

ENGLAND AND WALES / JUDGMENT

Kimani Durrell-Smith v R

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Judgment Approved by the court for handing down. R v Durrell-Smith Neutral Citation Number: [2026] EWCA Crim 463 IN THE COURT OF APPEAL (CRIMINAL DIVISION) ON APPEAL FROM THE CROWN COURT AT BIRMINGHAM HIS HONOUR JUDGE ANDREW SMITH KC 20BW1468725 Case No: 202503632 B1 Royal Courts of Justice Strand, London, WC2A 2LL Date: 17/04/2026 Before : THE VICE-PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION LORD JUSTICE EDIS MR JUSTICE GOOSE and HIS HONOUR JUDGE CONRAD KC

- ----- Between : KIMANI DURRELL-SMITH

- and - THE KING

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- ----- Appellant Respondent Thomas Schofield KC and Justin McClintock (instructed by Sands Criminal) for the Appellant Phil Bradley KC (instructed by the Crown Prosecution Service) for the Respondent Hearing dates : 20 March 2026

- ----- Approved Judgment This judgment was handed down remotely at 10.30am on Friday 17 April 2026 by circulation to the parties or their representatives by e-mail. Judgment Approved by the court for handing down. R v Durrell-Smith The Vice-President:- 1. 2. 3. 4. This is a judgment of the Court in respect of which we have all contributed. On the 7 October 2025 in the Crown Court at Birmingham before His Honour Judge Andrew Smith KC the Recorder of Birmingham, the applicant was convicted of two counts of s.18 Wounding With Intent, being Counts 5 and 8 on the Indictment. He had previously pleaded guilty to Count 10, Possession of a Prohibited Firearm. The s.18 convictions were lesser alternatives to the charges of Attempted Murder on Counts 4 and 7. He was acquitted of those two counts. The appellant's sentencing has been adjourned to take place on the 17 April 2026. A co-accused, Aaron Nubie, was convicted of Counts 2 and 8. Those convictions were also lesser alternatives to offences of Attempted Murder. He has not sought leave to appeal against his convictions. The applicant seeks permission to appeal his conviction on Count 8 alone. His application has been referred to this Court by the Registrar. We give leave. The facts 5. 6. In the early hours of the 23 March 2025 the appellant was in a nightclub in Aston, Birmingham, with a group of friends. He was armed with a loaded 9mm handgun. At 4.16am Aaron Nubie, who was unknown to the appellant and his group, had a verbal altercation with one of them. At 4.40am Nubie had a second verbal altercation, but with a different member of the group who pushed Nubie away. At 4.54am Nubie left the club for 27 minutes. It was the Crown's case during trial that Nubie left the club to take possession

of his own 9mm handgun, returning at 5.22am. There was no evidence during the trial that Nubie was aware at this time that the appellant was also armed with his 9mm loaded handgun. Upon his return to the nightclub Nubie positioned himself close to the appellant's group. They left at 5.39am whilst Nubie watched them and followed shortly afterwards. Outside the premises the appellant went to a food stall which was being operated by Garth Pantry. He was the victim named in Count 8 of which both Nubie and the appellant were convicted by the Jury. The appellant was standing near to the food stall and was buying food when Nubie approached him. Nubie had his hand on his pistol, which was concealed in his right hand pocket. At 5.42am Nubie began to move his right arm and the appellant appeared to move to his right. Seconds later both the appellant and Nubie had raised respectively their outstretched arms, and both fired their guns towards each other. The evidence demonstrated both men looking and aiming at each other whilst they fired. The appellant's gun was fired first but very shortly afterwards, within a second, Nubie fired twice at the appellant. He then fired a further two times and began to run away. The appellant fired his gun once more towards Nubie as he ran. The jury saw the CCTV evidence which showed how close the two men were as they shot at each other. We have also seen that evidence. 7. The first shot by the appellant struck Nubie to the left hand, chin and neck. Nubie's first shot struck the appellant in the shoulder, the bullet passing through him and Judgment Approved by the court for handing down. R v Durrell-Smith 8. 9. 10. 11. 12. striking Garth Pantry, who was directly behind the appellant. It injured him to his left shoulder and passed through his body. In evidence Mr Horne, a forensic firearms and ballistics expert, analysed the CCTV evidence and stated that the appellant discharged his firearm first, with Nubie being injured. Within the same second, but after the appellant's shot, Nubie's firearm was discharged. Mr Horne said that they were almost simultaneous and that one person, the appellant, had pulled his trigger a fraction of a second before the other. The third discharge was by Nubie and was also within the same second. There were five shots, all discharged within two seconds. Mr Horne also observed from the CCTV evidence that the appellant was wearing gloves when he fired his gun. The police arrested Nubie whilst he was in hospital. After being transferred to the police station to be interviewed he made no comment to all questions he was asked. The appellant was arrested on the 1st April 2025 and provided a prepared statement, in which he said that he had acted in self defence. He made no further comment to questions asked by the police. The prosecution's case was that both the appellant and Nubie were aggressors and neither of them acted in self defence. Each defendant confronted the other outside the nightclub, intent upon unlawful violence, and proceeded to shoot at one another. Both of them had attended the nightclub with loaded handguns to which they had ready access. The prosecution relied on the fact that Nubie had fired his gun four times in the direction of the appellant, who had fired at Nubie and continued to do so as Nubie ran away. To prove their case the prosecution relied upon the CCTV evidence from the nightclub, both inside and outside, evidence from Garth Pantry, and witnesses who heard comments from different people both inside and outside the nightclub. Further the prosecution relied on the evidence of Mr Horne, and other scientific and medical evidence. The appellant's case was one of self defence. He stated that although

he fired first, it was justified in his reaction to the approach of Nubie whom he believed was about to shoot him. He relied on the agreed fact that he was in the process of buying food when he was shot. This, it was said on his behalf, showed that he had not sought out Nubie. His case was that he reacted only to events in front of him which happened at speed and in the heat of the moment. He responded, it was submitted, reasonably to the level of threat he genuinely believed existed. The appellant did not give or call any evidence. Ruling on the application to dismiss 13. At the start of the trial the appellant sought to have the proceedings dismissed against him in respect of Counts 7 and 8, those being of Attempted Murder and the lesser alternatives of Wounding with Intent, relating to the shooting of Garth Pantry. The evidence clearly proved that it was Nubie who fired the shot at the appellant, which passed through him and struck Garth Pantry. On behalf of the appellant it was submitted that he could not be convicted of offences in relation to Garth Pantry when he was also the victim of the shooting by Nubie. Judgment Approved by the court for handing down. R v Durrell-Smith 14. 15. The prosecution submitted that the evidence was capable of proving that both the appellant and Nubie were engaged in what was described as a “shoot out”, where they were both armed and shooting at each other. At the very least, there was an implied agreement to shoot and be shot at, knowing that it was a virtual certainty that the other would be armed. Further, that there was an intention, either to kill or cause really serious injury, such that the appellant was assisting or encouraging Nubie in any shooting of an innocent bystander. The judge gave a careful and reasoned judgment, dismissing the application made. On behalf of the appellant it is accepted that the judge applied the correct test for the assessment of the dismissal application. The judge concluded that there was evidence of the following facts:- “[The appellant] was armed with a loaded prohibited handgun when he attended the club. [The appellant] was part of the group with which Nubie appeared to have had an altercation leading to Nubie leaving the nightclub and returning with an armed and loaded handgun. When [the appellant] left the club and walked to the food stall Nubie followed and was close by. Nubie deliberately moved closer to [the appellant] who reacted to the presence of Nubie. The CCTV evidence showed the movement of Nubie’s right arm in his coat pocket including pulling out his gun. Other people in the immediate area ran away whilst the appellant remained close to Nubie. Each of the two men took a step back from one another and the appellant took out his own gun. The first shot was fired by the appellant with the next shot being fired by Nubie. Nubie then fired further shots in the direction of the appellant whilst his handgun remained raised during this period. It was Nubie’s shot which struck both the appellant and Garth Pantry. Having repeatedly discharged his firearm Nubie began to run from the scene and was pursued by the appellant who fired a further shot at Nubie”. 16. The judge concluded that there was, in the circumstances, sufficient evidence for the appellant to be properly convicted. The submission of no case 17. The judge directed that this submission should be made at the conclusion of all of the evidence. The judge observed that the evidential position at the start of the trial and at the close of the prosecution case was materially the same. The judge, however, identified some additional evidence which had been placed before the jury. Firstly, the fact that the appellant was wearing gloves inside the club while armed with his loaded

gun, in the opinion of Mr Horne, was evidence of consistency with an individual wanting to avoid gunshot residue being deposited on their hands at the time of discharging the firearm. Secondly, Garth Pantry described being shot as a consequence of the second discharge, namely that which was fired by Nubie. Thirdly, Mr Horne's review of the CCTV footage led him to the conclusion that both defendants pointed their guns towards one another as they manoeuvred. He did not see the guns pointing anywhere else on the footage which he reviewed. Fourthly, a Judgment Approved by the court for handing down. *R v Durrell-Smith* 18. 19. 20. still image within the jury bundle timed at 05.42am, shows both defendants (the appellant and Nubie) with their handguns raised with an outstretched arm, one pointing at the other, as each fired swiftly causing injuries to the upper bodies of the other. It was submitted on behalf of the appellant that there was insufficient or no evidence of an implicit agreement to shoot and be shot at. The appellant was the victim of a shooting by Nubie who had followed him from inside the nightclub, having armed himself following the earlier altercation. Further, it was submitted that the appellant was himself the victim of the shot which also injured Garth Pantry, such that he was not in any implied agreement to be shot. Mr Schofield KC submitted that the facts of this case did not fall within the rare occasions identified in the case of *R v Gnango*

[2011] UKSC 59 ("*Gnango*") where a person may be convicted of an offence where the shot which caused the harm was fired at him. There was no clear evidence of gang related rivalry between the two defendants, nor did they appear to have come to the scene in preparation for a shoot-out. It was argued that the jury could not convict the appellant of either attempted murder or s.18 wounding in respect of Garth Pantry. In response the prosecution repeated the submissions that they had made at the outset of the trial. The jury would be entitled to infer that each of the two defendants entered into an agreement to shoot and be shot at, and with the relevant reciprocal intention. The judge refused the application, being satisfied that the available strands of evidence and the inferences which could properly be drawn, would allow a reasonable jury, properly directed and putting the prosecution case at its highest, to convict the appellant of either attempted murder or s.18 wounding with intent in respect of both Counts 7 and 8. The direction to the jury 21. The issue was distilled in the following passage, which deals with count 7, the allegation that the appellant attempted to murder Mr Pantry:- "Further, I set out a few moments ago that you should decide count 7 in respect of Aaron Nubie before considering this charge in respect of Kimani Durrell-Smith. The reason for that, as you will now appreciate, is that for Mr Durrell-Smith to be guilty of count 7, he has to share the same intention as Mr Nubie. If you were not sure that Mr Nubie intended to kill Mr Pantry, then Mr Durrell-Smith must also be found not guilty of count 7. If, however, you were sure that Aaron Nubie intended to kill Mr Pantry, there is a single issue for you to consider in respect of Mr Durrell-Smith in count 7. On this count, the single issue is whether you are sure that Kimani Durrell-Smith agreed with Aaron Nubie to shoot and be shot at whilst sharing Aaron Nubie's intention to kill someone. An agreement can be made in moments and does not have to involve any formality. An agreement to commit an offence may arise on the

spur of the moment. Judgment Approved by the court for handing down. R v Durrell-Smith

There does not have to be anything said by anyone. Such an agreement can be made by the conduct of each person. It is for you to decide whether or not the evidence you accept leads you to conclude that Mr Durrell-Smith and Mr Nubie agreed with one another to shoot and be shot at. In addition, for you to be sure that Kimani Durrell-Smith agreed with Aaron Nubie to shoot and be shot at, you must be sure, as a minimum, that Mr Durrell-Smith was virtually certain that Mr Nubie had a firearm and that he intended to use that firearm by either opening or returning fire. In addition, you must also be sure that Mr Nubie was virtually certain that Mr Durrell-Smith had a firearm and that he too intended to use that firearm by either opening or returning fire. The prosecution contend that you can be sure that there was such an agreement. The prosecution rely upon the background of tensions within the club, the fact that Mr Durrell-Smith had chosen to attend the club in possession of a loaded firearm, that he had worn gloves whilst inside the club, that he produced his firearm as Mr Nubie approached, and that Mr Durrell-Smith fired first. In contrast, it is submitted on behalf of Mr Durrell-Smith that you cannot be sure that there was such an agreement. Instead the defence assert that the evidence supports the conclusion that this was a spontaneous exchange of gun fire and that at least Mr Durrell-Smith did not agree to shoot and be shot at. In particular, the defence rely on the speed with which events happened and his purchasing of food". The verdicts of the Jury 22. The Jury found the appellant not guilty of the attempted murder of Nubie (Count 4), but guilty of Count 5, the offence of wounding with intent. Further, the Jury found the appellant not guilty of Count 7, the attempted murder of Garth Pantry, but guilty on Count 8, the lesser alternative of wounding with intent. In identical terms the Jury acquitted Nubie on the charges of attempted murder but guilty of s.18 wounding with intent. It was clear from the verdicts that the Jury rejected any issue of self defence in relation to either of the defendants. Grounds of appeal 23. 24. The appellant relies on three grounds of appeal. Firstly, that the judge erred in failing to dismiss Count 8 at the start of the trial; secondly, the judge also erred in failing to accede to the submission of no case to answer on Count 8; thirdly, the judge erred in those decisions by concluding that the case against the application in respect of Count 8 was one to which the principles established in Gnango applied. The central argument is that the circumstances of this offence are inapposite for criminal liability on the analysis within Gnango. Mr Schofield KC argues that the shooting between the appellant and Nubie was very short lived, only a matter of Judgment Approved by the court for handing down. R v Durrell-Smith 25. seconds, after Nubie had followed the appellant outside the nightclub in an endeavour to shoot him. Whilst it is accepted that the jury rejected self defence, there was insufficient time for circumstances to develop into an agreed shoot out of the sort identified in Gnango. Further, he drew attention to features of evidence which meant that count 8 should have been withdrawn. Nubie clearly ambushed the appellant under the gazebo by the food stall. It was agreed that he had not confronted the appellant inside the club. He followed him out and then paused, timing his approach. There was then almost simultaneous fire. It could not therefore safely be concluded that the appellant's shot caused Nubie's shot which injured

Mr Pantry. As an irreducible minimum the alleged agreement could only have been formed shortly before the appellant's shot. Mr Pantry recalled someone saying "What's that in your hand? You got your gun in your hand: why?" If either of them was, as this would suggest, unaware until this point that the other was armed they cannot have formed agreement to shoot and be shot at. The wearing of gloves was, it was said, given too much weight. It may simply have been that the appellant was a little kid trying to project an image. The Possession by the appellant of a gun may only mean that he wished to use it to attack as opposed to encourage a return of fire. Nubie left the club and fetched a firearm, which he denied, but this was the evidence. Ie 27 minutes before the incident.

26. Mr Schofield concluded that the judge had impermissibly widened the Gnango decision, in effect holding that where two parties exchange fire Gnango is automatically engaged. The prosecution's grounds of opposition
27. Mr Bradley KC submits that the judge applied the correct test in the application to dismiss and the submission of no case to answer. Further, the judge correctly identified the evidence when considering Gnango. There was sufficient evidence upon which a jury could find that the defendants shared a common purpose to shoot and be shot at, and assist or encourage in the shooting of each other each knowing that it was virtual certainty that the other would be armed and return fire, and intending to cause really serious injury. Legal analysis 28. The starting point is Gnango. The Court of Appeal had allowed Gnango's appeal and quashed his conviction on the ground that on the facts the only possible common purpose between him and his unidentified antagonist, Bandana Man, had been to shoot and be shot at. They found that the existence of that common purpose had not been left to the jury, and that the simple participation by the defendant in an affray with foresight that Bandana Man might commit murder but without a joint enterprise to commit affray was not sufficient to found liability. Gnango occurred during the time when the law on joint enterprise had taken a wrong turn before the correction in *R v Jogee* [2016] UKSC 8 and [2016] UKPC 7; [2016] 1 Cr. App. R. 31 ("Jogee"). 29. The Court of Appeal certified the following question:- "If D1 and D2 voluntarily engage in fighting each other, each intending to kill or cause grievous bodily harm to the other, and Judgment Approved by the court for handing down. *R v Durrell-Smith* each foreseeing that the other has the reciprocal intention, and if D1 mistakenly kills V in the course of the fight, in what circumstances, if any, is D2 guilty of the offence of murdering V?". 30. 31. The Supreme Court concluded by a majority that D2 would be guilty of murdering V although the reasons for that criminal liability were not identical in the different judgments supporting that outcome. There was a difference of view about whether the defendant was liable as a principal to the agreed joint activity of shooting with intent to kill or cause serious injury, or whether he was a secondary party, aiding and abetting the shooter to fire at him with intent to kill or cause really serious harm. The Supreme Court in Gnango was comprised of 7 judges: Lord Phillips of Worth Matravers PSC, Lord Judge CJ, Lord Brown of Eaton-under-Heywood, Lord Kerr of Tonaghmore, Lord Clarke of Stone-cum-Ebony, Lord Dyson, and Lord Wilson JJSC. Lord Kerr dissented in the result. The other six judges agreed that the Crown's appeal should be allowed. Lord Phillips and Lord Judge gave

a joint judgment, with which Lord Wilson agreed. At [62] they said:- “We have considered the judgments of Lord Brown and Lord Clarke they essentially agree with our conclusions. Each, however, considers that the defendant was liable as a principal to the agreed joint activity of shooting with intent to kill or cause serious injury, rather than as an accessory to the act of firing the shot. This is not a difference of substance. It may well be that, in terms of common law, [the shooter] was a principal in the first degree, and the defendant was a principal in the second degree...whether the defendant is correctly described as a principal or an accessory is irrelevant to his guilt”. 32. Lord Dyson at [100] said, of that judgment:- “They draw an analogy with a dual and a prize fight. If the jury’s view of the facts was that this case was indeed analogous to a duel (that is that the respondent and the shooter had a common purpose to shoot at and be shot at), then I agree with the reasoning of Lord Phillips and Lord Judge. It is important to distinguish between a combat which is analogous to a duel and a mere fight. An essential element of the former is an agreement by the combatants to fight each other. They encourage each other to fight. ... If A shoots back at B because he has been provoked by B’s shooting to do so, that is very different from saying A shoots back at B because he has been encouraged to do so pursuant to an agreement to have a shoot out.” Judgment Approved by the court for handing down. *R v Durrell-Smith* 33. It appears that the reasoning of the majority, Lords Phillips, Judge, Wilson and Dyson, is therefore encapsulated by Lord Dyson in that passage. At [105] Lord Dyson expressed agreement with the passage from [62] which we have cited above. 34. Lord Dyson dealt with the difficult question of causation in this way:- “106 Lord Clarke JSC has suggested, as an alternative, that the defendant caused Bandana Man to shoot back at him and thereby contributed to the death. This way of putting the case was not left to the jury and causation was a matter for the jury to determine. Furthermore, we heard very little argument on this point. It seems to me that, if Bandana Man’s act of shooting at the defendant was a free, deliberate and informed act, it broke the chain of causation between the defendant’s shooting at him and his shooting and killing Ms Pniewska: see *R v Kennedy (No 2)* [2008] AC 269. As Professor Ormerod points out in his article (*loc. cit.*), it might be argued that Bandana Man’s act of shooting was not a free, deliberate and informed act because he was acting in self-defence. But that seems very difficult on the facts of this case. It might also be argued that, even if Bandana Man was acting in a free, deliberate and informed manner, that is irrelevant if he and the defendant were acting in concert: see *R v Latif* [1996] 1 WLR 104, 115. None of these issues was explored by the jury. I agree with Lord Clarke JSC that we cannot uphold the conviction on the basis that the defendant caused Bandana Man to fire the fatal shot.” 35. It may therefore be that if the case had been handled differently at trial, and the question of causation left to the jury in a different way, that at least some of the judges may have felt that the question of whether Gnango was liable as a principal or an accessory was “of substance”. Causation must generally be proved to establish liability as a principal. The position is different for a secondary party, see *Jogee* at [12]. Lord Kerr, dissenting, said at [130]:- “130 The actus reus in this case was the killing of Ms Pniewska. To be guilty of that offence as a joint principal, it would have to be shown that Gnango caused or contributed to a cause of her death. With great respect to the views of Lord Brown of Eaton-under-Heywood and Lord Clarke of Stone-

cum-Ebony JJSC, it is not sufficient that he be shown to be engaged by agreement in violence designed to cause death or serious injury. The crucial question is whether he caused or contributed to the death of the victim. This is not an issue which was put to the jury and a conclusion as to whether Gango's actions caused or contributed to Ms Pniewska's death cannot be inferred from their verdict." 36. In *R v Morgan* [2021] EWCA Crim 895 ("Morgan") this Court observed:- Judgment Approved by the court for handing down. *R v Durrell-Smith* ...it seems to us in this interlocutory appeal, the combined effect of the decisions in *Jogee* and *Gnango* in the present context is inter alia to the effect that if an individual agrees with others to engage in the joint activity of shooting (a shoot out) or intentionally assists or encourages others during a gun battle to fire shots, intending that others in the line of fire, whoever they may be, should die or suffer really serious injury, he or she will be guilty of the murder of those who die. This is irrespective of whether, for instance the individual in question [is] an innocent passer by..."

37. More recently in *R v Seed* [2024] EWCA Crim 650 ("Seed") this Court stated at [71]:- "The decision in *Gnango* has been the subject of much academic discussion, and must obviously now be read in light of the principles as to joint offending which the Supreme Court later set out in *Jogee*. It is unnecessary, and would therefore be inappropriate, to enter into that debate in a case where no issue arises and in which this court is bound by the decisions in the Supreme Court. We accordingly say only this. Respectfully agreeing with the approach taken by this court in *Morgan*, and applying the principles in *Gnango* and *Jogee* to circumstances such as arose in this case, we take the view that the necessary agreement to shoot and be shot at may properly be inferred where two or more persons engage in, or assist or encourage, shooting at each other each knowing that it was a virtual certainty and that the others would be armed and would either open or return fire, and each intending to kill or cause really serious injury. It may or may not be helpful to refer to the situation as a "shoot out": at best, that may be a convenient but imprecise shorthand description of a situation which will have to be analysed with care by a jury, before necessary agreement to shoot and be shot at can be inferred. It may be thought that the term implies reciprocity which is a feature of the agreement which must be proved." 38. The phrase "virtual certainty" is an addition by this court. It does not appear in *Gnango* except in the dissenting judgment of Lord Kerr at [125]. As he there explained, it usually arises when a person is alleged to have intended an outcome which he did not want to happen. If it was "virtual certainty" that it would happen as a result of his act then he may be found to have intended it even if he positively wished it not to. It may also be of value in inferring an agreement to be shot at, as the court in *Seed* decided. If so, that could perhaps lead to a finding that a person agreed to be shot at when his own act, shooting the other party, was intended to make it virtually certain that he would not be shot at. 39. In *R v ARU* [2024] EWCA Crim 1101 ("ARU") this court affirmed the analysis in *Seed* and *Morgan*. The facts there involved fighting with knives and William Davis LJ, giving the judgment of the court, made two observations about the passage in *Seed* we have cited at [39]:- Judgment Approved by the court for handing down. *R v Durrell-Smith* "First, the requirement that knowledge of the

other party's possession of weapons and their intention to use them had to be "a virtual certainty" for the necessary agreement to be inferred from the circumstances. Second, reciprocity must be demonstrated. In the course of the ruling with which we are concerned, the judge commented that the necessary reciprocity may be more readily inferred in cases involving the exchange of gunfire as opposed to an incident involving the use of knives." 40. In conclusion in ARU, the court referred to Lord Dyson's distinction between an agreement in the nature of a duel and a "mere fight". They said:- "Cases in which opposing sides engaged in violence have a common purpose of the kind required to fix all participants with liability for the death of anyone resulting from the violence will be rare. The reported examples indicate the unusual factual background which will be required. Gnango involved the actions of two men involved in a continuing feud who agreed to shoot at each other in a residential area. We anticipate that such an archaic method of settling a dispute is very unlikely to recur. In Riley and Robinson the circumstances were akin to a duel. The appellants in that case assisted in and encouraged the agreed fight. A duel of the kind which occurred in that case is likely to be a rarity. Even the circumstances of Seed and others were anything but commonplace. Members of gangs do ride out into the territory of opposing gangs but it is unusual for such people to be armed with loaded firearms being carried with the intent to fire them to cause at least really serious harm. Moreover, the state of mind required of the gang member participating in the riding out was an appreciation that it was virtually certain that the opposing gang was similarly armed and that they would return fire with the relevant intent." 41. The effect of Seed and ARU is to define and perhaps to limit the reach of the decision in Gnango. These decisions are binding on us as, of course, is Gnango itself. In Seed the court refused leave to appeal to the Court of Appeal. In ARU the court gave leave to appeal to this court but dismissed the prosecution appeal. The prosecution does not appear to have asked the court to certify a point of law of general public importance with a view to challenging the decision in the Supreme Court. That trial concluded in October 2025. The respondents to that prosecution appeal benefit from a direction made under section 45 of the Youth Justice and Criminal Evidence Act 1999 which will continue in each case until each of them reaches the age of 18. Discussion 42. The analysis and reasoning for criminal liability in the case of two parties engaged in firing shots at each other is not open for dispute in this court. Accordingly, it must be proved that there was an agreement, formed in advance, but perhaps only in the moments before the shooting, between the defendants "to engage in or assist or encourage the shooting at each other, each knowing that it was a virtual certainty and Judgment Approved by the court for handing down. R v Durrell-Smith that the others would be armed and would either open or return fire, and each intending to kill or cause really serious injury", Seed. The appellant does not seek to challenge in this court the legal analysis and legal directions by the judge in the trial. The basis of the appeal is that, it is contended, there was no evidence capable of proving the necessary inferences." 43. During the judge's reasons for dismissing the applications at the beginning of the trial and at the close of the evidence, he took care to identify the available evidence.

44. We are satisfied that the Judge gave clear and appropriate directions in accordance with the principles we have identified upon the central issue concerning Counts 7 and
8. We are also satisfied that there was evidence sufficient to prove guilt on Count 8. The jury were sure that this was a “shoot out”. 45. The factual submissions made by Mr Schofield are all relevant matters which the jury will have had well in mind when deciding whether the prosecution had proved its case in regard to the shooting of Mr Pantry. Notwithstanding the persuasive way they are presented, they were nevertheless matters for the jury to consider and they do not lead us to doubt the safety of this conviction. There was a proper evidential basis on which the issue could be left to the jury. The CCTV footage itself was capable of generating the necessary inferences. Two men came together, both armed and ready for a gunfight. Immediately they encountered each other, their conduct showed that. The appellant did not give evidence, and the jury was directed that they could draw an adverse inference from that fact. The jury was then properly directed about what had to be proved if the appellant was to be convicted.

Conclusion

46. Accordingly, we are not persuaded that the judge fell into error in relation to his ruling upon the dismissal application, the submission of no case or that the judge was wrong to direct the jury in accordance with the principles identified in R v Gnango as explained and applied by this court in Morgan, Seed, and ARU.
47. We therefore dismiss the appeal.

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