
JURISDICTION : CHILDREN'S COURT OF WESTERN AUSTRALIA
IN CRIMINAL

LOCATION : PERTH

CITATION : THE STATE OF WESTERN AUSTRALIA -v- JZ
(A CHILD) [2015] WACC 7

CORAM : JUDGE REYNOLDS

HEARD : 19-22 MAY 2015 AND 25 MAY 2015

DELIVERED : 5 JUNE 2015

FILE NO/S : CCPE 3551 of 2014
CCPE 3552 of 2014
CCPE 3553 of 2014
CCPE 3554 of 2014
CCPE 3555 of 2014
CCPE 3556 of 2014
CCPE 3557 of 2014
CCPE 3558 of 2014
CCPE 3559 of 2014

BETWEEN : THE STATE OF WESTERN AUSTRALIA
Prosecution

AND

JZ (A CHILD)
Accused

Catchwords:

Criminal - Child - Group violence - Intention to harm - Criminal liability as a principal and also as a party - Sections 7 and 8 of the *Criminal Code* - Knowledge of offending by others in group - Assault occasioning bodily harm probable consequence of unlawful purpose - Turns on own facts

Legislation:

Criminal Code

Result:

Defendant child guilty of two offences pursuant to s 304(2)(b) of the *Criminal Code* and five offences pursuant to s 317(1)(b) of the *Criminal Code*

Category:

Representation:

Counsel:

Prosecution : Ms Genevieve Cleary
Accused : Ms Lisa Roche

Solicitors:

Prosecution : Director of Public Prosecutions (WA)
Accused : Lisa Roche Barrister and Solicitor

Case(s) referred to in judgment(s):

Nil

JUDGE REYNOLDS:

1 JZ is before the Court charged with the following offences arising from an incident on 5 April 2014 at the Point Walter Cafe in Bicton:

- (1) PE 3551/2014 – with intent to harm Aaron John Flannery, did an act, as a result of which bodily harm was caused to Aaron John Flannery, or the life, health or safety of Aaron John Flannery was endangered. (*Criminal Code* s 304(2)).
- (2) In the alternative to charge No. PE 3552/2014 – that he unlawfully assaulted John Flannery and thereby did him bodily harm. (*Criminal Code* s 317(1)(b)).
- (3) PE 3553/2014 – with intent to harm Angela Marie Pich, did an act, as a result of which bodily harm was caused to Angela Marie Pich, or the life, health or safety of Angela Marie Pich was endangered. (*Criminal Code* s 304(2)).
- (4) In the alternative to charge No. PE 3554/2014 – that he unlawfully assaulted Angela Marie Pich and thereby did her bodily harm. (*Criminal Code* s 317(1)(b)).
- (5) PE 3555/2014 – unlawfully assaulted Jason Leslie Plant and thereby did him bodily harm. (*Criminal Code* s 317(1)(b)).
- (6) PE 3556/2014 – unlawfully assaulted Nicholas Gangell and thereby did him bodily harm. (*Criminal Code* s 317(1)(b)).
- (7) PE 3557/2014 – unlawfully assaulted Seraya Dalby and thereby did her bodily harm. (*Criminal Code* s 317(1)(b)).
- (8) PE 3558/2014 – unlawfully assaulted Jamie Simon Dalby. (*Criminal Code* s 317(1)(b)).
- (9) PE 3559/2014 – unlawfully assaulted Jade Lattimore and thereby did her bodily harm. (*Criminal Code* s 317(1)(b)).
- (10) PE 3560/2014 – made a threat to unlawfully harm guests and staff at the wedding of Bevan John Scanlon and Stacey Plant at the Point Walter cafe. (*Criminal Code* s 338B(b)).

- (11) In the alternative to charge No. PE 3561/2014 – behaved in a disorderly manner. (*Criminal Code* s 74A).

Charges

2 There is a history in relation to the charges for which JZ is currently before the Court. I wish to mention it, but only for the purpose of background information. JZ was initially before the Court jointly charged with eight other defendants on two charges, one, a charge pursuant to s 304(2) of the *Criminal Code* (the Code) which related to all seven complainants as specifically provided in the nine charges just set out. All or most counsel for the nine defendants engaged in discussion with the State on the issue of duplicity. That resulted in the State withdrawing the single charge of one offence against s 304(2) of the Code and substituting it with the nine charges as just set out for each and every one of the nine defendants, i.e. each complainant was the subject of a separate charge.

3 All allegations of criminal offending by each and every one of the other eight defendants which arose from the incident at Bicton on 5 April 2014, were finally resolved after negotiation and without the need for any hearing.

4 I wish to emphasise at the outset, that the fact that each and every one of the other defendant's matters were resolved, and how they were resolved, is totally irrelevant to the resolution of these outstanding matters for JZ.

5 JZ has pleaded guilty to the 10th of the 11 charges set out above, namely that he made a threat to unlawfully harm guests and staff at the wedding of Bevan John Scanlon and Stacey Plant at the Point Walter cafe in Bicton on 5 April 2014. Accordingly, the 11th charge of the 11 charges, which was an alternative charge to the 10th, falls away. The prosecutor has applied for it to be withdrawn.

6 JZ has pleaded not guilty to each and every one of the first nine of the 11 charges set out above. The second and fourth charges as set out above, are charges in the alternative to the first and third charges respectively. Therefore, I have actually been presiding over seven separate hearings at the one time. That said, each and every charge needs to be the subject of a separate consideration and decision by reference to all of the relevant evidence relating to it.

7 It summary, each and every one of the charges against JZ needs to be considered without any reference at all to all or any of the charges against

all of the other defendants, and further, each and every charge against JZ needs to be separately considered and determined from each and every other one of the charges against him.

8 About a month or so before this hearing, JZ had his bail revoked and he was remanded in custody. I presided over that bail hearing and made the decision to remand JZ in custody pending the hearing. In addition to emphasising the need for separate decisions as just mentioned by me, I also wish to emphasise that material presented in the course of the bail hearing is not taken into account in any way at all in determining any of the charges unless it has been presented as evidence in the course of this hearing. Further to that, I also wish to emphasise that the bail decision itself is of no relevance whatsoever in relation to finally determining each and every one of the outstanding charges. Each and every one of the charges falls to be determined by reference to the evidence presented in this hearing, and on the basis that the onus or burden of proof rests on the State to establish each charge, and so each and every element of the charge, beyond a reasonable doubt. On each charge, there is no onus at all on the defendant, JZ.

The Evidence

9 **Bevan John Scanlon** (Mr Scanlon) is 27 years of age. He was the bridegroom at the wedding.

10 Sometime during the reception, Mr Scanlon noticed commotion and a lot of activity out the front of the cafe. He heard a lot of yelling and screaming and observed fighting. He realised pretty quickly that some of his wedding guests were outside with some youths.

11 It is clear from Mr Scanlon's evidence that he did not know Aaron Flannery (Mr Flannery) very well. Mr Flannery came to be at the wedding because he was the partner of Angela Pich (Ms Pich) who was a friend and work colleague of Mr Scanlon's wife.

12 Mr Scanlon gave evidence that both Mr Flannery and Ms Pich were pretty drunk.

13 Mr Scanlon said that when he went outside, he put Mr Flannery on the ground because he was in a bad state and going in and out of consciousness. He gave evidence that the youths were just "attacking us" and that despite people being clearly injured, they kept coming. He went on to say that youths started throwing objects and going at other guests. He gave evidence that he saw Mr Flannery, Ms Pich, his father, Steve

Scanlon (Mr Scanlon Snr), Jason Plant (Mr Plant), and Nicholas Gangell (Mr Gangell) being punched. He added that he also saw Mr Flannery and Ms Pich being kicked. He said that he was not punched or kicked himself, but was struck on an ankle by a brick paver.

14 Later in cross-examination and re-examination, Mr Scanlon clarified that it was only when Mr Plant and Mr Gangell were dragged back inside the cafe that he was able to give names to the two of them as the ones he had seen being hit earlier. Further in relation to Mr Plant, Mr Scanlon said that he definitely saw him get hit and fall down.

15 Mr Scanlon was questioned by both counsel on whether or not he heard any abuse, including racial abuse. In essence, he gave evidence that because there was so much going on he didn't hear any threats from guests or youths while he was outside the cafe. When questioned in cross-examination about a wedding guest calling out racial abuse along the lines of "dick head", "f-off", "black c -", he said that that was said "after the fact". He clarified that by saying that it was said after all of the guests had got back inside the cafe and when only youths were outside. He in no way sought to condone any racial abuse but mentioned that those words would have been said when the guests were terrified. In relation to language used, I should add that no racial abuse at all has been attached to Mr Scanlon.

16 Mr Scanlon gave evidence that he had five or six beers at the most prior to the incident.

17 **Mr Flannery** is 31 years of age. He attended the wedding as a guest with his partner, Ms Pich. After the reception had been going for some time, he went outside the cafe for a cigarette. He was accompanied by Ms Pich. He gave evidence that he felt a little bit intoxicated at the time. When he and Ms Pich were standing together on a roadway near a paved and garden area a relatively short distance away from the entrance to the cafe, they were approached by a young person, EV. EV approached them alone but was with a group of young people who were within the immediate vicinity.

18 Mr Flannery said that this young person asked him for a smoke to which he said "no". Mr Flannery said that [EV] got a bit upset and was not happy about not being given a smoke. Mr Flannery said that he thought [EV] said something aggressively and that he thought [EV] was going to do something. He said that he felt threatened. Mr Flannery pushed EV. This caused EV to lose his balance. EV, while off balance,

grabbed Mr Flannery and the two of them fell onto a garden bed with EV falling backwards and Mr Flannery falling on top of EV. Both of them then got up and while grappling with each other, moved towards the cafe on the roadway.

19 Mr Flannery was subsequently charged with and pleaded guilty to an assault against EV. The assault was constituted by the push. He was dealt with in the Magistrates Court and received a fine for the offence.

20 Mr Flannery gave evidence that after the push, he and EV started moving towards the cafe on the roadway and everybody else got involved. He did not know who they were. When asked what they did to him, he said that they just punched, kicked and threw pavers and whatever and jumped on him and did whatever they could. He was not able to be precise, but he thought that about 10 young people were doing this to him. He said that he reacted by holding the guy away from him face. He said that he did not hit or do anything to anybody. He also gave evidence that he did not threaten anybody. In cross-examination, he rejected the proposition that he made a racist comment.

21 Mr Flannery gave evidence that he saw his girlfriend, Ms Pich, getting assaulted. She was trying to protect him. He also said that at some stage, he went to help her. He said that three or four youths were on her kicking her and pulling her hair. He is not sure how the assault against Ms Pich finished. He added that after he went to Ms Pich's aid, they jumped in again on him, punching and kicking. He recalls lying on the ground out in front of the cafe and being kicked pretty hard. One kick got him in the ribs.

22 Mr Flannery gave evidence that at some stage when he saw Ms Pich still outside and went to help her, bricks and bottles were being thrown at the windows. He recalls being hit on the chest by something.

23 Mr Flannery gave evidence that as a result of the incident, he sustained three broken ribs, a sore neck, bruises to his chest and all over. He was taken to hospital and x-rayed and took some pain killers.

24 **Ms Pich** is 33 years of age. She attended the wedding, as she was a friend of the bride, Stacey Scanlon (nee Plant). Ms Pich gave evidence that by the time she and Mr Flannery went outside and Mr Flannery pushed one of the youths, she was drunk. She remembers a youth approaching them and asking for a cigarette and being told "no". Ms Pich could not recall what words were actually spoken between Mr Flannery and [EV], but said that there reached a point where the mood changed,

and when [EV] moved a bit closer to Mr Flannery, Mr Flannery pushed him away and then they both fell backwards into the garden bed. She then went on to say that quickly after that, other people came in and grabbed both her and Mr Flannery.

25 Ms Pich gave evidence that she was hit to the face, slapped over the head and pulled to the ground. She remembers a female grabbing her by the hair and hitting her. Ms Pich responded by putting her hands out and grabbing out and ripped the female's clothing. She described many hands coming at her but she was not sure where from. She also gave evidence that when this was happening, she did not say anything.

26 At various points during cross-examination, Ms Pich said that she was not kicking out and striking out, that she did not hit people, that she was not getting into the fray and kicking, that she was being beaten up, and that she was defending herself.

27 In evidence-in-chief, Ms Pich said that she did not hear any racist taunts during the incident. She added that she did not hear anything said at all. In cross-examination she rejected the proposition that Mr Flannery made a racist taunt to [EV]. In the context of the incident as a whole, she gave evidence that she did not hear what was said, including in particular "hey d-head. There you go, d-head. f-off, you black c-". She explained that she did not hear because she was getting beaten up.

28 Ms Pich recalls that at one stage during the incident, Mr Flannery was on the ground and unresponsive and that she went to him. When she was with him she held her hand up. That was clearly for the purpose of trying to protect Mr Flannery. The last she recalls is someone grabbing her and pulling her back inside the cafe.

29 Ms Pich gave evidence that she was injured. She said that she was sore all over and had a big egg on her head like a haematoma. She also said that she sustained two black eyes and bruising to other parts of her body including down her side and to her calf. Exhibit 7 is a photo of Ms Pich taken a few days after the incident and it shows bruising to her cheek and head, and also a black eye. She said that these things were sustained during the incident at the wedding.

30 **Emily Smith** (Ms Smith) was a guest at the wedding. She was a work colleague of Ms Pich. She gave evidence that she had two glasses of wine before the incident.

31 When Ms Smith was outside the cafe, she noticed a caucasian female dressed in blue jeans assault Ms Pich. She said that the female kicked Ms Pich to the chest and said "Don't f-ing touch me". The female was not a wedding guest. Ms Smith said that she tried to grab Ms Pich and pull her back into the cafe, but couldn't manage to do so. She noticed bricks and bottles above her head. By then the number of people had increased from 10 to 30. Ten people were just around Mr Flannery and Ms Pich and Ms Pich was trying to protect Mr Flannery. She added that the group of juveniles were running around screaming. She noticed Mr Flannery on the floor but did not see him get hit. Ms Smith became worried because of the smashing, screaming, and bricks and bottles being thrown, and so she ran back inside the cafe.

32 Ms Smith then went back outside the cafe. She noticed a short grey haired man, she was not sure if it was Stacey Bevan's (the bride's) father. She said that he was trying to stop what was going on with his hands up in the air. She said that she did not see the guests do anything. She saw a kid standing up on a bench with a brick or bottle in his hand threatening a wedding guest who was saying "Please stop, please stop". She described the wedding guest as an elderly gentleman. She then noticed Ms Pich on her knees and a female punching her to the head. She then went back inside the cafe.

33 Ms Smith then noticed a male friend of the bride fall and lie partly unconscious near the entrance to the cafe. She grabbed him and pulled him into the cafe. She said that he had a gash to the back of his head. The gates to the entrance to the cafe were then closed. Ms Smith confirmed that the CCTV footage of camera 2 at 20.50.42 showed this particular action of her pulling the man back into the cafe. By reference to other evidence, I am satisfied that this man is Mr Plant. Ms Smith said that once the gates were closed, the juveniles kept throwing bricks and bottles. She added that bottles smashed and shards of glass struck her on the back and neck, but did not cause any injuries.

34 During cross-examination, Ms Smith said that she didn't hear any racial taunts during the incident.

35 **Brittania Bailey** (Ms Bailey) is 40 years of age. She was a guest at the wedding and is a friend of the bride.

36 Ms Bailey said that she heard yelling and screaming outside the cafe. She saw bricks and bottles being thrown and lots of people running around.

37 Ms Bailey knew many people involved but focussed her attention on Ms Pich. She noticed Ms Pich and Mr Flannery on the ground. Mr Flannery was not moving and she believed that he was unconscious. She said that Ms Pich was cradling Mr Flannery. She described Ms Pich as being over the top of Mr Flannery and trying to protect him from being kicked and punched. She did not see Mr Flannery or Ms Pich get kicked or punched. She said that two girls were over Ms Pich. She assisted Ms Pich back into the cafe.

38 Ms Bailey said that she received some scratches from the incident as a result of being struck by shards of glass, but did not suffer any injuries.

39 Ms Bailey also gave evidence that she did not hear any racial taunts and did not see any guests hit anyone in the fight.

40 Ms Bailey gave evidence that she was the designated driver on the night. I wish to add at this point that I am satisfied that Ms Bailey was not under the influence of alcohol at all.

41 **Phillip Roach** (Mr Roach) was a guest at the wedding. He partnered Ms Bailey. He also said that he was the driver for the evening. He said that he may have had one or two drinks.

42 Mr Roach said that he was sitting at a table outside of the cafe with Ms Bailey. I should mention that the cafe has a reception area and another separate sit down area immediately adjacent to it. Both areas are under the one roof. If a person walked through the main entrance to the cafe, he or she would enter the separate sit down area first, and from there, could then access the reception area. They noticed a number of people at the doorway and they went to the doorway to see what was happening. He said that he saw a female being dragged by the hair and punched. He noticed that the female was Ms Pich. Ms Pich was an employee of Ms Bailey.

43 Mr Roach said that his first instinct was that what he saw had to stop. He then saw Ms Pich on the ground with her husband over her. He described the situation as volatile with a number of people in the area being quite aggressive.

44 Mr Roach said that there was probably about half a dozen wedding guests outside. He said that he didn't hear any racial taunts from any of them and did not see any of them threaten or hit anyone. He said that the language from the juveniles included racial taunts calling us (the guests) white c-s. I should mention here, that nothing turns on whether or not that

was said. He decided to record the incident on his iPhone because he wanted appropriate action taken later.

45 Mr Roach said that one bloke threw a punch at him and that at the end of the incident three youths were throwing bottles at guests.

46 During cross-examination, Mr Roach agreed that when he was outside recording the incident, that he yelled out "D-heads" to youths. He also agreed that at the end of the incident when he and the other guests were inside the cafe and the gates were closed, that he yelled out to some youths who were outside the cafe words including "f-off, black c-". He said that he made those comments immediately after a brick had been thrown at the cafe when there were elderly people and women inside. He accepted that he was upset at the time. While he said that in his view there is no racial vilification in what he said, clearly there is.

47 **Mr Gangell** is 29 years of age. He was a guest at the wedding. He said that he had consumed no more than four to five beers and a glass of wine before the incident.

48 Mr Gangell's attention was drawn to outside when he heard yelling. He went outside thinking that he could calm the situation down. When he went outside he saw a male wedding guest in a fight with two or three non-guests. The fight involved scuffling and ripped shirts. He also saw a female from the wedding on the ground. A female was kicking the female wedding guest to the head and torso. There were no other guests around her. Mr Gangell ran to her aid and put her head under his arm pit to protect her from being hit. He also put his other arm out showing an open palm for protection. He said that the youths continued to kick and that he told them to "f-off, leave us alone". He remembered being kicked himself and then he went blank.

49 Mr Gangell remembers coming to when he was being dragged to the entrance of the cafe. When at the entrance he tried to get up but his legs were weak. He remembers coming to when he was inside the cafe. He helped to close the shutters at the entrance to the cafe and described bricks and bottles being thrown. He said that guests inside the cafe were screaming and terrified.

50 In cross-examination, Mr Gangell said that he was not involved in the midst of a fight. He said that he was on the ground protecting the female and that he did not lash out. He was sure about not lashing out. He said that he remembers what happened to him very vividly.

51 Mr Gangell gave evidence that he could not be specific on what was said by people both inside and outside of the cafe.

52 Mr Gangell gave evidence that he sustained some injuries during the incident. They included a laceration to his face and to his lip, and a lump on the back of his head for which he had scans.

53 **Jade Lattimore** (Ms Lattimore) is Mr Scanlon's sister. She was a guest at the wedding. She gave evidence that she had a glass of champagne before the reception and maybe another couple of glasses of champagne during the reception before the incident. She said that it was her role to take photos on the night.

54 Ms Lattimore was on the dance floor when she heard something happening outside. She went to the entrance to the cafe to have a look. She saw lots of people and chaos. She said that there were about 20 to 30 people outside. Some were guests and some were not. She was focussed on her father and went to him. She said that he was saying "Just go home, nothing is going to happen to you, just go home". She said that her father started to get hit to the head by a child. She stepped in between her father and the child and pleaded with the child to leave them alone. She got her father back inside the cafe.

55 Ms Lattimore then went back outside to try and bring her brother, her sister and her husband back inside. She saw her sister, Seraya Dalby (Ms Dalby) who was looking for her husband. She said that her husband, Daniel Lattimore (Mr Lattimore), was helping her sister. Ms Lattimore said that she did not see her husband or her sister threatening anyone who was not a guest. She said that there was a lot of talk but she couldn't say what it was. She recalled her father going back outside and her getting him back inside. She said that when her father went back out he was trying to talk with the kids and was not threatening. She went back inside the cafe and the gates at the entrance to the cafe were shut.

56 Ms Lattimore gave evidence that when she went back inside, some of them noticed a guest lying on the ground outside. The gates were re-opened and some of them went out to get the person and bring him back inside. When she was moving to get back inside the cafe she thought that she tore a muscle. She looked down and noticed blood and realised that she had been cut. She said that her leg was sliced open and mentioned that bottles were being thrown at the time. She required 14 stitches to the cut on her left leg. She also gave evidence that she received a minor cut to her chin which resulted in some bleeding. She

also said that her arms were all bruised as a result of being hit by projectiles which she believed were bricks.

57 When shown CCTV footage from camera 2 at 20.50.37, Ms Lattimore said that this showed the incident and was at the time when she was moving to go back inside and thought that she had torn her hamstring, but noticed that it was actually a cut.

58 During cross-examination, Ms Lattimore said that she did not hear the word "d-head" when she was outside, but added that when she was outside there was a lot of noise.

59 **Benjamin Ober** (Mr Ober) was the Restaurant Manager on the night of the wedding at the Point Walter Cafe.

60 Mr Ober said that he didn't know how the incident started, but that he saw two or three youths start fighting with two customers of the wedding. He observed this when he was standing at the entrance to the cafe and that it was about 10 or 20 metres away from him. He heard arguing and saw punching. He said that we all ran from the cafe to split them up and a group came from the hill.

61 Mr Ober said that a lot of guests were involved by the end of the incident. He said that he did not see guests punch anyone. He saw wedding guests defending themselves. He said that they (guests) were trying to push them (the youths) away. He expanded on that by saying that no attacking was going on from the guests. He described the actions of the guests as defending. He said that he saw them (the youths) punch guests a lot.

62 Mr Ober remembers a female on the floor being kicked. He said that a lot of screaming was going on and that people were calling on them (the youths) to stop. He added that the swearing from the kids included the "c" word and "going to kill you". He said that it was very scary from the young kids. He also said that the kids threw glass bottles and many bricks. He realised the day after the incident, when he was involved in the clean up, that bricks were obtained from a nearby wall. He assisted to try and get everyone (guests) inside the cafe and close the shutters. He called the police. He also gave evidence that when they (guests) were all back inside with the shutters closed that they (youths) kept throwing bricks.

63 Mr Ober said that he did not consume any alcohol on the night.

64 Mr Ober also gave evidence that he was struck on the finger by a brick when he was shutting the gates at the entrance to the cafe. He added that his finger was not broken.

65 **Mr Plant** was a guest at the wedding. He is an older brother of the bride, now Stacey Scanlon. He gave evidence that he consumed no more than three beers between the ceremony and the reception, and at a guess, maybe four or five beers at the reception.

66 Mr Plant said that he noticed people go outside. He noticed his partner and his best friend's partner outside and so he went to the door to have a look. He said that he saw a crowd of people, maybe about 10, and a male and female on the ground and both being kicked. In cross-examination he said that 10 people was an approximate and not an exact figure. He also said that it looked to him like the two were being kicked and possibly stomped on. He didn't recognise who the male and female were.

67 Mr Plant gave evidence that he went outside to find his partner, Jodie Jones, and his best friend. He said that he saw a big crowd and people being attacked. He said that he exchanged words with people who were not guests. He said that he told them "you need to go away, you are ruining my sister's wedding". He added that he may have told them to "f-off". He indicated that one of the youths said something to him in an aggressive manner. Mr Plant said that he did not see or hear any of the guests act in a threatening manner.

68 Mr Plant gave evidence that the next thing he remembers is coming to as he was being dragged inside the cafe. He did not know what had put him into that condition. When he was dragged back inside through the doors he was put in the recovery position and told not to move. He said that he sustained a concussion but did not receive any cuts. He added that when he came too, he was dazed and had a sore head and a headache. He was taken to hospital and by the time he was discharged his headache had gone.

69 Mr Plant was shown photographs taken from the CCTV footage captured on camera 2 at the cafe location. He said that it was possibly him at the top of the two steps in front of the entrance to the cafe at 20.50.31. He was not 100 per cent confident that it was him. Then when shown a photograph taken at 20.50.35 he said that the male in the light coloured shirt looked like him retreating back inside the cafe. He said that the same man shown in the photograph taken at 20.50.36 was him

slouching over at the top of the stairs and on the flat area in front of the entrance to the cafe.

70 During cross-examination, Mr Plant was not challenged on whether or not the person, who he identified in the photograph slouching over at the top of the stairs, was actually him. It was put to him in cross-examination that he had no idea on how he ended up on the ground. He agreed with that proposition. It was then put to him that it was even possible that he went to ground because he tripped or fell. In response to that proposition he said, "Well, it would be possible, yes, I have no idea what happened to me."

71 **Jodie Jones** (Ms Jones) is 31 years of age. She was a guest at the wedding. She is Mr Plant's partner. She gave evidence that after the ceremony and before the reception she had a glass of wine and that during the reception she had a cider.

72 Ms Jones said that she was sitting outside and heard yelling. She looked and saw five or six people fighting. When she went out to have another look she noticed a lot more than five or six. She focussed her attention on Mr Plant. She said that he was on the top level and that he had his hands up in front of him and was saying "Just calm down, its my sister's wedding, just calm down its my sister's wedding". She was dragged back inside the cafe by other wedding guests.

73 Ms Jones then looked again and says that she saw a guy with two bricks, one in each hand, and that he smashed them together and said "You're gonna f-ing die tonight". She said that he said it to Mr Plant. She was dragged back inside. She said that she could hear yelling, swearing and glass bottles being smashed. She said that she next saw Mr Plant when he was dragged inside, and that he was unconscious.

74 **Peter Lind** (Mr Lind) was also a guest at the wedding. The bride is his niece.

75 Mr Lind gave evidence that he saw one of the guests being beaten up on the footpath near the carpark. The guest was on the ground and a couple of people were "sought of bashing him, just fists and physically". He saw a guy with a couple of bricks in his hands threatening to throw them. He said that there were about a half a dozen guests outside, but it was hard to be specific. He said that people were shouting, trying to calm people down. He mentioned that Mr Scanlon Snr was saying "calm down". He also gave evidence that the man who he had seen on the ground, was working his way back to the restaurant and that kids were

pursing him and trying to hurt him. He could not remember anyone else specifically, getting assaulted.

76 Mr Lind was conscious of getting his wife inside the cafe because she had been sprayed with something and was a bit hysterical. When inside he started to close the shutters at the entrance to the cafe. He said that paving bricks and all sorts of projectiles were being thrown at the place by the young people. He said that he didn't hear guests say anything threatening. He added, that to the contrary, they were trying to calm it down. He did not see guests assault anyone. He said that bricks were thrown at windows and onto the roof. When inside the cafe he noticed Mr Plant getting his head patched up.

77 When Mr Lind was shown CCTV footage from camera 2, he said that the person with the white top on the top of the stairs near the entrance to the cafe at 20.50.31 was Mr Plant. That footage showed Mr Plant get struck and stumble to the ground at the entrance to the cafe.

78 **Martin Waller** (Mr Waller) is 36 years of age. He was a guest at the wedding. His wife worked with the bride, now Stacey Scanlon. He said that he had two light beers on the night.

79 Mr Waller gave evidence that he heard a lot of shouting and went out to investigate. He said that he saw Mr Flannery and his partner involved in an altercation. They seemed to be protecting themselves from physical abuse coming from many different directions. He said that Ms Pich was on the ground and a female had her by the hair and was hitting her with fists. He couldn't recall what was happening with Mr Flannery. He said he seemed to be protecting himself from being struck by two persons. He said Mr Flannery had his arms up in front of himself for protection. He said that he did not see any of the wedding guests assault the persons who were going at Ms Pich and her partner. Mr Waller said that he recognised the persons hitting Ms Pich and Mr Flannery as being members of a group who had been moving up and back outside of the cafe earlier before the reception. He said that they were not wedding guests.

80 Mr Waller also gave evidence that he recalled someone standing on a table with two bricks and being threatening. He also recalls objects being thrown prior to them (guests) going back inside.

81 **Jamie Dalby** (Mr Dalby) is 33 years of age. He was a guest at the wedding. He is the husband of Ms Dalby, Mr Scanlon's sister. Mr Dalby gave evidence that he was driving on the night of the wedding and that he had not had anything to drink before the incident.

82 Mr Dalby gave evidence that he was in the patio alfresco area of the cafe when he saw an all in brawl. That is the sit down area adjacent to the reception area and just inside the main entrance of the cafe. He described what he saw as 10 kids, and a guy from the wedding who was holding and trying to hit back because he was being hit. He said that at least 10 kids were on top of him. He described "our guy", (who was obviously Mr Flannery) as being under attack. Mr Dalby decided to go outside to help get Mr Flannery back in. He said that when he went out more kids came from the hill. He tried to rip kids off him (Mr Flannery) and drag him in. He said that we were trying to calm them down and that when doing so people from his party were telling them to "f-off" and that the kids were saying "f-off".

83 Mr Dalby said that he was worried that he would be hit from behind. He said that the kids were starting to square up and punch him. He said that he got hit from behind. He didn't see it coming. Guests were saying "Get the f-away, leave us alone". Mr Dalby said that our guy (again obviously a reference to Mr Flannery) was hit from behind and went to ground. He said that there were a lot of swings and near misses.

84 Mr Dalby went back into the cafe and took his glasses off. He then went back outside to get the guy on the ground. After he had gone back outside he was hit from behind. He responded by swinging a punch which hit the person who had hit him. Mr Dalby gave evidence that he could see kids going to kick a man who was on the ground outside the cafe. He threatened a person not to kick the man on the ground. In cross-examination, Mr Dalby accepted that some of the wedding guests said to the kids something along the lines of "If you are going to hit us, we are going to f-ing hit you back", or whatever.

85 Mr Dalby gave evidence that he got hit by something to the head. He indicated that he was struck on the forehead above his left eye. He said that the cut resulted in bleeding and that he had four stitches to close it up.

86 Mr Dalby was shown CCTV footage of the incident captured on camera 2. The footage at 20.48.38 shows Mr Dalby with his arms out in front of himself in a defensive stance on the lower level not far from the entrance to the cafe. A young person then punches him to the right jaw while he is standing there trying to ward youths away. It should be noted that this footage also shows JZ standing only a few paces away and looking towards the front of Mr Dalby when he got punched to the jaw. I have no doubt that JZ saw that happen. At 20.50.20 on the timer of the

footage, one of the youths can be seen to punch Mr Dalby to the head when he had his back turned, and then Mr Dalby immediately turned and swung back at the youth who had just punched him. This is consistent with the oral evidence given by Mr Dalby. I have no doubt that JZ also saw that happen.

87 I should add that the CCTV footage essentially shows Mr Dalby trying to stop the aggressive behaviour of the young people and settle the situation.

88 **Seraya Dalby** (Ms Dalby) is 32 years of age. She was a guest at the wedding. She is the sister of Mr Scanlon. She gave evidence that she had a glass of wine after the wedding ceremony and about six at the reception before the incident.

89 Ms Dalby gave evidence that she saw two guests go outside. Without her putting names to the guests, they were obviously Mr Flannery and Ms Pich. She heard noise and ran out to the entrance to the cafe and at the top of the stairs to have a look. She said that she saw children everywhere throwing punches, and abusing and screaming at wedding guests. She said there were quite a lot of children, about 20, and not many wedding guests. She described the situation as chaotic and that guests were trying to protect themselves. She said that her sister was trying to protect her dad from kids trying to hit him. She also said that her dad was trying to tell the kids to go home.

90 Ms Dalby gave evidence that at one point a young male ran at her. She thought he was going to punch her and so she pushed him away with her hands in front of herself and yelled at him to "f-off". She said that the young male did run off.

91 Ms Dalby gave evidence that at one point, a brick was thrown at her and hit her to the side of the head. She said that after she had been hit with the brick, that it fell onto the floor in front of her. She said that she needed four stitches to the cut, which she indicated was on the right side of her head. She said that her brother-in-law, Danny (Mr Lattimore), grabbed her and took her inside. She also said that when she was being taken inside she was hit by a bottle to the head.

92 In cross-examination, when Ms Dalby was challenged on her evidence that she was hit by a brick to the head, on the basis that she did not see the brick at the actual time of impact, and said that the brick fell to her feet three microseconds after she was hit to the head. Further, and in cross-examination, Ms Dalby agreed that when Mr Flannery and Ms Pich

had each gone outside, that she had joked about how drunk they were at that stage of the night.

93 **Daniel Lattimore** (Mr Lattimore) is 32 years of age. He is the husband of Ms Lattimore, who as mentioned, is Mr Scanlon's sister. Mr Lattimore is therefore Mr Scanlon's brother-in-law. Mr Lattimore was the Master of Ceremonies for the wedding and gave evidence that he had not had any alcohol to drink before the incident.

94 Mr Lattimore gave evidence that he heard noise outside and saw a brawl. He said that he told Mr Dalby and Mr Scanlon that they were going to have to stop it. He said that he first saw two wedding guests and a male. He saw a little bit of a scuffle between the male wedding guest and the male youth. He then saw a lot of teenage kids run in punching and kicking. He said that the male guest (who was obviously Mr Flannery) getting punched and kicked. He said that the male wedding guest's girlfriend was with him and was screaming "Get off him".

95 Mr Lattimore gave evidence that he said that they had to stop it because the guy (obviously Mr Flannery) was getting pretty badly hurt. Mr Lattimore said that he didn't go out initially because he thought that because he was big, it may inflame the situation. When he thought it looked like the wedding guest (obviously Mr Flannery) was going to get knocked out, he went out.

96 Mr Lattimore gave evidence that when he and some others went out he was saying to the young people to "Get the f-off him". He said that he backed off, basically because of the number of kids that approached them. He said that his father-in-law, Mr Scanlon Snr, then came out to try and calm the situation down. He said that Mr Scanlon Snr then started getting hit by different kids.

97 Mr Lattimore said that he saw Mr Plant get punched. He added that all he saw was Mr Plant going down to his knees and that he was totally out of it. He tried to get Mr Plant inside. He gave evidence that a teenager was fairly close to Mr Plant when he went down. He added that this incident occurred just above the stairs near the entrance to the cafe. He said that he saw the teenager move back after Mr Plant went down.

98 Mr Lattimore gave evidence that there were pregnant women and older women present. It was his assessment that the teenagers were not going to stop. He mentioned that there was a kid on a table with a brick in his hand about one or two metres away from him saying "You are going to f-ing die tonight".

99 Mr Lattimore gave evidence that when the gates to the entrance of the cafe were closed, that wine bottles were smashing on the rails and showering through.

100 Mr Lattimore also gave evidence that he did not get punched or kicked when he was trying to help people. When shown CCTV footage of the incident on camera 2, Mr Lattimore said that the footage at 20.50.36 showed Mr Plant being king hit, and that that was when he said in evidence that he saw Mr Plant go down to his knees.

101 In cross-examination, Mr Lattimore described the incident as horrendous. He said that he and others were all trying to defuse the situation. He said that he and others tried to withhold going out for as long as they could because they did not want a confrontation, but it got to the point where the wedding guest had got so much that it had to be stopped. He added that most people would have tried to stop it. Later in cross-examination, Mr Lattimore went on to say that basically 100 per cent we were restraining as much as we could not to throw punches, and that if anything, the punches were definitely coming from the teenagers.

102 Mr Lattimore gave evidence that he didn't recall the word "d-head" being used. However, he did accept that some of the wedding guests were telling the teenagers to "f-off" or to "get the f-away" or whatever. He explained the use of that language by reference to what was happening.

103 **Phillip Goldsmith** (Mr Goldsmith) is 28 years of age. He was a guest at the wedding. He was a best man.

104 Mr Goldsmith gave evidence that he heard a raucous outside. He went to look. He saw a male guest in an altercation and a female guest being dragged by the hair. There were several youths about the area and then bricks started to be thrown. He saw about 10 guests outside when he went out to look. He said there were about 20 or 30 people running down from the hill.

105 Mr Goldsmith said that he did not hear the guests saying things. He tried to bring them back inside the cafe. He said that youths were throwing bricks and items. He said that the guests did not throw anything. He also saw a couple of males on the ground but did not see them being attacked. He said that he was not assaulted or injured.

106 In cross-examination, he described the situation outside as chaotic. He agreed that wedding guests were getting into kids and that kids were getting into wedding guests. In re-examination, Mr Goldsmith clarified

that by saying that the wedding guests were getting into the kids in self-defence and did not attack. He said that the guests were trying to get inside to defend themselves.

107 **Kimberley James** (Ms James) is a work colleague of the bride, now Stacey Scanlon. She was a guest at the wedding. She had consumed two or three glasses of champagne before the incident.

108 Ms James gave evidence that she went outside to get some fresh air. When outside, she noticed Ms Pich lying on the ground and four or five kids around her stomping on her and kicking her. She said that Mr Flannery was there as well. She also gave evidence that later she saw Mr Flannery on the ground and Ms Pich leaning over the top of him trying to protect him. She then went back into the cafe.

109 In cross-examination, Ms James gave evidence that both Mr Flannery and Ms Pich were quiet drunk. She was sitting at the same table as them at the reception.

CCTV footage from the City of Melville

110 Exhibit 3 is CCTV footage of the incident. The footage is captured by cameras set up outside the Point Walter Cafe. Camera 1 shows a roadway and a paved and garden area outside the cafe and off to the side of the cafe. It is all outdoors and under the open sky. Camera 2 shows the entrance area to the cafe, the entrance itself, and areas inside and also the outside of the cafe itself. Essentially, the area shown in camera 1 is adjacent to the area shown in camera 2, save that there is a relatively small area in between which is missed, which means that the two areas are not contiguous in the true sense.

111 If you put the images from both cameras on the same screen, with the image from camera 1 on the left and the image from camera 2 immediately to the right of it, then you will not get a continuous image. There will be the small section missing from the middle as mentioned. So if a person was walking from left to right, the person would go off the right side of the image of camera 1, and then there would be a small gap before the person would then appear on the left side of the image of camera 2.

112 Each image has a time reference noted on it in hours, minutes and seconds. There is no issue between the parties that the timing shown on the footage from both cameras is synchronised. Anyway, from watching the footage on numerous occasions, it is clear without any reference to the

timing noted on the footage, that the footage from both cameras is running at the same time.

113 I should mention that it is easy to accurately identify JZ in the CCTV footage. He has distinctive clothing, including a "Chicago Bulls" jacket, light coloured trousers, white socks, black shoes and a cap. Indeed, when JZ gave evidence he actually identified himself in some of the CCTV footage. No one else is dressed like JZ. In addition to that, his height and build can be noted.

114 I make the following observations and comments from watching the footage from both cameras on numerous occasions.

Camera 1

Time	Observation and comment at about time
20:47:26	Mr Flannery, in company with Ms Pich, is approached by EV and they start communicating with each other.
20:48:04	Mr Flannery pushes EV and they both fall backwards into the garden bed.
20:48:08	Both Mr Flannery and EV have got back up on their feet and are moving on the roadway towards the cafe holding each other and Ms Pich is trying to intervene. As they move towards the entrance of the cafe, Mr Flannery is leaning backwards and with his back to the cafe. EV is moving facing forwards and facing Mr Flannery. EV has now become the aggressor. He punches Mr Flannery to the head twice with his right fist. Mr Flannery then swings back at EV with his left arm towards EV's head. Mr Flannery is losing balance falling backwards. The first of the other youths can be seen, having entered the screen from the left and running to the right of screen towards all three of EV, Mr Flannery and Ms Pich. There is no issue that this, first of the other youths, is RR.
20:48:10	RR runs to Mr Flannery and swings two forceful right round arm punches to Mr Flannery's head. Mr Flannery can then be seen to start falling backwards to the ground. They then move off screen to the right of screen. Also at this stage there is another young female on screen but just walking (not running) in the direction of Mr Flannery and Ms Pich.

20:48:11	The second male of the other youths enters the screen from the left (the hill area) and runs towards Mr Flannery and Ms Pich.
20:48:11	The defendant, JZ, then enters the screen from the left, just behind the second male, and runs towards and is looking forwards in the direction of Mr Flannery and Ms Pich.
20:48:12	<p>Two more male youths enter the screen from the left, close behind JZ, and run towards Mr Flannery and Ms Pich.</p> <p>On the evidence relating to the identification of JM-C, including in particular the identification of him on the footage material by JZ in the course of his evidence, neither of the first two males who entered the screen running towards Mr Flannery and Ms Pich in front of JZ is JM-C. One of the two males who followed close behind JZ may well be JM-C. The footage shows that when JZ is running towards Mr Flannery and Ms Pich, he is not paying any attention at all to either of the two males running just behind him. JZ is not running in to get to JM-C to stop or try and dissuade JM-C from doing anything.</p>
20:48:13	Another female youth enters the screen from the left running towards Mr Flannery and Ms Pich.
20:48:13	Then another male enters the screen from the left running towards Mr Flannery and Ms Pich. It can then be noted that all male youths who have run towards Mr Flannery and Ms Pich have run past the two female youths.
20:48:17	Another male youth enters the screen from the left and runs towards Mr Flannery and Ms Pich.
28:48:17 onwards	More youths enter the screen from the left and head towards Mr Flannery and Ms Pich who are obviously off the right of screen.
20:48:19 to 20:48:23	JZ reappears back to the right of screen but then goes back off screen to the right and towards Mr Flannery and Ms Pich and towards the cafe.
20:49:06	A female, I find to be Ms Pich, goes to ground and youths go in. Ms Pich is kicked and surrounded. Mr Gangell goes to help Ms Pich. Then Mr Scanlon Snr arrives and talks to the youths, no doubt in an effort to get them to calm down and/or disperse. Then Mr Flannery arrives to try and help Ms Pich but is pushed away and

	goes to ground. JZ was very proximate, and was part of this group although not directly involved in the actual violence, and was clearly watching it all.
20:49:20	JZ reappears to the right of screen after being off to the right of screen and then remains there with the others in the situation just mentioned above.
20:49:21 to 20:49:25	JZ then moves through other youths standing there next to each other in the group and goes up to an elderly person, who I find to be Mr Scanlon Snr. At this stage Ms Pich is still on the ground immediately behind Mr Scanlon Snr. JZ then stares in the face of Mr Scanlon Snr, and then moves past him. JZ is actively engaging in the incident in the company of others and is not simply standing off to the side watching. I find that what JZ did and the circumstances in which he did it to Mr Scanlon Snr was confronting and intimidating. JZ does this when Ms Pich is there on the ground. The behaviour of the group, including JZ, delayed assistance being rendered to Ms Pich. JZ then goes to the garden bed area off to the left of screen.
20:49:31	JZ picks something up, which I find to be a stone or rock, from the garden bed.
20:49:34	JZ jumps down from the garden bed level to the lower ground level of the roadway (only one step).
20:49:34 to 20:49:55	JZ walks forwards to the right of screen towards the cafe holding the stone or rock in his right hand. During this time he has been looking towards the entrance of the cafe and obviously observing what was happening in that area. He then turns around and walks back to the garden area.
20:50:08	JZ, still in possession of the stone or rock in his right hand and looking forwards towards the entrance to the cafe, he swings his right arm back and forth and then throws the stone or rock towards the entrance of the cafe. It can be noted from the footage that JZ throws the stone or rock with a bent elbow and with a round arm action with his hand out in front and about level with his shoulder. JZ does not throw the stone or rock in an upwards trajectory such that it would necessary land on the roof of the cafe. Rather, he throws it on a slightly upwards but relatively flat trajectory and towards the entrance to the cafe. The observation can be made from

	<p>camera 2 at the same time, that there are only wedding guests at the very front entrance of the cafe, within about four or five metres of the entrance and moving inside. There are some youths in front of JZ but they are closer to him than the guests. After throwing the stone or rock, JZ then walks off to the left of screen and under a tree or trees.</p>
<p>20:50:16 to 20:50:22</p>	<p>JZ then comes back moving to the right of screen. He is looking towards the entrance of the cafe. He initially walks but then starts to run to the right of screen and towards the entrance to the cafe and then goes off screen to the right of screen. It can be noted from camera 2 at 20:50:16 that Mr Flannery is punched by one male youth and then another which causes Mr Flannery to go to ground.</p> <p>It can also be noted from camera 2 that at 20:50:20, Mr Dalby is punched without warning by a male youth with a right fist to the head to which Mr Dalby responds with a punch by his right fist to the head of the youth who had just struck him. Mr Dalby then defensively backs away immediately towards the entrance to the cafe. The youth who struck Mr Dalby then moves back and away and looks back at the entrance to the cafe. That youth then remains with other youths at the location. They direct their attention to guests at the entrance.</p>
<p>20:50:21 to 20:50:23</p>	<p>JZ is present at the top right corner of the screen looking towards the entrance of the cafe shown on camera 2. Immediately after, he is then seen to move into the top left corner of the screen for camera 2 and then kicks at Mr Flannery. I will detail the kick in a moment.</p>
<p>20:50:33</p>	<p>The youth who struck Mr Dalby then turns and walks to the left of screen towards the garden bed area.</p>
<p>20:50:25</p>	<p>JZ can be seen in the top right of the screen and backing back to the left of screen and near a large tree in the garden area, but always looking forwards towards the entrance to the cafe. He is very near a table which can be seen to have a bottle on it.</p>
<p>20:50:31</p>	<p>JZ moves forwards towards the table and picks up the bottle from the table in his right hand.</p>
<p>20:50:33</p>	<p>Having picked up the bottle, JZ swings his right arm back while still holding the bottle and contents, fluid, in the bottle can be seen spraying out behind and to the side of him from the bottle.</p>

20:50:36	JZ throws the bottle, using his right arm, towards the front entrance of the cafe. Again, JZ's throwing action is the same as I described it when he threw the stone or rock. It was a relatively flat trajectory and not an upwards trajectory.
20:50:38	Having thrown the bottle towards the entrance, JZ then walks away and to the left of screen past the big tree in about the middle of the screen and on the upper level of the garden bed area.
20:50:42	JZ walks past the big tree, stops, and then turns back around, now facing the cafe entrance.
20:50:46	JZ then moves forward a few steps and picks up a piece of brick from the upper level paved area in the garden bed area.
20:50:48	JZ with the piece of brick in his right hand, starts walking to the right of screen towards the entrance of the cafe.
20:50:51	<p>When JZ is near the big tree in the paved area in the garden bed area, he throws the piece of brick towards the entrance of the cafe. Again his throwing action is as I described he threw the stone or rock. His right hand was out in front and about level with his shoulder. It was about level with his shoulder. It was thrown on a relatively flat trajectory and not in an upwards trajectory.</p> <p>It can be noted that on camera 2 at 20:50:51, Mr Flannery and Ms Pich were the only guests outside. They were on the ground and the others had taken refuge in the cafe. There were some youths about Mr Flannery and Ms Pich about three to four metres from the entrance and they both had a rock or brick in their hand and were focusing their attention at people inside the cafe.</p> <p>JZ then walks back away to the left of screen.</p>
20:50:58	JZ is with two other male youths. Neither of them is JM-C. JZ is not trying to get JM-C away from the situation.
20:50:58 to 20:51:08	JZ stays in the location of the garden bed area looking towards the entrance of the cafe. He then walks to the left of screen and under a low level tree and then out of screen to the left.
20:51:36	JZ comes back onto the screen from left of screen.

20:51:38	JZ leans down and picks up a projectile of some kind from the garden and holds it in his right hand. He then remains in the garden bed area. He looks towards the entrance of the cafe.
20:51:50	JZ drops the projectile, likely a piece of brick, but whether it is a stone, rock or piece of brick does not really matter, he drops it back into the garden bed. He then backs away off to the left of screen again.
20:52:09	A male youth, again going on the evidence including that of JZ, who I find to be JM-C, who is wearing a white t-shirt with a stripe, comes onto the screen from the left of screen. He walks towards the entrance of the cafe.
20:52:17	JM-C leaves the right of screen and goes to the entrance of the cafe.
20:52:44	JM-C and two other youths return back onto the screen and move away to the left of screen past the big tree. From 20:52:09 to 20:52:44 JZ is not to be seen at all and so he is not trying to talk with JM-C at all to get him to leave the situation.
20:52:53	The last of the male youths and a female youth appear to leave the scene.

Camera 2

Time	Observation and comment at about time
20:48:14	The first youth appears on the screen from the left of screen. On the evidence it is RR. Then some guests come out of the cafe. They include the bridegroom, Mr Scanlon. Mr Flannery and a group of youths can be seen to the left of screen.
20:48:26	More guests come out from the cafe.
20:48:29	JZ enters the screen from the bottom left of the screen.
20:48:29 to 20:48:49	JZ continuously remains on the screen in the area in front of the entrance to the cafe. At about 20:48:30, JZ can be seen very proximate to other youths and while not holding Ms Pich, he is clearly involved with others confronting and intimidating her. Guests can be seen trying to get Ms Pich and Mr Flannery back inside the cafe.

	At about 20:48:38, Mr Dalby is punched by a male youth to the right jaw. Mr Dalby was trying to ward youths away at the time in a non-violent manner with his arms outstretched. JZ is only a few paces away and very proximate to other youths and watched that happen.
20:48:41	There are guests in a group standing just outside of the entrance to the cafe. There is a group of six juveniles standing in front and facing the guests. The juveniles are configured in an arc and JZ is the second from the left in the group. The guests then start to move back inside the cafe. JZ raises one arm up so that his hand is above his shoulder. All of the six members of this group of youths, including JZ, are very proximate to one another.
20:48:47	A group of guests are standing just outside in front of the entrance to the cafe. At the same time about five youths, including JZ, are standing a short distance away from the guests and with their attention directed towards the guests. The youths are in a group, all proximate to each other. JZ puts both hands up above his shoulders and points a finger or fingers on each hand in the air. When JZ gave evidence, he indicated that at this point he was giving guests the finger as a means of communicating to them to "f-off".
20:48:49	JZ walks off towards the left of screen with three other male youths. They are very proximate to each other. Another male youth is a short distance closer to the entrance to the cafe. JZ then walks off the screen to the left and towards the garden area covered by camera 1.
20:49:01	JZ re-enters the screen from the bottom left of screen. He is just off to the side of other youths but still very proximate to them.
20:49:05	JZ goes back off the screen and to the left of screen in the same direction as a scuffle.
20:49:10	A crowd of guests are outside watching what is happening.
20:50:23	JZ appears from off the top left of screen to the top left of screen. I repeat the observation from the footage on camera 1 that at the same time on the time clock, JZ was at the top right of that screen. From that position as shown on camera 1, JZ would have been able to see a group of youths around Mr Flannery and Mr Flannery go to ground. Going back to the footage on camera 2, JZ can be seen to appear at the top left of screen on the upper level in front of the

	<p>entrance to the cafe. There are two steps down from this upper level to the lower roadway level. Mr Flannery was lying on the ground on the lower level with his head up against the vertical of the bottom step. JZ moves towards Mr Flannery, steps with his left foot onto the bottom step, still standing with his body leaning backwards, and then kicks forwards and downwards with his right foot at the head/neck/shoulder region of Mr Flannery while Mr Flannery is lying horizontal and motionless on the ground with his head up against the vertical of the bottom step.</p> <p>When JZ kicked at Mr Flannery there were at least five or six other youths about Mr Flannery who was lying motionless on the ground.</p>
<p>20:50:24</p>	<p>JZ then retreats straight away and moves back off screen to the left of screen.</p>
<p>20:50:28</p>	<p>Ms Pich goes to Mr Flannery who is still lying motionless on the ground in front of the steps. JZ is still off screen to the left of screen.</p> <p>At that time Mr Plant is on the lower level outside the entrance to the cafe with guests to his left and also slightly behind and near the entrance to the cafe. Further away from the entrance and in front of Mr Plant, Ms Pich is walking towards Mr Flannery lying on the ground as I have just mentioned. About eight male youths are standing in an uneven arc, side by side and proximate to each other, in front of all of the guests just mentioned. Some of the male youths are closer to Mr Flannery and Ms Pich and others are closer to Mr Plant. JM-C is one of the eight male youths.</p> <p>Mr Plant starts to step up onto the first step and move away from the male youths. When he does so he puts both arms in the air with the palms of his hands facing the youths in a defensive/surrender gesture and backs off towards the entrance to the cafe. As he backs off, a male youth in front of him and to his right throws a projectile through the entrance to the cafe. Mr Plant turns his attention to that male youth and while his back is turned another male youth moves towards him and punches him to the head. Mr Plant takes about three short steps and stumbles to the ground just inside the entrance to the cafe. Mr Plant is then dragged away from the entrance and further into the cafe. An elderly male, most likely Mr Scanlon Snr, then comes to the entrance and puts his arms up as in a defensive/surrender gesture.</p>

	JZ is not on screen during this part of the incident trying to stop JM-C or at all.
20:50:41	Mr Scanlon Snr is outside the entrance to the cafe with his arms up in the air, consistent with a defensive/surrender gesture. Guests can be seen behind him and inside the cafe. Mr Scanlon Snr retreats back towards the entrance to the cafe when three male youths advance towards him.
20:51:11	Male youths can be seen throwing rocks at the entrance to the cafe.
20:51:26	JM-C kicks/stomps on Mr Flannery's head while Ms Pich is on the ground over Mr Flannery. JZ is nowhere to be seen trying to stop JM-C or at all.
20:51:47	Ms Pich is still on the ground in front of the steps and is cradling Mr Flannery to protect him from youths. Ms Pich is spat on by a female youth.
20:51:58	Mr Scanlon Snr and other guests come out of the cafe to get Mr Flannery and Ms Pich and take them back inside the cafe.
20:52:28	JM-C throws a brick at the entrance to the cafe.
20:52:31	JM-C throws another brick at the entrance to the cafe. When JM-C throws the bricks, wedding guests are inside the cafe. JZ cannot be seen anywhere on screen trying to get JM-C away or at all. I should add that it was at about this time that Mr Roach was inside the cafe and made the visual/audio recording on his iphone which recorded the racial remark made by him to which I have earlier referred.

JZ's video record of interview

115 JZ participated in a video recorded interview with police on 8 April 2014. He was 15 years and five months of age at the time and in year 10 in a high school in a southern suburb of Perth. JZ's mother was his next friend during the interview. JZ's mother and JZ are of African descent. His mother's grasp of English is questionable. Therefore, while it was prudent to have her at the interview, it would also have been prudent to have had some other person present as a next friend. That said, however, on my assessment of all of the evidence including how JZ engaged in the interview, nothing turns on that issue in this particular case.

116 At the start of the interview, and before any questions were asked of JZ in relation to the incident, the police officer conducting the interview, Detective Bonser, gave the usual caution to JZ. I am satisfied that JZ had a very good grasp of English at the time and that he had a clear understanding of the caution. I am also satisfied that JZ participated voluntarily in the interview and that it was conducted fairly. That said, counsel for JZ criticised Detective Bonser on what he said to JZ near the end of the interview when he said "I am happy that you were confused". Counsel argued that this statement by the Detective Bonser, should be interpreted to mean that he was happy that JZ was confused during the interview and that it reflected an approach by him during the interview to confuse and trick JZ. I reject that submission.

117 Without going into this point in any great detail, those words were said by the Detective Bonser in the context of him being happy to accept that JZ had been confused in relation to prior questioning on a peripheral issue of whether he stayed in Fremantle for some time rather than catch a bus straight away in Fremantle when he travelled from home and through Fremantle and then to Point Walter on the day. Considered in the context of the interview, any confusion by JZ was limited to that particular issue. That issue is not materially significant at all on my assessment of the interview and the evidence as a whole.

118 During the interview JZ told the police officer the following amongst other things:

- (1) He just saw JM-C and one other mate grabbing him (no doubt a reference to Mr Flannery) and pulling him off. The guy (no doubt a reference to Mr Flannery) was mobbing, hitting JM-C.
- (2) RR ran up to pull the guy off and then he pulled JM-C out because he didn't want JM-C to get hit.
- (3) He thought that it was just a bunch of teenagers all fighting. He gave this as an explanation for not being too close.
- (4) In relation to the conversation between Mr Flannery and EV before EV was pushed, JZ said that he couldn't hear what was said in that conversation, but someone told him what was said and he can't remember if that person heard properly.

- (5) When asked whether he heard any racial comments, JZ said "Yeah, like most of, like, like, apparently, like all the people are saying -- ". He went on to say that he could hear someone say "You are calling me a black dog or something like that, like, come on lets fight or something, yeah." He also said that he did not hear anybody from inside the wedding say that. He said that he just heard that when he was on the wall.
- (6) He didn't see who it was who was throwing bricks. He said that he did not throw a brick and that he did not pick anything up.
- (7) He saw an old man who tried to stop what was happening and that someone came out from nowhere and just hit him. He saw blood on the face of the old man.
- (8) He said that people were running in the gate and that he started moving away when the old person got hit. He said that he did not see anyone he knew throwing bricks or picking bricks up and that he "Just seen [RR] grab that bouncer and like pull him away". He did not see JM-C pick up and throw bricks.
- (9) He said that he did not see RR hitting anybody.
- (10) He agreed that he was wearing a "Chicago Bulls" jacket.
- (11) He repeated that he did not throw anything and he also said that he did not hit anyone.
- (12) He said that he was not fighting anyone or throwing anything.
- (13) He said that he got pushed pretty hard by someone from the wedding. He described it as just a bump and nothing serious. He said he thought that someone bumped him because he ran into see it (what was happening). He said that the bump was probably accidental.
- (14) He said that after he got bumped he just went to where he could see what was happening by standing up on the brick wall. He said that he did not want to get close. He also indicated that he did not say anything to any of the boys

who were fighting. He said that he asked some guy next to him "What's happening".

- (15) Towards the end of the interview when he was asked whether there was anything else he wished to say about what happened at Point Walter, he said "Nah, because I didn't really know, like, exactly what happened, I was just, like, I was just [indistinct] talking to my mates, then after I just heard everyone screaming and then I just started to look, so I had to walk a bit closer to see what's happening." He added that "It didn't take that long to stop".

The evidence of JZ

119 JZ was legally entitled not to give and/or call any evidence. He chose to give evidence. JZ said the following amongst other things, when he gave his evidence:

- (1) One of his mates was feeling down because he had recently broken up with his girlfriend and so he asked a mate of his to go and ask for a cigarette from the guy with the white shirt (no doubt a reference to Mr Flannery).
- (2) He said that he didn't hear the cigarette being asked for. He indicated that he was back from where that happened.
- (3) He also said that he saw the conversation (a reference to the conversation between Mr Flannery and EV) getting a bit aggressive and heard the guy in the white shirt say "You want to, like, f-off. F-along, little boy" or something.
- (4) He said that the guy with the white shirt pushed him (EV) heavily to the ground and started laying punches.
- (5) He said that a friend of his, JM-C, got into it and was being punched really bad by the guy. He said that three boys started running and that he followed, running too. He said that RR was kind of wrestling, fighting him too. He said that he quickly ran and grabbed JM-C. He did that because he says JM-C was getting punched. He said that he "Kind of bumped RR off" and then about eight more teenagers came running in. Some of the teenagers were punching, like, throwing hits.

- (6) He said that the girlfriend of the boy who asked for the cigarette was fighting with the girlfriend of the guy in the white shirt. He said that he didn't really pay attention to that. He went on to say that JM-C went back in again. He said that he ran in to grab JM-C, and that when he did so, JM-C probably thought that he was going to hit him, and so JM-C tried to hit him, but he dodged it. He said that that was when someone in the crowd was yelling "F-off, you black c-" or something "You black". He said that he got offended real quick by that, and so he jumped on the top of a small brick wall. He saw a stone on the ground, not a big one, picked it up, and threw it pretty high and saw it hit the roof and heard it make a noise.
- (7) He said that at some point he saw one of the boys trip over and so he quickly rushed in again. That is when he picked up a smashed brick, which was a little bit bigger than the stone he had thrown earlier, and he threw it. He said that the brick hit a window and shattered it. He then ran in closer and grabbed the boy that was on the ground and pulled him up. He then walked back. He saw the guy with the white shirt on the ground. When asked in his evidence-in-chief whether he kicked out at anybody on the ground, he said "Absolutely not". When asked again if he kicked out at anybody, he said "No".
- (8) He said that he then walked back and picked up another stone. He was going to throw it, but one of his mates told him that it wasn't worth it and so he dropped it in the garden.
- (9) He said that he was pretty confused when he was interviewed by the police.
- (10) He gave evidence to the effect that he felt alone and isolated in the interview because his mum would not have had an understanding of what was happening.
- (11) He thought that Detective Bonser was trying to deceive him. He said that he did not feel well about how Detective Bonser was asking him the questions. He said that he thought Detective Bonser was trying to trick him to get out of his mouth what he wanted to know. He said that he

thought that if he spoke up to much then Detective Bonser might change what he said anyway. He said that he did not have much trust in the Detective.

- (12) He said that he went to Point Walter to watch fireworks. He did not go to cause trouble and he did not intend to hurt anyone or throw stones. He said that everything changed so quick and went from normal to being crazy. He added that he did not kick out at anyone and, absolutely, did not punch anyone.
- (13) In cross-examination, JZ agreed that he wore a "Chicago Bulls" jacket on the night. The jacket, as mentioned, was very distinctive. The body of the jacket was black and the sleeves were red and white.
- (14) He said that RR was on the same bus as him when he went to Point Walter, but that he did not go there with him.
- (15) In cross-examination, it was put to JZ that he ran in for two reasons, and that one was to get a better look. He responded "Yes" to that question. It was also put to him that the second reason that he ran in was to be with the group that was there, to which he answered "Yes".
- (16) CCTV footage from camera 2 was shown to JZ during cross-examination. The footage at timer 20:48:46/47 was shown to JZ and he was asked what he was doing, to which he answered "I think I just – I think I was just, like, like, 'f-off', or something." He then agreed with the proposition put to him by the prosecutor, that he was giving guests the finger.
- (17) When the CCTV footage on camera 2 was shown to him at timer 20:49:16, he identified one of the youths as JM-C. He also identified JM-C on the same footage at timer 20:50:07.
- (18) During cross-examination, JZ admitted that what he said during his interview on not picking anything up and not throwing anything, was not true.
- (19) Also during cross-examination, the CCTV footage on camera 1, including the footage from timer 20:50:29

through to 20:50:38, was shown to JZ and he was asked by the prosecutor whether the footage showed him picking up a bottle from a table. He answered "No, I don't remember picking up a bottle". The CCTV footage was played a second time and it was put to JZ by the prosecutor that "It looks like you picked something up and you've thrown it?" to which JZ said, "Yes". The prosecutor then asked JZ "What do you think? Does that jog your memory at all?" to which he answered, "I don't remember doing that – that is what it shows. Yes".

- (20) Also during cross-examination, JZ was shown the CCTV footage on camera 2 at timer 20:50:28. This footage showed Mr Flannery lying on the ground with his head up against the vertical of the bottom step and Ms Pich on the ground leaning over him. He was asked whether he went to that location at any point and he said "No". He was then asked if he came from the area just left off the screen of camera 2 to see the guy (Mr Flannery) lying on the ground (in front of the steps), and he said, "No". JZ was then asked about an occasion when he had spoken about coming around on to the top step and grabbing someone, and he indicated that happened somewhere else.
- (21) In cross-examination, when JZ was shown the CCTV footage for camera 1 from timer 20:50:13 to 20:50:23, he accepted that the person at the top right of the screen was him. He was then shown the CCTV footage from camera 2 from timer 20:50:23 and was asked if it was him who appeared and kicked out at the man in the white shirt who was lying at the bottom of the steps, and he answered "I don't remember. No".
- (22) Also during cross-examination, the visual/audio recording of Mr Roach from inside the cafe was played, and JZ was asked if that was what he heard which insulted him, or was it something entirely different. JZ answered "Yes. That's – that's just one of them". He then added "In my perspective, I – it – it seemed like he was coming to my direction. Like, it looked like he was, I don't know. I think – no, I can't stop, it is very hard to say because there was other, like, like, were not black, but Aboriginals around me, so it could have been to me and it could have

been to just all of us, yes, I just took it, well, this is offence. He just said – like, he said the word so. I just – I got – I got offended. So I grabbed – I went up and grabbed a – grabbed a stone. Yes." He then agreed that he was talking about the first stone that he threw.

- (23) Also in cross-examination, JZ gave evidence that he did not think that anyone was around him when he threw the stone. In relation to him throwing part of the brick, he gave evidence that he was not with the mob and "It was just like, me and, like two or three people."
- (24) When cross-examined on his video recorded interview, JZ gave evidence that he really didn't understand that he could ask Detective Bonser to ask a question a different way if he did not understand it. When asked why he didn't just tell the truth, he said "Because then – he seemed like he – if I was just to tell the truth, I thought it would just go on and on from everything like [indistinct] ask me 'so why did you do that?' and just will stay on that one question, and I thought he would just go on like that for everything, so I just wanted everything to just [indistinct] stop."
- (25) In re-examination, when JZ was asked if he had any idea how to contact a lawyer, he answered "No" and that "I didn't know at that point that I had an actual lawyer".
- (26) Further in re-examination, JZ gave evidence that he heard racial remarks before the time that Mr Roach made the recording from inside the cafe. He gave evidence to the effect that he heard voices during the incident, although he didn't hear where the voices were coming from, but just heard it, saying like "F-off, you black". He said that he remembers "black" and "like f-off, you black". He said that he couldn't really say if it was "dog" or "c-". He said that it happened more than once.

Relevant statutory provisions

120 Section 304(2) of the Code provides as follows:

- (2) If a person, with an intent to harm, omits to do any act that it is the person's duty to do, or does any act, as a result of which –
- (a) bodily harm is caused to any person; or

- (b) the life, health or safety of any person is or is likely to be endangered,

the person is guilty of a crime and is liable to imprisonment for 20 years.

121 Section 304(3)(a) and (b) of the Code provides as follows:

- (3) For the purposes of subsection (2) an intent to harm is an intent to —

- (a) unlawfully cause bodily harm to any person; or
- (b) unlawfully endanger the life, health or safety of, any person; or

...

122 Section 317(1) of the Code provides as follows:

317. Assault causing bodily harm

- (1) Any person who unlawfully assaults another and thereby does that other person bodily harm is guilty of a crime, and is liable —
 - (a) if the offence is committed in circumstances of aggravation or in circumstances of racial aggravation, to imprisonment for 7 years; or
 - (b) in any other case, to imprisonment for 5 years.

123 Section 7(a) – (d) of the Code provides as follows:

7. Principal offenders

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

- (a) Every person who actually does the act or makes the omission which constitutes the offence;
- (b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) Every person who aids another person in committing the offence;

- (d) Any person who counsels or procures any other person to commit the offence.

124 Section 8 of the Code provides as follows:

8. Offence committed in prosecution of common purpose

- (1) When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.
- (2) A person is not deemed under subsection (1) to have committed the offence if, before the commission of the offence, the person —
- (a) withdrew from the prosecution of the unlawful purpose; and
 - (b) by words or conduct, communicated the withdrawal to each other person with whom the common intention to prosecute the unlawful purpose was formed; and
 - (c) having so withdrawn, took all reasonable steps to prevent the commission of the offence.

125 Pursuant to s 1 of the Code, the term "bodily harm" is defined to mean "any injury which interferes with health or comfort".

The respective cases of the prosecution and the defence

126 Before I set out the respective cases of the prosecution and the defence, I wish to restate some cardinal rules in criminal trials. The onus or burden to establish guilt rests on the State from start to finish, and the standard of proof required is beyond reasonable doubt. The defence, in this case JZ, does not have to prove anything. It is not for him to prove innocence. I should add, that even if I reject or do not accept the evidence of JZ, it would still not be open for me to find him guilty unless I was satisfied beyond a reasonable doubt on all of the other evidence of his guilt. Further, on each charge, it is necessary for the State to establish each and every element of the charge beyond a reasonable doubt in order to establish guilt.

127 I also wish to repeat, that in cases where a multiple number of
charges are all heard together at the same time, each charge must
nevertheless be the subject of a separate consideration and determination.

128 In relation to the two charges pursuant to s 304(2) of the Code
concerning each of Mr Flannery and Ms Pich, the State case is that JZ is a
principal offender. Further, it is submitted that JZ is an offender by
reason of being a party pursuant to each and both of the provisions of
sections 7 and 8 of the Code. Alternatively, in relation to each and both of
these two charges, the State submits that JZ is a party with others and
criminally responsible for unlawfully doing bodily harm to each of
Mr Flannery and Ms Pich, respectively.

129 Further, in relation to the other five separate charges alleging
unlawful assault causing bodily harm in respect of each of Mr Plant,
Mr Gangell, Ms Dalby, Mr Dalby, and Ms Lattimore, respectively, the
State submits that while JZ did not directly cause bodily harm, he is
nevertheless criminally responsible as a party to the offence by operation
of ss 7(b), 7(c), 7(d) and also s 8 of the Code.

130 I do not propose to flesh out the particulars relied upon by the State
in relation to various parts of its submissions.

131 While always bearing in mind that there is no onus on the defence to
prove anything, the defence case is that JZ is not guilty of any offence as
alleged as a principal or as a party pursuant to the provisions of sections 7
and 8 of the Code.

132 Further, and in particular, counsel for JZ has submitted that all of the
charges should be dismissed because at the very least, the State has not
established that any of the seven complainants suffered any bodily harm.
Counsel has pointed to the absence on each charge of any medical
evidence being presented in relation to the element of bodily harm.

133 It was submitted on behalf of JZ that he did not form any intent to
directly or indirectly harm anyone when he was at Point Walter. He went
to Point Walter thinking that there was going to be a fireworks display.
Further, it was submitted that he only got closer to what was happening to
look and/or to check on his friend JM-C and to try and ensure that JM-C
didn't get into any trouble.

134 It was submitted that JZ's actions of throwing a stone onto the roof
and throwing part of a brick which hit a window, did not result in the
stone or brick going near Mr Flannery and/or Ms Pich and did not put

either of them in any danger. It was submitted there is no evidence of JZ participating in anyway in what was described as a riot. In further support of that, it was submitted that as a matter of fact, JZ did not kick out at Mr Flannery and that he did not throw a bottle, and so the State had failed to establish each and both of those acts.

135 It was submitted that the State has failed to establish that JZ did or omitted to do any act for the purpose of enabling or aiding another person to commit the offence, that he aided another person in committing the offence, and that he counselled or procured another person to commit an offence. In particular, it was submitted that JZ did not have any requisite knowledge to make him an offender pursuant to s 7 of the Code. Further, it was submitted that JZ was not a party to any common intention to prosecute an unlawful purpose and so it could not be said that he was in any way criminally responsible pursuant to s 8 of the Code.

136 It was submitted that JZ was an honest and truthful witness. It was also submitted that the untruths he told in his video recorded record of interview were the result of him being confused and overwhelmed, and also his young age and the interview techniques of Detective Bonser who conducted the interview. Further, it was submitted on behalf of JZ that he was an honest witness when he gave his evidence in the hearing.

137 It was further submitted on behalf of JZ that the incident involved and was the result of bad behaviour by drunken wedding guests who wanted to fight the youths.

138 Further to that last submission, it was also submitted that some wedding guests made inciteful and/or racial taunts to the youths present. I take it from this submission that it is further submitted that any involvement by JZ was reasonable and/or authorised, justified or excused by provocation.

Analysis of the law and the evidence

139 On an overall consideration of the evidence as a whole, I find that each and every one of the guests who gave evidence at the hearing, was both credible and reliable and I accept what each of them has said. In respect of each of them who had some actual involvement in the incident, I accept what each of them said that he or she did and what happened to him or her. I also accept what each of those witnesses said that he or she observed others doing and what else happened during the incident.

140 In relation to those guests who gave evidence who did not have any
actual involvement in the incident, but were observers, I accept what each
of them said that he or she observed.

141 I wish to add that it should be noted that each and both Mr Flannery
and Ms Pich accepted that they were intoxicated. In particular, Ms Pich
accepted that she was drunk. Mr Flannery said that he was a little bit
intoxicated. On the evidence of other guests I find that he was drunk. It
should also be noted that Mr Flannery readily accepted that he pushed EV
at the beginning of the incident. That said, on my assessment, the
combination of all of the evidence of all of the other wedding guests and
the CCTV footage supports the evidence of Mr Flannery and Ms Pich, and
I so find, that after Mr Flannery pushed EV, both Mr Flannery and
Ms Pich were on the defensive trying to fend off youths and that each of
them was being punched and kicked.

142 I find that JZ lied, both in his video recorded interview with the
police and when he gave his evidence in the hearing. The State does not
submit that these lies should be used as showing a consciousness of guilt.
Therefore I will treat them as only going to credit.

143 In relation to the video recorded interview with Detective Bonser, I
repeat that while it was proper to have JZ's mother present, she was not
really suitable to be there for the purpose of fulfilling the role of a next
friend. That said, I find that JZ was not confused at all during the
interview on anything that happened during the incident itself. I also find
that he was in no way overwhelmed by or felt as though he was being
tricked by Detective Bonser. On my assessment the interview was
conducted both voluntarily and fairly.

144 I am in no doubt at all that JZ was being deliberately untruthful
during the interview in an attempt to avoid all and any responsibility in
relation to the incident.

145 JZ lied in his interview with Detective Bonser about not picking
anything up and not throwing anything. He lied about not seeing anyone
he knew throwing bricks. I have no doubt that he saw JM-C doing that.
He lied on what he knew of RR's involvement. He lied when he said that
he went and stood up on the brick wall and did not want to get close. He
lied when he said that he was not fighting. On the evidence of the CCTV
footage alone, he was a very active participant. When I say that JZ lied, I
mean that on my assessment he told deliberate untruths on factual matters
which were highly material. JZ knew what he was doing in the video

recorded interview with Detective Bonser. He deliberately used it as an opportunity to try and avoid responsibility for his active involvement in the incident.

146 JZ did not have to give any evidence at the hearing. He had a right to remain silent. He chose to give evidence. That was also his right. Having given evidence, he and what he said needs to be assessed in my overall assessment of the evidence as a whole. I am in no doubt that JZ was deliberately untruthful during his evidence in an attempt to try to avoid all and any responsibility in relation to the incident. Again, I will treat his lies as only going to credit.

147 On my assessment of JZ, he was not confused, overwhelmed or forgetful when he was in the witness box generally, and also particularly in relation to material factual matters, including whether he kicked at Mr Flannery and whether he threw a bottle. On my assessment, he knew very well that he both kicked at Mr Flannery and that he threw a bottle. He did not want to admit doing so because he knew that each of those two things was very prejudicial to him.

148 JZ's evidence that he went into the area of the incident to look after his friend JM-C, and to try and stop him from getting into trouble, is simply made up nonsense and a deliberate lie to try and avoid responsibility. On the evidence, I find that JZ ran into the incident very early and ahead of JM-C, albeit marginally. The CCTV footage clearly shows that JZ did not have the mindset at all of trying to look after JM-C. He was not trailing JM-C and trying to extricate him from the incident at all.

149 I also find that racial taunts played no part at all in JZ's involvement in the incident. I accept that Mr Roach made a racist comment, which was recorded on his iphone, but that was at the end of the incident when all of the guests had returned back inside the cafe and the gates to the entrance were shut. I find that JZ did not hear the racial comment made by Mr Roach from inside the cafe.

150 I find that none of the guests who gave evidence, other than Mr Roach, made any racial taunt at all to any of the youths, including JZ, before or during the incident.

151 I wish to say that I found JZ's evidence in relation to racial taunts somewhat vague and inconsistent. Further, sometimes he sought to rely on hearsay and at other times he said that he actually heard a racial taunt. In relation to the latter, he was very vague and unclear on my assessment.

152 I wish to emphasise that in a healthy community, racial taunts are unacceptable in any context and in any situation. That said, I find that JZ has made up hearing or being told about racial taunts before and during the incident prior to all of the guests returning back into the cafe. I reject his evidence that he felt offended by racial taunts. His references to racial taunts in his interview and when he gave evidence are deliberate attempts by him to avoid responsibility for his involvement in the incident.

153 In respect of the offence pursuant to s 304(2) concerning Mr Flannery, the State must prove that JZ:

- (1) Had an intent to harm, and
- (2) That he did an act, and
- (3) That as a result of that act the life, health or safety of any person is or is likely to be endangered, and
- (4) That that was so in relation to Mr Flannery.

154 It can be noted that I did not include, as an element, that bodily harm was caused to Mr Flannery. Charge PE 3551/2014 actually provides for both of the alternatives in paragraphs (a) and (b) in section 304(2) of the Code. However, in opening, the prosecutor only sought to rely on the alternative in paragraph (b). The case proceeded on that basis in relation to both charge PE 3551/2014 concerning Mr Flannery and charge PE 3553/2014 concerning Ms Pich. I wish to add that even if the State did not narrow the elements in the prosecution of these two charges, the final result on each charge would be the same.

155 In respect of the first element of intent to harm, intent can be proved by an admission or by inference. In this case there is no admission by JZ. An inference adverse to JZ can only be drawn if it is the only reasonable inference open on the facts. If there is an inference consistent with innocence then an adverse inference cannot be drawn against JZ.

156 At the outset, I wish to consider JZ's involvement in the incident in a broad prospective. He ran towards EV and Mr Flannery very quickly. He can be seen entering the screen from the CCTV footage only about seven seconds after Mr Flannery pushed EV and about three seconds after they both got up from the garden bed. When he ran towards them, his attention was focussed on them and he would have seen Mr Flannery then in a defensive position relative to EV. He would also have seen Mr Flannery outnumbered with both EV punching him to the head and also RR

punching him twice to the head and then Mr Flannery going to the ground. On his own admission he also knew that JM-C became involved.

157 The combined actions of both EV and RR was in no way authorised, justified or excused by Mr Flannery's push on EV.

158 Then, about 33 seconds after both of EV and Mr Flannery got up from the garden bed, and when I find that JZ knew that both Mr Flannery and Ms Pich were being kicked and punched, JZ stood in front of the entrance to the cafe, being one of about six youths, and gestured to guests at the entrance of the cafe and deliberately sought to intimidate them and dissuade and prevent them from coming out to assist Mr Flannery and Ms Pich. Only about another six seconds after that, he again, this time being one of about five youths gathered as a group, deliberately sought to intimidate guests at the entrance and dissuade and prevent them from coming out to help Mr Flannery and Ms Pich when knowing that they were being assaulted. He gave the finger sign to the guests with both hands raised. JZ had clearly become an active participant very early in the incident and that would have been obvious to other youths also involved.

159 Clearly, by his actions, JZ was acting in common with the other youths present to engage in riotous behaviour. By that I mean behaviour which tumultuously disturbs the peace (see s 62 of the Code). Indeed, on the evidence I find that the common intention with other youths was to engage in intimidating and personally violent behaviour and to harm guests at the wedding.

160 In addition to all of that, and in further support of those findings, I also find that JZ deliberately kicked Mr Flannery to the head/neck/shoulder region at 20:50:23 on the CCTV footage of camera 2 when Mr Flannery was lying motionless on the ground. He also deliberately threw a bottle towards the entrance to the cafe as shown in the CCTV footage of camera 1 at 20:50:36. At that time there were guests at the entrance to the cafe. The prosecutor submitted that the bottle was broken by JZ by it coming into contact with the table when he took it off the table and before he threw it. It was not submitted that he deliberately broke it. I am not satisfied that the bottle was broken before JZ threw it, but nothing turns on that.

161 JZ also threw a stone and a piece of brick towards the entrance to the cafe when guests were outside the front of the cafe entrance. I am mindful that Mr Lind said that bricks were thrown on the roof, but I reject

JZ's version that he intended the stone or rock that he threw to land on the roof.

162 JZ no doubt saw guests being assaulted including Mr Scanlon Snr or some other elderly gentleman. He even admitted that he saw an old man get hit. I refer to passages of the CCTV footage. Not long into the incident, at 20:48:38 JZ saw Mr Dalby punched. He was part of that group. At 20:49:06 and thereafter, he saw Mr Gangell, Mr Scanlon Snr and Mr Flannery go to Ms Pich's assistance. He actively involved himself by walking through other youths and confronting Mr Scanlon Snr. Generally, he continued to move about very proximate to other youths and engage with, provide encouragement to, and counsel other youths to engage in intimidating and personally violent behaviour towards guests at the wedding. It was group, mob behaviour, and he was actively involved in it with others.

163 I am satisfied on the evidence that JZ was an active participant in the incident from very soon after it started and until very close to the end when all of the guests had returned to the inside of the cafe and shut the doors. A couple of the youths, including JM-C, then threw rocks or bricks at the cafe.

164 The only reasonable inference open on the combination of all of the evidence that I have referred to is that JZ had an intent to harm. Indeed it is irresistible.

165 In relation to matters raised on behalf of JZ. I find that no racial taunts were made during the incident when guests were outside the cafe. The racial comment by Mr Roach was not made until all of the guests had returned back inside the cafe and the incident was near an end. While I accept that Mr Roach made the comment, I find that JZ did not actually hear it. He was not at that particular location at that time. As indicated, I reject the evidence of JZ that there were racial taunts when the incident was happening and guests were outside of the cafe. I also point out, that even on JZ's evidence, he ran in at the start without actually hearing any racial taunt. That is not really surprising, given that on the CCTV footage, EV does not look to be of Aboriginal or African descent.

166 I also find that the incident was in no way caused by and was not in any way escalated by any bad behaviour by any of the guests. That said, I should add, that the push by Mr Flannery against EV in no way legitimised what happened thereafter. Aside from Mr Flannery and Ms Pich, I find that none of the wedding guests who gave evidence

including in particular the five other complainants, Mr Plant, Mr Gangell, Ms Dalby, Mr Dalby, and Ms Lattimore were adversely affected by alcohol at all.

167 In relation to Mr Flannery and Ms Pich, I find on the evidence of all of the other guests, which I accept, and also the CCTV footage, that neither of them was an aggressor towards any of the youths. In the case of Mr Flannery, as Mr Lattimore said and I accept, he was getting pretty badly hurt and it looked like he was going to get knocked out and so he went out with others to assist him. While his push to EV was not excusable, immediately thereafter, as I have mentioned in my observations of the CCTV footage, he was clearly outnumbered, on the defensive, and being punched.

168 In relation to Ms Pich, I accept her evidence and that of others, that she was getting dragged, punched and kicked soon after the incident started. I also accept her evidence that she was trying to help Mr Flannery, and also that she did not hit anyone.

169 I also find that neither of Mr Flannery or Ms Pich made any racially offensive comment. Further, I also find that none of the other five complainants made any racially offensive comment.

170 Having made all of those findings, can I return to the charge pursuant to s 304(2)(b) relating to Mr Flannery. By reference to all of the reasons that I have just mentioned in combination, I find beyond reasonable doubt that JZ actively engaged in the company of other youths with an intent to harm guests. That intent to harm applied to Mr Flannery.

171 The next considerations are whether the State has proved that JZ did an act, as a result of which, the life, health or safety of Mr Flannery was or was likely to be endangered. I am satisfied beyond reasonable doubt that he did. As already mentioned, he sought to intimidate, dissuade and prevent guests from going to the assistance of Mr Flannery when he knew that Mr Flannery was being assaulted. He also, directly by his own act, very deliberately kicked Mr Flannery to the head/neck/shoulder region as previously mentioned. That act of itself clearly satisfies these further elements of the charge.

172 Further to all of that, I should also say, that because of the combination of all of the reasons already mentioned, I find that JZ is also jointly liable pursuant to ss 7 and 8 of the Code for all of the other acts committed against Mr Flannery which resulted in his life, health or safety being or likely being endangered. On the evidence, other youths punched

and kicked him and bricks and bottles were thrown in his direction. JZ knew these things were happening. JZ was an active participant. He was not simply present observing or trying to get JM-C out of it. As already mentioned, he had a common intent with others to engage in intimidation and personal violence and to harm guests, and in my view, the actions of other youths in committing a s304(2)(b) offence against Mr Flannery was a probable consequence of the prosecution of the unlawful purpose.

173 Given my findings on the s 304(2)(b) charge, it is not necessary to consider and determine the alternative charge pursuant to s 317(1) of the Code. If I had to consider it, then I would have found it proved. On my assessment of the evidence, Mr Flannery was clearly unlawfully assaulted. Further, and notwithstanding the submissions by counsel for JZ, I am satisfied on the evidence of Mr Flannery alone, and without the need for medical evidence, that he suffered bodily harm, save that he could not reliably say that his ribs were actually broken.

174 Also in relation to this alternative charge, if I had to decide it, I would again conclude that ss 7(b), (c) and (d) applied and also that s 8 applied for the combination of the reasons already given. In my view the offence of assault occasioning bodily harm would be a probable consequence of the common intention to engage in the unlawful purpose of engaging in riotous behaviour and particularly behaviour to intimidate and be personally violent towards and harm other people, in this case, wedding guests.

175 I now wish to move on to the charge pursuant to s 304(2)(b) concerning Ms Pich. I repeat all of my reasons and findings, and particularly on the element of intent to harm, on the same kind of charge concerning Mr Flannery. They also apply to this charge concerning Ms Pich. In addition to all of that, I also wish to add the following. When JZ deliberately acted to intimidate, dissuade and prevent guests from going beyond the entrance to the cafe to help guests outside, including Ms Pich, he knew that Ms Pich had been and was being assaulted and got the better of. I also find that JZ was aware that stones, bricks, pieces of brick, and bottles were being thrown towards the entrance of the cafe and in the direction of Ms Pich. Further I find that Ms Pich did not threaten or hit anyone.

176 I find that JZ with an intent to harm guests, which applied to Ms Pich, acted in ways as shown and outlined in the CCTV footage, and as just mentioned above, which endangered Ms Pich's life, health or safety.

177 For all these reasons, I find the charge pursuant to s 304(2)(b) of the Code concerning Ms Pich proved beyond reasonable doubt. Accordingly, it is not necessary for me to consider and determine the alternative charge pursuant to s 317(1) of the Code. If I had to determine this alternative charge, then I would adopt the reasoning already given in relation to the same kind of charge relating to Mr Flannery. Again, in relation to bodily harm, I would find that the evidence Ms Pich alone, and without the need for any medical evidence, satisfied the element of bodily harm.

178 I now turn to the five charges of unlawful assault occasioning bodily harm. In relation to each and every one of these charges, the State does not allege that JZ is a principal offender. It relies on the operation of the provisions of ss 7(b), (c) and (d), and also s 8 of the Code, to establish that JZ is a party to each and every one of these charges.

179 Again, in relation to each and every one of these five charges, I repeat all of the reasons and findings that I have already given in relation to JZ actively engaging in the incident with an intention to harm. In particular, I again refer to his very early entry into the incident, everything he did during the incident, and that he was actively engaged in the incident until just before it ended and the guests had all returned to the safety of being inside the cafe with the gates to the entrance shut. It is clear from the CCTV footage, that JZ was paying very close attention to what was happening during the incident. I find that he knew what was happening outside the cafe. It was a relatively small area and visibility from various locations within the area to other locations within the area was good. The CCTV footage shows instances of violent behaviour and JZ observing and actively participating. He knew that guests were outnumbered and being assaulted. He also knew that youths were throwing projectiles towards the entrance to the cafe and in the direction of guests.

180 I find that JZ by the combination all of his conduct, as already mentioned, enabled and aided others to assault each and every one of the additional complainants mentioned. Further, I find that by the combination of all of his conduct, as already mentioned, that JZ counselled and indeed positively encouraged other youths to commit assaults against each and every one of the other complainants.

181 Again, in relation to the operation of s 8 of the Code, I find that he formed a common intention with other youths to prosecute an unlawful purpose, namely to engage riotous behaviour and in particular, to engage in behaviour which involved intimidation, personal violence and doing

harm. I also find, as already mentioned, that the offence of unlawful assault occasioning bodily harm in respect of each of the five complainants, was a probable consequence of that common intention to prosecute that unlawful purpose.

182 In relation to the charge concerning Mr Plant, I also find as follows. Although Mr Plant cannot recall actually being struck, given his evidence in combination with the evidence shown on the CCTV footage, the evidence of Mr Scanlon, Ms Smith, Ms Jones, Mr Lind, and Mr Lattimore, I am satisfied beyond reasonable doubt that he was assaulted and unlawfully so. The submission by counsel for JZ, that by reference to Mr Plant's evidence in isolation, there is a reasonable possibility that he was injured as a result of tripping over, is totally without merit.

183 In relation to the charge concerning Mr Dalby, the submission by counsel for JZ that anyone, including a guest, could have hit him, is totally without merit. On both occasions that he was hit to the head, the CCTV footage shows that it was clearly one of the youths and not a wedding guest. The second hit to his head, and from behind, was likely JM-C. Further to all of that Mr Dalby was also hit by something to the head which caused a laceration and the need for four stitches. That was clearly caused by a projectile of some sort. It is not necessary to find what kind of projectile it was in particular. I further find that only youths threw projectiles during the incident. None were thrown by any of the guests. The assaults against Mr Dalby were clearly unlawful.

184 In relation to the charge concerning Ms Lattimore, the submission by counsel for JZ that she could have cut herself on the gate at the entrance to the cafe, is totally without merit. It is not necessary for me to find that the injury to Ms Lattimore, the cut to her leg, was caused by JZ throwing the bottle, in order to find this charge proved. The State does not rely on me making that finding in order to establish the charge.

185 In my view, Ms Lattimore's evidence and the CCTV footage does not give rise to any possibility at all that the cut to her left leg, which required 14 stitches, was caused in that way. I have no doubt at all that it was caused by her being hit on the leg by a projectile with a sharp edge thrown by one of the youths. There is a possibility that it was caused by the bottle thrown by JZ, but I am not satisfied beyond reasonable doubt about that, and as mentioned, I do not need to be. The assault was clearly unlawful.

186 In relation to the charge concerning Ms Dalby, the submission by counsel for JZ that it is not open to conclude that she was hit on the head by a brick, is totally without merit. I have no concern at all in accepting the evidence of Ms Dalby, both generally and on this particular matter of fact. She was an impressive witness. Based on the factual evidence that she has given, and which I accept, the only reasonable inference open, indeed it is irresistible, is that she was hit on the head by a brick. I am satisfied that the brick was thrown by one of the youths during the incident. The assault was clearly unlawful.

187 In relation to the charge concerning Mr Gangell, the submission by counsel for JZ that because he does not know how he was rendered unconscious, the charge should be dismissed, is totally without merit. Mr Gangell gave evidence on how he went to the aid of a female wedding guest, who I find to be Ms Pich. When he was on his knees trying to protect her, he was kicked to the head and then he went blank. He suffered a laceration to the top of his lip and a lump to the back of his head.

188 I find that the only reasonable inference open on his evidence in combination with the rest of the evidence as a whole, is that he was struck to the head by one of the youths. The assault was clearly unlawful.

189 Counsel for JZ has submitted that each and every one of these five charges of unlawful assault occasioning bodily harm should be dismissed because on each of them, there is no medical evidence to establish bodily harm. In some cases it may be necessary for the State to present some medical evidence to establish the element of bodily harm as defined in the Code. However, that is not always necessarily the case.

190 On each and every one of these five charges, I am satisfied that the evidence of each complainant respectively, is sufficient to establish the element of bodily harm in the case of that particular complainant.

Conclusion

191 For all these reasons I make the following ultimate findings on each and every one of the charges.

- (1) Charge No. PE 3551/2014 – Guilty.
- (2) Charge No. PE 3552/2014 – Dismissed (alternative charge).
- (3) Charge No. PE 3553/2014 – Guilty.
- (4) Charge No. PE 3554/2014 – Dismissed (alternative charge).
- (5) Charge No. PE 3555/2014 – Guilty.
- (6) Charge No. PE 3556/2014 – Guilty.
- (7) Charge No. PE 3557/2014 – Guilty.
- (8) Charge No. PE 3558/2014 – Guilty.
- (9) Charge No. PE 3559/2014 – Guilty.