Neutral Citation Number: [2021] EWCA Crim 48

Case Nos: 202000793 B2 & 202000922 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM SNARESBROOK CROWN COURT
HHJ Del Fabbro
T20190999 & T20190748

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/01/2021

Before :

LORD JUSTICE DINGEMANS
MR JUSTICE NICOL
and
MR JUSTICE JULIAN KNOWLES
Between :

(1) Luis Binoku	**Appellants**
(2) BFR	
- and -	
Regina	**Respondent**

- -
- -

Ms Emma Akuwudike (instructed by **The Registrar of Criminal Appeals**) for the **First Appellant**
Ms Ria Banerjee (instructed by **The Registrar of Criminal Appeals**) for the **Second Appellant**
Ms Lucy Organ (instructed by **The Crown Prosecution Service**) for the **Respondent**

Hearing date : 15 January 2021
- -

Approved Judgment

Lord Justice Dingemans :

1. This is the hearing of an appeal against conviction brought by Mr Binoku, and BFR. Mr Binoku was aged 23 at the time of the incident on 24 May 2019. BFR was aged 15 years at the time of the incident and is now aged 16 years.

2. As BFR is under 18 years old and because BFR's rehabilitation would have been adversely affected by publication of his name, a reporting restriction order was made on 26 June 2019 pursuant to the provisions of section 45 of the Youth Justice and Criminal Evidence Act 1999. This prevents the publication of matters which might lead members of the public to identify BFR as the person concerned in the proceedings and continues until he is aged 18 years. For this reason we have referred to this appellant as BFR.

3. On 11 February 2020, in the Crown Court at Snaresbrook (HHJ Del Fabbro and a jury), the appellants were convicted of violent disorder (count 1) (Mr Binoku – unanimously, BFR – by a majority 11-1) and the appellant Binoku was also convicted (by a majority 11-1) of possession of an offensive weapon (count 2). On 19th October 2020 Mr Binoku was sentenced to a total sentence of 18 months' imprisonment, suspended for 24 months, with thinking skills, rehabilitation activity requirements and an unpaid work requirement. BFR was sentenced to a Youth Rehabilitation Order for 18 months.

4. A co-defendant Mr Mahir Abdulkadir was unanimously convicted of violent disorder and sentenced to 18 months imprisonment, suspended for 24 months, with an unpaid work requirement.

5. There were other co-accused being Mr Mudrik Abdulkadir, Mr Makame Makame, Mr Joshua Bragg and Mr Mohammed Sulieman who had earlier pleaded guilty to violent disorder. Mr Mudrik Abdulkadir was sentenced to 14 months imprisonment, suspended for 24 months, with an unpaid work requirement. Mr Makame Makame was sentenced to 18 months imprisonment, suspended for 24 months, with rehabilitation activity requirements and an unpaid work requirement. Mr Joshua Bragg was sentenced to 13 months imprisonment. Mr Mohammed Sulieman was sentenced to 8 months imprisonment suspended for 12 months.

Some difficulties with Cloud Video Platform at the appeal hearing

6. The appeal was heard on 15 January 2021, in the middle of a national lockdown in England and Wales as a result of the COVID-19 pandemic. Ms Akuwudike, on behalf of Mr Binoku, and Ms Banerjee, on behalf of BFR, appeared by Cloud Video Platform ("CVP"), as did Mr Justice Nicol and Mr Justice Julian Knowles. Ms Organ appeared in Court. I was sitting in Court, as were others including Mr Binoku.

7. There was some initial feedback on CVP at the start of the appeal, but after that had been sorted the submissions from Ms Akuwudike and Ms Banerjee could be clearly heard both on the CVP and in Court. When Ms Organ began her submissions she could be heard clearly in Court. However there were difficulties for Ms Akuwudike and Ms Banerjee, and Mr Justice Nicol and Mr Justice Julian Knowles in hearing parts of Ms Organ's submissions on CVP. Things became a bit easier when Ms Organ was provided with the microphone from the judge's bench but some words remained indistinct on the CVP. Ms Organ's submissions mirrored submissions set out in writing

in the Respondent's Notice which meant that it was possible for everyone to follow what was being submitted on behalf of the Respondent.

8. In the final event all parties confirmed that they had been able to hear and respond to Ms Organ's submissions and there was no need to adjourn the appeal to a different hearing date. We are satisfied that it has been possible to provide a fair hearing of the appeal, but the court apologises for the difficulties caused to counsel and the parties by the technological difficulties.

The relevant circumstances of the offence

9. So far as count one is concerned, which was faced at trial by BFR, Mr Binoku and Mr Mahir Abdulkadir, on the afternoon of 24th May 2019, at around 3.30pm, a fight erupted on the pavement outside the parade of shops on Ripple Road, Barking, involving a number of males. This included the co-defendants Mr Mudrik Abdulkadir and Mr Makame. The men were grappling with each other and exchanging blows, one using the shaft of a golf club.

10. The Prosecution case was that Mr Binoku, BFR and the co-defendant Mr Mahir Abdulkadir were also active and willing participants in a fight. Before the fight started, street CCTV showed a convoy of cars arriving in the road and a group of males, including the co-defendant Mr Mahir Abdulkadir, getting out with weapons and clearly looking for someone. A concerned member of the public called the police, who attended and spoke to the group. The group were hostile, uncooperative and demanded that armed police attend.

11. The officers were still observing the group from the opposite side of the road when the disorder broke out and caught some of the incident on their bodyworn cameras as they moved to intervene. Mr Binoku and BFR could be seen on the footage involved in the disorder. The co-defendant Mr Mahir Abdulkadir could be seen kicking Mr Binoku in the head. None of them sought the assistance of the police, nor did they seek to desist from the violence, even when the police intervened with batons extended.

12. No one was arrested at the scene but following further enquiries, Mr Mahir Abdulkadir and BFR were arrested and interviewed in June 2019. BFR gave a false account at the scene about how he came to have a lip injury.

13. Mr Binoku was arrested in August 2019. When interviewed, he gave a prepared statement in which he explained that he had only become involved in the disorder in an effort to protect his 15 year old friend BFR who was being harassed by a group of males. This group then turned on him and he defended himself. Mr Binoku's previous convictions were adduced as evidence of a propensity to be violent.

14. BFR had also given a prepared statement in interview, stating that he had been walking home from school with two friends when they were attacked by a group of men. He had only acted in defence of himself and his friends.

15. The co-defendant Mr Mahir Abdulkadir had given an account in interview, explaining that he had gone to Ripple Road with his brother, cousin and several other males in an attempt to locate "the Albanians", a group who were continually harassing his brother and mother by coming to the family home. He wanted to talk to them but the other

group started to attack them. He tried to break up the violence. He tried to stop Mr Makame from using the golf club. He only kicked Mr Binoku to try and stop him from attacking his brother.

16. There was evidence from CCTV on the road, showing the group arriving in the cars. There was bodyworn camera footage, taken by police officers who intervened. Storyboards, comprising stills from relevant footage were created for each defendant. Mr Binoku is shown with a red shirt and a brown hooded jacket. BFR is shown with a green hooded jacket. There was also evidence from the police officers on Ripple Road.

17. Mr Binoku gave evidence at trial. The appellant BFR did not give evidence. Mr Binoku stated that he was walking down Ripple Road, when he saw a young friend BFR being harassed by a group of males. He went over to assist his friend and to tell the group to leave BFR alone. When he did so, the group turned on him and started to attack him. He was hit with weapons, punched and kicked to the head. He tried to escape into a shop, but was told to leave by the shop owner. When he came out of the shop, he tried to retrieve BFR's bag, but he was attacked again and had to defend himself. He explained that he had not mentioned some matters in interview as he followed the advice of his solicitor. The co-defendant Mr Mahir Abdulkadir also gave evidence, in short stating that he was a peace-maker, only trying to stop the incident and defend his brother.

18. The real issue at trial was whether the violence shown on the photographs was unlawful violence, or lawful violence in self defence.

19. Count 2 concerned only Mr Binoku. On the afternoon of 30th May 2019, some 6 days after the events in count 1, Ms Alfreedi was upstairs in her house when she heard a commotion outside. When she looked out of the window, she saw a group of five males on the steps that come down from Gale Street, Dagenham, some 2 miles from Ripple Road. Ms Alfreedi described one of the males as having large curly hair, a burgundy t-shirt, three-quarter length shorts and a white plastic bag in his hand.

20. The Prosecution case was that Mr Binoku was the male described by Ms Alfreedi. As a scooter went down Gale Street, the males appeared to be watching it and the male with the white plastic bag started handing items from the bag to the others. She clearly saw one of the items was a red handled axe. The axe fell to the floor and another of the males picked it up. When she saw the axe, she started taking pictures (although did not get a picture of the axe) and called 999. The group then moved off up Malpas Road, in the same direction as the scooter. Mr Binoku did not answer questions when interviewed. Reliance was again placed on his previous convictions as showing a propensity to violence. Ms Alfreedi gave evidence and photographs that she took were adduced.

21. Mr Binoku's case was that Ms Alfreedi was mistaken in saying that Mr Binoku had possession of the axe. Mr Binoku gave evidence at trial that he had seen someone on a moped, who appeared to be carrying a large knife. He did not want any trouble so he took the steps down off Gale Street to move away. On the steps, he came across a group of males, including Tyrone Okai whom he knew. Mr Okai was in possession of an axe matching the description of the item given by Ms Alfreedi and had admitted possession. Mr Binoku did not question why Mr Okai had the axe, as it was nothing to do with him. Ms Alfreedi must have mistaken Mr Okai for Mr Binoku. She was mistaken about a

number of other elements of what she had seen, including the direction of the scooter and the colour of his trainers.

The grounds of appeal

22. There are a number of grounds of appeal on behalf of both Mr Binoku and BFR, some of which are common to both appellants. Both Mr Binoku and BFR complain that there were impermissible judicial interventions which have made their convictions unsafe. In addition Mr Binoku complains that the trial judge wrongly failed to sever the two counts which he was facing. BFR also complains that the judge's timetabling of speeches meant that there was a 5 day delay between speeches and summing up of the facts (there was a split summing up), that there was a failure to give a direction that the jury should be aware that the co-defendant Mr Mahir Abdulkadir who gave evidence might have an interest of his own to serve, and that the summing up was unbalanced.

23. The prosecution submit that the judge's interventions were permissible and that the summing up was balanced. They submit that the two counts were properly heard together, that the timetabling of speeches was permissible, and that there was no need to give a direction about the evidence of the co-defendant. They submit that the convictions were safe. We were very grateful to Ms Akuwudike, Ms Banerjee and Ms Organ for their helpful written and oral submissions.

No severance

24. At the trial Ms Akuwudike on behalf of Mr Binoku and Ms Banerjee on behalf of BFR submitted that count 2 (possession of an offensive weapon) should be severed from the indictment and tried separately. It was submitted that the two incidents were entirely separate from one another. They were on different dates, in different places and involved different groups of people. To hear them together would be prejudicial, not only to Mr Binoku (the only person charged on count 2) but also to BFR. This was because BFR's defence on count 1 was supported by the account given by Mr Binoku, and therefore any potential prejudice in the jury's minds towards Mr Binoku might also have an adverse effect on BFR.

25. The Judge ruled that count 2 should not be severed. He found that count 2 was "part and parcel of the ongoing antagonism between these two parties. It is linked in time and geography, and with the same characters, as it were, or protagonists, rather, who were involved in the earlier violent disorder". It seems that the judge's statement that the characters were the same was an error because it was not known which groups were involved in count 2. The judge also stated that there would be no prejudice to either of the appellants as the jury would be directed to deliver separate verdicts and there was no evidence to link BFR to count 2.

26. In *R v Toner* [2019] EWCA Crim 447; [2019] 1 WLR 3826 the Court of Appeal Criminal Division recorded that the Criminal Procedure Rules 2015 had removed technical barriers to joinder. The current rule is now contained in CPR Rule 3.29(4). This provides that:

> "(4) Where the same indictment charges more than one offence, the court may exercise its power to order separate trials of those offences if of the opinion that—

> (a) the defendant otherwise may be prejudiced or embarrassed in his or her defence (for example, where the offences to be tried together are neither founded on the same facts nor form or are part of a series of offences of the same or a similar character); or
>
> (b) for any other reason it is desirable that the defendant should be tried separately for any one or more of those offences."

27. It can be seen that the current rule has echoes of former provisions of rule 3 of the Indictment Rules 1915 and rule 9 of the Indictment Rules 1971 which required charges to be "founded on the same facts … or … a series of offences of the same or a similar character" before joinder was permitted.

28. In our judgment in this case the judge was right not to sever the counts on the indictment. This was because the two offences were broadly in the same geographical area, separated by six days, and formed part of the a series of offences of the same character, namely alleged day-time street violence in Barking and Dagenham.

29. Ms Akuwudike also complained that Ms Alfeedi's evidence on count 2 was interposed in the evidence of a police officer introducing the bodyworn camera evidence for count 1. It would have been desirable to avoid interposing Ms Alfreedi's evidence but it appears that this was done because Ms Alfreedi was a teacher and the trial had overrun. This was a permissible trial case management decision taken by the judge. It is apparent that Ms Akuwudike was able to cross examine Ms Alfreedi on behalf of Mr Binoku effectively, notwithstanding the difficulties that the timetable caused.

Permissible timetabling of speeches

30. At trial Ms Banerjee on behalf of BFR submitted that she should be permitted to give her closing speech after the break of 5 days between the first part of the summing up and the second part, so that the speech might be given on the day that the jury were sent out to deliberate.

31. The Judge ruled that speeches should be made before the break in the trial. He concluded that there was no issue with speeches given before the break as he intended to remind the jury of defence cases and the speeches in the second part of his summing up.

32. In our judgment the judge was permitted to timetable the speeches in the way that he did as a matter of trial case management given the timings of the trial which it seems had overrun. The short delay between speeches and the summing up could not have affected the safety of the convictions. We note that while delays in trials should be avoided were possible, in long multi-handed cases there are frequently delays between closing speeches and the jury's retirement to consider their verdicts. The Judge gave a detailed summary of the defence cases in the second half of his summing up following the 5 day break. There was no indication that the jury could not properly carry out their task and the verdicts show that they considered each case carefully.

Sufficient directions on the evidence of co-defendants

33. At trial Ms Banerjee submitted on behalf of BFR that the jury should be given a direction that when the evidence of one defendant is at odds with the case of another defendant, the jury should have in mind that the defendant whose evidence they are considering may have an interest of his or her own to serve and may have tailored their evidence accordingly. The Judge ruled that it was not necessary to give that direction. He concluded that it was not that kind of case as there had been opportunity to challenge the account of Mahir Abdulkadir and because BFR had not given evidence.

34. In submissions before us reference was made by Ms Banerjee to *R v Jones and Jenkins* [2003] EWCA Crim 1966; [2004] 1 Cr App R 5 where a judge failed to warn of the need for caution where defendants were running cut throat defences.

35. In our judgment this was a case where there was no need to give a direction about the evidence of the co-defendant. These were not cut throat defences properly so called. This is because it is apparent that it was no part of the prosecution case to say who started or provoked the fight, a point on which there was different evidence from Mr Mahir Abdulkadir and Mr Binoku, but the prosecution case was that both sides were involved in the violence at times when it could be seen that they were not acting in self defence as was apparent, said the prosecution, from the CCTV evidence. In this critical respect the evidence of Mr Mahir Abdulkdair did not undermine the evidence of Mr Binoku or the case of BFR. We also note that Mr Binoku had said of Mr Mahir Abdulkadir when giving evidence that it was not his task to convict any other person. In addition there is nothing to suggest that the failure to give the direction in this case rendered the trial unsafe.

Balanced summing up

36. Complaint is made on behalf of BFR that the summing up was unbalanced and that the judge had not reminded the jury of some specific points made on behalf of BFR. The judge reminded the jury of his and their respective roles in his summing up. He specifically said "what is important is that you put your mind to it … at the end of the day, you and you alone must decide the facts of the case" in conventional terms. In our judgment the judge set out the case for the prosecution and the case for the respective defendants fairly and accurately. It is right that the judge did not restrict himself to three lines on the prosecution case, which he had suggested he would during timetabling discussions, but the judge did take the jury to the material parts of the defence case as advanced by Ms Banerjee. All of the defendants were shown on the CCTV and body worn cameras to have participated in violence, which had caused fear to bystanders, meaning that the only issue was whether the violence was unlawful. The difficulty with the respective cases on self defence is that the defendants continued fighting, even in the presence of the police, and re-engaged in fighting even when they were safe.

The judge's interventions

37. We therefore turn to what was the main ground of appeal identified by the single judge, namely the nature and effect of the judge's interventions.

38. Impermissible judicial interventions and their effect on the safety of the convictions have been addressed in a number of cases. In *R v Hamilton* (113) Sol Jo. 546 Lord

Parker CJ stated that whether judicial interventions would in any case give ground for a conviction was only a matter of degree noting that interventions to clear up ambiguities and to ensure that a note is accurate were perfectly justified. He went on to say:

> "But the interventions which give rise to a quashing of a conviction are really three-fold; those which invite the jury to disbelieve the evidence for the defence which is put to the jury in such strong terms that it cannot be cured by the common formula that the facts are for the jury …. The second ground giving rise to a quashing of a conviction is where the interventions have made it really impossible for counsel for the defence to do his or her duty … and thirdly, case where the interventions have the effect of preventing the prisoner himself from doing himself justice and telling the story in his own way".

39. The report of *R v Hamilton* in the Solicitors' Journal is very brief but in *R v Hulusi and Purvis* (1973) 58 Cr App R 378 Lawton LJ set out at pages 381-382 extracts from a transcript of Lord Parker's judgment when setting aside convictions for robbery where the appellant "was cross-examined by the judge – there is no other word for it – at very considerable length …". *R v Copsey* [2008] EWCA Crim 2043 was another case where the Court quashed a conviction where they found that the judge "took on the role of cross-examining in the way that is more suitable for a prosecuting counsel than for a judge".

40. It is not, however, every case where a judge acts impermissibly that will render a conviction unsafe. In *Randall v The Queen* [2002] UKPC 19; [2002] 1 WLR 2237 at paragraph 28 Lord Bingham stated:

> "While reference has been made above to some of the rules which should be observed in a well-conducted trial to safeguard the fairness of the proceedings, it is not every departure from good practice which renders the trial unfair. Inevitably, in the course of a long trial, things are done or said which should not be done or said. Most occurrences of that kind do not undermine the integrity of the trial, particularly if they are isolated and particularly if, where appropriate, they are the subject of a clear judicial direction. It would emasculate the trial process, and undermine public confidence in the administration of criminal justice, if a standard of perfection were imposed that was incapable of attainment in practice. But the right of a criminal defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty."

41. In *Bernard v The State of Trinidad and Tobago* [2007] UKPC 34; [2007] 2 Cr App R. 22 the court stated that "in a case of procedural unfairness … determination of such an issue involves weighing the seriousness of the irregularities. If the defects were

relatively minor, the trial may still be regarded as fair. Conversely, if they were sufficiently serious it cannot be accepted as fair, no matter how strong the evidence of guilt." In *R v Grove* [2017] EWCA Crim 1229 the court held that the judge's conduct in that particular case "crossed to the wrong side of the lines which Lord Parker and Lord Bingham drew".

42. Reliance was placed in the submissions before us on the decision in *R v Beresford* [2020] EWCA Crim 1674 where a conviction was set aside by this Court because of impermissible interventions by a trial judge which had undermined the defendant and his case before the jury. Reporting of that judgment is, at the time of writing this judgment, restricted pursuant to section 4(2) of the Contempt of Court Act 1981 until after a retrial has taken place. It is sufficient to say that the decision in *R v Beresford* sets out relevant principles which we have referred to above and is an application of those principles to the factual situation in that case. Reference was also made to *R v Naz* [2017] EWCA Civ 482 which was another example of where a trial had been rendered unfair by judicial interventions.

43. Complaint was made about judge's comments to counsel before trial when addressing issues of timetabling. It appears that these comments were made as the judge was addressing the fact that two trials were listed to start before him at the same time. It was said that the judge suggested that there was no sustainable defence. The judge's comments were made before the trial had started and were made in the absence of the jury. The judge's comment that he did not think that the CCTV illustrated reasonable self-defence was not necessary given that the trial was about to start, and it seems that the judge had not appreciated the significance of the words "unlawful" violence when considering the elements of the offence. However the judge was put right by counsel appearing in front of him. Any misunderstanding that the judge had about the elements of the offence of violent disorder was corrected and the summing up was, because of the assistance of counsel, accurate on this point.

44. At this stage of the proceedings BFR was not present because of delays in getting to court but counsel advised him about what had occurred. In oral submissions Ms Banerjee submitted that the judge's approach at this timetabling discussion had been a reason why BFR had not given evidence at trial. The difficulty with this submission is that it was not set out in the Advice on appeal or grounds of appeal and as a result there had been no waiver of privilege. This meant that we had not seen any contemporaneous material showing the thinking behind the decision made by BFR not to give evidence.

45. It was also submitted that the Judge made damaging facial expressions and gestures (such as shaking his head), which would have influenced the jury and prejudiced them against the appellant. This, for obvious reasons, does not appear on the transcript but we do note that there is an absence of complaint about such actions, suggesting that any such actions were not considered damaging at the time. If counsel are confronted with such a situation where inappropriate gestures have been made, it is always possible to ask the judge to ask the jury to retire briefly so that counsel can raise the matter immediately with the judge.

46. Complaint is made about interventions when Mr Binoku gave evidence. It is apparent that the judge made some interventions to clarify that it was better to use the term fighting and not violence. Given the distinction between lawful and unlawful violence on which the case turned we do not see that this was an inappropriate intervention. The

judge also intervened to clarify what Mr Binoku was doing on Ripple road, but these were minor clarifications and it seems that it was in part so that the judge could ensure that his note was accurate because he said "hang on, finished work, and was going to catch a bus".

47. There then followed an exchange where it is said that the judge cross examined the defendant.

> "JUDGE: So, the question, first question is when you came out of the shop, why do you not turn left and away from this frightening episode?
>
> MS AKUWUDIKE: Your Honour, that was not the question I asked him.
>
> JUDGE: Well, that is a question I am asking, why did you not turn left?
>
> THE DEFENDANT: Mr Suleiman was there, sir.
>
> JUDGE: He is in front of the shop. Why did you not run away?
>
> THE DEFENDANT: There's the police officers there, your Honour.
>
> JUDGE: Why do you not run away?
>
> THE DEFENDANT: Because there are police in front of me. Why would I run away from them if –
>
> JUDGE: Because you have just told us that you were involved in a very frightening episode. You were scared.
>
> THE DEFENDANT: Yeah.
>
> JUDGE: That is why you run away."

48. The exchange continued before counsel continued with her questions. The next intervention by the judge was simply to assist with finding a document in the jury bundle, and then to clarify where BFR was standing.

49. There was then an exchange about which particular complaint was made following discussion about another participant who had pleaded guilty:

> "JUDGE: Is the answer you did not say anything. You just followed him.
>
> THE DEFENDANT: I didn't follow him, your Honour. I had my own –
>
> JUDGE: No?

THE DEFENDANT: No, your Honour, because –

JUDGE: What about that picture we saw you jogging up there.

THE DEFENDANT: Yeah, I'm ahead of him.

JUDGE: Oh, you are ahead of him. It looks like you are leading the pack.

THE DEFENDANT: No, but he's in front of me here.

JUDGE: What do you mean?

THE DEFENDANT: How could I be leading him?

JUDGE: He has got an axe.

THE DEFENDANT: Yeah, if I am behind him, he's walking.

JUDGE: Excuse me, Mr Binoku, he has got an axe. You have seen him with an axe. Why are you going in the same direction as he is going?

THE DEFENDANT: Your Honour, I'm stuck between a rock and a hard place because at first, on hearing the motorbike going up and down with a knife, this person's pulled out an axe because he's scared for his own safety, I'm trying to not get stabbed by this gentleman over here. He's not attacking me, so I've walked to go and try and dodge the person on Gale Street.

MS AKUWUDIKE: Can I ask the jury to retire, please? There is one matter."

50. After the jury had retired Ms Akuwudike raised, very properly, with the judge the fact that he had suggested to Mr Binoku that he was leading the pack and was cross examining the defendant. The judge said he had not intended to, but was clarifying matters. After the jury returned the judge directed the jury:

> "JUDGE: Ladies and gentlemen, Ms Akuwudike raised the fact that I said to the defendant that he seemed to be running with the pack. Well, you have heard his answer. There was no pack. It was my way of short circuiting. Perhaps inappropriate use of the language. We see what we see, three or four young men. They are going in the same direction. The defendant says he was not running with them. He was doing his own thing and if the others were following him, so be it, but he did not know that, so just to make sure that you have got the picture. At the end of the day, ladies and gentlemen, I ought to remind you as I have been reminding you, these are matters for you to judge, not for me at all …"

51. Thereafter the judge intervened only to ensure that Mr Binoku did not inadvertently waive privilege when relaying that he had legal advice not to answer questions, suggesting that counsel lead Mr Binoku.

52. Complaint was made about the judge's interruptions when Mr Binoku was being cross-examined by counsel on behalf of Mr Mahir Abdulkadir. It seems to us that most of these interventions were proper, for example to protect Mr Binoku from being invited to speculate, although the judge did at one stage say "there was a fight". In cross examination by the prosecution the judge also contradicted Mr Binoku saying "the camera says something different" in the form of cross examination.

53. As appears above we agree that some of the interventions made by the judge in the passages set out above were not appropriate. This is because the judge did appear to cross examine Mr Binoku saying "Why did you not run away", "It looks like you are leading the pack", "Excuse me, Mr Binoku, he has got an axe", "there was a fight" and "the camera shows something different". It is not the judge's function to cross examine witnesses and defendants, as has been explained in numerous cases. The trial judge's function is to facilitate the provision of a transparently fair trial where the parties can advance their respective cases. However, as was made clear in *Randall*, it is not every departure from good practice which will render a trial unfair.

54. In this case, having considered transcripts of substantial parts of the trial, having reflected on the judge's statements to the jury about his comment in relation to leading the pack and the clarification that "there was no pack", and noting the terms of the summing up, we are sure that the departure from good practice in this case was not so gross, or so persistent or so irremediable that the trial was unfair. This is because the appellants were able to and did advance their respective cases in a trial where so much of the evidence was shown by CCTV and storyboards, on which all the parties relied and about which all the parties addressed the jury. It is also because the judge's interventions were not in such terms that they could not be cured. It is apparent from the verdicts that the respective cases were fully and fairly evaluated by the jury.

Safe convictions

55. In these circumstances and having considered carefully all of the grounds of appeal, and we can see nothing to suggest that the convictions of the appellants were not safe.

Conclusion

56. For the detailed reasons set out above the appeals against conviction are dismissed.