APPEAL COURT, HIGH COURT OF JUSTICIARY

[2026] HCJAC 13
HCA/2025/395/XC

Lord Justice Clerk
Lord Matthews
Lord Clark

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

APPEAL AGAINST CONVICTION

by

PATRICK DAVID MCGROW

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Collins, Sol Adv; Faculty Services Ltd (for Bridge Legal Ltd, Glasgow)
Respondent: Farrell, AD; the Crown Agent

14 April 2026

Introduction

[1] The appellant challenges his conviction for attempted murder of his brother by stabbing him repeatedly with a knife on the ground that the judge failed adequately to direct the jury on the requirements of self-defence in a case where, the appellant maintains, it was open to the jury to find self-defence made out despite evidence to the effect that he started a fight whilst armed with a knife. For the purposes of the appeal, the court was provided with

transcripts of the evidence of a senior charge nurse from Glasgow Royal Infirmary who had dealings with the appellant, the Crown and defence speeches and the judge's jury directions.

[2] On 9 July 2025 at the High Court in Glasgow, the judge imposed an extended sentence of 12 years with a 10-year custodial term following the appellant's conviction on 27 May 2025 of the following charge:

> " on 13 January 2024 at [an address in Glasgow] you PATRICK DAVID MCGROW, also known as DAVID MCGROW, did assault Andrew McGrow … and did repeatedly strike him on the head and body with a knife or similar implement, to his severe injury, permanent disfigurement, permanent impairment and to the danger of his life and did attempt to murder him."

The evidence

[3] The judge reports that there was evidence of a history of animosity between the brothers and that they had argued earlier on 13 January 2024 at the complainer's home where the crime was committed. The complainer had invited the appellant to return so they could clear things up. The judge inferred that they had argued and a fight developed in which certain injuries were sustained by the complainer and appellant. The complainer did not report what happened to the police and did not cooperate with their inquiries. The police became involved on being contacted by staff at the hospital where the complainer, and later the appellant, were treated.

[4] Many facts were established in an extensive joint minute including identification of the appellant as the person various witnesses were referring to, the taking of swabs and a trail of blood from the locus, CCTV footage from a nearby pub, photographs, the taking of DNA samples from the appellant and complainer and certain DNA findings. The joint minute also established that the complainer sustained injuries that were severe, permanently

disfiguring, caused permanent impairment, were to the danger of the complainer's life and that they were consistent with being inflicted by a knife or similar implement.

[5] A barmaid spoke to the complainer leaving a local bar, uninjured, at 1700 hours having spent two hours there. At 1710, the mother of the appellant and complainer received a phone call from the complainer stating, "Ma, I've been stabbed." We note that whether the complainer's words are viewed as part of the *res gestae*, which is certainly tenable, or a statement made *de recenti,* the report of his comment was admissible evidence to prove that the complainer had been stabbed: *O'Shea* v *HM Advocate* [2014] HCJAC 137, 2015 JC 201; *Lord Advocate's Reference (No 1) of 2023* [2023] HCJAC 40, 2024 JC 140; *Lord Advocate's References (Nos 2 and 3) of 2023* [2024] HCJAC 43, 2025 JC 200. She went to the complainer's house to find him in a bad state, seriously injured and unable to see from one eye. The house was showing signs of a disturbance with blood throughout. The complainer told her, falsely, that nothing had happened and then said, again falsely, that he had been attacked in a lane. She, her daughter and husband took the complainer to hospital. The appellant was seen after the time when the assault must have occurred in the same bar by the barmaid who saw the complainer earlier. The appellant had blood on his hands, was animated and, at one point, gestured towards his own eye.

[6] A police officer spoke to attending at the locus and concluding that a violent disturbance had taken place from the distribution of blood staining. A forensic scientist spoke to the DNA findings. The appellant's DNA was found on swabs taken from the hallway and garden path at the locus and on a bottle recovered nearby. DNA findings within the locus were consistent with the complainer residing there.

[7] The jury saw photographs of blood at the locus. Another witness spoke to the appellant arriving at her home bleeding, asking for a towel and saying he had fallen.

Another witness found the appellant lying on the ground with a bleeding hand, saying he had been attacked by three boys. The appellant was uncooperative when this witness tried to take him to hospital and he left his car before later being collected again and taken to hospital.

[8] The senior charge nurse, who had 12 years' experience, was working on the night shift from 1945 hours on 13 January 2024 and encountered the appellant when she heard shouting and swearing from a curtained cubicle and went to investigate. He was irate and wanted to find out what had happened to his brother. She understood that the complainer did not want the appellant to know any medical information about him. When she told the appellant that the complainer's condition was confidential, he responded, "Oh, so he's alive then." The appellant's sister arrived and it was obvious that the appellant did not want the nurse present so she left but remained outside the curtain. She heard his sister ask what had happened and the appellant reply to the effect that they had got into a fight, both of them had blades. When the sister asked if he had started it, the appellant confirmed that he had. The appellant said they were having a bit of a scuffle and that he, the appellant, was stabbed with his own blade, that wasn't the end of it, and he was going to finish him off. He had carved into the complainer's door the words: "You are dead."

[9] With reference to notes she had made shortly afterwards the charge nurse confirmed that she had noted:

> "[The appellant] states that him and his brother got into a fight and that both of them had blades. She asked if he started the fight and he confirmed. Then he mentioned he got stabbed with his own blade. He then said about his brother being slashed in the neck and stabbed in his eye."

This was what the appellant had said. Other medical notes recorded in respect of the appellant: "dog bites [right forearm and right shin] and knife lacerations." She confirmed

that the appellant had knife lacerations inside his forearm, and on his right little and ring fingers.

[10] In cross-examination, it was put to the witness with reference to medical notes that a colleague had noted at 1816 hours that when he was being taken into custody the appellant was unhappy and said that he was the one attacked. Towards the end of cross-examination, the nurse confirmed in response to a leading question that she knew what a defensive injury meant. The questioning continued:

> "Q Now the injuries that [the appellant] had to his right hand, would it be fair to describe them as a defensive injury?
>
> A It could be. I don't …"

The appellant's solicitor-advocate then cut her off from finishing what she was saying. He then stated, "could be" and finished his cross-examination.

[11] The appellant did not give evidence, and he adduced no further witnesses.

Speeches

Crown

[12] The Advocate Depute observed that it was not in dispute that the appellant had inflicted the injuries sustained by the complainer. The appellant sought acquittal by reason of self-defence based on the comments he was reported to have made and the opinion evidence of the senior charge nurse that the injuries to the appellant's hand could be defensive injuries. In examining the requirements of self-defence, he invited the jury to conclude that what the appellant told his sister to the effect that he started the attack having gone to the complainer's house, showed that he was not acting defensively. He invited the

jury to infer that the appellant had arrived with a knife, not least from his comment that they both had knives and that he, the appellant, had been injured with his own knife.

[13] He then submitted that self-defence also fell at the second hurdle as there was no evidence of the absence of a reasonable means by which the appellant could have escaped, the use of violence needing to be a last resort. Indeed, there was no evidence at all that he had no means of escape. Finally, he submitted that the appellant's actions constituted a cruel excess of violence.

Defence

[14] The appellant's solicitor-advocate confirmed that it was not in dispute that the appellant was part of a violent altercation with his brother and inflicted injury. He continued, stating that the jury knew that the appellant had lodged a special defence of self-defence. The judge would tell the jury that it was for the Crown to meet it and not for the defence to prove that what happened was self-defence, adding: "If the very notion of self-defence raises a reasonable doubt with you about Patrick McGrow's suggested guilt then you must acquit him."

[15] The jury should conclude that the appellant did not injure his own hand. Forensic evidence about blood spotting on a hat in the house was to the effect that it may have taken a second blow to cause it as the appellant's wet blood would not be present before a first blow. The jury could infer that the complainer cut the appellant's hand and then struck a second blow causing a spot to fly off from the appellant's bleeding hand. The jury should conclude that the complainer sustained injuries to his hand because he had raised them to protect his face from blows with a knife. We consider this to be something of a stretch and no more probable than alternative possibilities such as the complainer slashing at the

appellant's hands as he wielded his knife or the appellant cutting himself afterwards in the realisation he had stabbed his brother in the eye. From the comments the nurse overheard, the appellant plainly contemplated that the complainer may be dead, intended to finish him off and had carved a threat into his front door with a knife. We also note that, having stabbed his brother in the eye and slashed his neck, rather than seeking medical assistance for him, the appellant made his way to a pub.

[16] The solicitor-advocate went on to refer to the evidence of remarks made by the appellant, that both had blades, the appellant was stabbed with his own blade and agreed that he had started the fight. That admission was crucial to the Crown case as it was the only possible basis to "displace the special defence of self-defence that has been lodged."

[17] The injuries sustained by both brothers did not suggest that one was behaving more violently towards the other. To convict, the jury would have to conclude that when the appellant started the fight, he did so by using the knife. What did the appellant mean when he said he started the fight? Was it just an argument or a fist fight to which the complainer responded with the first use of a knife? The jury should find that the most likely scenario was that the complainer attacked the appellant with a knife, repeatedly attempting to strike his face causing the appellant to raise his hand to protect himself. The probability was that the injury to the complainer's eye was the last thing to happen.

[18] He referred again to the notice and that there was no onus of proof on the appellant and continued:

> "If you believe the self-defence, or just if it raises a reasonable doubt as to the guilt of Patrick McGrow then you must acquit him. It is for the Crown to meet the special defence, and his Lordship will tell you when a person is entitled to act in self-defence."

[19] He then submitted that there was no evidence of cruel excess as the appellant could just as easily have sustained the serious injuries sustained by the complainer. He continued:

> "Have the Crown led any evidence that Patrick McGrow had a safe means of escaping violence from Andrew McGrow?
>
> No. Because you heard no evidence about ... direct evidence about what happened during the incident.
>
> Have they led any evidence about other options that might have been available to Patrick McGrow other than violence?
>
> No."

[20] The following submission is particularly relevant to the ground of appeal:

> "Have they led any evidence that Patrick McGrow was not attacked first? Now, this is where it gets a little more complicated. They have led the comment, which he accepted, that he started the fight, but I wish to say this: in law if an accused person starts a fight with someone and the other person responds with a disproportionate degree of violence then the person who started the fight can still, as a matter of law, claim self-defence. So it's not about who started the fight.
>
> It might be about who first used the knife. If Patrick McGrow physically starts an assault upon Andrew McGrow without any weapon and Andrew McGrow responds by using a knife then Patrick McGrow is entitled in law to defend himself against that disproportionate response and he would in law, in my submission, be entitled to defend himself with a knife, because the level of violence that he'd be using to stop the attack would not be disproportionate to the knife that's coming towards him. Have you heard any evidence led to rebut that scenario, in my submission."

[21] He concluded his speech by submitting that the appellant ought to be acquitted because he acted in self-defence. If the jury considered that they could not know exactly what happened, and so could not reach any conclusion on self-defence, then they should reflect that if they did not know what happened, they could not conclude that this was attempted murder. They should find a reasonable doubt and acquit.

The judge's charge to the jury

[22] It is unnecessary for us to outline the general directions, the definition of the crime, verdicts etc and we shall focus on the issue of self-defence. At pages 17 to 19 of the transcript, the judge gave conventional directions on the generality of self-defence, reminding the jury that the appellant sought acquittal on this basis. At 17-18 he directed:

> "The only purpose of a special defence is simply to give notice to the Crown that a particular line of defence may be taken; it doesn't take away from an accused's position that he's not guilty; it doesn't take away from the requirement on the Crown to prove the case against the accused beyond reasonable doubt. The defence do not need to lead [evidence] in support of it, they don't need to prove it to any particular standard; you just consider any evidence relating to it along with the rest of the evidence: if it's believed, or if it raises a reasonable doubt, then an acquittal must result.
>
> In this case the accused is saying that at the time the crime was committed he was acting in self-defence; as a result, he should be acquitted of the charge. It will always be for the Crown to meet that defence and to satisfy you beyond reasonable doubt that the self-defence should be rejected."

[23] In dealing with the first requirement for self-defence (that the accused was attacked) after giving a standard direction, the judge further directed at 19-20:

> "Effectively, you're going to have to consider whether or not [the appellant] had been attacked, but remember also that there can be an ongoing situation whereby something might have happened which was not as dangerous at the start but then becomes more dangerous, and then the attack becomes more serious at that stage. So you're going to have to look at the extent of all of the evidence in respect of this matter that's made available to you."
>
> [Emphasis added]

He went on to deal with the second requirement (violence can only be used as a last resort and that any other reasonable way to avoid the attack should have been taken) and third requirement (there must be no cruel excess in responding to the attack).

[24] At 20-21, the judge observed that normally striking someone with a knife in response to a fist would not be justified because it would not be proportionate. He then explained that there could be exceptional circumstances. He directed at 21:

> "…where, basically, if someone is being attacked with a knife and they use a knife to try to defend themselves: that's a matter for you, ladies and gentlemen, to consider all of the evidence presented to you, and for you to consider in this case. So you've heard the facts, you've heard the circumstances, and you're now going to have to decide whether or not … if in fact you have to go that far about considering the reasonable amount of force being used to ward off the attack: that's a matter for you."

[25] He summed up the three requirements for self-defence and directed at 22:

> "If you think that each and every one of these three circumstances exist that I've actually outlined for you … (1) being attacked or the matter goes on further, and basically it requires a person to defend themselves, (2) that they had no other means of getting away from the attack, and (3) that any action taken was a reasonable amount of force under all the circumstances … these are things for you to sift through when you're looking at that."
>
> [Emphasis added]

[26] At 23-24, with specific reference to the evidence of the senior charge nurse about the appellant's utterances, he gave a conventional mixed-statement direction. He directed that if part of it pointed to innocence, or it left them in reasonable doubt of the appellant's guilt, the jury must acquit alluding to the Crown's position and the defence submissions in support of self-defence.

Note of appeal

[27] The ground of appeal was prepared by the solicitor-advocate who represented the appellant at trial. The appellant maintains that the judge failed to direct the jury that even if the appellant started a fight, it was still open to him to claim self-defence. Although he did not give evidence, his statement to the charge nurse and his having wounds to his hands

consistent with infliction by a knife, provided a foundation. His statement that he started the fight did not fatally undermine any possibility that he acted in self-defence as it did not necessarily mean that he was the first to present or use a knife. The omission of a direction on self-defence in a quarrel was a misdirection. The judge should have directed the jury that even if they concluded that the appellant started the fight but also concluded that the complainer responded with disproportionate violence by making first use of a knife, then the appellant would have been entitled to defend himself with equal force. Had that direction been given, there was a realistic prospect that the jury would have accepted self-defence or been left in reasonable doubt of the appellant's guilt on account of it.

Submissions

Appellant

Written submissions in advance of the appeal

[28] Again, these were prepared by the solicitor-advocate who represented the appellant at trial and state: "the defence relied upon the previously lodged special defence of self-defence." He goes on to submit that evidence of injuries to the appellant's hands, evidence from the forensic scientist about the mechanism necessary to create a blood spot, permitting the inference that the appellant was struck repeatedly with a knife by the complainer, the lack of clarity of what the appellant had meant in stating that he started the fight, his comment that both men had knives and the nursing note that the appellant was unhappy when taken into custody because he was the one attacked, allowed the jury to find that the appellant had acted in self-defence.

[29] Failing to direct the jury that the appellant could have been acting in self-defence even if he started the fight was a misdirection: *Burn*s v *HM Advocate* 1995 JC 154. In

delivering the opinion of the court, the Lord Justice General (Hope) explained that it is not the law that a person who started the trouble or provoked the quarrel cannot plead self-defence. It would depend on the nature of any retaliation to an accused's actings and whether it was so disproportionate to the accused's actings as to give rise to the reasonable apprehension that he was in immediate danger from which he had no other means of escape and whether he used no more violence than was necessary to protect himself from serious injury.

[30] The jury were entitled to find that although the appellant may have started the fight, the first use of the knife was by the complainer. If so, the appellant would be entitled to plead self-defence as the complainer's response with a knife to the appellant starting the fight without a knife would be disproportionate. The judge should have directed the jury along the lines of the specimen direction in the Jury Manual chapter on self-defence where it addresses self-defence in a quarrel: Judicial Institute for Scotland, 3 September 2024 at 45.4-5/133. The directions he gave (quoted above at paras [23] and [25]) were insufficient. The jury were left with the impression that the appellant could not plead self-defence because he had started the fight. This was a material misdirection constituting a miscarriage of justice.

The appeal hearing

[31] A different solicitor-advocate appeared. Whilst he broadly adopted his predecessor's written submissions, he did not found on the comment spoken to by the charge nurse from a colleague's note that the appellant "said that he was the one attacked." He was not satisfied of its provenance and recognised its limited status when adduced in cross-examination by the appellant: *McCutcheon* v *HM Advocate* 2002 SCCR 101, the Lord

Justice General (Cullen)at [15] and [16(ii)]. Although he had to concede that his predecessor had not identified in his speech any basis in the evidence capable of meeting the second requirement, given that the appellant was injured there might be an inference that it was not possible for him to safely escape the situation.

[32] It was a possible interpretation of the charge nurse's evidence that the appellant was saying that it was his brother who got stabbed with his own blade bringing the situation to an end. We note that this is the direct opposite of the submission made for the appellant to the jury. The transcript of speeches on 23 May 2025, at page 57, records the appellant's solicitor-advocate, in summarising the evidence of the charge nurse, stating:

> "[she] heard Patrick McGrow [the appellant] tell his sister that he and his brother got into a fight. Both of them had blades. Patrick was actually stabbed with his own blade and Patrick agreed he started the fight."

[33] The judge's directions on self-defence in a quarrel were insufficient. If the court is satisfied that there was a basis for the jury to conclude that the appellant was the initial instigator of violence without a weapon, it would be a misdirection sufficiently material to constitute a miscarriage of justice.

Crown

Written submissions in advance of the appeal

[34] The appeal should be determined according to certain general principles. Directions should be viewed in the context of our oral tradition, and a charge should not be scrutinised as if the jury had not heard the evidence and speeches: *Sim* v *HM Advocate* [2016] HCJAC 48, 2016 JC 174. A judge should engage with the specifics of the trial and tailor the charge to its particular circumstances: *Lauder* v *HM Advocate* [2016] HCJAC 30, 2016 SCL 459 at [13]; *Goldie* v *HM Advocate* [2020] HCJAC 9, 2020 JC 164 at [33]. A judge's decision not to use the

phraseology proposed for specimen directions in the Jury Manual does not of itself constitute a misdirection: *Daniel* v *HM Advocate* [2018] HCJAC 52, 2019 SCCR 55 at [20]. Not every misdirection leads to a miscarriage of justice: *MacDougall* v *HM Advocate* [2021] HCJAC 32 at [18].

[35] The Crown case was circumstantial and neither the appellant nor complainer gave evidence. The overheard statement by the appellant that he started the fight was of central importance. There was plainly a cruel excess of violence in the appellant's actions given the minor injuries he sustained. The appellant's actions after the event were supportive of his guilt. Any attempt to found on the most favourable part of the various statements attributed to him were undermined by the inconsistency of those statements. He said he was attacked by three men; he said he started the fight; and he said that he had been the one attacked.

[36] The judge posited an ongoing situation whereby something not dangerous at the start became more dangerous and the attack more serious, as an alternative to the appellant having been attacked being the basis for self-defence. He also referred to "being attacked or the matter goes on further and basically it requires a person to defend themselves."

[37] The judge did not direct the jury that an initial aggressor could not successfully claim self-defence. The special defence of self-defence remained before the jury. When the charge is read as a whole, and in the context of the evidence and speeches, there was no misdirection. Even if there was a misdirection, there is no miscarriage of justice in this case when regard is had to the context of the evidence as a whole and the content of speeches.

The appeal hearing

[38] The absence of testimony from the complainer and appellant limited the scope of the evidence on which self-defence might be based. Whilst neither full nor detailed, the trial

judge's directions were sufficient in the circumstances, particularly in the context of the defence speech to which he was plainly responding. In the appeal hearing, the appellant's representative came to recognise that there was little, if any, basis in the evidence to meet the second requirement of self-defence. The appeal should be refused.

Decision

[39] In *Crawford* v *HM Advocate* 1950 JC 67, the Lord Justice General (Cooper) expounded a principle concerning special defences that has been followed ever since. He explained, at 69, that it is a strong step to withdraw a special defence from the jury's consideration but there are circumstances where it is a judicial duty to do so. He continued:

> "…[I]t is the duty of the presiding Judge to consider the whole evidence bearing upon self-defence and to make up his own mind whether any of it is relevant to infer self- defence…If he considers that there is no evidence from which the requisite conclusion could reasonably be drawn, it is the duty of the presiding Judge to direct the jury that it is not open to them to consider the special defence. If, on the other hand, there is some evidence, although it may be slight, or even evidence about which two reasonable views might be held, then he must leave the special defence to the jury …".

The principle was recently endorsed in *Dines* v *HM Advocate* [2021] HCJAC 29, 2021 JC 219 and *Telford* v *HM Advocate* [2018] HCJAC 73, both cases involving self-defence.

[40] This raises a problem for the appellant not reflected in the written argument to which we alerted parties in the appeal hearing. There was no evidence whatsoever, nor basis to infer, that stabbing the complainer in the eye and slashing his neck was the appellant's only resort. It is not sufficient for the appellant to assert, as he did in addressing the jury, that the Crown had led no evidence about possible means of escape. There required to be something in the evidence permitting the jury to reach the conclusion that there was no means reasonably open to the appellant to escape from any threat posed by the complainer. There

was nothing. A notice of special defence of any kind, including self-defence, does not constitute evidence, even if some rather loose submissions for the appellant (see paras [14], [16] and [18] above) were liable to suggest otherwise. Accordingly, there was no basis in the evidence for the second of the three requirements for self-defence and therefore no basis for self-defence to remain before the jury. The trial judge should have directed the jury accordingly and withdrawn self-defence from the jury's consideration. That is sufficient reason to conclude that there has been no material misdirection and no miscarriage of justice. The appeal is accordingly refused.

[41] Even without an insurmountable problem with the second condition for self-defence, in the circumstances of this case, it is very difficult to identify a basis on which the jury could properly have found that the appellant acted in self-defence. It was almost inevitable that the jury would find that there was a cruel excess in what the appellant did. The defence theory that the appellant may have been unarmed when the fight began appears to be contradicted by his comment that they both had blades.

[42] In considering if there was a misdirection as proposed, we recognise that a special defence of self-defence may be open even where the person accused started a fight. That has been clear at least since *HM Advocate* v *Kizileviczius* 1938 JC 60. In *Burns*, the Lord Justice General reviewed and explained the law in this regard.

[43] Had the ground of appeal advanced remained a live issue, and the appeal turned on whether there was a misdirection, we note that in his speech to the jury (see para [20] above) the appellant's solicitor-advocate explicitly founded on the principle that self-defence can be available to the person that starts a fight. He first advanced this as a general proposition and then sought to particularise it to the circumstances of this case. He postulated a scenario where the appellant assaulted the complainer without using a weapon, but the complainer

responded with a knife, such that the appellant would be entitled to defend himself with a knife against such a disproportionate response. It is plain to us, as it would have been to the jury, that the judge's directions in the passage set out at paras [23] and [25] above, and particularly the words emphasised, were referring to that submission. Accordingly, whilst it would have been preferable to have addressed the issue more precisely, and an adaptation of the specimen direction in the Jury Manual would have been an appropriate method, we are not persuaded there was a misdirection. For this reason, we would refuse the appeal on this ground if we had not already done so for the reasons at paras [39] and [40] above.

[44] Even if we had concluded that there was a misdirection as proposed, and that self-defence was available on some theoretical basis, we would not determine it on a "realistic possibility of a different verdict" test as the appellant proposed that we should. That test applies in human rights cases, mostly those concerned with a failure of disclosure by the Crown: *TH* v *HM Advocate* [2025] HCJAC 46, 2026 JC 58 at [24] and [25] citing the misdirection case of *Brodie* v *HM Advocate* [2012] HCJAC 147, 2013 JC 142 and *Geddes* v *HM Advocate* [2015] HCJAC 10, 2015 JC 229. In *Geddes*, the Lord Justice Clerk (Carloway) explained, at para [89]:

> "…in any criminal appeal, other than one based on a breach of Convention rights and thus governed by the UK Supreme Court's *dicta* in *McInnes* v *HM Advocate*, the court has to apply its collective knowledge and experience (*AJE* v *HM Advocate*) in taking an 'overall view of the circumstances' (*Brodie* v *HM Advocate*) on whether a miscarriage of justice can be seen to have occurred…"

[45] Taking that approach, we would not have been persuaded there was a miscarriage of justice given the strength of the evidence inferring a murderous assault and the paucity of any evidence to support self-defence. There was a plain disproportion between any violence that it could be inferred the complainer offered to that used by the appellant. Such evidence as there may have been in the appellant's utterances was riddled with contradictions. Any

impression that the appellant acted defensively is further undermined by his failure to take any action to secure medical assistance, his contemplation that his brother would be dead, his professed intention to finish him off and his carving a threat to similar effect on the complainer's door. That said, whilst we repeat that it is not the appropriate criterion in this case, we would also conclude that there is no realistic possibility that fuller directions on self-defence in a quarrel would have prompted a different verdict.

[46] For all of these reasons, the appeal is refused.