT 425; *White v HM Advocate* 1990 JC 33; *Cameron v HM Advocate* 1999 SCCR 476; *Goldie*. The circumstances were distinct from cases where it was clear that there was a requirement for the jury to change their votes or their assessment of the evidence: *Kerr*; *SS v HM Advocate* [2023] HCJAC 48, 2024 JC 113.

Decision: appeal against conviction

[47] The pathology and forensic evidence were important in this trial. The pathology demonstrated that the five stab wounds to the deceased's torso were only part of a multiplicity of attempts to stab him because he had additional incised wounds to his head and defensive injuries to his arms. The findings of the deceased's blood on the appellant's clothing suggested that she was in close proximity when blows were being inflicted on the

already bleeding Mr Fisher. The findings were consistent with the appellant participating in an assault on Mr Fisher that the jury properly considered murderous. They were supported by the evidence of Ms Fisher, the CCTV footage and the other circumstantial evidence described above. The sheer number of blows aimed at Mr Woods with a conspicuously visible knife (as the appellant put it in the recorded phone call “obviously it’s a bright pink knife”) belonging to the appellant, alongside the whole evidence, made the jury’s conclusion that she participated in the assault with the requisite knowledge almost inevitable.

[48] As we have noted above, when the judge gave further directions, first in response to jury questions and then in response to the incompetent verdict, she consistently directed that in order to convict the appellant of murder they must be satisfied that she knew or must have known that Mr Woods was using a knife and continued her participation in her attack on the deceased. The formulation, “knew or must have known” has not been challenged and was sound: *Mcfadden v HM Advocate* [2009] HCJAC 78, 2009 SCCR 902 at [38] and [41].

[49] It was a matter of judgement and discretion how best to answer the jury questions. No issue is taken with the judge’s answer to the first question. When it came to the second and third questions, a simple yes or no answer would not have been adequate. Nor would the answers proposed by the appellant constitute a proper direction as they would require further explanation on the basis on which the appellant could be convicted and part which, in this case, would be of murder if the jury determined that Mr Woods was guilty of murder. Whilst it might appear more helpful to have essayed answers more directly responsive to the questions, there were hazards in doing so, potentially adding to the jury’s confusion by using different language from the standard directions already given.

[50] The additional directions given, whilst substantially repeating what had gone before, were correct in law and provided the key answer to the second and third questions: to be

convicted the appellant must have participated in the assault knowing that her co-accused was using a knife.

[51] It was when the judge stripped out extraneous examples of concert and gave the core of her directions on concert that the jury reached a verdict that was properly open to them on the evidence following their rejection of the appellant's account. We are not persuaded that the judge erred in responding to the questions as she did and we reject this ground of appeal.

[52] By declining to accept both verdicts when the incompetent verdict was returned, the judge was fair to both the appellant and Mr Woods. It left open the possibility of the jury convicting both the appellant and Mr Woods of culpable homicide. Proceeding in that way was the only way in which the jury could have returned a competent verdict of culpable homicide for the appellant if that was what they really wished to do. Had the judge recorded the jury's verdict against Mr Woods, then the option of the appellant being guilty of culpable homicide was lost. The only options would have been guilty of murder or acquittal, and the jury did not acquit the appellant. Their verdict of guilty of culpable homicide could not be treated as if it was an acquittal. It seems clear that the jury considered the appellant to bear joint criminal responsibility for Mr Wood's murderous assault.

[53] In *Kerr*, the votes cast fell short of the eight votes of guilty necessary for a conviction hence the verdict should have been accepted as an acquittal. In *SS*, the only basis for conviction was mutual corroboration. The returning of a verdict demonstrated by necessary implication (given the judge's directions) that the jury had not accepted the evidence of a complainer on a charge when it was essential that they did if they were to convict the

accused of any charge by mutual corroboration. The judge should have treated the incompetent verdict as an acquittal and recorded it as such.

[54] That is not the position in the appellant's case. In a situation where the purported verdict did not signal that the jury had reached a final verdict of acquittal, and the "verdict" was inconsistent with her directions, the judge was entitled and, in our view, correct to invite the jury to retire and reconsider their verdict: *Cameron* noted with approval in both *Goldie* and *SS*. There is no miscarriage of justice and the appeal against conviction is refused.

Appeal against sentence

[55] The appellant founds on having no previous convictions, certain traumatic experiences in her childhood, her age when she committed the offence and its implications.

Justice Social Work Report

[56] The appellant was 22 at the time of the offence and 24 when sentenced. She was a first offender. The appellant maintained her innocence and refused to discuss the circumstances of the offence on legal advice pending her appeal against conviction.

[57] The appellant said she was the victim of serious offending when she was 14 causing her to suffer poor mental health, for which she was referred to the Child and Adolescent Mental Health Service. She has been prescribed appropriate medication. Records disclose that she attempted to overdose on medication in May 2020. She has a history of alcohol and cocaine use and has had several relationships that she described as physically and emotionally abusive. Her 6-year-old child has been taken into the care of the appellant's mother several times. The appellant left school after fourth year with no qualifications and

has no employment history beyond volunteering in her mother's shop. The appellant gave accounts of impulsive behaviour and regular suicidal thoughts.

Victim Impact Statements

[58] The judge considered statements prepared by the deceased's mother and by the mother of the deceased's child. The former described the devastation she felt at her son's death. She became distrustful of others and felt alone in her grief. The deceased was well-liked and was a very caring son to her. He had been trying to better his life and she grieved that he would not see his daughter grow up. The latter spoke of the effect on the child of losing her father. It was difficult to explain things to her and to support her.

The judge's reasons

[59] In selecting a punishment part, the judge took account of the seriousness of the offence, the JSWR, senior counsel's plea in mitigation, the Victim Impact Statements, the *Sentencing Young People* guideline and the cases of *Haig v HM Advocate* [2024] HCJAC 28, 2025 JC 9 and *RH v HM Advocate* [2025] HCJAC 16 to which senior counsel had referred.

[60] The appellant was 24 at the time of sentencing and at the upper end of the range of persons to whom the *Sentencing Young People* guideline applied. The appellants *Haig* (16) and *RH* (16) were both teenage offenders. It was appropriate to differentiate between the appellant and Mr Woods (sentenced to life imprisonment with a punishment part of 18 years and 6 months) in setting their respective punishment parts to account for their different roles in their murderous attack.

Written submissions for the appellant

[61] The punishment part was too long given the appellant's age and personal circumstances. The judge had failed to take account of the absence of previous convictions and the significant trauma experienced by the appellant in her youth. Had the judge properly applied the *Sentencing Young People* guideline, she would have given greater weight to the appellant's mental health difficulties, the trauma she had suffered and her adverse childhood circumstances.

[62] Senior counsel simply adopted these submissions in the hearing whilst acknowledging that the court's recent opinion in *McLachlan v HM Advocate* [2026] HCJAC 14 did not assist the appellant.

Decision: sentence

[63] The jury convicted the appellant art and part of a vicious and sustained attack with a knife that she provided. She participated in the attack. There is no indication that she sought to restrain her co-accused. She did nothing to seek assistance for their victim, instead removing herself from the scene along with her co-accused before attempting to run away from the police. Far from showing immediate remorse, she misled the police in their investigations. The implication of the number and nature of injuries sustained by the deceased is that this was a frenzied and savage attack. There were five stab wounds to the torso, including the fatal wound to the heart, knife wounds to the deceased's head and defensive injuries to his arms.

[64] In *McLachlan*, this court repeated at [40] that whilst the implications of youth bear on a young offender's culpability, they do not mitigate harm. Whilst the appellant has not founded on comparison, the sentence passed on Mr Woods is relevant. Given the guidance

in *HM Advocate v Boyle* [2009] HCJAC 89, 2010 JC 66, endorsed as relevant in *McLachlan*, the sentence imposed on Mr Woods was appropriate. He was the principal actor and in control of how much violence he used. The appellant was guilty art and part, and her punishment part was lower. Allowing for her status as a first offender, her difficult background, that she fell within the ambit of the *Sentencing Young People* guideline (towards the upper end of its scope) and the importance of her being a parent of a young child, we are not persuaded that a punishment part of 16 years for her significant role in this vicious murder, committed with her knife, and for which she showed no remorse, was excessive. The appeal against sentence is refused.