

SUPREME COURT OF QUEENSLAND

CITATION: *R v Ashman* [2022] QSC 99

PARTIES: **R**
v
JAKE SCOTT ASHMAN
(accused)

FILE NO/S: Indictment Rockhampton Supreme Court 42 of 2022

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court of Queensland at Maryborough; trial heard in Rockhampton

DELIVERED ON: 27 May 2022

DELIVERED AT: Brisbane

HEARING DATE: 9-12 and 27 May 2022

JUDGE: Davis J

VERDICT: **Guilty of murder**

CATCHWORDS: CRIMINAL LAW - PARTICULAR OFFENCES - OFFENCES AGAINST THE PERSON - HOMICIDE - MURDER - VERDICT - where the accused and the deceased were living in adjoining units - where the deceased was stabbed to death - where the accused told police he was not involved in the killing - where the accused told police that he had found the deceased dead - where the accused told police that he also found a note instructing him to do certain things - where the accused disposed of knives and other things - where at trial the accused recanted his version to police - where the accused gave evidence that he was attacked by the deceased and killed him in self-defence - where at trial the only two issues were whether the accused had an intention to cause death or grievous bodily harm to the deceased and whether he acted in self-defence - where the accused admitted initially lying to police - whether the lies demonstrated consciousness of guilt - whether post-offence conduct demonstrated consciousness of guilt - whether the Crown had proved an intention to kill or do grievous bodily harm -

whether the Crown had proved that the accused did not act in self-defence

Criminal Code, s 271, s 272, s 291, s 293, s 300, s 302, s 303, s 576, s 615B, s 615C, s 644

Evidence Act 1977, s 39PB(3)

Edwards v The Queen (1993) 178 CLR 193, followed

Fleming v The Queen (1998) 197 CLR 250, cited

Griffiths v The Queen (1994) 69 ALJR 77, followed

Marwey v The Queen (1977) 138 CLR 630, followed

R v Baden-Clay (2016) 258 CLR 308, followed

R v Gray (1998) 98 A Crim R 589, cited

R v Mitchell [2008] 2 Qd R 142, cited

R v Muratovic [1967] Qd R 15, followed

R v Murray [2016] QCA 342, cited

R v Pentland [2020] QSC 231, followed

R v Roughan & Jones (2007) 179 A Crim R 389, followed

R v Saxon [2020] QCA 85, followed

R v Shields [2022] QCA 51, cited

R v Swaffield and Pavic (1998) 192 CLR 159, cited

R v Trebeck [2018] QCA 183, cited

R v Vidler (2000) 110 A Crim R 77, cited

R v Wilmot (2006) 165 A Crim R 14, cited

Stevens v The Queen (2005) 227 CLR 319, followed

Woolmington v DPP [1935] AC 462, followed

Zoneff v The Queen (2000) 200 CLR 234, followed

COUNSEL: E L Kelso for the Crown

K Bryson for the accused, Jake Scott Ashman

SOLICITORS: Office of the Director of Public Prosecutions for the Crown
Legal Aid Queensland for the accused, Jake Scott Ashman

- [1] Over a period of four days, between 9 and 12 May 2022, Jake Scott Ashman was tried for murder in Rockhampton by judge without jury. This is the verdict and explanation of the findings of fact relied upon and the principles of law applied in reaching the verdict.¹

General background

- [2] Mr Ashman was charged on indictment:

¹ Code, s 615C(3).

“that on the seventeenth day of February, 2019 at Granville in the State of Queensland, JAKE SCOTT ASHMAN murdered DARREN JOHN INTS.”

[3] Particulars were delivered by the Crown:

“The defendant, intending to kill or cause grievous bodily harm to Darren Ints, unlawfully killed Darren John Ints by stabbing him.”

[4] It is not contentious that the incident giving rise to the charge of murder occurred on 17 February 2019 at a block of units at 146 Cambridge Street, Granville, a suburb of Maryborough.

[5] The Cambridge street property consists of a number of individual residential units. Mr Ashman resided in unit 8 and had done so from 15 August 2018. Mr Ints resided in unit 3 and had done so since 20 December 2016.

[6] Units 3 and 8 adjoined each other and Mr Ashman and Mr Ints shared a common bathroom and toilet.

[7] Other residents of the Cambridge Street property saw Mr Ints alive between about 9.00 am and about 10.00 am on the morning of 17 February 2019. Between about 10.00 am and noon, some residents heard a disturbance from Mr Ints’ unit. At about midday, residents found Mr Ints dead on the kitchen floor of his unit, that is unit 3.

[8] Later examination revealed that Mr Ints’ body bore 34 incised wounds, including four which penetrated his heart and another to his chest which severed his left internal mammary artery. Any of these wounds could have caused his death.

[9] Police investigated and identified Mr Ashman as a person of interest in the apparent murder. Mr Ashman participated in an interview with police. He denied killing Mr Ints. Mr Ashman was charged with Mr Ints’ murder. While he was being held in custody, he spoke with a police officer who was pretending to be another prisoner. He continued to deny killing Mr Ints.

[10] In due course, the indictment upon which Mr Ashman was tried was presented to the Court in Maryborough.

[11] On 8 March 2022, Bowskill J (as her Honour then was) ordered the transfer of the indictment from Maryborough to Brisbane for the purpose of a pre-trial hearing. That resulted in me making various directions and ordering that:

“1 The trial of the accused is transferred from Maryborough to Rockhampton.

2 Pursuant to s 615(1) of the Criminal Code, a no-jury order is made.

3 The trial is listed for 9 May 2022 in Rockhampton. ...”

- [12] On 5 May 2022, an application was filed by the Crown seeking orders that certain witnesses give evidence by audio visual link, that an expert witness, Dr Christopher Day, give oral testimony in person² and that two controlled items, namely a yellow handled kitchen knife and a black handled serrated kitchen knife, be brought onto the precincts of the Court. Both parties urged me to make the orders which I did.
- [13] The yellow handled kitchen knife became Exhibit 45. The black handled serrated kitchen knife became Exhibit 69.
- [14] The trial commenced on 9 May 2022 without a jury.³ The following witnesses gave evidence by audio visual link:
1. Detective Sergeant Michael Polit;
 2. Alan Bachmann;
 3. Sunil Zachariah;
 4. Christopher Rixon;
 5. Corey Jones;
 6. Justin Moore;
 7. Natalie Creighton-Jay; and
 8. Michelle Krueger.
- [15] In addition to the witness who gave evidence by audio-visual link, I heard evidence from the following Crown witnesses:
1. Adrian Shaw;
 2. Paul Quill;
 3. Luke Martin;
 4. Senior Constable Scott McLeod-Robertson;
 5. Sergeant Brett Everest;
 6. Leona Lavelle;
 7. Senior Constable Shane Coles;
 8. Sergeant Stephen Veitch;
 9. Karoline Berndt;
 10. Dr Christopher Day (Pathologist); and

² *Evidence Act 1977*, s 39PB(3).

³ *Criminal Code* s 615.

11. Detective Senior Constable Tara Inch.

[16] A total of 143 Exhibits were received. All were tendered by the Crown:

Exhibit No	Description
1.	Floor plan
2.	Photograph of front of unit 4
3.	Photograph of unit complex showing common area doors and doorway to deceased's unit
4.	Witness Mr Martin's marked version of Exhibit 1
5.	Photograph of the inside of deceased's unit showing the paramedics' equipment and other things
6.	Photograph of face of Mr Ashman
7.	Photograph of right side of Mr Ashman's head
8.	Photograph of back of Mr Ashman's head
9.	Photograph of left rear side of Mr Ashman's head
10.	Photograph of front torso and face of Mr Ashman
11.	Photograph of Right pec area of Mr Ashman's chest
12.	Photograph of Mr Ashman's right arm
13.	Photograph of Mr Ashman's right arm in vertical position
14.	Photograph of back of Mr Ashman's right arm
15.	Photograph of front of Mr Ashman's left arm
16.	Photograph of Mr Ashman's left arm in horizontal
17.	Photograph of Mr Ashman's right side
18.	Photograph of Mr Ashman's left side
19.	Photograph of Mr Ashman's back
20.	Photograph of front of Mr Ashman's left leg
21.	Photograph of front of Mr Ash man's right leg
22.	Photograph of back of Mr Ashman's right leg
23.	Photograph of back of Mr Ashman's left leg
24.	Photograph of Mr Ashman's left hand
25.	Photograph of Mr Ashman's right hand
26.	Photograph of intersection of Cambridge and Cardigan Streets
27.	Photograph of overhead map of area

Exhibit No	Description
28.	Photograph of Mr Int's body (screenshot from BWCF)
29.	Photograph of gate at 146 Cambridge Street
30.	Photograph of common area (screenshot of BWCF)
31.	Photograph of doorway to unit 8
32.	Sergeant Brett Everest marked version of Exhibit 1
33.	Photograph of unit 8 bedroom window (screenshot of BWCF)
34.	SOCO Coles' marked version of Exhibit 27
35.	Photograph of end of 2 Cardigan Street
36.	Photograph of other side of bushes at the end of Cardigan Street
37.	Photograph of close up of bushes at end of Cardigan Street
38.	Photograph of blue cool bag
39.	Photograph of tape lift location on blue cool bag
40.	Photograph of blood-stained shirt
41.	Photograph of tape lifts of collar and cuffs of shirt
42.	2 x photographs of knife wrapped in check fabric
43.	Photograph of yellow-handled knife
44.	Photograph of knife with ruler markings
45.	Yellow-handled knife
46.	Photographs of contents of blue bag with shirt and knife removed
47.	Photograph of Pineocleen bottle
48.	Bundle of photographs of blood splatted toilet rolls
49.	Photograph of plastic bag in blue bag
50.	Photograph of contents of plastic bag
51.	Photograph of Frantelle water bottle
52.	Photograph of Up & Go container
53.	Photograph of energy drink can
54.	Photograph of front of backpack
55.	Photograph of back of backpack (SD tape lift)
56.	Photograph of backpack (SW tape lift)
57.	Photograph of sponge
58.	Photograph of inside of backpack

Exhibit No	Description
59.	2 x photographs of sheet
60.	Photograph of bowl
61.	Photograph of yellow crisps packet and towel
62.	2 x photographs of towel
63.	2 x photographs of bathmat
64.	Photograph of Fanta can
65.	Photograph of Fanta bottle
66.	Photograph of grey bathmat
67.	Photograph of tissue with red marks
68.	3 x photographs of black-handled steak knife
69.	Black-handled knife
70.	Photograph of razor
71.	Photograph of pillow and pillowcase
72.	Close up photograph of pillow
73.	Photograph of lid and red chux cloth
74.	Photograph of inside of unit 8 bedroom
75.	Close up photographs of bed
76.	Photograph of shelf and location of yellow-handled knife
77.	Photograph of kitchen drawer
78.	Photograph of kitchen drawer of deceased's unit
79.	Admissions and DNA table
80.	Field footage of Officer Plate (disc)
81.	Record of interview at Maryborough Police Station on 17.02.2019 (disc)
82.	Photograph of deceased's face with autopsy labels
83.	Photograph of deceased's neck with autopsy labels
84.	Photograph of deceased's torso with autopsy labels
85.	Photograph of deceased's left armpit with autopsy labels
86.	Photograph of deceased's left wrist

Exhibit No	Description
87.	Photograph of back of deceased's head
88.	Photograph of deceased's left lower abdomen
89.	Photograph of left wrist of deceased
90.	Photograph of right elbow of deceased
91.	Photograph of right hand of deceased
92.	4 x recordings with LEP (1 x disc)
93.	Photograph of diagram prepared by colleague of units 3 and 8 and adjoining area
94.	Photograph of front doorway to unit 3
95.	Photograph of front cement pathway
96.	Close up photograph of front doorway to unit 3
97.	Photograph of outside of front door to unit 3
98.	Photograph of inside of front door to unit 3
99.	Photograph of outside of front door to unit 3 with blue markings
100.	Photograph of front tiles in doorway to unit 3
101.	Photograph of floor area beyond tiles in entry to unit 3
102.	Photograph of floor further into unit 3
103.	Photograph of top area of kitchen cabinet area
104.	Photograph of KC26 ⁴
105.	Photograph with single armchair and deceased's body
106.	Photograph of front of armchair
107.	Photograph of side of armchair
108.	Photograph of floor of unit 3 near sliding door into the bedroom
109.	Ms Berndt's marked version of Exhibit 93
110.	Photograph of sliding door into bedroom in unit 3

⁴ This and similar references refer to identifiers placed on Exhibits by scenes of crime officers.

Exhibit No	Description
111.	3 x photographs of close up of sliding door into bedroom in unit 3
112.	2 x photograph of floor of bedroom area
113.	Photograph of inside of bedroom
114.	Photograph of bed and fridge in bedroom
115.	Photograph of bedroom carpet leading into hallway
116.	Photograph of length of hallway
117.	Photograph of the back of hallway door to unit 3
118.	Photograph of door handle on hallway door to unit 3
119.	Photograph of KC30 on doorframe
120.	Photograph of door with markings KC29 and arrows
121.	2 x photographs of brick wall opposite to bathroom doorway
122.	2 x photographs of KC32
123.	Photograph of inside of bathroom from doorway
124.	Photograph of toilet roll and handle
125.	2 x photographs of close up of right wall of bathroom with red and white stickers
126.	Photograph of right wall just above toilet paper roll
127.	2 x photographs of toilet
128.	2 x photographs of shower
129.	2 x photographs of wall above basin
130.	2 x photographs of glasses and cord on floor
131.	Photograph of door from shared hallway into unit 8
132.	Photograph of inside of the door in unit 8
133.	Photograph of door handle with KC43
134.	Bundle of copy of Exhibit 93 with markings with 2 x photographs of area 2
135.	2 x photographs of area 3 (according to diagram in Exhibit 134)
136.	Photograph of sliding door into kitchen in unit 8 KC46
137.	Photograph of KC47

Exhibit No	Description
138.	Photograph at door frame of sliding door looking through to front door to unit 8
139.	2 x photographs of coffee table
140.	2 x photographs of cupboard area of kitchen and sink
141.	3 x photographs of bed and towel in bedroom of unit 8
142.	Photograph of deceased as found by Ms Berndt at time when she
143.	7 x photographs of deceased with Ms Berndt's markings

[17] Pursuant to s 644 of the *Criminal Code*, admissions were made. These were regarded as mutual admissions in that they were either admissions made by Mr Ashman pursuant to s 644(1) or they were admissions made by the Crown with the consent of Mr Ashman pursuant to s 644(2) of the Code.

[18] The joint admissions were:

“Darren John Ints (the deceased)

1. Darrent John Ints moved into Unit 3 at 146 Cambridge Street, Granville on 20 December 2016.
2. At 5.47am on 17 February 2019 Darren John Ints attended the Granville Takeaway Store and collected two hamburgers. He left at 5.55am.
3. Alan Bachmann sent two text messages to Darren Ints mobile phone. One at 10.49am and the second at 11.45am.
4. The defendant killed Darren John Ints on 17 February 2019.
5. A phone call was made to 000 at 11.59am on 17 February 2019.
6. In Unit 3 police located a black NAB card in Darren Int's name, in a wallet in the bedside table.

Unit Complex at 146 Cambridge Street, Granville.

7. The defendant moved into Unit 8 at 146 Cambridge Street, Granville on 15 August 2018.
8. As at 17 February 2019 Unit 5 was unoccupied.
9. Roland Muller resided in Unit 10. He was not at the complex on 17 February 2019.

10. The internal doors that separate the units from the bathroom, are lockable. They have an internal push lock, with no keyhole so can only be unlocked from inside the unit that has locked the door.

Defendant's movements on 17 February 2019

11. The defendant walked past 24 Cardigan Street, Granville carrying a backpack and cooler bag at 10:14am.
12. The defendant walked past the BP service station at 10.20am
13. The defendant walked into the BP service station at 10.22am and left at 10.23am.
14. The defendant returned to the BP service station at 11.09am.
15. On each occasion the defendant attended the BP service station he was wearing the same clothing. That clothing was located by DSS David Harbison in Unit 8 around the defendant's bed; namely a black Reece t-shirt, pink shorts, a black cap and thongs.
16. Both transactions attempted by the defendant at the BP service station were on the same NAB bank card belonging to the deceased.

Items located

17. On 17 February 2019, following a statement made by the defendant to DSC Tara Inch, Constable Ethan Langmead located a pillowcase in the garden bed at 146 Cambridge Street, Granville between Unit 8 and the fenceline on Cambridge Street. He maintained sight of that pillowcase until Scenes of Crime officers arrived. Inside that pillowcase was a pillow, cannabis, chux and a cardboard lid.
18. On 17 February 2019 PCSC Peta Schenck attended 2 Cardigan Street, Granville at 4.10pm and began guarding a blue Aldi bag and a backpack until Scenes of Crime Officer Shane Coles arrived.
 - a. Inside the blue Aldi bag was;
 - i. A long sleeve 'Brilliant Basics' shirt
 - ii. Yellow handled knife wrapped in a red & white chequered tea towel and tied with a piece of pink string
 - iii. Bottle of Pine O Clean.
 - iv. Plastic bag containing predominantly rubbish

1. White coloured bath towel
 2. Blue and white tea towel
 3. Red and white chux
 4. Ragulletto pasta sauce bottle
 5. 5 x Quilton rolls of toilet paper
 6. Flying power energy drink can
 7. Up & Go drink container
 8. Frantelle water bottle
 9. Portions of food stuff
- b. Inside the backpack was;
- i. An orange coloured bowl
 - ii. Fanta can
 - iii. 1.2L Fanta bottle
 - iv. Grey flannelette sheet
 - v. Smiths crisps packet
 - vi. Black handle pair of scissors
 - vii. Surfs Up Beach towel
 - viii. Plastic shopping bag
 - ix. Black handled steak knife
 - x. White bath mat
 - xi. Blue bath mat
 - xii. Piece of a label

The backpack had two side pockets, in one was a Philips brand razor and in the other was a sponge.

19. The door between the bathroom and Unit 8 was locked when police arrived at the complex.

Fingerprints / Footprints

20. A single latent fingerprint was found on the yellow knife located in the shelving by the defendant's bedroom. That fingerprint matched the defendant.

21. The defendant's right palm print impression was located deposited in blood on the exterior surface (jam edge) of the front door of Unit 3.
22. The defendant's right foot print impression was located deposited in blood on the linoleum floor in front of the kitchen sink cabinetry in Unit 3.
23. The defendant's right foot print impression was located deposited in blood on the linoleum floor in the kitchen area, inside the front door to Unit 3.

Scenes of Crime

24. Scenes of Crime Officer Stephen Vietch removed the S-Bend from;
 - a. The kitchen sink in Unit 8. Inside he located leftover spaghetti and two skewers.
 - b. The bathroom. Inside he located clear water only
 - c. The kitchen sink in Unit 3. Inside he located clear water and possible food type debris.

DNA Results

25. Samples were taken from the Exhibits listed and sent for analysis. The results were returned as per the attached table."

[19] The joint admissions incorporated a table of DNA test results. That is:

Unit 3⁵

Exhibit #	Description of Item	SOCO ⁶	DNA Result
944072688 ⁷ KC2	Swab; tiled ledge into unit 3	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile. DNA profile indicates the possible presence of additional low level DNA unsuitable for comparison purposes.

⁵ The unit occupied by Mr Ints.

⁶ Scenes of Crime Officer.

⁷ These are barcode references to Exhibit stickers placed by scenes of crime officers.

Exhibit #	Description of Item	SOCO ⁶	DNA Result
944072699 KC3	Tape-lift; right shoulder of deceased	Karoline Berndt	<p>DNA profile containing three contributors.</p> <p>It was assumed that Darren Ints was a contributor to the DNA profile.</p> <p>It is equally likely Jake Ashman had or had not contributed to the mixed DNA profile.</p>
944072704 KC4	Tape-lift; left shoulder of the deceased	Karoline Berndt	<p>DNA profile containing three contributors.</p> <p>It was assumed that Darren Ints was a contributor to the DNA profile.</p> <p>It is equally likely Jake Ashman had or had not contributed to the mixed DNA profile.</p>
944072721 KC5	Tape-lift; right wrist of the deceased	Karoline Berndt	Not suitable for meaningful analysis due to complexity of the DNA sample and the uncertainty as to the number of contributors.
944072721 KC6	Tape-lift; left wrist of the deceased	Karoline Berndt	<p>DNA profile containing three contributors.</p> <p>It was assumed that Darren Ints was a contributor to the DNA profile.</p> <p>Approximately 12 million times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
944072732 KC7	Swab; right palm of deceased	Karoline Berndt	DNA profile containing three contributors.

Exhibit #	Description of Item	SOCO ⁶	DNA Result
			<p>It was assumed that Darren Ints was one of the contributors.</p> <p>Greater than 100 billion times more likely Jake Ashman contributed to the mixed DNA profile.</p>
944072743 KC8	Swab; left palm of deceased	Karoline Berndt	<p>DNA profile containing two contributors.</p> <p>It was assumed that Darren Ints was one of the contributors.</p> <p>Greater than 100 billion times more likely Jake Ashman contributed to the mixed DNA profile.</p>
944072759 KC9	Tape-lift; right ankle of the deceased	Karoline Berndt	<p>DNA profile containing three contributors.</p> <p>It was assumed that Darren Ints was a contributor to the DNA profile.</p> <p>Approximately 46 times more likely Jake Ashman had contributed to the mixed DNA sample.</p>
944072765 KC10	Tape-lift; left ankle of the deceased	Karoline Berndt	<p>DNA profile indicates the presence of a single contributor which matched Darren Ints' reference DNA profile. No statistical analysis was performed as the result is unexpected.</p> <p>DNA profile indicates the possible presence of additional low level DNA unsuitable for comparison purposes.</p>

Exhibit #	Description of Item	SOCO ⁶	DNA Result
728206009 KC19	Swab; outside surface of front entry, unit 3	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
728206018 KC20	Swab; inside surface of front door, unit 3	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile. DNA profile indicates the possible presence of additional low level DNA unsuitable for comparison purposes.
728206036 KC22	Swab; floor of living room close to sliding door into bedroom	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
728206045 KC23	Swab; side of armchair in living room of unit 3	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile. DNA profile indicates the possible presence of additional low level DNA unsuitable for comparison purposes.
728206072 KC26	Fabric; tea towel on kitchen sink of unit 3	Karoline Berndt	DNA profile containing two contributors. Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile. Approximately 2 times more likely Jake Ashman had contributed to the mixed DNA sample.
728206081 KC27	Swab; carpeted floor in bedroom on of unit 3	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA sample.
944072905	Swab; outer surface, front door,	Karoline	Greater than 100 billion times more likely Darren Ints contributed to the

Exhibit #	Description of Item	SOCO⁶	DNA Result
KC53	unit 3	Berndt	single DNA profile.

Unit 8⁸

Exhibit #	Description of Item	SOCO	DNA Result
728206212 KC40	Swab; hot water tap, kitchen sink, Unit 8	Karoline Berndt	<p>DNA profile containing three contributors.</p> <p>Approximately 24 million times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Greater than 100 billion times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
728206240 KC43	Swab; door into shared hallway from unit 8 (bedroom side of unit 8)	Karoline Berndt	<p>DNA profile containing two contributors.</p> <p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Approximately 3.3 million times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
728206267 KC45	Carpet, bedroom of unit 8 (close to door to kitchen)	Karoline Berndt	<p>DNA profile containing three contributors.</p> <p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p>

⁸ The unit occupied by Mr Ashman.

Exhibit #	Description of Item	SOCO	DNA Result
			Approximately 4 times more likely Jake Ashman had contributed to the mixed DNA profile.
728206278 KC46	Swab; sliding door into kitchen of unit 8	Karoline Berndt	<p>DNA profile containing three contributors.</p> <p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Approximately 3 times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
728206289 KC47	Swab; edge of sliding door into kitchen of unit 8	Karoline Berndt	<p>Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.</p> <p>DNA profile indicates the possible presence of additional low level DNA unsuitable for comparison purposes.</p>
728206295 KC48	Fabric; towel below bed in unit 8	Karoline Berndt	<p>DNA profile containing two contributors.</p> <p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Greater than 100 billion times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
728206308 KC49	Swab; top drawer kitchen cabinet, unit 8	Karoline Berndt	Greater than 100 billion times more likely Jake Ashman contributed to the single DNA profile.
944072884 KC51	Swab; top of kitchen table, unit 8	Karoline Berndt	DNA profile containing two contributors.

Exhibit #	Description of Item	SOCO	DNA Result
			<p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Greater than 100 billion times more likely Jake Ashman had contributed to the mixed DNA profile.</p>

Shared hallway and bathroom

Exhibit #	Description of Item	SOCO	DNA Result
728206090 KC28	Swab; doorknob of door into shared hallway (hallway side)	Karoline Berndt	<p>DNA profile containing three contributors.</p> <p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Greater than 100 billion times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
728206113 KC30	Swab; doorframe of door into shared hallway (hallway side)	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
728206125 KC31	Swab; eastern wall of shared hallway side	Karoline Berndt	<p>DNA profile containing three contributors.</p> <p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Greater than 100 billion times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
728206130	Swab; door frame of	Karoline	Greater than 100 billion times more likely Darren Ints contributed to the

Exhibit #	Description of Item	SOCO	DNA Result
KC32	shared bathroom	Berndt	single DNA profile.
728206141 KC33	Swab; floor of shared bathroom	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
728206157 KC34	Swab; spectacles on the floor of the shared bathroom	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
728206168 KC35	Swab; northern wall of shared bathroom	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
728206185 KC37	Swab; eastern wall of shared bathroom	Karoline Berndt	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
728206196 KC38	Swab; shower screen of shared bathroom	Karoline Berndt	Mixed DNA profile containing three contributors. Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile. Approximately 110 times more likely Jake Ashman had contributed to the mixed DNA profile.

Items found in cooler bag and back pack⁹

Exhibit #	Description of Item	SOCO	DNA Result
944755014 SA1	Swab; inside front of 'Brilliant Basics' shirt, cooler bag	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile. DNA profile indicates the possible presence of additional low level DNA unsuitable for comparison purposes.

⁹ Items disposed of by Mr Ashman and found near 2 Cardigan Street.

Exhibit #	Description of Item	SOCO	DNA Result
944755292 SA2	Tape-lift; collar and cuffs of 'Brilliant Basics' shirt, cooler bag	Shane Leslie Coles	DNA profile containing three contributors. Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile. Greater than 100 billion times more likely Jake Ashman had contributed to the mixed DNA profile.
944755031 SB1	Swab; blade of yellow handled knife, cooler bag.	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
944755042 SB2	Tape-lift; handle of yellow handled knife, cooler bag	Shane Leslie Coles	Not suitable for meaningful analysis due to complexity of the DNA sample and the uncertainty as to the number of contributors.
944755042 SC	Tape-lift; cloth handles of the cooler bag	Shane Leslie Coles	Not suitable for meaningful analysis due to complexity of the DNA sample and the uncertainty as to the number of contributors.
944755069 SD	Tape-lift; hand and straps of backpack	Shane Leslie Coles	Not suitable for meaningful analysis due to complexity of the DNA sample and the uncertainty as to the number of contributors.
944755075 SE	Swab; lid of 'Pine Clean' bottle, cooler bag	Shane Leslie Coles	Sample contained insufficient DNA to be suitable for analysis.
944755086 SF	Swab; 'Quilton' toilet roll, cooler bag	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
944755097 SG	Swab; 'Quilton' toilet roll, cooler bag	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
944755105 SH	Swab; 'Quilton' toilet roll, cooler bag	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.

Exhibit #	Description of Item	SOCO	DNA Result
944755119 SI	Swab; 'Quilton' toilet roll, cooler bag	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
944755137 SJ	Swab; mouth of 'Flying Power' can, cooler bag	Shane Leslie Coles	Greater than 100 billion times more likely Jake Ashman contributed to the single DNA profile. DNA profile indicates the possible presence of additional low level DNA unsuitable for comparison purposes.
944755146 SK	Swab; straw in 'Up & Go' drink container, cooler bag	Shane Leslie Coles	Greater than 100 billion times more likely Jake Ashman contributed to the single DNA profile.
944744128 SL	Swab; mouth of 'Frantelle' water bottle, cooler bag	Shane Leslie Coles	Greater than 100 billion times more likely Jake Ashman contributed to the single DNA profile.
944755182 SP	Swab; sponge from 'Caribee' backpack	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile. DNA profile indicates the possible presence of additional low level DNA unsuitable for comparison purposes.
944755191 SQ	Swab; mouth of 'Fanta' can from 'Caribee' backpack	Shane Leslie Coles	DNA profile containing two contributors. Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile. Approximately 6 times more likely Jake Ashman had contributed to the mixed DNA profile.
944755206 SR	Swab; grey flannelette sheet from 'Caribee'	Shane Leslie Coles	DNA profile containing three contributors.

Exhibit #	Description of Item	SOCO	DNA Result
	backpack		<p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Approximately 12 billion times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
944755229 SS1	Swab; 'Surfs Up' beach towel from 'Caribee' backpack	Shane Leslie Coles	<p>DNA profile containing two contributors.</p> <p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA sample.</p> <p>Approximately 60 times more likely Jake Ashman had contributed to the mixed DNA sample.</p>
944755238 ST	Swab; white bath mat from 'Caribee' backpack	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
944755251 SV	Swab; head of 'Philips' razor from 'Caribee' backpack	Shane Leslie Coles	<p>DNA profile containing three contributors.</p> <p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Approximately 580 million times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
944755260 SW	Swab; strap of 'Caribee' backpack	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.
944755283	Swab; handle of	Shane	DNA profile containing two

Exhibit #	Description of Item	SOCO	DNA Result
SX1	black handled steak knife from 'Caribee' backpack	Leslie Coles	<p>contributors.</p> <p>Greater than 100 billion times more likely Darren Ints contributed to the mixed DNA profile.</p> <p>Greater than 100 billion times more likely Jake Ashman contributed to the mixed DNA profile.</p>
944755304 SX2	Swab; blade of black handled knife from 'Caribee' backpack	Shane Leslie Coles	Greater than 100 billion times more likely Darren Ints contributed to the single DNA profile.

Fingernail scrapings of Darren Ints and Jake Ashman

Exhibit #	Description of Item	SOCO	DNA Result
728235972	Post-mortem fingernail scraping of Darren Ints' left fingernails	Taken during post mortem at the direction of Dr Day	<p>DNA profile of three contributors.</p> <p>It is assumed that Darren Ints was a contributor.</p> <p>Approximately 13 times more likely Jake Ashman had contributed to the mixed DNA sample.</p>
	Post-mortem fingernail scraping of Darren Ints; right fingernails		<p>DNA profile of three contributors.</p> <p>It is assumed that Darren Ints was a contributor.</p> <p>Approximately 4 times more likely Jake Ashman had contributed to the mixed DNA profile.</p>
712837226	Fingernail scrapings Jake Ashman's left hand	Bruce Napier	DNA profile from a single contributor matching Jake Ashman's reference DNA profile.

Exhibit #	Description of Item	SOCO	DNA Result
712837235	Fingernail scrapings of Jake Ashman's right hand		<p>DNA profile of three contributors.</p> <p>It is assumed that Jake Ashman was a contributor.</p> <p>Approximately 480 times more likely Darren Ints had contributed to the mixed DNA profile.</p>

- [20] The Crown case closed on 11 May 2022.
- [21] Mr Ashman elected to give evidence himself, which he did. He called no other witnesses.
- [22] Mr Ashman's case also closed on 11 May 2022.
- [23] Addresses were heard on 12 May 2022 and the matter was adjourned to 27 May 2022 for verdict in Brisbane.

The offence of murder; and the defence of self-defence

- [24] By s 291 of the Code, the killing of another is unlawful unless it is authorised, justified or excused by law.
- [25] Section 293 provides that a person kills another if he causes the death of that other "directly or indirectly, by any means whatever". Section 300 provides that unlawfully killing another is a crime "which is called murder, or manslaughter, according to the circumstances of the case". Section 302 defines "murder" by prescribing the circumstances in which an unlawful killing constitutes murder rather than manslaughter.
- [26] As already observed, particulars of the count of murder were delivered by the Crown. Those particulars, together with the charge on the indictment, engaged the circumstance prescribed by s 302(1)(a) of the Code, namely:

"302(1) Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say—

- (a) if the offender intends to cause the death of the person killed or that of some other person or if the offender intends to do to the person killed or to some other person some grievous bodily harm; ..."

[27] In the context of the count on the indictment and the particulars delivered, the elements of the offence of murder are:

1. Darren John Ints is dead.
2. Mr Ashman caused Mr Ints' death.
3. Mr Ashman killed Mr Ints unlawfully.
4. Mr Ashman intended at the time he killed Mr Ints, to kill him or to do him grievous bodily harm.

[28] It was formally admitted that “[Mr Ashman] killed Darren John Ints on 17 February 2019”.¹⁰ That constitutes an admission to both elements 1 and 2. By s 644(1) of the Code, that admission “... is sufficient proof of the fact(s) without other evidence”. I therefore find both element 1 and element 2 proved beyond reasonable doubt. The two remaining elements are elements 3 and 4, unlawfulness and intention.

[29] Manslaughter will be established where the Crown proves beyond reasonable doubt an unlawful killing (elements 1, 2 and 3 of murder) but do not prove the circumstances which make the unlawful killing murder (element 4).¹¹

[30] By s 576 of the Code, manslaughter is an alternative verdict on a count of murder. A person charged with murder may be convicted of manslaughter on the count of murder if manslaughter “is established by the evidence”.¹²

[31] By his evidence, Mr Ashman raised self-defence as a lawful excuse for the killing of Mr Ints. The onus then falls upon the Crown to disprove self-defence beyond reasonable doubt.

[32] The Code provides for the defence of self-defence by ss 271 and 272. Section 271 provides for self-defence against an unprovoked assault and s 272 provides for self-defence against a provoked assault.

[33] The Crown did not suggest that any defence made by Mr Ashman was a defence to a provoked assault. Section 272 need not be considered.

[34] Section 271(1) is excluded unless the force used is “not intended, and is not such as is likely to cause death or grievous bodily harm”.

[35] Grievous bodily harm is defined as:

“*grievous bodily harm* means—

- (a) the loss of a distinct part or an organ of the body; or

¹⁰ Admission number 4.

¹¹ Code, ss 300 and 303(1).

¹² Code, s 576(1).

- (b) serious disfigurement; or
- (c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.”¹³

[36] There is no alternative here other than to conclude beyond reasonable doubt that the force used by Mr Ashman to make defence was at least likely to cause at least grievous bodily harm. Counsel for Mr Ashman did not contend otherwise. Section 271(1) is not available to Mr Ashman.

[37] Section 271(2) is raised as available to Mr Ashman. It provides:

“271 Self-defence against unprovoked assault

....

- (2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person can not otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.”

[38] There are four elements of a lawful defence to an assault where the force used in self-defence is lethal:

1. the person making defence must have been assaulted;
2. the person making defence must not have provoked the assault to which defence is made;
3. the nature of the assault to which defence is raised must have been such as to cause reasonable apprehension of death or grievous bodily harm to the person making defence;
4. the person who made defence must have believed on reasonable grounds that he could not otherwise preserve himself from death or grievous bodily harm.

[39] It has been clear since *R v Muratovic*¹⁴ and *Marwey v The Queen*¹⁵ that it is the belief of the person making defence that the defence is necessary which is relevant,

¹³ Code, s 1.

¹⁴ [1967] Qd R 15 at 19.

not whether the force used was objectively necessary.¹⁶ The other question is whether such belief was held on reasonable grounds.

- [40] To exclude self-defence, the Crown must disprove at least one of the elements to a standard beyond reasonable doubt.
- [41] If the Crown does not exclude self-defence beyond reasonable doubt, Mr Ashman is entitled to an acquittal.
- [42] If the Crown does exclude self-defence beyond reasonable doubt but does not prove beyond reasonable doubt that at the time he delivered the fatal stabs, Mr Ashman intended to cause Mr Ints' death or grievous bodily harm, then Mr Ashman is guilty of manslaughter. If the Crown excludes self-defence beyond reasonable doubt¹⁷ and proves intention beyond reasonable doubt,¹⁸ Mr Ashman is guilty of murder.¹⁹

THE EVIDENCE

The layout of the complex

- [43] The unit complex occupies a block of land on the corner of Cardigan Street and Cambridge Street at Granville, a suburb of Maryborough. Exhibit 1 is a plan of the site and also shows some internal walls of the units.²⁰
- [44] Cardigan Street runs roughly north-south. Cambridge Street runs roughly east-west. The land upon which the complex is built sits on the eastern side of Cardigan Street and the northern side of Cambridge Street.²¹
- [45] The unit complex is all on ground level. It consists of three conjoined parts. Units 1, 2, 3 and 8 are in a block which runs parallel to Cambridge Street. Units 4, 5, 6 and 7 are in a block that runs about 45 degrees north from the parallel to Cambridge Street. Between the two blocks is a roughly pie-slice shaped section which contains a common area and units 9 and 10. The common area contains an open space, a

¹⁵ (1977) 138 CLR 630 at 637.

¹⁶ *R v Gray* (1998) 98 A Crim R 589, *R v Vidler* (2000) 110 A Crim R 77, *R v Wilmot* (2006) 165 A Crim R 14 and *R v Saxon* [2020] QCA 85.

¹⁷ Thereby proving element 3 of murder; unlawfulness.

¹⁸ Element 4 of murder.

¹⁹ Elements 1 and 2 of murder having been admitted.

²⁰ A more detailed diagram of the internal features of unit 3 (Mr Ints' unit) and unit 8 (Mr Ashman's unit) is Exhibit 93.

²¹ Exhibit 27 is an overhead photograph showing the intersection and the complex.

laundry and an entry area in which are housed the fuse boxes. A car park is on the northern part of the land near an exit onto Cardigan Street.

- [46] The units are contained in pairs. Between each of the two units which constitutes a pair sits a bathroom (with a toilet) which is accessible from both units. Units 1 and 2 form a pair. Unit 1 is the closest of all of the units to Cardigan Street. It runs roughly north-south. Unit 2 runs parallel to it but to its east. The shared bathroom sits between them.
- [47] Moving east away from Cardigan Street, the next pair of units are 3²² and 8.²³ These run east-west so that unit 2 shares a common wall with both units 3 and 8, with unit 3 sitting to the north of unit 8.
- [48] Units 9 and 10 sit at an angle in part of the pie-slice shaped part of the building with unit 9 positioned to the north of unit 10 and both running more east-west than north-south.
- [49] Units 4 and 7 adjoin the common area to the north-east. The final pair at the north-east extremity of the complex consists of units 5 and 6.
- [50] It was mutually admitted that Mr Ints lived in unit 3 and that Mr Ashman lived in unit 8.

Residents and visitors

- [51] There were eight witnesses called to give evidence who were at the unit complex at the time Mr Ints was killed. Five of these were residents. They were:
1. Justin Moore, who occupied unit 1;
 2. Adrian Shaw, who occupied unit 2;
 3. Paul Quill, who occupied unit 4;
 4. Alan Bachmann, who occupied unit 7; and
 5. Luke Martin, who occupied unit 9.
- [52] The other three were visitors:
6. Sunil Zachariah;
 7. Christopher Rixon;
 8. Corey Jones.
- [53] A summary of their evidence follows.

²² Mr Ints' unit.

²³ Mr Ashman's unit.

*Adrian Shaw*²⁴

- [54] Mr Shaw lived in unit 2 which, as already observed, shared a common wall with both Mr Ints (unit 3) and Mr Ashman (unit 8). Mr Shaw was at home on the morning of 17 February 2019 editing audio books. He did that activity for about two hours until about 8.30 am. He then left his unit to visit Mr Bachmann and Mr Quill. They occupied units 7 and 4 respectively which are in the other wing of the complex past the common area. Mr Shaw walked past Mr Ints' unit (unit 3) on his way to Mr Bachmann (unit 7) and Mr Quill (unit 4).
- [55] Mr Shaw went firstly into Mr Quill's unit (unit 4). There he saw Mr Quill and Mr Ints. He then walked through Mr Quill's unit and into Mr Bachmann's (unit 7) where he found Mr Bachmann. He spent some time with Mr Bachmann and then returned to his unit. He passed through Mr Quill's unit on his way, and there he saw Mr Ints still in unit 4.
- [56] Mr Shaw was confident that he was back in his unit by 9.30 am because a television program which he wished to watch was to start then.
- [57] When Mr Shaw returned to unit 2, he sat at his desk and set up an audio book to upload while he then watched the television. The desk sat on the common wall with units 3 and 8.
- [58] Mr Shaw heard a commotion from behind the common wall. Under cross-examination, he said that occurred at about 10.00 am. He heard four to six loud bangs and crashes and heard things smash. That occurred for about 10 seconds. Then, he heard a male voice yell out "fuck off; fuck off" and then more bangs and then silence.
- [59] There was some variation in his accounts of the sequencing of the noises he heard. He gave a second version where he said that there was no noise after he heard the male voice yell "fuck off; fuck off". Under cross-examination, he gave this version:

"In terms of what you heard back on the 17th of February 2019, you've said that you heard some big bangs, some shattering, a male person saying 'fuck off, fuck off' very loudly, and some banging. Is that correct?---Yes.

And is that the sequence that you think that you heard those things in, in terms of the first was the banging, then there was the shattering, and then the fuck off - - -?---Well, during - during the couple of bangings, there was the shattering and a lot of things being smashed and then 'fuck off, fuck off' and then a couple more bangs and then it just went silent.

Okay. And you say all of that occurred within about a period of about 20 seconds; is that right?---Yes.”²⁵

[60] Mr Shaw then went to the door of his unit. That door is on the northern side of the complex as is the door to unit 3 (Mr Ints’ unit). Mr Shaw looked out of his door and to the right and saw an arm reach from inside unit 3 and close the door to that unit.

[61] After a few minutes, Mr Shaw left his unit and walked to see Mr Bachmann and Mr Quill (units 7 and 4 respectively). After having a conversation with Mr Bachmann and Mr Quill, he returned to his unit (unit 2). After a short time, he noticed that some men had gathered at the door of unit 3. These people included Mr Jones. Access was gained to unit 3 and Mr Shaw saw Mr Ints on the floor in a pool of blood. Others he saw in the unit at various times included Mr Bachmann and Mr Martin (unit 9).

*Justin Moore*²⁶

[62] Justin Moore occupied unit 1 in February 2019. The bathroom he shared with Mr Shaw (unit 2) runs parallel to Cardigan Street and perpendicular to Cambridge Street. Therefore, Mr Shaw’s unit (unit 2) sits between Mr Moore’s (unit 1) and Mr Ints’ and Mr Ashman’s (units 3 and 8) with the result that Mr Moore does not share a common wall with either of units 3 or 8.

[63] Mr Moore woke in the morning of Sunday, 17 February 2019 to what he thought was Mr Shaw yelling, “fuck, fuck”. He thought he awoke about 10.00 am. He went to the door of his unit and looked towards unit 3 (Mr Ints’ unit) where he saw Mr Shaw, Mr Bachmann, Mr Quill and Mr Jones standing outside. Mr Moore did not go into unit 3 but walked to unit 6 and spoke to a person who was there.

*Luke Martin*²⁷

[64] Mr Martin (unit 9) had been away from the complex for about a week. He returned on Saturday, 16 February 2019. He slept in his unit that night and awoke early the next morning, about 5.00 or 5.30 am.

[65] At about 9.30 or 10.00 am, Mr Martin saw Mr Ashman standing outside his unit holding a blue shopping bag which was folded in his hand.

[66] The external door to unit 8 and the external door to unit 9 are adjacent to each other on the southern side of the complex nearest Cambridge Street. Mr Martin’s kitchen window looks out towards unit 8. Mr Martin was standing at his kitchen window when he saw Mr Ashman with the blue shopping bag. He saw Mr Ashman walk

²⁵ T 1-20.

²⁶ T 1-57.

²⁷ T 1-31.

into the common area which sits to the north of units 9 and 10. Mr Martin followed Mr Ashman and saw him walk through the common area out the northern side of the complex and then north-west through the car park and towards Cardigan Street.

- [67] On Cardigan Street, at the point where the driveway from the property exits onto it, is a bottle shop. Mr Martin lost sight of Mr Ashman as he left the property and disappeared behind the bottle shop. Mr Martin drew on a copy of Exhibit 1 a diagrammatical explanation of the path which he saw Mr Ashman take as he exited the property. That became Exhibit 4.
- [68] Mr Martin said that at a time before he saw Mr Ashman with the blue shopping bag, he heard a male voice yell, “fuck you” or “fuck off”. He thought that came from the direction of the bottle shop. From Mr Martin’s unit (unit 9), Mr Ints’ unit (unit 3) is roughly west and the bottle shop is roughly north-west.
- [69] Sometime later, a neighbour alerted Mr Martin to an issue concerning Mr Ints. Mr Martin walked to Mr Ints’ unit (unit 3) where he saw Mr Bachmann and Mr Jones in unit 3 attempting to revive him. Mr Martin attempted to clear Mr Ints’ airways, and he performed some compressions. He noticed there was a good deal of blood and he saw stab wounds on Mr Ints’ body. He was present when paramedics arrived and directed that the unit be cleared.
- [70] Under cross-examination, Mr Martin said that he had observed Mr Ints and Mr Ashman interacting with each other around the unit complex and had observed no apparent tension between them.

*Paul Quill*²⁸

- [71] On 17 February 2019, Mr Paul Quill awoke in his unit at the complex (unit 4) at about 8.30 am. Mr Quill was injured and leaving the unit was difficult for him. He knew Mr Ints and he had made arrangements for Mr Ints to visit him that day.
- [72] Mr Ints arrived at unit 4 as planned about 9.00 am. Mr Ints stayed with Mr Quill for about 15 to 20 minutes. The two men drank coffee and watched television. Mr Ints then left with a promise to later return.
- [73] About 40 minutes after Mr Ints left unit 4, Mr Quill became aware of some incident and walked towards unit 3. As he made his way, he looked through the common area and saw Mr Ashman standing near the door to his unit (unit 8).
- [74] When Mr Quill arrived at unit 3, he saw men, one of whom was probably Mr Shaw and another, Mr Martin. Someone kicked the door of unit 3 in and Mr Quill, with others, entered the unit and found Mr Ints on the floor. Mr Quill and others unsuccessfully attempted resuscitation.

²⁸ T 1-21.

- [75] Under cross-examination, Mr Quill agreed that Mr Ints received medication for his mental health. He alleged that he had seen an occasion where Mr Ints had become angry.

*Alan Bachmann*²⁹

- [76] As already observed, Mr Alan Bachmann lived in unit 7. He knew Mr Ints. Mr Bachmann subscribed to Foxtel. As Mr Bachmann had mobility issues, Mr Ints would visit him at his unit and the two men would watch television together.
- [77] One program that interested both Mr Ints and Mr Bachmann was the coverage of European snooker. Mr Ints arrived at Mr Bachmann's unit at about 5.00 am on 17 February 2019 to watch the snooker. Sometime later, Mr Ints left Mr Bachmann in unit 7 to go to the local hamburger shop to buy breakfast for them both. That was consumed and Mr Ints then left Mr Bachmann's unit at about 9.00 am. He was to return to Mr Bachmann's unit later, but never did.
- [78] Mr Shaw and Mr Rixon arrived at Mr Bachmann's unit probably half an hour after Mr Ints left. There was a discussion, and Mr Shaw and Mr Rixon then left to go to Mr Ints' unit. Mr Bachmann followed some short time later.
- [79] When he arrived at unit 3, Mr Bachmann saw Mr Shaw, Mr Jones and Mr Rixon at the unit. The door was then kicked in and they found Mr Ints on the floor. Mr Bachmann performed cardiopulmonary resuscitation (CPR) until some other person took over. Mr Bachmann then rang emergency, 000.

*Sunil Zachariah*³⁰

- [80] Sunil Zachariah was a visitor to the complex on the morning of 17 February 2019. He had previously resided in unit 10.
- [81] On this day, he planned to visit Mr Ints. When he arrived at unit 3, he knocked on the door but could not raise a response. He then walked to Mr Quill's unit (unit 4). When Mr Zachariah arrived at unit 4, both Mr Quill and Mr Bachmann (unit 7) were home.
- [82] Mr Zachariah spoke with Mr Quill and Mr Bachmann for a short time and then Mr Rixon arrived. There was a conversation with him and then Mr Zachariah became aware of men at Mr Ints' unit. Mr Zachariah left units 4 and 7 and walked past unit 3 but did not enter.

²⁹ T 1-42.

³⁰ T 1-47.

*Christopher Rixon*³¹

- [83] Mr Rixon was also a visitor to the complex on 17 February 2019. He said that he arrived at about 11.45 am. The purpose of his visit was to see Mr Bachmann. At some stage he also saw Mr Jones. It is likely that he also saw Mr Quill. Mr Rixon walked through Mr Quill's unit (unit 4) in order to enter Mr Bachmann's (unit 7). Other evidence suggests that Mr Quill was at home.
- [84] Mr Rixon went to Mr Ints' unit and noticed blood on the door. He yelled out to Mr Ints but could not raise a response. He returned to units 4 and 7.
- [85] Mr Rixon and Mr Jones gained entry to Mr Ints' unit by kicking the door in. Mr Rixon noticed Mr Ints lying on the floor of the unit. He took one step inside the unit but then withdrew and went outside to help guide the police and ambulance to the unit.

*Corey Jones*³²

- [86] The third visitor to the complex who gave evidence was Mr Corey Jones. He said that he thought that he arrived at the unit complex at about 1.00 pm. He is wrong about that. He obviously arrived earlier. Natalie Creighton-Jay is a paramedic who attended at the scene. She received a call and was dispatched at 11.58 am. Mr Jones was at the complex before she arrived.
- [87] Mr Jones, when he arrived at the complex, went to Mr Bachmann's unit (unit 7). He walked through Mr Quill's unit (unit 4) to gain access to Mr Bachmann's unit. He left Mr Bachmann's unit and went to Mr Ints' unit (unit 3). Other men were there. The door was then kicked in and Mr Ints was found lying on the floor of the unit. He could locate no pulse on Mr Ints and so he started CPR. He could not recall the identity of all those in the unit, but he did say that Mr Bachmann was present.
- [88] The evidence of the residents and the visitors was not seriously challenged. There is no need to resolve any inconsistencies between them.

The paramedics*Natalie Creighton-Jay*³³

- [89] As previously observed, Natalie Creighton-Jay is a paramedic. She is employed by the Queensland Ambulance Service. On 17 February 2019 she was based at

³¹ T 1-50.

³² T 1-53.

³³ T 1-59.

Maryborough. She received a call and was dispatched at 11.58 am, arriving at the complex about seven minutes later at 12.05 pm.

- [90] By the time she arrived, another paramedic, Tristan Mitchenday, who did not give evidence, was present with two police officers. The two paramedics attempted various resuscitation techniques, all of which were unsuccessful. Mr Ints was declared dead at 12.12 pm.

Community Housing

*Michelle Krueger*³⁴

- [91] Michelle Krueger works for a community housing organisation in Maryborough which managed the Cambridge Street complex. She oversaw that property. She explained that each unit in a pair was connected by a joint hallway giving access to a shared bathroom. At each end of the hallway was a door, but she could not recall how they locked.
- [92] Under cross-examination, Ms Krueger confirmed that Mr Ints originally occupied a unit other than unit 3 but was relocated to unit 3 because of conflict with another tenant. That other tenant, who was not Mr Ashman, was evicted as a result of the conflict.

Police

*Detective Sergeant Michael Polit*³⁵

- [93] Detective Sergeant Michael Polit is a police officer stationed at the Maryborough Criminal Investigation Branch. He attended the complex with Detective Senior Constable Inch on 17 February 2019 and sought entry to unit 8 (Mr Ashman's unit).
- [94] Detective Sergeant Polit knocked on the door of unit 8, but could raise no response. The door was locked. A locksmith was called, but ultimately the door was jemmied open. Mr Ashman was inside lying on his bed. He was arrested and escorted to an area outside the complex where DSC Inch interviewed him in the presence of DS Polit.
- [95] Detective Sergeant Polit was present when Senior Constable Napier, a Scenes of Crime Officer, took fingerprint scrapings from Mr Ashman and photographed him. Those photographs became Exhibits 6-25. Detective Sergeant Polit was present in the interview room when DSC Inch interviewed Mr Ashman at the Maryborough police station.

³⁴ T 1-71.

³⁵ T 1-64.

*Senior Constable Scott McLeod-Robertson*³⁶

- [96] Senior Constable Scott McLeod-Robertson was, on 17 February 2019, stationed at the Maryborough Police Station. At about 12.05 pm on that day, he and his partner, Constable James Demuth,³⁷ attended the unit complex. They were the first responders.
- [97] Senior Constable McLeod-Robertson and Constable Demuth entered unit 3 and located Mr Ints and some other men. Constable Demuth began CPR on Mr Ints while SC McLeod-Robertson attended to various things back at the police vehicle. After attending to those things, he then returned to unit 3.
- [98] Senior Constable McLeod-Robertson was wearing a body camera and a still photograph taken from footage from that camera became Exhibit 28. It shows Mr Ints prone on the floor in unit 3. He also produced an overhead map of the area of Cambridge and Cardigan Streets which became Exhibit 27.

*Senior Sergeant Brett Everest*³⁸

- [99] Senior Sergeant Brett Everest was, in 2019, working at the Maryborough Police Station. He was at that point a Sergeant Chief Supervisor. He attended the unit complex at about 12.15 pm on 17 February 2019. He entered unit 3 and attempted entry into unit 8. He put into evidence Exhibits 29-33 which were still photographs of various points of interest at the complex. It is unnecessary to analyse these Exhibits.

*Senior Constable Shane Coles*³⁹

- [100] Senior Constable Shane Coles is a Scenes of Crimes Officer stationed at Maryborough. On 17 February 2019, he attended at the complex and then attended at 2 Cardigan Street.
- [101] As already observed, Cardigan Street runs roughly north-south. The southern end of Cardigan Street where number 2 is located leads down onto the river.
- [102] The property at 2 Cardigan Street is owned by Leona Lavelle who lives there, but part of the property was occupied by Steven Dannett and his family.
- [103] Senior Constable Coles spoke to Ms Lavelle and Mr Dannett and was directed to a backpack⁴⁰ and a blue insulated shopping bag clearly designed to transport chilled

³⁶ T 1-74.

³⁷ Who did not give evidence.

³⁸ T 1-79.

³⁹ T 1-87.

⁴⁰ Photograph, Exhibit 54.

grocery items.⁴¹ At the time SC Coles saw those bags, they were on the veranda of the house at 2 Cardigan Street.

- [104] Senior Constable Coles was then directed to an area where shrubs were growing at the front of the property near Cardigan Street. He took photographs of this area and those photographs became Exhibits 35, 36 and 37. Later evidence from Ms Lavelle identified this as the area where the blue bag and the backpack were located.
- [105] Senior Constable Coles then took photographs of the two bags and their contents. Exhibits 38-53 are photographs depicting the blue bag and its contents. Exhibits 54-70 are photographs depicting the backpack and its contents.
- [106] As SC Coles examined the various items, he took samples by way of tape lifts and swabs. The results of tests of those various samples became the subject of admissions. The admissions were written and became Exhibit 79.
- [107] In the blue bag, the following significant items were found:
1. A “Brilliant Basics” white shirt. The long-sleeved shirt had bloodstains on the front of it and also under towards the left armpit. Photographs of the shirt constitute Exhibits 40 and 41. DNA testing of the inside front of the shirt showed that it was greater than 100 billion times more likely that Mr Ints contributed to the single DNA profile than not. DNA testing of the collar and cuffs of the shirt showed that it was greater than 100 billion times more likely that Mr Ints contributed to the mixed DNA profile than not, and greater than 100 billion times more likely that Mr Ashman contributed to the mixed DNA profile than not.
 2. A knife wrapped in checked fabric. That knife was found to have a yellow handle and was the knife which Mr Ashman said in his evidence was used to stab Mr Ints several times. Photographs of the knife wrapped in the fabric formed Exhibit 42 and photographs of the knife unwrapped are Exhibits 43 and 44. The knife itself is Exhibit 45. The DNA testing showed that it was greater than 100 billion times more likely that Mr Ints contributed to the DNA profile on the blade of the knife than not.
 3. A bottle of “Pine O Cleen” brand cleaner. A photograph of that is Exhibit 47.
 4. Several empty toilet rolls with obvious blood splatters. Photographs of these constitute Exhibit 48. The DNA testing showed that it was greater than 100 billion times more likely that Mr Ints contributed to the DNA profile extracted from the toilet rolls than not.
 5. A blue rag and a red rag. These can be seen in the photograph of the contents of the plastic bag which was inside the blue bag, which is Exhibit 50.

⁴¹ Photograph, Exhibit 38.

6. A “Frantelle” brand water bottle. That was photographed and is Exhibit 51. The DNA testing showed it was greater than 100 billion times more likely that Mr Ashman contributed to the DNA profile extracted from the bottle than not.
7. An “Up&Go” container. A photograph of this is Exhibit 52. The DNA testing showed it was greater than 100 billion times more likely that Mr Ashman contributed to the DNA profile lifted from that container than not.
8. An energy drink can which is shown in Exhibit 53.

[108] The backpack appears in photographs which are Exhibits 54-56. Of significance in the backpack were:

1. A sponge. That is shown in the photograph which is Exhibit 57 and the DNA testing showed it was greater than 100 billion times more likely that Mr Ints contributed to DNA on the sponge than not.
2. A sheet with obvious blood stains. That is depicted in photographs which are Exhibit 59. DNA testing showed it was greater than 100 billion times more likely that Mr Ints contributed to the mixed DNA profile than not and that it was approximately 12 billion times more likely that Mr Ashman contributed to the profile than not.
3. A blue towel. This is shown in the photographs which are Exhibits 61 and 62. The DNA testing showed it was greater than 100 billion times more likely that Mr Ints contributed to the mixed DNA sample than not and approximately 60 times more likely that Mr Ashman had contributed to it than not.
4. A white bath mat with blood stains which is shown in the photograph which is Exhibit 63. The DNA testing showed it was greater than 100 billion times more likely that Mr Ints contributed to the DNA profile than not.
5. An empty “Fanta” brand drink can which is shown in Exhibit 64. The DNA testing showed it was greater than 100 billion times more likely that Mr Ints contributed to the mixed DNA profile than not and six times more likely that Mr Ashman did than not.
6. A blue bath mat. The photograph of this is Exhibit 66.
7. A knife which appears to be of a style of a common steak knife. Photographs of this form Exhibit 68. The knife itself is Exhibit 69. The DNA testing showed it was greater than 100 billion times more likely that Mr Ints contributed to the mixed DNA profile taken from the handle than not, and a greater than 100 billion times more likely that Mr Ashman did than not. In relation to the blade, the testing showed a greater than 100 billion times more likely that Mr Ints contributed to the single DNA profile there found than not.

8. An electric razor. It was the subject of the photograph which is Exhibit 70. DNA testing showed a mixed profile, it being greater than 100 billion times more likely that Mr Ints contributed to it than not and approximately 580 million times more likely that Mr Ashman did than not.

*Sergeant Stephen Veitch*⁴²

- [109] Sergeant Stephen Veitch is a police officer stationed at Maryborough Scenes of Crime. He attended the complex at approximately 12.54 pm on 17 February 2019. He proceeded to conduct a physical search of an area under the foliage of a bush located on the southern side of the complex outside a window in unit 8. A photograph of the area of Sergeant Veitch's search is Exhibit 33.
- [110] The search located a pillowcase. In the pillowcase was a pillow. On the pillow itself were crumbs of green leafy material. Also in the pillowcase was a cardboard lid and a red "Chux" type rag. These various things are shown in the photographs which became Exhibits 71-73.
- [111] Sergeant Veitch also took various photographs of the inside of units 3 and 8. They became Exhibits 74-78.

*Detective Senior Constable Tara Inch*⁴³

- [112] Detective Senior Constable Tara Inch interviewed Mr Ashman at the complex immediately after he had been extracted from unit 8. The conversation was recorded. The recording became Exhibit 80. A transcript of the interview was marked F for identification.
- [113] There were several recordings tendered and all were accompanied by transcripts. The evidence is what I heard on the recordings, not what appeared in the transcript which is just someone else's opinion of what is heard on the recording. I used the transcripts only as an aid in listening to the recordings.
- [114] During the interview with DSC Inch at the complex, Mr Ashman told police that an intruder must have killed Mr Ints.
- [115] Mr Ashman told police that he was in unit 8 when he heard bangs coming from Mr Ints' unit. He said he heard two voices and he also heard a couple of yells. He became concerned about Mr Ints. He knocked on the door of Mr Ints' unit. This was the door which led from the joint bathroom into unit 3.
- [116] Mr Ashman said that he then walked into Mr Ints' unit to find Mr Ints on the floor with his shirt full of blood. On the kitchen bench was a handwritten note. On the note was a steak knife of a similar description to the one later found at 2 Cardigan

⁴² T 1-111.

⁴³ T 2-9. Dr Day was interposed at T 2-16 and DSC Inch resumed her evidence at T 2-41.

Street and which became Exhibit 69. Mr Ashman said that the knife was placed by him in the pillowcase found under the bush. However, no knife was found there. One meeting that description was found with other things near 2 Cardigan Street. Also on the bench was a bowl containing an amount of cannabis.

[117] Police were told by Mr Ashman that he was convinced that the assailant had intended him particularly to find the note. The note instructed the finder to clean up the blood, consume the cannabis, not call for any help until the next day and burn the note. The note bore a “winky face” like an emoji.

[118] Mr Ashman said that he wiped up some spots of blood, smoked the cannabis and burnt the note. After he burnt the note, he washed the ashes down the sink. He also said that he searched in drawers in Mr Ints’ bedside table looking for money but found none.

[119] Although Mr Ashman said that he did not know who the assailant was, some of his comments strangely hinted to an odd relationship or understanding with the assailant.

[120] He said:

“I should’ve, it was just part of the deal. I get a bit of the free weed⁴⁴ and a coupla cigarettes for waitin’ a day. So, I thought, fuck yeah, I’m lockin’ the door.”

And later:

“That’s what I mean like, that person must’ve known me as well. ‘Cause he left that knife on the note, so he’s bein’ funny. Like you, you hide your shit when he done it, you know what I mean? So yeah, when I heard youse at the door I didn’t hesitate to chuck it in the bush. Try and cover for him.”

And later still:

“UNIDENTIFIED MALE OFFICER. Do you know this other person that you heard inside [INDISTINCT].

ASHMAN: Nuh, nuh, I don’t know who it was.

UNIDENTIFIED MALE OFFICER: So, would you usually do something that’s left on a note, that you don’t know the person?

ASHMAN: Not really, but a deal’s a deal. So, I was like, fuck it.

UNIDENTIFIED MALE OFFICER: A deal’s--

ASHMAN: Must--

⁴⁴ A reference to the cannabis which he found.

UNIDENTIFIED MALE OFFICER: A deal.

ASHMAN: A deal's a deal, yeah.

UNIDENTIFIED MALE OFFICER: Whaddya mean by that?

ASHMAN: I get a bit of Weed, get some cigarettes and stuff. I thought I'd get some money too if I locked the door and, and--

UNIDENTIFIED MALE OFFICER: What made you think--

ASHMAN: Yeah--

UNIDENTIFIED MALE OFFICER: That?

ASHMAN: T-, hide the knife, hide the knife. So, it thought, might as well.

UNIDENTIFIED MALE OFFICER: So, was that on the note as well, was it?

ASHMAN: Yeah."

[121] As is clear from the formal admissions,⁴⁵ Mr Ashman found Mr Ints' National Australia Bank credit card and attempted to use that to purchase goods at the BP Service Station before the police arrived. There was no mention of that to police during this first interview.

[122] The goods in the pillowcase were, as already observed, located by Sergeant Veitch when he conducted a search of the bush outside the window of unit 8. No steak knife was found in the pillowcase, although, as already observed, a steak knife (which became Exhibit 69) was found in the backpack at 2 Cardigan Street. No bowl was found in the pillowcase either. One was found in the backpack and a photograph of it is Exhibit 60.

[123] No mention was made by Mr Ashman during the conversation with police at the complex of:

1. the existence of the blue bag;
2. the existence of the backpack;
3. the existence of the yellow knife;
4. his trip to 2 Cardigan Street with those two bags.

[124] Detective Senior Constable Inch and Sergeant Polit interviewed Mr Ashman at the Maryborough Police Station. The recording is Exhibit 81 and the transcript is Exhibit G for identification.

⁴⁵ See admission number 16.

- [125] Mr Ashman maintained the account which he gave to police at the complex. Much of the interview was laboured and repetitive but some aspects of it are significant. Mr Ashman volunteered that after he found Mr Ints' body, he walked to the service station and tried unsuccessfully to purchase cigarettes. He did not at that point mention that he had attempted to use Mr Ints' bank card.⁴⁶
- [126] Mr Ashman volunteered that during the yelling which he heard from Mr Ints' unit, one of the persons said the word, "dog".⁴⁷
- [127] Mr Ashman said at various times that he felt threatened by the note and thought that he should obey what it directed him to do to avoid possible reprisals.⁴⁸
- [128] At the complex, Mr Ashman told police he urinated in his pants. He told police in the formal interview that he had done that as he was nervous.⁴⁹ He later told police in the formal interview that he had urinated into a shirt because he did not want to go near the body or near the toilet in the shared bathroom.⁵⁰
- [129] Police asked Mr Ashman questions about his trip to the service station. He then volunteered that he had tried to use Mr Ints' bank card which he had taken from unit 3 after he had found Mr Ints dead.⁵¹
- [130] Police noticed injuries on Mr Ashman's right hand and left arm. He explained these as being from an altercation at a "hock shop" some days previously and a graze he got "from my shower".⁵² These injuries were minor and are seen in Exhibits 14 and 24. There are other minor injuries shown in photographs which are Exhibits 10, 11, 12, 13, 15, 16, 19 and 25.
- [131] Mr Ashman said he did not let the police into his unit because he did not know they were there. He said he had his earphones in and had the music up loud.⁵³
- [132] During the interview, it came to the attention of DSC Inch and Sergeant Polit that the two bags had been found at 2 Cardigan Street. They raised this with Mr Ashman. This exchange occurred:

⁴⁶ Transcript, Exhibit G, page 19.

⁴⁷ Transcript, page 20.

⁴⁸ Transcript, pages 28, 29, 32, 35, 47, 50 and 58; my summary of the substance of his statements, not his words.

⁴⁹ Transcript, page 40.

⁵⁰ Transcript, page 46.

⁵¹ Transcript, pages 41-42.

⁵² Transcript, page 48.

⁵³ Transcript, page 51.

“TI Ok. We have received some information about some property that was located near your house. So this property, we’ll show you. For the purpose of the tape it’s a brown, a brown, a blue cooler bag. Its got what appears to be a white cloth in it; pine o clean bottle; a red and white checkered T towel

JA Yep

TI With a bloodied knife ah poking, protruding out the end. And it also appears to be like a red and white chux. Just for the purpose of the tape. So this is located today, what can you tell me about that?

JA Yeah yep that was that was another knife that I had to hide for him. And then I tried to hide it down past someone else. So I had to do two trips. And yeah

TI So tell me about this

JA Well yeah I tried to hide it down there for him or I cleaned it up for him cause there was a couple of knives. And yeah. I didn’t think I’d get caught with that one, but yeah I did

MP What’s in that bag?

JA Oh it looks like a knife; a bit of pine o clean and a shirt

MP What else, what can’t we see?

TI What’s underneath?

JA A cloth. And yeah ...

TI Where was that bag located?

JA Down, down near the water. I put, I put it down near there this morning. Just had the note, had a bunch of shit on it. I didn’t think I’d get caught with that but yeah I did”.⁵⁴

[133] Mr Ashman told police that the knife with the yellow handle but wrapped in cloth and which became Exhibit 45, was located by him next to Mr Ints’ leg. Mr Ints was at that point in unit 3 and prone on the floor. He did not wrap the knife in the tea towel.⁵⁵ He insisted that he understood from the note that he had to hide both knives.⁵⁶ He did so.

⁵⁴ Transcript, pages 57-58.

⁵⁵ Transcript, page 59.

⁵⁶ Transcript, page 61.

[134] In order to hopefully obtain a confession from Mr Ashman, police introduced a Law Enforcement Participant (LEP) into the cell where Mr Ashman was being held at the Maryborough Watchhouse on 17 and 18 February 2019. The tactic is one condoned by the High Court's judgment in *R v Swaffield and Pavic*.⁵⁷ As is customary, the LEP was wearing a recording device.

[135] The LEP provoked conversation with Mr Ashman. Four separate recorded passages of conversations were downloaded to one electronic disc which became Exhibit 92. There were four transcripts which together became Exhibit H for identification.

[136] In substance, Mr Ashman repeated to the LEP the version that he had given to DSC Inch both at the complex and during the formal interview at the Maryborough CIB.

*Karoline Berndt*⁵⁸

[137] Ms Berndt is a Forensic Scientist working in the Forensic and Scientific Section Major Crime Unit of the Queensland Police Service. She attended units 3 and 8 of the complex. She produced a diagram of the floor plan of both units. That became Exhibit 93. It provides more detail of the internal layout of the units than does Exhibit 1.

[138] Ms Berndt inspected the two units attempting to identify blood and blood stains, and documenting where she found those. She directed photographs of what she found, and where she took samples. The samples were later tested.

[139] It is unnecessary to analyse her evidence. Much of it was the subject of admissions. Through Ms Berndt, the Crown tendered various photographs and these became Exhibits 94-143.

Evidence at 2 Cardigan Street

*Leona Lavelle*⁵⁹

[140] As already observed, Leona Lavelle owns the property at 2 Cardigan Street. It is highset. She lives upstairs and Mr Dannett and his family lived downstairs. Mr Dannett was not called to give evidence.

[141] Ms Lavelle attended a religious gathering which started at about 10.00 am on 17 February 2019. She thought she left the gathering about an hour and a half later. She drove the 10 to 15 minutes home.

[142] In the front of her yard near Cardigan Street was a display boat that she had decided to sell. After returning home, she went to take some photographs of it and she

⁵⁷ (1998) 192 CLR 159.

⁵⁸ T 3-5.

⁵⁹ T 2-3.

noticed the backpack in the bushes depicted in Exhibits 36 and 37. She thought nothing of the bags assuming that they were Mr Dannett's fishing gear.

- [143] Ms Lavelle then had a conversation with Mr Dannett which led her to believe that the bags may be more sinister. Mr Dannett took the bags up to the verandah of the house and police were called. That led to SC Cole's examination of them.

The Pathologist⁶⁰

Dr Day

- [144] Dr Christopher Day is a specialist forensic pathologist. He received Mr Ints' body and the two knives which are Exhibits 45 and 69.

- [145] He measured the knives. The yellow handled knife, which is Exhibit 45, was 28.5 centimetres total length with a blade of 15.2 centimetres. The black handled knife, which is Exhibit 69, was 21.5 centimetres long with a blade of 11.5 centimetres.

- [146] Dr Day gave his evidence by reference to 10 photographs of Mr Ints' body. These are Exhibits 82-91. Dr Day identified 34 sharp force injuries consisting of stab wounds and incised wounds. Stab wounds by his definition are sharp force wounds which have penetrated into the body a greater distance than the length of the surface of the wound. An incised wound is one where the length of the surface of the wound exceeds the depth of its penetration.

- [147] There were four blunt force injuries. One was an injury to the skull which is shown in the photograph which is Exhibit 87. The second is a five by four millimetre triangular red abrasion on the chest up near the left arm pit. It is the injury which is shown by tab 29 in the photograph which is Exhibit 85. The third is an ill-defined 14 by 6 centimetre stippled red bruise shown in the photograph which is Exhibit 90. The last is an injury to the right thumb which is shown in Exhibit 91.

- [148] It is unnecessary to analyse Dr Day's evidence concerning each of the wounds. It is obvious that Mr Ints sustained an attack with a sharp bladed instrument which has consisted of over 30 blows.

- [149] When asked as to the cause of death, Dr Day responded, "The listed cause of death is stab wounds to the neck and chest".⁶¹

- [150] There were three wounds to Mr Ints' neck. These are shown on the photograph that is Exhibit 83 and are the wounds marked 5, 6 and 7. Two are incised wounds. It is

⁶⁰ T 2-16.

⁶¹ T 2-30, ll 25-30.

the third which is the most severe. It is a stab wound which passed through skin, subcutaneous tissue and muscle of the neck.⁶² It is the wound marked 7.

[151] There are many chest wounds. Of particular significance is a cluster of wounds to the upper left chest. These are shown in the photograph, which is Exhibit 84 as wounds 12, 13, 14, 15 and 16. The wounds which constitute this cluster are very close to each other. This hampered Dr Day's ability to track the wounds under the skin.

[152] Dr Day determined that:

“Four separate injuries have penetrated - or four wounds have penetrated the pericardial sac, which is the lining over the heart, and four separate injuries have entered the - the heart itself. Of those four, one injury has entered the right chamber of the heart to go through the right ventricle, which is the large - one of the large chambers of the heart, and terminated within the aorta. Two further injuries have entered the left chamber of the heart where they have terminated and a fourth has gone into the fat and muscle in the front of the heart to not penetrate the chest cavity.”⁶³

[153] Dr Day concluded that the aorta was not severed. The maximum depth of the wounds in this cluster was 7.5 centimetres.⁶⁴

[154] Dr Day said that death could result from injuries to the heart in one of two ways. Firstly, the structure of the heart could be so damaged that cardiac arrest resulted. Secondly, the heart may continue to pump but blood loss will ultimately cause a fall in blood pressure resulting in cardiac arrest and therefore death.

[155] Dr Day opined that as there was significant blood around the heart, instant cardiac arrest did not occur. He was of the view that the heart continued to pump after the injury and Mr Ints died from blood loss.

[156] Dr Day opined that once the cluster of wounds which entered the heart were inflicted, death was inevitable in the absence of immediate surgical intervention.⁶⁵

[157] Further, Dr Day opined:

1. either knife could have caused any of the injuries;
2. it is impossible to determine the order in which any of the injuries occurred;

⁶² T 2-21.

⁶³ T 2-25, ll 2-8.

⁶⁴ T 2-25.

⁶⁵ T 2-39, ll 25-35.

3. all injuries looked fresh but he could not exclude the possibility that all, except for the cluster of chest wounds, may have occurred earlier;
4. the cluster of chest wounds occurred close to the time of death;
5. he would not exclude that some wounds occurred after death;
6. the blunt force trauma injury to Mr Ints' skull may have occurred in a fall.⁶⁶

[158] Dr Day's evidence was not contested and I accept it.

Defence case

*Jake Scott Ashman*⁶⁷

- [159] Mr Ashman gave evidence. He explained that he was only 22 years of age when Mr Ints died. He had gone to school until grade 10 and had then taken up hairdressing. He did not have a place to stay in 2018 and had obtained community housing in the complex at Easter.
- [160] Mr Ints occupied the unit next door (unit 3) to the unit occupied by Mr Ashman (unit 8) and they shared a common bathroom. Mr Ashman had a drink of alcohol and a smoke of cannabis with Mr Ints around Christmas 2018 but otherwise had nothing to do with him. There had been no hostility between them.
- [161] Mr Ashman observed that Mr Ints was both heavier and taller than he was. He was also a lot older. I noticed from the video footage of Mr Ashman taken on 17 February 2019 and tendered into evidence (and some of the photographs) that he appeared then to be significantly thinner than he appeared in the dock upon his trial.
- [162] Mr Ashman said that on 17 February 2019, he was in the bathroom which he shared with Mr Ints. He was on the toilet and heard a knock on the door. Mr Ints told Mr Ashman that he needed to use the toilet. Mr Ashman said that he would not be long, and Mr Ints said, "Well hurry up because I got to go". Mr Ashman said, "Well there's not much I can do". Mr Ints said, "Well, hurry up. I'm going to come in there and sort it out". Mr Ashman then said, "Fuck off".
- [163] The yellow handled knife which was Exhibit 45 was, Mr Ashman said, sitting on the basin in the bathroom. It was Mr Ashman's knife and had been brought into the bathroom by him to open a packet of razors.
- [164] Mr Ashman said that Mr Ints entered the bathroom and grabbed the knife in his right hand and lunged at Mr Ashman with the knife while going for his throat with his left hand.

⁶⁶ T 2-40.

⁶⁷ T 3-35.

[165] Mr Ashman said that as Mr Ints grabbed him with the left hand, Mr Ashman punched Mr Ints with his right hand while disarming him with his left.

[166] Once Mr Ashman had the knife, he stabbed Mr Ints and continued to do so until Mr Ints fell to the floor. Mr Ashman said he was in fear of his life and stabbed Mr Ints to prevent further attack. This evidence was given in chief:

“So at the time that you stabbed him, are you able to estimate how many times that occurred?---I remember it was over 10.

Right. When did you stop stabbing him?---I just kept going [indistinct] till he sort of fell on the ground.

Why did you stab him so many times?---Because he - he was a lot bigger than me. I just had to - I had to keep going until he sort of backed off.

Why didn't you just leave the bathroom with the knife?---I don't think he would've let me leave if I didn't attack him.”⁶⁸

[167] Mr Ashman said he dropped the yellow handled knife and went back into his unit and locked the door. At this stage, Mr Ints was on the floor in the bathroom.

[168] Mr Ashman said that he was frightened that Mr Ints might break into his unit and attack him, so he armed himself with the steak knife that ultimately became Exhibit 69. The yellow handled knife was left in the bathroom.

[169] After a time, Mr Ashman thought that he should go and see if Mr Ints was alive. Armed with the steak knife, he went back into the bathroom to find that Mr Ints was gone. He then walked into Mr Ints' unit to find Mr Ints lying on his back but alive. He said that Mr Ints lunged at his ankle so he “sort of instinctively just put the knife in his throat and then went back into my unit. It was just an instinct sort of reaction”.⁶⁹ He said at that point he was still in fear of Mr Ints.

[170] After stabbing Mr Ints in the throat, Mr Ashman then went back to his own unit (unit 8). He made some attempt to clean up some of the blood in the bathroom and went to the toilet.

[171] Mr Ashman could not recall disposing of the backpack, but accepted that he did. He put various things in the blue bag and walked down to the end of Cardigan Street and put them near the river. He said he did that because he “wanted it away from me because it made me feel so sick”.⁷⁰

⁶⁸ T 3-41.

⁶⁹ T 3-42.

⁷⁰ T 3-43.

- [172] Mr Ashman said that he then returned to the complex and entered Mr Ints' unit to find Mr Ints' bank card. He said he did this because he had lent Mr Ints \$20.00 around Christmas time which he had not repaid. While in unit 3, he took some cannabis that he saw there which he then smoked.
- [173] Mr Ashman said that he found the National Australia Bank card in Mr Ints' wallet in his drawer and he went to the service station to attempt to buy cigarettes. Neither Mr Ints' card nor his own achieved that, presumably because there were no funds in either account. He returned to unit 8. He said he saw the steak knife and a box of "smoke stuff" and that all made him feel sick. He put all that in a pillowcase and hid it under the bush.
- [174] When asked why he lied to police on the day of the incident, he told his counsel:
- "I was just too embarrassed over what - what just happened on the toilet, sort of had that much, sort of run it through me that I ended up just making a fake story, and yeah"⁷¹
- [175] Under cross-examination, Mr Ashman was reminded that he told the LEP that Mr Ints had stolen from him. He was asked why he would leave his belongings in the bathroom, such as the knife and the razors, if he thought Mr Ints was stealing from him. He responded by saying that he could not remember why he would do that.
- [176] Mr Ashman was asked about his intention when he was stabbing Mr Ints. He said this:
- "Were you intending to seriously hurt or kill him while you were stabbing him in the bathroom?---I didn't mean to kill him, no."⁷²
- [177] Mr Ashman accepted that all the injuries to Mr Ints, other than the ones to his neck, were inflicted using the yellow knife in the bathroom.⁷³
- [178] When asked why, if he feared for his life, he would have dropped and left the yellow knife in the bathroom, he said that he was in fear and shock at the time. He also said he was upset.⁷⁴

⁷¹ T 3-44.

⁷² T 3-49.

⁷³ T 3-50.

⁷⁴ T 3-50.

[179] He accepted that he had a mobile phone and had other ways in which he could get help, but he did not. When asked why, he said, "Because I didn't really think about it".⁷⁵

[180] Mr Ashman was cross-examined as to why he would have gone back into the bathroom if he feared Mr Ints. This exchange occurred:

"Are you still in fear of Darren at this point?---Yep.

All right. You say that you choose to go back into the hallway to the bathroom?---Yep.

And why did you do that?---Because he might be like coming at me. He might break into that hallway door with the knife or something.

But it was locked and closed?---Yeah, but I wasn't sure if he could crack it with the knife.

So you decided to unlock your hallway door?---Yep.

Open the hallway door?---Yep.

And walk into that hallway?---Yep.

And at that stage, do you say you were still fearing for your life?---Yeah. I wasn't really thinking straight."⁷⁶

[181] Mr Ashman was cross-examined as to the incident which led to him to stab Mr Ints in the neck. He said that he walked around him, and Mr Ints lunged at him with just his arm. He did not move his torso or his head. This exchange then occurred:

"Okay. While you were in Darren's kitchen area, then, and he's done that, what did you do?---I just instinctively went to protect myself again and put the knife in his throat.

All right. Were you standing up at the point that he grabbed your ankle?---Yeah, I was still in fear, yeah, standing up.

All right. So you're standing up and he's lying on his back on the ground. And just his arm moves towards your ankle. Explain to me what movements you have to make to stab him to his neck?---I, sort of, had to just kneel down and - and go for his neck.

All right. You stabbed him three times to the neck?---Just once."⁷⁷

⁷⁵ T 3-50.

⁷⁶ T 3-51.

⁷⁷ T 3-53.

[182] Mr Ashman accepted that he went into Mr Ints' unit and shut the wooden door of unit 3 leading outside.⁷⁸ He denied that he pulled the screen door closed⁷⁹ and denied the suggestion that the door was closed to prevent Mr Ints from getting outside through the front door.⁸⁰ As to why Mr Ashman did not ring for help, he said he was embarrassed, and this exchange occurred:

“And why didn't you do that?---I was just in shock and felt that sick that I didn't - if - even if I did ring them on the phone, I was a bit too embarrassed to tell them what had happened straightaway and, yeah, it just overcame me where I ended up lying to the police about what happened straightaway. So I just knew I needed to chill out and it could be a day or two before I end up ringing anyone or telling anyone what happened. I was just in that much, sort of, shock and fear and stuff.

All right. But you thought your embarrassment might pass in a couple of days and you might tell someone what happened?---Yeah, that's - that was the plan when I was all right to talk about it.”⁸¹

[183] Mr Ashman could only remember taking one bag, that is the blue bag, down to the river. He did not think that the backpack was his but later he said he thought it might be. He then said that he did not go near the backpack that day, but it was in his room.⁸² He said he did not know whether the backpack was used by Mr Ints to keep his toiletries in when he went to the bathroom and he thought that the Surfs Up towel was Mr Ints'.

[184] Mr Ashman was asked about his actions in going back into unit 3 while apparently still fearful of Mr Ints. This exchange occurred:

“Okay. So at this point that you go back in to look for the bank card, you're still fearful of Darren?---Yep.

You're still fearing that he might attack you?---Yep.

Still fearing for your life?---Yep.

But you choose to go back down to Darren's unit?---Yeah, yep.

Okay. And you don't know at this point if Darren's alive or dead?---I'm not sure. No.

⁷⁸ T 3-54.

⁷⁹ T 3-55.

⁸⁰ T 3-55-56.

⁸¹ T 3-57.

⁸² T 3-59.

All right. But you - had you locked and closed your hallway door in the meantime?---No.

All right. So you weren't so scared that you bothered locking it again?---No.

Okay. Did you know where Darren kept his wallet?---I wasn't too sure. No.

All right. So did you have to do some searching around his unit to try and find it?---Yeah.

How long did that take?---Only like a minute.

All right. Do you see Darren while you're doing this?---No.

You didn't see him?---No, because I was in his bedroom and that's where his drawer was.

All right. You didn't look for Darren in case he was going to attack you again?---I saw him first and he was still on the floor and then I went to go get the card.

All right. Did you look to see if he was alive or dead?---I wasn't too sure. I did look but I wasn't sure if he was alive or dead."⁸³

[185] It was suggested to Mr Ashman that he hid the pillowcase in an attempt to distract the police so they did not go looking for the yellow knife that was down near the river. Mr Ashman denied that proposition and said that he hid the pillowcase and its contents under the bush because "I just wanted it out of the unit because it made me feel sick".⁸⁴

[186] Mr Ashman accepted that he lied to police. He denied that he told lies because he feared the truth, namely that he had attacked Mr Ints. He said he told the lies because he was embarrassed.

[187] This was put by the Crown prosecutor to Mr Ashman:

"All right. And in case I haven't made it clear, I suggest to you that those lies you told to police, that it wasn't you who killed Darren it was someone else who'd left you a note. You told those lies because you didn't stab Darren while you were defending yourself?---I told those lies because I was embarrassed about what had happened."⁸⁵

⁸³ T 3-61-62.

⁸⁴ T 3-65.

⁸⁵ T 3-73.

Principles governing the trial

[188] By Chapter 62, Chapter Division 9A of the Code (trial by judge alone):

1. As far as practicable the same principles of law and procedure must be applied as if the trial was by jury.⁸⁶
2. The Judge must proceed consistently with any warnings or instructions which would be given to a jury in the circumstances of the case.⁸⁷
3. The Judge must give such verdicts or make any findings which a jury could have given or made.⁸⁸
4. In giving the verdict, the Judge must “include the principles of law that he or she has applied and the findings of fact on which he or she has relied”.⁸⁹

[189] The indictment charges murder. As previously observed⁹⁰ a verdict of guilty of manslaughter is open on the indictment. None of the partial defences which reduce murder to manslaughter are open on the evidence.⁹¹ Therefore the only pathway to manslaughter is if the Crown proves an unlawful killing but does not prove an intention to kill or do grievous bodily harm at the time of the stabbing.

[190] Each element of the offence of murder or manslaughter must be proved beyond reasonable doubt before a conviction for the offence is achieved by the Crown. Mr Ashman having properly raised self-defence, it is incumbent upon the Crown to disprove at least one of the elements of self-defence beyond reasonable doubt before it has proved that the killing was unlawful.

[191] I dismiss all feelings of sympathy or prejudice whether it be sympathy for or prejudice against Mr Ashman or anyone else. I have approached my duty dispassionately, deciding the facts upon the whole of the evidence.

[192] I have decided the case on the evidence which has been presented to me in Court and only that evidence. That evidence consists of the testimony of the witnesses that I have heard, the Exhibits and the formal admissions that have been made. I have not taken into account any outside information or other outside influence. I have not made my own enquiries or investigations about the case or anyone connected with it.

⁸⁶ Code, s 615B(1).

⁸⁷ Code, s 615B(3).

⁸⁸ Code, s 615C.

⁸⁹ Code, s 615C(3); see generally *Fleming v The Queen* (1998) 197 CLR 250 at [24]-[30].

⁹⁰ Code, s 576.

⁹¹ Diminished responsibility s 304A; provocation s 304.

- [193] I have approached the task of reaching a verdict on the basis that I may accept evidence in whole or in part. It is for me to decide whether I accept the whole of what a witness says or only part of it or none of it. I have accepted or rejected such parts of the evidence as I have thought fit. It is for me to decide whether a witness is telling the truth and correctly recalls the facts upon which he or she has testified.
- [194] In this case, I have drawn inferences. I have approached the drawing of inferences on the basis that any inferences must be reasonable ones drawn from the evidence. I have not engaged in speculation or conjecture to fill in any gaps in the evidence, but it is up to me to decide whether I accept particular evidence and, if I do, what weight or significance it should have.
- [195] I have drawn inferences bearing in mind that where there are reasonable inferences consistent with guilt and reasonable inferences consistent with innocence, I must not draw an inference consistent with guilt. Further, I must not convict Mr Ashman on the basis of inferences unless I have excluded beyond reasonable doubt any reasonable inference consistent with innocence. Guilt must be the only rational inference. These principles are an incident of the burden of proof which rests upon the Crown.
- [196] Mr Ashman is presumed innocent. That presumption may only be displaced by the evidence which has been placed before me and may only be displaced if I am satisfied of his guilt beyond reasonable doubt. I am aware that Mr Ashman is in custody and I draw no adverse inference from that.
- [197] Mr Ashman has given evidence. He was not obliged to give evidence and, by so doing, he has not assumed a responsibility of proving his innocence. The Crown continues to bear the onus of proving all the elements of the offence of murder or the offence of manslaughter beyond reasonable doubt and of disproving the defence of self-defence and must do that beyond reasonable doubt.
- [198] Here, the Crown seeks to prove the case by circumstantial evidence. No Crown witness gave evidence of seeing Mr Ashman stab Mr Ints or the circumstances in which that happened. It is not for Mr Ashman to prove that inferences against him should not be drawn. His evidence is added to all the evidence in the case to determine ultimately whether the Crown has proved its case beyond reasonable doubt.
- [199] In circumstances such as these where Mr Ashman has given evidence, there are one of three possible results which follow:
1. I may think that his evidence is credible and reliable and that it provides a satisfactory answer to the prosecution's case. If so, my verdict would be not guilty; or
 2. I might think that, although his evidence was not convincing, it leaves me in a state of reasonable doubt as to what the true position was and so my verdict would be not guilty;

3. I may think that Mr Ashman's evidence should not be accepted. If that is my view then I must set the evidence to one side and look at the rest of the evidence and determine whether, on that evidence, the Crown has proved each element of the offence beyond reasonable doubt and negated the defence of self-defence beyond reasonable doubt.

[200] As I have observed, some of the witnesses gave evidence by audio-visual link. I have not given the evidence of those witnesses any more or less weight or drawn any inferences against Mr Ashman by virtue of the fact that the evidence was given in that way.

[201] Dr Day, a forensic pathologist, gave opinion evidence and is clearly an expert witness. The ordinary rule is that witnesses may speak only to facts and not express their opinions. An exception to the general rule is that persons duly qualified to express some opinion in a particular area of expertise are permitted to do so on relevant matters within the field of their expertise. Dr Day's expertise was not challenged. Dr Day was clearly qualified to give opinion evidence as to:

1. the injuries he observed on Mr Ints;
2. the medical effect upon Mr Ints of those injuries;
3. their cause;
4. the cause of death;
5. whether death would be instantaneous upon infliction of the injuries.

[202] The fact that witnesses such as Dr Day are referred to as experts does not mean that their evidence has automatically to be accepted. I am the sole judge of the facts and I am entitled to assess and accept and reject any such opinion evidence as I see fit. It is up to me to give such weight to the opinions of expert witnesses as I think they should be given, having regard in each case to the qualifications of the witness and whether I thought them impartial or partial to either side and the extent to which their opinion accords with whatever other facts I find proved. It is up to me to decide what weight or importance I give to their opinions or indeed whether I accept their opinions at all. It is important to remember that an expert's opinion is based on what the expert witness has been told of the facts. If those facts have not been established to my satisfaction, the expert's opinion may be of little value.

[203] In the course of cross-examination of Mr Ashman, the Crown Prosecutor suggested, albeit vaguely, that Mr Ashman may have been motivated to attack Mr Ints to secure money or cannabis. The motive by which a person is induced to do an act or form an intent is immaterial to the question of criminal responsibility. The Crown does not need to prove a motive. Motive may be relevant, but in this case, I did not

consider there was sufficient evidence to find motive. Indeed, I consider that here there is a lack of apparent motive which is an aspect which favours Mr Ashman.⁹²

The real issues

[204] Mr Ashman has formally admitted that he killed Mr Ints; that he caused his death.⁹³

[205] What is in issue is:

1. Did Mr Ashman hold the requisite intention, to kill or do grievous bodily harm to Mr Ints at the time he did the act which killed him?
2. Did Mr Ashman act in self-defence?

[206] As already observed, the Crown must prove intention beyond reasonable doubt. The Crown must disprove self-defence beyond reasonable doubt.

[207] Mr Ashman gave evidence of each element of the defence of self-defence:

1. He said he was assaulted by Mr Ints;
2. He said he did not provoke the assault by Mr Ints;
3. He said that Mr Ints attacked him by grabbing his throat and lunging at him with the yellow bladed knife. I find that an assault of that nature would cause reasonable apprehension of death or grievous bodily harm to Mr Ashman.
4. Mr Ashman said that he believed he could not otherwise preserve himself from death or grievous bodily harm than by stabbing Mr Ints.

[208] I find, given the nature of the assault, that if Mr Ashman believed that he could not otherwise preserve himself from death or grievous bodily harm than by stabbing Mr Ints, that belief would have been formed on reasonable grounds.

[209] Therefore, in order to find beyond reasonable doubt that Mr Ashman unlawfully killed Mr Ints and is therefore guilty of at least manslaughter, I would have to be satisfied beyond reasonable doubt that his evidence was not true in relation at least to one of the four elements of self-defence. In that case, there being no other authorisation, justification or excuse for the killing upon the evidence, Mr Ashman would be guilty, at least, of manslaughter.

[210] Mr Ashman said that when he stabbed Mr Ints, he held no particular intention. In order to convict him of murder, I would therefore have to be satisfied beyond reasonable doubt that his evidence that he had no specific intent was not true. If I reach that point, I would not convict him of murder unless satisfied beyond reasonable doubt on all the evidence that he held the requisite intention.

⁹² On the relevant principles, see generally *R v Pentland* [2020] QSC 231 at [17].

⁹³ Elements 1 and 2 of murder are thereby proved.

Submissions by the barristers

Ms Bryson for Mr Ashman

[211] Ms Bryson addressed me on behalf of Mr Ashman. In essence, her submission was that:

1. the Crown had not proved to my satisfaction beyond reasonable doubt that Mr Ashman did not act in self-defence and, consequently, he ought to be acquitted of both murder and manslaughter; and
2. if the Crown had negated self-defence beyond reasonable doubt, that I would hold a reasonable doubt as to Mr Ashman's intention to kill or do grievous bodily harm and, therefore, he should only be convicted of manslaughter.

[212] I suggested to Ms Bryson that some aspects of Mr Ashman's evidence appeared illogical, such as his account of going back into unit 3 after the stabbing and then stabbing Mr Ints in the neck. She submitted that in any assessment of Mr Ashman's evidence, I should make allowance for various factors including:

1. Mr Ashman had some difficulties communicating his evidence clearly;
2. Mr Ashman was not a sophisticated person, at least when it came to oral communications;
3. The events in the bathroom occurred very quickly; and
4. The court environment was foreign to him.

[213] Ms Bryson submitted that, given the admissions that had been made by Mr Ashman, there were only two remaining issues:

1. whether the Crown negated self-defence beyond reasonable doubt; and
2. whether the Crown had proved beyond reasonable doubt that Mr Ashman had the intention to kill or do grievous bodily harm to Mr Ints when he stabbed him.

[214] I accept that submission.

[215] On the issue of self-defence, Ms Bryson submitted that Mr Ashman had given evidence of all the elements of self-defence and so, if he was to be convicted of either murder or manslaughter, I would have to be satisfied beyond reasonable doubt that his evidence ought to be rejected at least on one element of self-defence.

[216] I accept that submission.

[217] As to intention, Ms Bryson submitted that Mr Ashman gave evidence of holding no specific intention to harm Mr Ints. His evidence was that he simply applied force to

defend himself. She submitted that if I was to find beyond reasonable doubt that Mr Ashman intended to kill or do grievous bodily harm, I would have to:

1. reject his evidence on intention beyond reasonable doubt; and
2. be satisfied beyond reasonable doubt on the circumstantial evidence that his intention was to cause death or grievous bodily harm.

[218] I accept that submission.

[219] I asked Ms Bryson as to the significance of the number and nature of the stab wounds and whether that indicated an intention at least to do grievous bodily harm. She responded with submissions:

1. that the nature and the number of the stab wounds were not decisive. The issue of intention had to be considered in the light of all the evidence; and
2. Dr Day's evidence was that death would not have been instant upon the stabs to the heart. Mr Ints therefore, even after being stabbed in the heart, may have continued to pose a threat to Mr Ashman, therefore warranting further stabs in self-defence.

[220] I accept the first submission is correct as a matter of law. The second submission accurately Dr Day's records evidence.

[221] Mr Shaw had given evidence that he heard one of the voices from next door say the words, "fuck off". Mr Martin also gave that evidence. Ms Bryson submitted that it was likely that it was Mr Ashman who yelled those words. It followed then that it was more likely that Mr Ints was the aggressor. Ms Bryson made that submission based on Mr Shaw's evidence that he had known Mr Ints for about seven months, but he did not know Mr Ashman. That suggested, she submitted, that the voice he heard, being one he did not know, was that of Mr Ashman not Mr Ints, suggestive that Mr Ints was the aggressor.

[222] Mr Quill gave evidence that he would socialise with Mr Ints and knew that he received needles of medication in relation to his mental health. That, Ms Bryson submitted, was consistent with Dr Day's evidence of the presence of paliperidone in Mr Ints' system post-mortem. Ms Bryson also pointed to the evidence of Mr Quill that Mr Ints would get angry, at least at himself. All that was evidence suggesting that Mr Ints may have been the aggressor, as did the evidence of Michelle Krueger who said that Mr Ints had been involved in an altercation previously and moved units.

[223] The evidence of Mr Bachmann, Mr Zachariah, Mr Rixon, Mr Jones and Mr Moore concerned events after the stabbing and much of it is not directly relevant, Ms Bryson submitted, to the two real issues in the trial. However, their evidence was that Mr Ashman was a person who kept to himself and there was no suggestion

of him causing any trouble. That also, Ms Bryson submitted, suggested it was more likely that Mr Ints was the aggressor.

- [224] Ms Bryson submitted that the only direct evidence of what occurred in the bathroom and unit 3 came from Mr Ashman. Ms Bryson asked that evidence be examined with great care. She explained that his account was consistent with a defence of self-defence and was consistent with forensic evidence such as the location of blood in the bathroom and around the toilet.
- [225] Ms Bryson submitted that it was accepted that Mr Ashman lied in his first interactions with police. She accepted that the fact that he lied is relevant to his credit. Ms Bryson submitted that people lie for different reasons. The fact of telling the lies was not relevant to the two specific issues remaining in the trial, she said.
- [226] I suggested to Ms Bryson that it might be thought that Mr Ashman's account of going into unit 3, Mr Ints grabbing him by the leg but then leaning down to stab him was inconsistent with him being in fear of him. Ms Bryson submitted that those actions were not inconsistent with still being fearful and those submissions were made against the context of her earlier submissions as to the short period of time over which the events occurred.
- [227] Ms Bryson also submitted that although Dr Day said that the causes of death were the injuries to the heart and the injury to the neck, on the whole of Dr Day's evidence, the cause of death was likely the blood loss from the heart injuries. It followed then that the stab wounds to the heart were the ones relevant to self-defence. It was not open, she submitted, to determine that the stab wounds to the neck caused or hastened death. It therefore followed that the episode of Mr Ashman entering unit 3 and stabbing Mr Ints in the neck was not directly relevant to Mr Ashman's criminal liability.

Ms Kelso for the Crown

- [228] Ms Kelso submitted that Mr Ashman had told lies which, in the context of the case, demonstrated consciousness of guilt. The evidence which she identified as constituting the lies were reduced to a table which became Exhibit I for identification. That was:

1. That he did not kill the deceased / did not know who did

Exhibit	Reference	Evidence
Field recording, Exhibit 80, Transcript F	Page 4, line 12 - 13	I don't know who killed him, or what happened, or what the go is.
Field recording,	Page 30, lines	UNIDENTIFIED MALE OFFICER: Do you know this other person that you heard inside

Exhibit 80, Transcript F	20 - 23	[INDISTINCT], ASHMAN: Nuh, nuh, I don't know who it was.
Record of interview, Exhibit 81, Transcript G	Page 51, lines 1458 - 1460	And I tried to yeah get a pack of cigarettes, steal some steal a little bit of money. So I done four things wrong. But yeah I didn't kill him. I don't know who did
LEP recording 1.1, Exhibit 92, Transcript H	Page 3, lines 24 - 50	ASHMAN: Just heaps of shit bro, just fuckin' tried to hide somethin' from stuff, like someone stabbed someone and then I tried to hide some shit. And yeah, I got caught tryin' to hide it, so I might get done for the actual murder or. LEP 72: Oh shit. ASHMAN: For assisting it, I dunno. But I hope so, it should be sweet. LEP 72: Alright. ASHMAN; 'Cause I didn't do it, but yeah. LEP 72; Yeah- ASHMAN; Yeah, yeah. So, I should be alright. LEP 72: Fuck, I thought I was a badass with mine, my sob story. You know who did it then? ASHMAN: Hey? LEP 72; Do you know who did it? ASHMAN: Nuh, I have no idea, that's the thing, aye. Just left a note, and just fuckin', 'cause they musta known me. Just.
LEP recording 2, Exhibit 92, Transcript H	Page 2, line 15 - 17	LEP 72: That's it, aye. And you have no idea who did it? ASHMAN: Nuh, but I know that they know me.
LEP recording 3, Exhibit 92, Transcript H	Page 2, line 47 - 51	M-, 'cause I'm the main suspect, I had to come in. But, you know, there's no-one else 'cause I'm his neighbour. And there's like, yeah, that, that person was that good that they still just don't know. It's still pinned on me. Which I'm trynna get it out of.
LEP recording 3, Exhibit 92, Transcript H	Page 3, lines 19 - 28	ASHMAN: Yeah, someone beat me to it, so it looks like it was me. I don't know who it was, I might've been a family member or somethin', but yeah. Maybe-- LEP 72: Like your family member or his family

		<p>member--</p> <p>ASHMAN; His family member, and they had it goin' all to me. And I'm goin', well, it's not me, I found a note and I tried to get some money. 'Cause he stole some things from me, like a towel and stuff. You know how I told you, a cup--</p>
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2. That the deceased and another person were involved in an altercation in unit 3

Exhibit	Reference	Evidence
Field recording, Exhibit 80, Transcript F	Page 10, lines 56 - 59	So, I heard someone yell, I heard like a, a fight between, between him and someone else and the bang. Like I heard a different voice, and it wasn't anyone from here, so yeah--
Record of interview, Exhibit 81, Transcript G	Page 9, lines 213 - 218	Like I heard two people yelling and then I heard a couple of bangs. Then I heard someone leave. And then like I heard the door shut. And I waited about what fifteen and knocked on the door. Cause it didn't involve me. And then yeah there was a note left for me. So yeah oh like bang, bang then he must have stayed there for a bit, done the note and then he was gone.
Record of interview, Exhibit 81, Transcript G	Page 20, lines 545 - 553	Um yeah took them out for a bit, just resting, just chillin. And then I heard um yeah two, Darren and someone else yelling. Like real quick. Called him a, pretty sure he called them a dog or something. Someone called, said 'dog'. And then um and then yeah I heard a couple of bangs and I thought well that doesn't involve me. I'll stay out of it. But then I could, I had a weird sickly feeling. So UI about what twenty minutes later or so I knocked on the door and saw the note UI knife and tried to hide the knife and stuff. UI took the weed. And I felt like if I rang then my family were in danger so... you know what I mean?

3. That he found a note in unit 3 which provided instructions to the defendant

Exhibit	Reference	Evidence
Field recording, Exhibit 80,	Page 4, lines 3 - 6	And then there was a note there, um, that said, if you roll one up, if, if I buy [INDISTINCT]. If I like tried to hide, if I tried to clean some stuff there, some blood on

Transcript F		something. So, I hid some stuff over there, in there.
Field recording, Exhibit 80, Transcript F	Page 4, lines 51-59	So, I opened it up and then I found, and I, and then I found it. And it said s-, no, ah, leave it, the note s-, saying sh-, no-one leave it, roll one up. So, they must've known that I like Weed, like to smoke. So, I took his Weed and then I had to burn the note, clean the little bit of blood up and then bu-, burn the cloth too. He said, any, like any little spicks and specks type of thing, with the winky face.
Field recording, Exhibit 80, Transcript F	Page 12, lines 55 - 56	Um, yeah, no answer, so I slowly opened it up and yeah, walked in and then saw the note and the body.
Record of interview, Exhibit 81, Transcript G	Page 10, line 260 - 263	Yeah like I I found a note and there was a knife holding the note down. And then there was a little bit there but I had to clean up. The note said um it said yeah can you, can you give this a wipe and roll one up and wait till tomorrow, with a winky face.
Record of interview, Exhibit 81, Transcript G	Page 25, lines 682 - 688	Um knocked on the, waited about twenty. Knocked, knocked on his door a couple of times. There was no answer so I opened it. It was unlocked. And then I found a note with the knife on it. Wiped this black stuff off the bench. Cause the note said to. Can you give that a wipe, hide that and roll that up with a winky face. And oh, can you, and there was something like can you wipe that; hid that; wait till tomorrow and roll one up, with a winky face on it
Record of interview, Exhibit 81, Transcript G	Page 28, lines 784 - 793	Um had a look around at the floor and then I saw the knife on the note. Picked up the knife and read the note. And then um yeah went back into my room with the knife and the note and stuff. Got a cloth, wiped a little bit of stuff that he asked me to wipe. Might have been his sweat or something. Cause it looked like browny like yeah it was like a browny type of coloury. Browny dried up watery thing. And then um yeah gave that a wipe. And then went back into my room and I UI after I gave that a wipe I went through to try and get the money to see if I could get a little bit of money. And then yeah I wasn't gunna ring you guys till the morning, cause the note said not to. And I didn't want to put my family in danger
Record of interview, Exhibit 81,	Page 32, lines 891 -	Yeah give, give it a wipe; hide the knife. Um and then wait till and wait till tomorrow and roll one up with a

Transcript G	892	winky face sign.
Record of interview, Exhibit 81, Transcript G	Page 62, lines 1765 - 1767	Said um yeah give, like give, it had heaps of stuff on it hey. It was like clean this up, roll one up, um and wait till the sun comes up. Something like that. And then ring like a little rhyme thing.
LEP recording 1.1, Exhibit 92, Transcript H	Page 5, lines 9 - 18	ASHMAN: Yeah, and like there was a note. LEP 72: Yeah. ASHMAN: And it just said, um, wait 'til the morning, clean that up, ah, hi-, hide some stuff. Just--- LEP 72: Yeah. ASHMAN: Had like a coupla things to do.
LEP recording 2	Page 4, Lines 1 - 23	LEP 72: Fuck that, yeah. How big was the note, was it like on a big A-4 piece of paper- ASHMAN: Oh, oh just-- LEP 72: Or-- ASHMAN: Yeah-- LEP 72: Just small, just-- ASHMAN: Like half, half a piece of paper. LEP 72: Oh, yeah? ASHMAN: It just had some things on it, it just.

		<p>LEP 72; Where did they leave it? How did you find it?</p> <p>ASHMAN: Just with the knife on it. Like--</p> <p>LEP 72: Oh, really--</p> <p>ASHMAN: Half like, yeah. Dude, dude, like, clean this up and roll one up. Um.</p> <p>LEP 72: Oh, yeah?</p> <p>ASHMAN: And wait 'til the sun comes up to ring the cops, with a winky face.</p> <p>LEP 72: Yeah, right.</p> <p>ASHMAN: And like, it had, think of your family. I forgot, I forgot to tell them what else it had.</p>
LEP recording 2	Page 8, lines 10-16	<p>LEP 72: Do you recognise the handwriting on the, on the note?</p> <p>ASHMAN: The handwriting?</p> <p>LEP 72: Yeah, yeah.</p> <p>ASHMAN: [INDISTINCT]. I couldn't tell who it was, aye.</p>
LEP recording 1.2, Exhibit 92, Transcript H	Page 3, line 13-16	<p>LEP 72: Oh, ah. True, might as well, might as well clean up, aye? And yo-, you don't know who left the note?</p> <p>ASHMAN: Nuh, [INDISTINCT]--</p>

[229] I suggested to Ms Kelso that as the only two issues in the case were intention and self-defence, the lies would only be probative (apart from issues of credit) if they

- were capable of demonstrating an intentional killing without self-defence. She accepted that proposition but submitted that they were capable of showing a consciousness of guilt of an intentional killing without self-defence.
- [230] Ms Kelso also submitted that the admitted lies were relevant to any assessment of the credibility or otherwise of Mr Ashman's account at trial.
- [231] In relation to an intention to kill or at least do grievous bodily harm, Ms Kelso relied upon the wound cluster in the chest which included the injuries to the heart. She submitted that Dr Day's opinion was they would all require moderate force to inflict except for one that penetrated the bony part of the rib which Dr Day opined required a severe degree of force. Ms Kelso accepted that was not the fatal blow but submitted the evidence was relevant to the force of Mr Ashman's attack upon Mr Ints.
- [232] Ms Kelso also pointed, on the question of intention, to the dimensions of the yellow handled knife which has a 15.2 centimetre blade.
- [233] Ms Kelso accepted that the abrasion to Mr Ints' head may have occurred when he fell but she pointed to the lack of serious injuries on Mr Ashman, suggesting it was Mr Ashman who was the aggressor.
- [234] Mr Ashman's evidence was that he stabbed Mr Ints with no specific intention other than to make self-defence. Ms Kelso submitted that if Mr Ashman's evidence of acting in self-defence was rejected (and it would have to be rejected beyond reasonable doubt), then his denial of a lack of intention would necessarily fall and intention would then be determined on the circumstantial evidence. That includes evidence of 34 stab wounds, at least some of which were inflicted with the use of a knife with an 15.2 centimetre blade.
- [235] Ms Kelso submitted that Mr Ashman's account of self-defence ought to be rejected. She submitted that the lies told by Mr Ashman initially to police were such that his evidence in court ought to be rejected beyond reasonable doubt. She submitted that the account given to police was detailed and quite complicated and was repeated to the LEP in the watchhouse.
- [236] Ms Kelso also submitted that there was dishonest behaviour by Mr Ashman such as hiding evidence near 2 Cardigan Street and taking Mr Ints' bank card and attempting to use it to purchase goods at the service station. This, she said, even if it did not show a consciousness of guilt, damaged his credit.
- [237] Mr Ashman gave evidence that he lied to police because he was embarrassed that he was on the toilet when the attack occurred and he did not wish to tell the police that. That, Ms Kelso said, should be rejected because he had been quite candid with police that he had urinated on himself and had urinated in a t-shirt in his room.
- [238] Ms Kelso submitted that there were aspects of Mr Ashman's account of acting in self-defence which were illogical. Firstly, she said that it was illogical to drop the

knife and leave both the knife and Mr Ints in the bathroom. It was illogical, she submitted, for Mr Ashman to then venture back into the bathroom and then into unit 3, areas where Mr Ints was, even though Mr Ashman was still fearful of Mr Ints.

- [239] Mr Ashman's evidence of Mr Ints lunging at him is unlikely, Ms Kelso said, and it was also illogical that Mr Ashman would kneel down close to a man who he thought had tried to kill him to then stab him in the neck.
- [240] Ms Kelso submitted that there was evidence of Mr Ashman shutting and locking the door to unit 3, thus shutting himself in the unit with Mr Ints, a man whom Mr Ashman feared.
- [241] Ms Kelso submitted that there were obvious inaccuracies in Mr Ashman's account. For example, he thought that the black knife had been placed in the pillowcase which was thrown under the bush, whereas in fact, it was found in the bushes near 2 Cardigan Street.
- [242] Ms Kelso submitted that throwing some items in a pillowcase under a bush and then telling police about that was a deliberate ruse by Mr Ashman to try to conceal the existence of other items namely those near 2 Cardigan Street.
- [243] Ms Kelso submitted that it was likely that the backpack was used by Mr Ints to store his toiletries and that it was likely that Mr Ints entered the bathroom first and was attacked by Mr Ashman.
- [244] Ms Kelso countered Ms Bryson's submission that the voice which Mr Shaw heard say "fuck off" was likely that of Mr Ashman. She referred to evidence where Mr Shaw was asked whether he and Mr Ints socialised and Mr Shaw answered, "no, just hello now and then. I don't know him that well". That, she submitted, showed that it was unlikely that Mr Shaw would have recognised Mr Ints' voice if he was the one who said "fuck off".
- [245] Ms Kelso acknowledged that there was evidence that Mr Ints was taking medication for mental health problems. However, she pointed to the fact that none of the residents suggested that Mr Ints was violent or aggressive and that Dr Day found antipsychotic medication in Mr Ints' system, therefore suggesting that he was medicated. At worst, Ms Kelso submitted that evidence was neutral.

Consciousness of guilt: lies and post-offence conduct

- [246] As already observed, the Crown prosecutor identified both lies and other post-offence conduct of Mr Ashman which she said was probative of guilt.
- [247] I should consider the fact that Mr Ashman told elaborate lies to the police in assessing the credibility of his version given in evidence. I direct myself

consistently with the suggested draft direction in the judgment of Gleeson CJ, Gaudron, Gummow and Callinan JJ in *Zoneff v The Queen*:⁹⁴

“You will make up your own mind about whether he was telling lies and if he was, whether he was doing so deliberately. It is for you to decide what significance those suggested lies have in relation to the issues in the case but I give you this warning: do not follow a process of reasoning to the effect that just because a person is shown to have told a lie about something, that is evidence of guilt.”⁹⁵

[248] Similarly, I assess the credibility of Mr Ashman’s version against his post-offence conduct. I direct myself that the fact that the post-offence conduct may not be consistent with the version of events that he gave initially to police, is not evidence of guilt. It is just a factor I take into account when assessing his evidence.

[249] A lie, or other post-offence conduct, is evidence of a consciousness of guilt and therefore circumstantial evidence probative of guilt when:

1. a lie, namely a deliberate untruth, has been told;
2. the lie is concerned with some circumstance or event concerned with the offence;
3. the accused knew that the truth of the matter would implicate him in the commission of the offence;
4. the lie was told to avoid the truth;
5. the lie was told because he is conscious that the truth would convict him.⁹⁶

[250] Sometimes a person has an innocent explanation for lying. Sometimes a person has an innocent explanation for post-offence conduct such as covering up their involvement in events linked to the offence.

[251] Difficulty often arises associating the consciousness of guilt to a particular offence. A lie might be said in order to distance the offender from an unlawful killing but not out of consciousness of guilt of an intentional killing. The lie, or the other post-offence conduct, must be probative of a fact in issue in the case.

[252] Here, Mr Ashman has admitted to killing Mr Ints. As already observed, the only two issues are:

⁹⁴ (2000) 200 CLR 234.

⁹⁵ At [23].

⁹⁶ *Edwards v The Queen* (1993) 178 CLR 193.

1. whether the Crown has proved beyond reasonable doubt that Mr Ashman intended to kill or do grievous bodily harm to Mr Ints when he fatally stabbed him; and
2. whether the Crown has proved beyond reasonable doubt that Mr Ashman did not act in self-defence.

[253] In cases of post-offence conduct, including lies told after a killing, questions arise as to whether the conduct is consistent with a consciousness of guilt of a killing, or an intentional killing.⁹⁷ It is one thing to say that an accused has lied or done things to distance themselves from a killing. It is quite another to conclude that the conduct is consistent only with an intentional killing. Often the evidence is neutral. Cases will though arise where post-offence conduct is such as to be only consistent with an intentional killing. *R v Baden-Clay*⁹⁸ is an example.⁹⁹

[254] Here, Mr Ashman went to some lengths to distance himself from the killing. He hid evidence in a pillowcase under a bush. He hid other evidence near the river at 2 Cardigan Street. He concocted an elaborate web of lies explaining that he had heard violence in unit 3 and had then found a note which gave him instructions which he followed. That is what led him to dispose of some evidence and refrain from calling the police.

[255] Mr Ashman is not a sophisticated person. On his version given to the Court, he had killed Mr Ints violently and, in the process, stabbed him multiple times. He must have known that Mr Ints was either dead or very seriously injured.

[256] The lies and post-offence conduct are not, in my view, consistent only with an intentional killing done otherwise than in self-defence. The evidence is probative of a unintentional killing or an intentional killing done in self-defence. As Mr Ashman has admitted that he stabbed Mr Ints to death, the evidence of lies and post-offence conduct here is only relevant to Mr Ashman's credit.

Assessment of the evidence

[257] As already observed, Mr Ashman's evidence is consistent with him acting in self-defence, and acting without any particular intention. He is entitled to an acquittal if his evidence of self-defence is not rejected beyond reasonable doubt. If that evidence is rejected beyond reasonable doubt, he is entitled to be acquitted of murder and convicted only of manslaughter unless his evidence that he had no specific intention is excluded beyond reasonable doubt.

⁹⁷ *R v Mitchell* [2008] 2 Qd R 142, *R v Murray* [2016] QCA 342 and *R v Trebeck* [2018] QCA 183.

⁹⁸ (2016) 258 CLR 308.

⁹⁹ See [72]-[76].

[258] Even if Mr Ashman's evidence is totally rejected, he may only be convicted if the other evidence establishes his guilt beyond reasonable doubt.

[259] While Dr Day said that the cause of death was the injuries to the chest and neck, the weight of his evidence was that it was the injuries to the heart which caused death. Therefore, the Crown must prove intention beyond reasonable doubt at the time of infliction of the chest injuries to the heart and must disprove self-defence beyond reasonable doubt in relation to the acts which inflicted those injuries.

[260] The Crown prosecutor submitted that Mr Ashman was not an "impressive witness".¹⁰⁰ That was a reference to how he gave his evidence; his demeanour.

[261] I had the opportunity to carefully observe Mr Ashman giving his evidence. The court environment was foreign to Mr Ashman. The events which he was describing occurred over three years ago and he was obviously struggling to remember details. For example, he gave evidence that the black handled knife was in the pillowcase which he put under the bush just outside his unit. The black handled knife was in fact found at 2 Cardigan Street. There is no logical reason for Mr Ashman to be deliberately untruthful about that detail. He simply got it wrong.

[262] Mr Ashman had difficulty in understanding some of the questions put by the Crown prosecutor. That was not him being evasive. In my view, Mr Ashman was attempting to respond to every question put to him. I am not critical of Mr Ashman's evidence as a result of how he gave it. My ultimate rejection of his evidence is not dependent upon any assessment by me of his demeanour.

[263] Mr Ashman's account of how he came to stab Mr Ints was, in my view, not logical or credible.

[264] I have considered Ms Bryson's submission that there is evidence suggesting that Mr Ints was the aggressor. That evidence is relevant even though it would not constitute admissible propensity evidence about Mr Ints.¹⁰¹

[265] That evidence is:

1. Mr Ints had some mental condition justifying medication;
2. he had been seen to get angry;
3. he had some disagreement with another resident.

[266] Countering that evidence was the evidence that:

1. Mr Ints was taking his medication. It was found in his system;
2. none of the witnesses gave evidence of Mr Ints being violent;

¹⁰⁰ T 4-20.

¹⁰¹ *R v Roughan & Jones* (2007) 179 A Crim R 389 at [68]-[70].

3. none of the witnesses gave evidence of Mr Ints showing animosity towards Mr Ashman;
4. Mr Ashman did not suggest any prior aggression by Mr Ints either towards him, or at all.

[267] Mr Ashman said that Mr Ints grabbed the yellow handled knife which was sitting on the basin in the bathroom and attacked him with it. It was common ground that the yellow handled knife was Mr Ashman's knife and would usually reside in unit 8. Mr Ashman said that the knife had been brought by him into the bathroom to be used to open a packet of razors. It was then left by him on the basin. It seems unlikely to me that a knife like that one would be used to open a packet of razors. It also seems unlikely that the knife would be left in a shared bathroom.

[268] Mr Ashman's version was that he was attacked by Mr Ints while he (Mr Ashman) was on the toilet. He was, on his version, taken by surprise. Mr Ashman said that he stabbed Mr Ints until he (Mr Ints) fell on the ground. He stabbed him "til he backed off". On Mr Ashman's version, his attack upon Mr Ints was in reaction to Mr Ints' attack, and limited to causing Mr Ints to stop his attack.

[269] There were 34 individual stab or incised wounds to Mr Ints. They were to his chest, abdomen and his face. Dr Day's evidence was that the order in which the injuries were inflicted could not be established. Therefore, the more superficial injuries may have been inflicted earlier than the fatal stab wounds. It follows that Mr Ashman may have thought it necessary to inflict a number of wounds to make effective defence. Dr Day's evidence was also that death was not instant upon infliction of the wounds which proved ultimately to be fatal. Mr Ints was capable of movement after suffering the wounds which were ultimately fatal. In my view, even taking Dr Day's evidence into account, the evidence of Mr Ints' injuries is consistent more with a prolonged attack by Mr Ashman rather than the version given by him.

[270] Mr Ashman's reaction to the incident was to retreat into his unit, then over a period of time, enter Mr Ints' unit, find his NAB bank card, go to the BP Service Station, clean up some of the blood and dispose of the knives and some other things. For the reasons I have given, I do not rely on those actions as post-offence conduct showing consciousness of guilt. However, in my assessment, they are a strange reaction by Mr Ashman to an extremely stressful event which, on his version, was life-threatening to him. Those actions are, in my view, inconsistent with the version given by Mr Ashman and, therefore, damage his credit.

[271] When cross-examined about his reasons for disposing of the things at Cardigan Street, Mr Ashman said that he needed to get the things away from him because they made him feel sick. This is illogical. As observed, he retreated to his unit after the stabbing. None of the things were in his unit. To collect those things, it was necessary for him to re-enter the bathroom where there was the blood of Mr Ints, handle all of those things which allegedly made him sick and place them in the bags which he then took to Cardigan Street.

- [272] As observed, the blood-stained things were not even in the same room as Mr Ashman. He had retreated to unit 8. Apparently because the presence of those things in the bathroom and unit 3 so revolted him, he was motivated to enter the bathroom and unit 3 and handle them before hiding them at the bottom of Cardigan Street. I reject Mr Ashman's evidence in this respect.
- [273] Mr Ashman did all those things, but he did not call for any assistance from anyone. He did not call police to report the incident and he did not call an ambulance for Mr Ints. When asked why he did not call for help after the stabbing, Mr Ashman said that he "didn't really think about it".
- [274] I understand that, on Mr Ashman's version, he had just been through a terrible and distressing event. For the reasons I have given, I regard neither his lies nor his other conduct after the stabbing as demonstrating a consciousness of guilt. However, I find as totally unbelievable the fact that he would not have contemplated his next move, at least to the extent of thinking about whether he ought to call police and an ambulance. He in fact did think of his next move. He created an elaborate tale which he told police when first interviewed.
- [275] Although Mr Ashman was still fearful of Mr Ints, he entered unit 3 after the stabbing. Even though Mr Ashman had safely retreated to his unit and locked the door, he was still fearful of Mr Ints, he said. Mr Ints had, on Mr Ashman's version, acted irrationally and violently, attacking him with a dangerous weapon for no apparent reason other than Mr Ashman spent too much time on the toilet. His reaction was then to arm himself with the black handled knife and re-enter the bathroom, potentially putting himself in danger. That account seems highly unlikely.
- [276] However, Mr Ashman's version becomes even more unlikely. Once in the bathroom, he sees that Mr Ints has gone so he then walks into unit 3. Mr Ints is found by Mr Ashman prone on the floor. He said Mr Ints "lunged" at him, but only with his arm. Mr Ashman reacted, he said, by kneeling down next to Mr Ints and stabbing him in the neck.
- [277] That account is unbelievable. That Mr Ashman would place himself in a vulnerable position by kneeling down next to the man who he says violently attacked him, is incredible.
- [278] Mr Ashman accepted that he entered unit 3 and remained there for a time with Mr Ints. Two things of significance happened while he was in unit 3. Firstly, he searched the unit and recovered Mr Ints' NAB bank card. Secondly, Mr Ashman closed the door to unit 3 and locked it from the inside. He therefore remained in unit 3 and indeed locked himself in unit 3 with Mr Ints, a man he feared and who had a short time earlier attempted to kill him with a knife.

- [279] As already observed, when police arrived, Mr Ashman told them a fantastic story. While the telling of the story is not, for the reasons I have given, evidence of consciousness of guilt, it very severely damages Mr Ashman's credibility.
- [280] No single one of these things has led me to conclude beyond reasonable doubt that Mr Ashman's account of acting in self-defence is untrue. I have considered the likelihood of Mr Ashman's account but have done so remembering that the ultimate issue is whether the Crown has proved Mr Ashman's guilt beyond reasonable doubt. It is the combination of these things against the context of Mr Ashman's earlier lies to police which has resulted in my satisfaction beyond reasonable doubt that his evidence ought to be rejected.
- [281] Mr Ashman invented a story which he told police when questioned on the day of Mr Ints' death. Although incredible, it was quite an intricate tale. Not only did Mr Ashman lie and say that he did not kill Mr Ints, he sought to then explain some of his actions by inventing a story about a note having been left in unit 3. There were details given of where the note was left, what it said and how the instructions in the note explained his actions. The note even gave a reason why Mr Ashman could not produce the note. The note instructed Mr Ashman to burn it, which he said he did.
- [282] The Crown prosecutor submitted that it was significant that Mr Ashman told the lie again to the LEP in the watchhouse. I do not think that is particularly significant. Having told the lie to police during interviews which together took some three hours, he would have, at that stage, felt committed to the lie and so repeating it to the LEP was hardly surprising.
- [283] I am satisfied beyond reasonable doubt that Mr Ashman's version of killing Mr Ints in self-defence is not true and should be rejected. For the reasons I have explained, it is an illogical tale, told against the backdrop of hours of lies told to police.
- [284] Having rejected Mr Ashman's account, it is necessary to turn to the other evidence to determine whether the Crown has proved Mr Ashman's guilt beyond reasonable doubt.
- [285] The first and second elements of the offence of murder are admitted. As to unlawfulness, the only evidence which raises any lawful excuse is Mr Ashman's. I have not made the mistake made by the trial judge in *R v Shields*.¹⁰² There is no requirement upon Mr Ashman to prove self-defence. However, once his evidence is rejected beyond reasonable doubt, there is no evidence casting any reasonable doubt upon the unlawfulness of the killing.
- [286] There were no significant injuries to Mr Ashman. This is compared to the numerous, serious injuries to Mr Ints which indicate a sustained attack. Once

¹⁰² [2022] QCA 51 at [21]-[31].

Mr Ashman's account of self-defence is rejected beyond reasonable doubt, the physical evidence leads me to conclude beyond reasonable doubt that Mr Ashman attacked Mr Ints with the yellow handled knife while Mr Ints was in the bathroom, on or near the toilet.

[287] There is no apparent motive for Mr Ashman to kill Mr Ints. I have directed myself that the absence of a motive is a consideration. In other words, I would have to be satisfied beyond reasonable doubt of Mr Ashman's guilt despite the absence of a motive. I have directed myself to that evidence of Mr Ints suffering some mental condition. Neither a lack of motive, or the evidence of Mr Ints' mental condition cause me to have any reasonable doubt that Mr Ashman's account should be rejected.

[288] Mr Ints was stabbed while in the bathroom. His blood was on the floor, there was blood around and in the toilet¹⁰³ and on the shower screen,¹⁰⁴ and on the walls.¹⁰⁵ Mr Ints' blood-stained glasses were found on the floor.¹⁰⁶

[289] Having rejected Mr Ashman's evidence beyond reasonable doubt, there is no evidence which would cast doubt upon the unlawfulness of the killing; Mr Ints was stabbed or cut 34 times and he died from the injuries. No other exculpation or defence is raised on the evidence for my consideration.¹⁰⁷ Once his evidence is rejected, there is no hypothesis consistent with the killing being other than it being unlawful.¹⁰⁸

[290] I am satisfied beyond reasonable doubt that the killing was unlawful. That is the third element of murder.

[291] As to Mr Ashman's intention at the time of the killing, there is Mr Ashman's evidence that he had no specific intention. That evidence is inextricably bound up with his account of acting in self-defence which I reject beyond reasonable doubt.

[292] Other evidence points inevitably towards Mr Ashman intending to kill, or at least to grievous bodily harm to Mr Ints at the time he stabbed him. That evidence is:

1. there were 34 stab wounds or incised wounds;
2. most were to the chest or abdomen of Mr Ints;

¹⁰³ Photographs, Exhibit 127.

¹⁰⁴ Photographs, Exhibit 128.

¹⁰⁵ Photographs, Exhibit 126.

¹⁰⁶ Photographs, Exhibit 130.

¹⁰⁷ *Woolmington v DPP* [1935] AC 462 followed in *Griffiths v The Queen* (1994) 69 ALJR 77 and see *Stevens v The Queen* (2005) 227 CLR 319.

¹⁰⁸ *R v Baden-Clay* (2016) 258 CLR 308 at [49]-[58].

3. seven of the stab wounds were to the area of Mr Ints' chest above his heart;
4. other stab wounds were to his face and caused very serious injuries, including severing his lip;
5. the cuts (be they stabs or incisions) were inflicted with a sharp pointed knife with a blade of 15.2 centimetres.

[293] The finding of intention is made purely on circumstantial evidence being the nature and number of the wounds. I am satisfied beyond reasonable doubt that there is no reasonable hypothesis consistent with any finding other than that Mr Ashman held an intention to cause at least grievous bodily harm when he stabbed Mr Ints to death. I therefore find beyond reasonable doubt that he had such an intention.

[294] I find, beyond reasonable doubt that:

1. Mr Ints is dead;
2. Mr Ashman killed Mr Ints;
3. Mr Ashman did not kill Mr Ints while acting in self-defence. He killed him unlawfully;
4. At the time Mr Ashman killed Mr Ints, he held an intention to cause him at least grievous bodily harm.

[295] Being satisfied, beyond reasonable doubt, of all four elements of murder, including lawfulness based on a rejection beyond reasonable doubt of the defence of self-defence, I find Mr Ashman guilty of murder.