

SUPREME COURT OF QUEENSLAND

CITATION: *R v Grace* [2026] QCA 109

PARTIES: **R**
v
GRACE, Lucan Jade
(appellant)

FILE NO/S: CA No 49 of 2025
SC No 137 of 2025

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: Supreme Court at Brisbane – Date of Conviction:
17 February 2025 (Muir J)

DELIVERED ON: 12 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 28 April 2026

JUDGES: Bowskill CJ, Boddice JA, Brown JA

ORDER: **The appeal be dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO THE EVIDENCE – APPEAL DISMISSED – where the appellant was convicted by jury of one count of unlawfully using a motor vehicle to facilitate the commission of an indictable offence, one count of attempted murder and one count of arson – where the appellant contends that the verdict of guilty of attempted murder was unreasonable or insupportable having regard to the evidence – where the appellant contends it was unreasonable for the jury to find beyond reasonable doubt that the appellant had the requisite intention to kill the complainant – where the case at trial was a circumstantial case – whether the verdict of guilty of attempted murder was unreasonable having regard to the evidence

CRIMINAL LAW – APPEAL AND NEW TRIAL – INTERFERENCE WITH DISCRETION OR FINDING OF JUDGE – CONTROL OF PROCEEDINGS – SEPARATE TRIALS AND ELECTION – where an application for a separate trial was dismissed – where evidence of telephone calls that were only admissible against the co-accused were led at trial against the co-accused – where the appellant contends that the evidence in those telephone calls created a necessary connection between the appellant and the complainant – where the appellant contends that evidence had such a prejudicial effect on the reasoning of the jury that it occasioned

a miscarriage of justice – where that evidence could be disentangled from the evidence against the appellant – where the trial judge properly directed the jury to do so – where other independent and compelling evidence was led at trial against the appellant – whether the failure to order a separate trial occasioned a miscarriage of justice

Coughlan v The Queen (2020) 267 CLR 654; [2020]

HCA 15, applied

Dansie v The Queen (2022) 274 CLR 651; [2022] HCA 25, applied

Pell v The Queen (2020) 268 CLR 123; [2020] HCA 12, applied

R v Baden-Clay (2016) 258 CLR 308; [2016] HCA 35, cited

R v Belford (2011) 208 A Crim R 256; [\[2011\] QCA 43](#), cited

COUNSEL: V Drago for the appellant
M A Green for the respondent

SOLICITORS: Alexander Rashidi Lawyers for the appellant
Director of Public Prosecutions (Queensland) for the respondent

- [1] **BOWSKILL CJ AND BROWN JA:** Having undertaken our own assessment of the evidence at the trial and making due allowance for the jury’s advantage in seeing and hearing the evidence, we agree, for the reasons given by Boddice JA, that the appeal against conviction should be dismissed. The jury were given clear directions by the trial judge as to the requirement for them to be satisfied, beyond reasonable doubt, that at the time the appellant shot the complainant, he held the intention to kill. There is no complaint about any aspect of the directions given by the trial judge, and rightly so. The appellant deliberately shot the complainant, at close range, almost immediately after the complainant got into the car, in a part of the body containing many vital organs. The appellant’s primary argument at trial was that he was not the shooter. There was no evidence before the jury of any lesser intent. Once the jury were persuaded, as they were, that the appellant was the shooter, the inference that, by doing so, he intended to kill the complainant, was not merely open, it was compelling. No other reasonable hypothesis arose on the evidence at the trial.
- [2] **BODDICE JA:** On 17 February 2025, a jury found the appellant guilty of unlawful use of a motor vehicle to facilitate the commission of an indictable offence (count 1), attempted murder (count 2) and arson (count 3).
- [3] The appellant appeals his conviction of count 2, on two grounds. First, that the verdict of guilty was unreasonable and cannot be supported having regard to the evidence. Second, that a miscarriage of justice occurred by the failure to order that the appellant be tried separately from his co-accused.

Indictment

- [4] The indictment charged the appellant and his co-accused with the following offences:
- (a) That between 2 November 2021 and 16 November 2021, the appellant and his co-accused unlawfully used a motor vehicle without the consent of the person

in lawful possession of it and that the motor vehicle was used by them to facilitate the commission of an indictable offence (count 1);

- (b) That on 15 November 2021, the appellant and his co-accused attempted unlawfully to kill Anthony Scott Ford;

Alternatively, that on 15 November 2021, the appellant and his co-accused, with intent to do grievous bodily harm to Anthony Scott Ford, unlawfully did grievous bodily harm to Anthony Scott Ford (collectively count 2);

- (c) That on 15 November 2021, the appellant and his co-accused, wilfully and unlawfully set fire to a motor vehicle (count 3).

[5] Count 1 was particularised as the appellant and his co-accused using the motor vehicle to facilitate the commission of the offending in count 2, with the appellant being liable as the driver and his co-accused being liable as a passenger in the vehicle.

[6] Count 2 was particularised as the appellant shooting Ford (the complainant), intending to kill him with the appellant liable as the shooter and the co-accused liable as aiding the appellant to attempt to kill the complainant, by virtue of any one or a combination of the following acts:

- organising or making arrangements with the complainant to meet at a specific location;
- informing the appellant of these arrangements;
- travelling with the appellant to the location;
- meeting the complainant at the location;
- directing the complainant to the vehicle where the appellant was seated;
- directing the complainant to enter the backseat of the vehicle in which the appellant was seated;
- being deliberately and voluntarily present at the location when the complainant was shot by the appellant, without withdrawal or dissent; and

that the co-accused knew the appellant intended to kill the complainant at the time of each act and did each act with the intention of helping or aiding the appellant attempt to kill the complainant, with the same being proven by inferences drawn from the co-accused's acts;

or that the appellant and the co-accused formed an intention to kill the complainant and it was a probable consequence of that common unlawful purpose that an injury would be inflicted with an intention to kill.

[7] The alternate count 2 was particularised as the appellant shooting the complainant intending to do him grievous bodily harm, with the appellant liable as the shooter and the co-accused aiding the appellant to injure the complainant with an intention to cause him grievous bodily harm, by virtue of any one or a combination of the same acts as listed above, with the co-accused knowing the appellant intended to injure the complainant with an intention to cause him grievous bodily harm at the time of each act and the co-accused did each act with the intention of helping or aiding the appellant to intentionally cause grievous bodily harm to the complainant, with those

matters to be proved by the inferences drawn from the acts; or the appellant and the co-accused forming an intention to inflict serious violence upon the complainant and it was a probable consequence of that common unlawful purpose that an injury would be inflicted with an intention to cause grievous bodily harm.

- [8] Count 3 was particularised as the appellant and the co-accused unlawfully and wilfully setting fire to a motor vehicle, with each liable by virtue of any one or a combination of the following acts:
- organising others to obtain petrol to set the fire;
 - assisting to light the fire or lighting the fire;
 - by aiding/encouraging the lighting of the fire through their voluntary and deliberate presence.

Trial

- [9] The trial was conducted as a joint trial. The appellant pleaded not guilty to each count, including the alternate count in count 2. The co-accused pleaded guilty to count 1, unlawful use of a motor vehicle, but not guilty to the circumstance of aggravation of using it to facilitate the commission of an indictable offence, guilty to count 3, arson and not guilty to count 2, attempted murder, including the alternate count of malicious act with intent.
- [10] Evidence was heard over six days. The Crown called 14 witnesses. The Crown also tendered a number of documentary exhibits and relied on formal admissions reached between the parties. The jury was told throughout the trial that when evidence was led that was only admissible in the case against the co-accused, that evidence was not admissible in the case against the appellant.
- [11] At the conclusion of the Crown case, both the appellant and the co-accused elected neither to give nor call evidence.
- [12] The Crown case at trial was that the appellant did not know the complainant, but that the co-accused and the complainant knew each other well; that the co-accused contacted the complainant to arrange a meeting to repay a debt; that the appellant drove the motor vehicle, the subject of count 1, with the co-accused as a passenger, to the arranged meeting place; that the complainant was driven by a friend to the same meeting place, arriving shortly prior to 2.00 am on 15 November 2021; that the co-accused met the complainant before sitting in the front passenger seat of the motor vehicle driven by the appellant with the complainant seated behind the driver's seat; that the appellant, who was seated in the driver's seat, turned around, introduced himself as Brett or someone similar, before facing the front briefly and turning and shooting the complainant once.
- [13] The Crown accepted that its case against the appellant, both as to identification and intention, was circumstantial. The Crown case as to identification relied heavily on various pieces of CCTV footage and still photographic images of the appellant on his arrest to satisfy the jury that the driver, and therefore the shooter, was the appellant. In addition to that evidence, the prosecution relied on what was said to be lies in the appellant's record of interview about being at the casino at 2.00 am and visiting a friend's house at Wynnum to see a girl as well as post-offence conduct including the appellant having organised or recruited others to assist in destroying evidence,

namely the motor vehicle driven by him, as well as statements made by the appellant during calls whilst in custody, being efforts to conceal or destroy evidence (phone, sim card and gun), speaking to witnesses about their responses and organising for the complainant to provide a statutory declaration that he shot himself. The post-offence conduct was relied upon as evidence of a consciousness of guilt on the appellant's part that he was the shooter.

- [14] The Crown case as to the appellant's intention to kill did not rely on any post-offence conduct to prove intention. Instead, the Crown relied on the shooter's actions during and immediately after the shooting, including that the shooting occurred within a very short period of entering the car and at a close distance with the shot fired into a vulnerable part of the complainant's body, containing a number of vital organs.
- [15] The appellant's case at trial, in respect of count 2 and its alternative, was that he was not the driver of the motor vehicle and therefore not the shooter and, further, if the jury was satisfied as to his identification as the shooter beyond reasonable doubt, that the jury would not be satisfied beyond reasonable doubt that he held a murderous or any intent at the time of the shooting.
- [16] The appellant identified multiple reasons as to why the jury would have a reasonable doubt about the identification of the appellant as the driver, including the unreliability of the complainant's description, inconsistencies in the complainant's account, references to other names, the lack of any prior contact between the appellant and the complainant, the complete lack of any motivation for the appellant to harm the complainant and statements made post the shooting of the complainant consistent with the appellant having had nothing to do with the shooting. The appellant submitted, in respect of intention, that the jury would have a reasonable doubt both as to an intention to kill or cause grievous bodily harm having regard to a number of facts, including that there was no suggestion that the shooter wore any facial disguise, the car ignition was off, there was only one shot, the lack of any animosity or prior contact between the appellant and the complainant, and the trajectory of the bullet path being downwards and not in the direction of the chest or head.
- [17] The jury returned verdicts on day nine. The jury found the appellant guilty of counts 1, 2 and 3. The jury found the co-accused not guilty of the circumstance of aggravation in count 1 and not guilty of count 2 and its alternative (including the natural alternative of grievous bodily harm).

Evidence

Shooting

- [18] The complainant gave evidence that he was introduced to the co-accused by his younger brother a few months before November 2021. The complainant knew the co-accused by the nickname "Kush". He had his contact details in his mobile phone. The co-accused was also a friend on Facebook and an application called Signal. The complainant's name on Signal was his nickname, Lefty.
- [19] On the night of 14 November 2021, when the complainant was at a friend's house, two streets away from a convenience store, he received a missed call and messages from the co-accused. When they spoke, the co-accused said he had \$1,000 the complainant had lent him. They agreed to meet at the convenience store car park.

The complainant was driven by a friend as he did not have a licence. The friend parked a few cars away from a green Commodore. When they pulled up, the complainant saw the co-accused coming out of the store. The co-accused said they had to go to his car to get the \$1,000. The co-accused sat in the front passenger seat of the green Commodore. The complainant observed a fairly big, muscular man sitting in the driver's seat. The complainant said the driver's seat was pushed right back so he sat sideways in the backseat behind the driver. The rear passenger door stayed open the whole time.

- [20] The complainant said he did not know the male sitting in the driver's seat. The complainant said, "Oi, you're a big boy". The male in the driver's seat shook hands with the co-accused and introduced himself to the complainant by a name. The complainant "straight away" noticed a flame, heard a big bang and felt something really hard pushing down in the side of his ribs. The complainant said he had been shot, through the driver's seat. The complainant jumped out of the car and the car immediately drove off. The complainant ran back to his friend's car and said, "I'm driving. I have been shot. Let's go." They drove back to the friend's house. The complainant told his girlfriend he had been shot and she drove to the hospital.
- [21] In cross-examination, the complainant accepted that in a statement to police on 18 November 2021, he made reference to two people in the green Commodore. One was the co-accused, who he described as an average sized male with tattoos over his face and arms. He did not give the police any description of the driver. The complainant remembered the vehicle because his brother had previously owned it. After his brother was incarcerated,¹ he drove the vehicle to a person known as "Mitch" or "Mitchy". He did not speak to that person. There was nothing about the condition of the car that indicated to him that it was a stolen car.
- [22] The complainant said that he did not know that the co-accused had come with a driver. As he approached the car, he saw a person in the driver's seat. That was why he sat in the rear seat. The engine of the vehicle was not running at that time. The driver was bald and was not wearing a hat. It was not long enough for him to notice whether there were any tattoos on his arms. He remembered that the driver was wearing big thick gold jewellery, but accepted he made no reference to that in his first police statement, or in his statement after speaking to the prosecutor.
- [23] The complainant accepted that in his first police statement, he said that the driver introduced himself as Brett and shook his hand. The complainant said the driver shook the co-accused's hand. He accepted there was nothing in his first statement to police about the driver shaking the co-accused's hand. He accepted that when he spoke to the prosecutor, shortly prior to trial, he said that the driver did not shake his hand. The complainant said he thought it was weird that the driver did not want to shake his hand. The complainant accepted that the driver could have introduced himself as Jason. The complainant accepted he never saw a gun, but said common sense meant there was a gun as he had a bullet in his spine. The shot was fired through the driver's chair. The complainant denied that he had told his brother that he had shot himself, by accident.
- [24] The complainant accepted that he had a lengthy criminal history over almost 20 years. Some of those offences were committed after he suffered the bullet wound. He

¹ Police gave evidence that the complainant's brother had been arrested on 27 October 2021 and had remained in custody from that date.

accepted that he had been a drug addict for many years. He had used drugs in the days before being shot. He denied suffering from amphetamine withdrawals whilst in hospital. The complainant accepted it was the co-accused who suggested the convenience store car park. He agreed the co-accused was not trying to have him meet in some industrial area, or in a dark park. The co-accused did not tell him where to sit in the green Commodore. The complainant got out of the car as soon as he was shot. Nobody tried to restrain him.

- [25] The complainant's friend gave evidence that on the night of 14 November 2021, the complainant asked the friend to drive him to the convenience store to pick up money. When they arrived, the friend observed a green Commodore in the rear area of the car park. It was parked like it was ready to take off. A male wearing shorts, a shirt, a jumper and a bum bag, walked towards the green Commodore. The complainant went over to the green Commodore and sat in the rear driver's side seat. The friend heard a gunshot and saw the green Commodore take off. The complainant opened the door and said, "...I got shot, I got shot. Help. Help..." They drove home, collected the complainant's partner and drove together to the hospital.
- [26] In cross-examination, the friend agreed that he did not see the driver of the green Commodore. The windows of the green Commodore were tinted black-on-black and you could not see inside. The friend asked the complainant who shot him. The complainant said "Jayson" or "Kush" and referred to his brother's friend.
- [27] The complainant's partner gave evidence that on the night of 14 November 2021, the complainant and his friend left to go to the convenience store. They returned back soon after, saying the complainant had been shot. When they were driving to the hospital, the complainant's friend mentioned a green Commodore. He said it was the car bought by the complainant's brother. The brother sold it to "a bloke called Kushie" who he described as a big bald guy.
- [28] An employee of the convenience store gave evidence that a male came into the store alone at about 1.45 am on 15 November 2021. The male had tattoos on his face and hands, had his left hand in plaster and was wearing a black t-shirt, black shorts, a baseball cap and was carrying a side bag. About 10 to 15 minutes after the male left the store, police arrived at the store. The employee did not hear anything around the time the person left the store. The car park is a short walk from the store. The employee agreed that the store had a number of security cameras. They were not hidden.

Injury

- [29] The medical practitioner who operated on the complainant on 15 November 2021 gave evidence that the complainant attended the emergency department at 2.10 am with a gunshot wound to the left upper quadrant of the abdomen. In that quadrant, there are a variety of vital organs, including the liver, spleen, colon, small bowel, pancreas and a kidney. There was no burn, soot or tattooing evident around the entry wound and no exit wound. If the muzzle of the weapon had been close to the skin, there would be those signs. A CT scan revealed the presence of a bullet in the muscles around L3 of the spine. At operation, six holes were found in the small bowel. Such an injury, if left untreated, would cause fluid and bowel contents to leak into the abdominal cavity. The patient would die from that injury within five to seven days.

- [30] In the medical practitioner's opinion, a bullet discharging from the driver's seat would be consistent with the trajectory of the bullet found in the complainant. It would also be consistent with the complainant sitting sideways or twisted. The medical practitioner conceded that there were numerous scenarios that could be consistent with the injury he observed in surgery. What was fair to say was that the trajectory of the bullet was downward, not up toward the chest.

Aftermath

- [31] A friend of the co-accused gave evidence that he knew the co-accused by the nickname Kush. At about 2.00 am on 15 November 2021, the co-accused telephoned him saying he needed to come over. About 30 minutes later the co-accused arrived with another male, in a green coloured car. The other male drove the car. After a brief conversation, a tarp was thrown over the car. The man who drove was of a medium build and was wearing shorts and a shirt, like the co-accused. He had a ponytail. Neither said why they were at his house. After a while, they left his house. The co-accused left a brown cap at the house. When he walked them to the driveway, the friend held a torch while the number plates were taken off the car. The friend cut the plates up and put them in the bin. They then drove away. He did not see that car again. The friend confirmed that CCTV footage taken at 2.18 am on 15 November 2021 depicted both him and the co-accused on his front stairs. The friend said later on 15 November 2021, the co-accused called to ask him to pick up his car from a fast-food outlet at Kangaroo Point.² He brought the car back to his house.
- [32] In cross-examination, the friend accepted that he had a lengthy criminal history. He accepted that in November 2021, he was regularly using cannabis. He was also taking heavy painkillers due to a previously broken jaw. On occasions, he would use ice. He knew the complainant's brother. He had met him a year before. The first time he saw the green Commodore was that day. He never saw the complainant's brother in possession of the green Commodore. The friend accepted that he told police that the co-accused was his best friend. He also told police that they both had bought the same type of shoes at the same time. Police took photographs of his shoes. He accepted that he also told police that he did not know the male driver of the green Commodore, that he gave the co-accused some clothes to change into, that the driver of the vehicle did not change his clothes, that he had taken the numbers plates off the vehicle, that the number plates were in the bin, that there was no mention of a firearm, and that he did not see a firearm.
- [33] The friend agreed that he knew the co-accused's brother to be a car thief. They shared the same unit whilst in prison. The friend agreed that he told police on 17 November 2021 that he smashed his mobile phone the previous day in a fight with his partner. He did not have any parts of it to produce for police as it did not happen at home. The friend agreed that he initially refused to provide a formal statement to police, but later did provide a statement. In that statement he said that he was trying to find out why they were at his house, but the other male had his head in his phone and did not say anything and that he was never told by either the co-accused or the other man what had happened that morning.
- [34] The friend agreed that he did not provide any description of the driver to police. It was only during his consultation with the prosecutor three years later, shortly prior to

² CCTV footage obtained on 14 November 2021 at 10.35 pm from a fast-food restaurant at Kangaroo Point depicted a motor vehicle registered to the co-accused parked at the restaurant and the co-accused was seen to exit from it.

the trial, that he identified the appellant as the driver. That identification was the first time he had ever indicated to any person in authority that the appellant was present at his house that night or early morning. He denied that the appellant was not the person present at his house that night. The friend agreed that when the two men arrived at his house, there was tension between them.

- [35] A bartender gave evidence that she finished work at about 3.30 am on 15 November 2021. At about 4.00 am, when she turned onto Nudgee Road in Nudgee Beach, she saw a car on fire in the middle of the road. She telephoned triple-zero. She did not observe any other persons or cars in the area.
- [36] A fireman gave evidence that he attended a car fire on Nudgee Road in Nudgee Beach on 15 November 2021. A call was received at about 4.10 am. The fire truck arrived at about 4.18 am. They discovered a Holden Commodore on fire in the middle of the road. It was a “unique green”. No persons were inside the vehicle.
- [37] A male named Jayson gave evidence that in October 2021, he owned the green Commodore. It was stolen whilst he was staying at a friend’s house. He last saw it at about 9.00 pm on 20 October 2021. When he woke up the next morning, the car and its keys were gone. He did not give anyone permission to take his car.

Investigation

- [38] Police received information on 15 November 2021 about a shooting of the complainant in the car park of a convenience store. Police also received information about a green Holden Commodore. Later, the green Commodore was found on fire at Nudgee Beach. Police ascertained that there had been a complaint that that vehicle had been stolen sometime between the night of 20 October and the morning of 21 October 2021. CCTV footage obtained from a Bowen Hills apartment block, the casino and elsewhere revealed that the green Commodore had left the apartment car park on the evening of 14 November 2021 and travelled to a fast-food outlet at Kangaroo Point, before travelling to the casino. The green Commodore and two men in it were depicted moving between the Casino and the apartment block in the early hours of 15 November 2021. Relevantly, the vehicle was depicted as entering a car park adjacent to the convenience store at 1.42 am, leaving the car park by 1.53 am,³ and travelling to Boondall and later in the direction of Nudgee Beach. The last footage depicted the green Commodore approximately 800 metres from where it was located on fire, a short time later. The last time the two male persons of interest were recorded together on CCTV was 8.00 am on 16 November 2021.
- [39] Other CCTV footage depicted two women in a Yaris vehicle, travelling between Herston and Boondall, between 2.00 am and 3.00 am on 15 November 2021. That Yaris was depicted driving in front of the green Commodore, before it looped back and followed the green Commodore in the direction of Nudgee Beach. It was last seen near where the green Commodore was found on fire, before travelling back to the Bowen Hills apartments at 4.36 am on 15 November 2021. Further, CCTV footage depicted the Yaris vehicle leaving the apartment building and travelling to a fast-food outlet at Cannon Hill at 5.51 am the next morning on 16 November 2021, before travelling back to the apartments.
- [40] A search warrant was executed on a residence at Camp Hill on 16 November 2021, where the co-accused and his partner were present. On 17 November 2021, a search

³ CCTV footage from a camera located adjacent to the car park to the convenience store depicted the complainant inside the green Commodore at the point a gun was discharged.

warrant was executed at an apartment at Bowen Hills where the appellant and Samantha Crump (**Crump**) were present. The apartment had been booked by Crump. Police located Crump's mobile telephone and a second damaged telephone. Crump provided the PIN to a mobile phone. Clothing worn by the appellant was seized that day. Photographs were also taken of the appellant, a watch and jewellery worn by the appellant and of tattoos on his legs.

- [41] Police also executed a search warrant at the co-accused's friend's residence. They located a cap as well as cut up number plates in a bin. During that search, they were told the friend's mobile had been smashed the day before. They did not find any remnants of the phone at the premises. The friend also identified a point in time when he had witnessed the two men, one being the co-accused, arguing with the other. The friend said he did not know what the men were arguing about at that time.
- [42] Police interviewed the appellant on 17 November 2021. In that interview, the appellant said he did not know the complainant and did not know anything about a shooting incident involving the complainant. When asked if he had been in possession of a green Commodore, the appellant said, "No comment." The appellant accepted that CCTV footage taken from the casino at approximately 1.00 am on 15 November 2021 depicted him. He declined to say the name of the person he was with at the casino. The appellant said he remained at the casino for about two hours. He then went to a friend's house at Wynnum, to see a girl. He declined to say how he travelled to and from the casino, or to Wynnum. He denied going to the convenience store that morning. He denied having any knowledge of a green Commodore being burnt that morning. When told that the shooting occurred around 1.40 am on the morning of 15 November 2021, the appellant replied, "I definitely wasn't there, and I definitely didn't pull the trigger." He said he had heard of someone called Lefty but had never met or spoken to that person. Once a person by that name had sent him a text. He did not know if that was the same person. He could not recall his current phone number. He had not had his number long enough to remember it. When told that Crump had text messages from a contact called lucangrace89, the appellant said he did not have a username and definitely not that name. When told that lucangrace89 provided instructions to obtain petrol, the appellant said he did not send those text messages. He said, "I don't even really use Signal". When asked if he knew a person with the nickname Kush, the appellant said, "Anything to do with anyone else, no comment". When asked whether there was anything else, the appellant said, "Yeah you have to think, w -, why would I shoot someone I don't even know. Never met".
- [43] Police obtained mobile telephone records from the appellant, the co-accused, Crump, the co-accused's friend, the owner of a Yaris motor vehicle and the complainant.
- [44] Relevantly, the appellant's telephone records revealed that at 11.50 pm on 14 November 2021, the co-accused made a short call to the appellant's number; on 15 November 2021 at 1.54 am, the co-accused sent a text message to the appellant; at 3.15 am on 15 November 2021, the number of the owner of the Yaris motor vehicle unsuccessfully attempted to contact the appellant's number; at 9.53 pm on 15 November 2021, the co-accused tried to contact the appellant but the call went to message bank; and on 15 November 2021 at 10.15 pm, the appellant's phone number called the co-accused's phone number. A short three second call was answered. The appellant's phone also had contact with Crump's phone on 12, 13, 14, 15 and 16 November 2021. On 14 November 2021, the contact commenced at 12.15 am.

On 15 November 2021, the contact commenced at 6.38 am. The last contact that day was at 11.52 am. There were also communications between the co-accused's friend's number and the appellant's number on 15 November 2021 at 11.12 pm.

- [45] An examination of Crump's phone revealed messages through the private messenger app Signal to the appellant's mobile number ending 700, saved as "Matty's Mate". A contact number, ending in 786, was saved as "lucanrace89". Signal messages to and from lucanrace89 included a message from lucanrace89 at 2.32 am, stating "sweet get what I said"; a return message at 2.34 am from Crump, stating, "She has to find a jerry can yeah"; a message from lucanrace89 at 2.36 am, stating, "u get it from servo" and "use your brain" with a response from Crump's phone, "I fucking told him that". Later messages from Crump included, "Don't worry I know what I'm doing".
- [46] Telephone records for the complainant's phone recorded a call from the appellant's mobile number to the complainant's mobile number at 7.51 am on 12 November 2021, with an SMS sent. The records did not reveal who was operating the phone at that time. Records also revealed contact between the co-accused's telephone number and the complainant's telephone number on 14 November 2021 at 10.50 pm and on 15 November 2021 at 1.01 am. There was also telephone contact between the co-accused and his friend, starting from 13 November 2021 at 7.57 am. There was a long voice call on 14 November 2021 at 6.59 pm. The final call was made at 2.00 am on 15 November 2021, from the co-accused's phone.
- [47] Police gave evidence that calls made by prisoners were monitored under a system known as Arunta. Records revealed that the appellant had made four calls to Crump on 23 November 2021 and to a female friend on 25 November 2021 and 25 December 2021.
- [48] During the first phone call on 23 November 2021, the appellant asked Crump whether she went to see "the old boy" and whether Crump threw "that away". When Crump replied that she hadn't turned it on, the appellant said, "Get all the numbers outta the diary, get every single number out. Um, just save all the numbers. Um, I guess, you know photos and all that stuff..." and "...that little bit of yellow thing, that needs to go asap". Later, the appellant said, "they're accusing me of shooting someone I don't even know, right? But I've already spoke to someone that, that knows this guy, and he's gonna do a stat dec saying um, he shot himself. So, I don't even know what the fuck they're talking about. So that's all I know, is apparently this guy shot himself, I wasn't even there." When Crump told the appellant that she had been charged with two counts of unlawful use of a motor vehicle and arson, saying they had footage of her getting fuel at a service station, the appellant said he did not understand as it is not illegal to get fuel out. The appellant then asked Crump what she had said in interviews. She said she got fuel for "that guy with the scar on his face" who had run out of fuel. Crump said the other female had said the same thing. The appellant is then recorded as telling Crump that she needed to listen and not to say anything to anyone. He told her that if police asked her more questions to say no comment and to say no if police asked for her pin numbers. The appellant is also recorded as telling Crump that police have been asking about text messages from someone on Signal. The appellant said he didn't know anything about anything and that if he was Crump, he would delete anything and everything to which Crump said, "I already did". The appellant also asked what happened to something and was told that it was gone and it was in a million pieces. A male person was heard on that phone call at one point, saying, "...oi don't stress bro. Everything's s – um, everything's sorted".

- [49] During the second phone call that day, the appellant said that Crump had given her pin number when he told her not to do so. Both Crump and the same male are recorded as saying that Crump did not do that, to which the appellant said, "I was sitting right there ... when you done it". Crump said that the pin number she gave was to another phone. Later, the appellant told Crump that he needs her to grab the flip flop thing and "snap the little fucking thing ... into a thousand pieces and flush it". There was again a discussion about Crump having purchased fuel. The appellant is recorded as saying she had done nothing wrong, that she had got the petrol for someone else and the reason she got petrol had nothing to do with him as he didn't even know why she got petrol. Later, the appellant was recorded as saying that the only person to keep their mouth shut was the person that shot himself. The appellant stated, "He shot himself by accident apparently, so he's keeping his mouth shut". The appellant said, "even Kush has apparently said some things" and that "This is how people end up in jail for a long, long time". Crump is recorded as telling the appellant that her friend has been charged with arson and that police have raided the friend's house over a gun and taken her car. When Crump said that she was going to go see her, the appellant said, "why haven't you gone and done that A-S-A-P ...".
- [50] In the third call that day, the appellant is recorded as asking Crump whether she had snapped and flushed "that thing" and as telling Crump that they should stop talking on the phone, that he was being accused of something he didn't even do and that it didn't even happen. The appellant is also recorded as asking Crump whether she is going to testify against him.
- [51] In the final call that day, the appellant asked Crump to put the male on the phone. The appellant tells the male that he needs him to write down some things as it is "really serious". One was to go and see the female who was in the car with Crump. The appellant also asked whether the Versace painting had been thrown away. When told "million per cent", the appellant said, "Sweet sweet sweet". The appellant then said, "I know for a fact that um, the guy um, shot himself and he's actually going to the police station or he's gonna do an affidavit or a stat dec saying that's, that he shot himself". The appellant said that everyone needed to keep their mouth shut completely because nothing happened, that he did not know the guy and was not even there, that he had spoken to the other guy's brother and that he was going to do a statutory declaration saying he shot himself, and that Kush was acting weird and was worried about his girl.
- [52] In the call from the appellant to female friend on 25 November 2021, the appellant asked her to tell his lawyer that he was "getting a stat dec or an affidavit off the bloke, the alleged victim who's doing a stat dec or an affidavit saying that he's shot himself". In the call on 25 December 2021, the appellant told the female friend, "You know Old mate that shot himself? ... I was just talking to Old Mate's brother..." When the female friend asked if he had done his thing yet to say he'd done it himself, the appellant replied, "that's what I just, I just talking to him then". He said that the brother was in a different unit so it was hard to speak to him. The appellant said that once that came through and the man was willing to stand up in court and tell the truth that he'd shot himself and that the appellant wasn't even there, he should be able to get the case thrown out.
- [53] Police also gave evidence that a vehicle with the complainant's friend and his partner was pulled over on the morning of 15 November 2021, near the convenience store. A search of the vehicle located \$3,880 in cash, the complainant's wallet, driver's licence and two grams of methylamphetamine.

Admissions

- [54] The Crown relied on a number of formal admissions, including the holders of various telephone numbers; that on 7 July 2021, the appellant was intercepted by police for a traffic infringement and told police he no longer used the phone number ending in 786, with his new number ending in 700, and that on 14 November 2021 and 15 November 2021, the appellant was in possession of a mobile phone, with the number ending in 700 and was the person responsible for sending the relevant communications from that phone.
- [55] Formal admissions were also made by the appellant that he was one of the male persons speaking to Crump on 23 November 2021, and that the appellant spoke to Keeney on 25 November 2021 and 25 December 2021.
- [56] Finally, the Crown admitted that on 15 November 2021, the complainant's friend gave a written statement to police, which he endorsed as true and correct, in which the friend said that the complainant told him that he needed to pick up money from a friend who had borrowed \$1,000. The friend described the car park as well-lit and said that after the incident, the complainant said Jay or Jayson had shot him as he was yelling out in pain. At no point in his statement did the friend say that the complainant ever said that the co-accused or Kush was responsible for shooting him.

Co-accused

- [57] In the case against the co-accused, the Crown called evidence from the co-accused's partner. The trial judge expressly directed the jury that the partner's evidence was only admissible in the case against the co-accused; that none of that evidence was relevant or admissible in the case against the appellant; and that the jury were not to take it into account in any way when coming to their deliberations in relation to the case against the appellant.
- [58] The Crown also relied on records obtained from the Arunta system as to a number of calls made by the co-accused to his partner and his friend and on admissions made by the co-accused. Again, the jury was expressly directed by the trial judge that this evidence was not admissible in the case against the appellant.

Consideration

Ground 2

- [59] The determination of a ground that the verdict of guilty on count 2 was unreasonable requires this Court to undertake an independent assessment to determine whether it was open to the jury, on the consideration of the evidence as a whole, to be satisfied beyond reasonable doubt of the appellant's guilt of the offence of attempted murder.
- [60] In undertaking that task, due regard is to be given to the role of the jury and the advantages afforded to a jury in having seen and heard the witnesses give evidence at trial. However, if an independent assessment of the record as a whole reveals inadequacies or discrepancies or other reasons why, notwithstanding those advantages, the jury ought to have entertained a reasonable doubt as to the appellant's guilt of that offence, the verdict is to be set aside as unreasonable.⁴

⁴ *Pell v The Queen* (2020) 268 CLR 123 at [39]; *Dansie v The Queen* (2022) 274 CLR 651.

- [61] Whilst there were two issues in dispute at trial, it is not contended on appeal that it was not open to the jury to be satisfied beyond reasonable doubt that the appellant was the driver of the green Commodore and therefore the shooter of the bullet that lodged in the complainant's abdomen. The unreasonableness is said to arise in the jury's satisfaction, beyond reasonable doubt, that at the time of the discharge of the firearm, the appellant intended to kill the complainant. It is submitted that the evidence was insufficient to establish an intention to kill, beyond reasonable doubt. In support of this contention, the appellant submits that as the case against the appellant on this issue was circumstantial, it was not open to the jury to be satisfied of the requisite intent unless the prosecution excluded an inference consistent with innocence that was reasonably open.⁵
- [62] At trial, the prosecution contended that the jury would be satisfied beyond reasonable doubt that the appellant, at the time of discharge of the weapon, did so with an intention to kill having regard to the following matters:
- (a) the appellant was armed;
 - (b) the shooting took place in a confined space;
 - (c) the "driver" had his seat pushed back;
 - (d) the complainant was "well and truly squished";
 - (e) the driver and the co-accused shook hands in the car;
 - (f) the shooting took place very shortly after the complainant got into the car;
 - (g) the site of entry of the bullet and that the complainant was shot "point blank to the vulnerable part of his body";
 - (h) the bullet entered the body where a number of vital organs are located;
 - (i) the bullet was shot "from a distance that the shooter could not possibly miss"; and
 - (j) that neither occupant of the green Commodore rendered assistance.
- [63] The appellant contended that there were 17 reasons why the prosecution could not demonstrate, beyond reasonable doubt, an intention to kill, or an intention to cause grievous bodily harm. The reasons were:
- (a) the appellant was not wearing a mask or disguise, despite having worn a mask earlier in the evening at the casino;
 - (b) the car was turned off when parked in the carpark;
 - (c) the complainant was not entirely in the car when shot;
 - (d) the gun was discharged only once;
 - (e) the complainant left the car uninterrupted by either occupant of the green Commodore after being shot;
 - (f) even only limited pressure could cause the discharge of a firearm and no evidence was adduced by the prosecution relevant to ballistics;
 - (g) no evidence was adduced by the prosecution about the calibre of the gun used, noting the distinction between heavy and light calibre firearms;

⁵ *Coughlan v The Queen* (2020) 267 CLR 654 at [55].

- (h) no firearm was seen by the complainant, including in the driver's hand;
- (i) there was no evidence of motive lending support to the appellant's intention;
- (j) the driver said nothing at the time of the shooting, including any threat or demand;
- (k) evidence that the appellant rhetorically asked, "why would I shoot someone I've never met or someone I didn't know?";
- (l) the firearm was shot through the driver's seat;
- (m) a shot through a chair had no control or aim;
- (n) the trajectory of the bullet path was away from the most vulnerable parts of a human body;
- (o) post-offence conduct was irrelevant to the question of intent; and
- (p) any utterance by the co-accused could not be used against the appellant on the question of intent.

[64] Whilst each of those factors was a relevant factor for the jury to consider, none of them, either individually or collectively, support a conclusion that it was not open to the jury to be satisfied beyond reasonable doubt that at the time of the discharge of the firearm, the appellant intended to kill the complainant.

[65] The evidence clearly established that the complainant was shot at close range, immediately upon entering the green Commodore, through the driver's seat and into a part of the complainant's body containing many vital organs, such that without treatment the appellant would die. These circumstances provided compelling reasons for a conclusion, beyond reasonable doubt, of an intention to kill at the time of discharge of the firearm.

[66] The fact that the trajectory of the bullet's path was not towards the chest or head did not detract from that conclusion. Nor did the fact that only one shot was fired. The other factors relied on by the appellant equally did not detract from such a finding. When viewed in the context of the evidence as a whole, none were of a character that could properly be relied upon by the jury to support a conclusion that an inference consistent with innocence was reasonably open on the evidence. Many of the remaining factors were neutral. Some, such as the contentions that only limited pressure could cause the discharge of a firearm, the lack of evidence as to ballistics or calibre, or the fact that the complainant did not see a firearm in the driver's hand, were, at best, matters of conjecture.

[67] As was observed in *R v Baden-Clay*:⁶

“For an inference to be reasonable, it ‘must rest upon something more than *mere conjecture*. The bare possibility of innocence should not prevent a jury from finding the prisoner guilty, if the inference of guilt is the only inference open to reasonable men upon a consideration of all the facts in evidence’. Further ‘in considering a circumstantial case, *all of the circumstances* established by the evidence are to be considered and weighed in deciding whether there is an inference

⁶ (2016) 258 CLR 308 at 324.

consistent with innocence reasonably open on the evidence'. The evidence is not to be looked at in a piecemeal fashion, at trial or on appeal."

[68] The verdict of guilty of attempted murder was not unreasonable.

Ground 1

[69] The appellant contends that the dismissal of the appellant's application for a separate trial occasioned a miscarriage of justice, as evidence admissible only against the co-accused would not have been led before the jury, in a separate trial, and the impact of that evidence on the appellant's trial was highly prejudicial, giving rise to an unavoidable risk the jury would use the evidence impermissibly to fill gaps to create the necessary connection between the appellant and the complainant to support a finding that the appellant had an intention to kill when he discharged the firearm.

[70] The evidence said to have been highly prejudicial was the content of Arunta calls made by the co-accused. Relevantly, those calls contained the following statements by the co-accused:

"And old mate wanted to meet Old Mate as well. Like, they were tryna, like, get introduced, ah, at the same time. I said, look at what, I'll get your money. I said fuckin', blah blah-blah. And then, that's why I'm on camera everywhere. That's why I was having a Slurpee. I'm having a Slurpee, then I'm sitting out the front having a cigarette waiting for Old Mate to rock up."

and

"And um, and um, like, get um, for the two to meet, brother, because Old mate wanted to meet Old mate."

[71] Absent a conclusion that the evidence against one accused was significantly weaker than the other accused, occasioning a real risk that the weaker prosecution will be made immeasurably stronger by prejudicial material inadmissible to that weaker prosecution case, the appellant and the co-accused were properly to be tried together. As was observed in *R v Belford*:⁷

"Generally, there are strong reasons of principle and public policy why joint offences should be tried jointly. The mere fact that one result will be that evidence admissible against one accused but inadmissible against the other accused will be before the jury is a not sufficient reason for ordering separate trials ... Cases where separate trials should be ordered include those where the evidence admissible against each accused 'is impossible or at least extremely difficult to disentangle and the evidence against one is highly prejudicial against the other', where the directions given by the trial judge to avoid prejudice require 'remarkable mental feats' that the jury could not be expected to perform, or where the prejudice may be such as to 'cause a jury even to ignore the directions of a trial judge'."

[72] In the present case, a consideration of the evidence led in the joint trial, which was inadmissible against the appellant, supports a conclusion that there was no such impermissible prejudice.

⁷ (2011) 208 A Crim R 256 at [104].

- [73] First, the evidence against the appellant was not significantly weaker than the evidence against the co-accused. There was compelling evidence, in the case against the appellant, that the appellant was the driver of the green Commodore and therefore the shooter and, further, that the appellant shot the complainant intending to kill him.
- [74] Photographs of the appellant taken by police on 17 November 2021, when viewed against images from various relevant pieces of CCTV footage from the Treasury Casino, the apartments at Bowen Hills, the buildings adjacent to the convenience store car park at Spring Hill and from a neighbouring property to the co-accused friend's residence established, beyond reasonable doubt, that the appellant was the driver of the green Commodore that evening. Further evidence of that fact was provided by the co-accused's friend, who gave evidence that the appellant was the driver of the green Commodore when the co-accused and the appellant arrived at his house that evening.
- [75] This conclusion was also supported by a consideration of the telephone records, in conjunction with CCTV footage depicting the movements of the appellant and the co-accused in and from the casino on the evening of 14 November 2021, until their arrest on 17 November 2021. The footage provided independent support for the limited time period the complainant was in the green Commodore before he exited, after being shot. That time period was central to the circumstantial case against the appellant as to an intention to kill the complainant.
- [76] Second, the content of the co-accused's Arunta calls was easily disentangled from the evidence admissible against the appellant. That content was limited and discreet. There was no need for the jury to embark upon "remarkable mental feats" to exclude it from their minds in determining whether the Crown had established the appellant's guilt of attempted murder, beyond reasonable doubt.
- [77] Third, there was no real risk the jury would ignore the clear and comprehensive directions of the judge. The jury was properly directed that the evidence was inadmissible in the case against the appellant and not to be used by them in any way in determining the appellant's guilt or innocence of the offences. There is no reason to doubt the jury followed that express direction.

Conclusion

- [78] An independent assessment of the record supports a conclusion that it was open to the jury, on a consideration of the evidence as a whole, to be satisfied beyond reasonable doubt that the appellant discharged the firearm with the intention to kill the complainant.
- [79] The failure to order that the appellant be tried separately did not occasion a miscarriage of justice.

Orders

- [80] I would order:
1. The appeal be dismissed.