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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 2 April 2019

B e f o r e:

LADY JUSTICE HALLETT DBE
(VICE PRESIDENT OF THE CACD)

MS JUSTICE RUSSELL DBE

MR JUSTICE GOSS

R E G I N A
v
IMRAN HUSSAIN

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Ms S Forshaw QC appeared on behalf of the **Appellant**

Mr P Wright QC appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

THE VICE PRESIDENT:

Background

The single judge has referred the application for leave to appeal against conviction and the extension of time application to the full court.

The application for leave to appeal raises again the issue of what a trial judge should do when the sole issue to be determined at trial is the partial defence of diminished responsibility provided by section 2 of the Homicide Act 1957 (as amended) and there is unanimity amongst the psychiatric experts as to the mental health of the killer at the time of the killing.

On 11 July 2013, in the Crown Court at Manchester before Jeremy Baker J, the applicant was convicted of murder and sentenced the next day to imprisonment for life with a minimum term of 23 years specified.

The facts

The applicant was 26 years old and a full time student on an engineering course at Coventry University. He had no previous convictions and there was no history of violence in his family. However, members of his family did report that his attitude and his ability to control his anger had started to change in recent years.

On 4 January 2013, in what the prosecution said was a dry run for the killing, the applicant drove from Coventry to Nottingham and punched a complete stranger, Paul Kershaw, in the face before returning to his car and driving back to the family home.

On 16 January 2013, the applicant drove from Coventry to Manchester. He there attacked

18-year-old Keiran Crump Raiswell, another complete stranger walking down the street. The applicant stabbed Mr Crump Raiswell five times with a knife, killing him. The attack was entirely unprovoked and apparently motiveless. The applicant was seen by passers-by to be smiling and laughing before he got back into his car and drove to Coventry. On the way he stopped to fill up the car with petrol using cash rather than a credit card.

The applicant was in Coventry when he was arrested on suspicion of murder in Manchester on 20 January 2013. He told police he had done nothing and he had not been to Manchester.

During his detention he was assessed three times by medical professionals. He was first assessed by Dr Rajput. He has a specialty in psychiatry. He examined the appellant at 9.15 pm that day. Dr Rajput noted no symptoms of overt mental illness. At about 10.00 pm the applicant asked the police if they had photographs of him in Manchester. In the early hours of 21 January the applicant was examined by Yvonne Blair, a mental health nurse, who was familiar with symptoms of paranoid schizophrenia. Ms Blair did not find any symptoms of paranoid schizophrenia. She specifically asked the applicant twice whether he was hearing voices in his head or had intrusive thoughts and he said no. Both she and Dr Rajput assessed him as fit to be detained and interviewed.

The applicant was interviewed 12 times starting on 21 January. The applicant's solicitor, Ms Ward-Jones, had no concerns about his mental health at the beginning and throughout thought he was fit to be interviewed and detained. However, she soon expressed her concerns that the applicant may have some difficulty understanding the caution and the interview process and the first interview was suspended so that an appropriate adult could attend.

The applicant initially made no comment to questions but provided a prepared statement in which he denied ever having been to Nottingham or Manchester and provided an alibi for

both dates. He was interviewed again, during which the police disclosed they had evidence to show his car was in Nottingham on the day Mr Kershaw was attacked and in Manchester on the day Mr Crump Raiswell was killed. In the seventh interview, the next day, they asked whether he suffered from depression or had any anxieties and he said no.

In the eight interview, the police disclosed that the attacker wore a distinctive sweater and asked the applicant if he had one. They also told him they had found a knife wrapped in tissue hidden in a void underneath a desk drawer in his bedroom and CCTV footage of him at the service station on the M6 southbound. Mr Kershaw identified him on an identification parade. When the applicant was asked about the knife, his response was that he would have to check. This struck his solicitor as odd and she again became concerned about his mental state. She asked him directly if he was hearing voices and he said yes he had and had been for some time.

He was seen by a further forensic medical examiner, Dr Raja. He had no specialty in psychiatric health. To Dr Raja the applicant made no complaint of hearing voices and denied having mental health issues. Dr Raja found no symptoms of psychosis. The interview process continued without further mental health assessment.

Later that day the applicant began to speak in interview about the voices he had been hearing. He said they had started in November 2012 and they were abusive towards him. Some of the voices came from the police and some from ‘army people’. They told him to find them. The applicant explained he went to Nottingham and drove around looking for the person responsible for the abuse. He saw a man and started a fight with him. He returned home and he did not hear the voice from Nottingham again. He did not tell his family what had happened.

He then went to Manchester with a knife to look for some people to stop them swearing at him

and racially abusing him. There were many different voices speaking to him at the time and they told him to go to a place called Stretford Road. He drove around for an hour or so before he saw someone he thought was the one who had been swearing at him. He wanted to scare that person. He got out of the car and hit them three times in the stomach. He did not think he had killed anyone.

At a pretrial hearing the trial judge directed the applicant's treating doctor, Dr Sengupta, to provide a report. The defence instructed Dr Silva. The prosecution instructed Dr Chesterman. All three doctors were very experienced and senior forensic psychiatrists. Mr Peter Wright QC, representing the Crown, spoke to Dr Chesterman a few days before the trial. Having done so, Mr Wright took the decision not to call him but ensured that Dr Chesterman's report and a note of their conversation were disclosed to the defence. Dr Chesterman was unavailable to be called at the trial and the only doctors called were Dr Silva and Dr Sengupta. They both agreed that the applicant was suffering from paranoid schizophrenic at the time of the killing and that it substantially impaired his responsibility.

The prosecution relied upon the following facts and evidence to disprove their diagnosis and its impact on the applicant:

1. The elements of planning, in that the applicant had conducted map searches on the internet for routes on both 3 January and 15 January and afterwards he had deleted his internet searches.
2. He selected days to travel to Nottingham and Manchester on which he had an alibi and attempted to rely upon those alibis when he was first questioned.
3. He planned and conducted a dry run to attack Mr Kershaw.
4. CCTV footage showed him driving around Manchester for an hour before the attack and

passing the deceased on five separate occasions in about 6 minutes. This was said to disprove the random nature of the attack as claimed by the applicant.

5. CCTV footage showed the applicant's behaviour after the event and the fact he used cash to pay for his petrol, it was said to avoid detection.
6. The applicant changed his clothing on his way home after the killing and placed a sweater underneath the front seat of his car.
7. The applicant washed and wrapped the knife in tissue and then hid it. This was a knife that he had taken from his family home some time before and then used in the killing.
8. The applicant lied to the police during his time in custody and was inconsistent in his account to various psychiatrists.
9. There had been no previous reporting of mental health problems and no family history of psychosis.
10. The examinations by a forensic medical examiner with a specialty in psychiatric medicine, a mental health nurse and another forensic medical examiner whilst the applicant was in custody, days after the killing, showed that he was fit to be detained and interviewed and showed no symptoms associated with paranoid schizophrenia. The applicant specifically denied that he had heard voices or had any intrusive thoughts until he realised the extent of the evidence against him.

On that basis, Mr Wright's primary argument was that the doctors had been duped and the applicant was not suffering from paranoid schizophrenia. In the alternative, he argued that any mental illness from which the applicant suffered did not substantially impair his responsibility for the killing and did not provide an explanation for it. Critical to the diagnosis of paranoid schizophrenia was the applicant's complaint of hearing voices and Mr Wright invited the jury to note that one would have thought anyone genuinely suffering

from them would have mentioned those symptoms before the third day of his police interviews.

The defence case as advanced by Mr Webster QC at trial was that the applicant was not guilty of murder but guilty of the lesser offence of manslaughter by reason of diminished responsibility and a plea to this effect had been tendered. The defence pointed to the evidence of the two psychiatrists Dr Silva and Dr Sengupta and the opinion of Dr Chesterman (as elicited through Drs Silva and Sengupta) by both advocates that the applicant suffered from paranoid schizophrenia. In their view it substantially diminished his mental responsibility in that it affected his ability to form a rational judgment and exercise self-control. They accepted that the likes of Dr Chesterman and another psychiatrist, Dr Humphreys, who had examined the applicant, had considered the possibility that the applicant may have been faking his symptoms but noted that ultimately all the doctors who had seen the applicant were agreed the diagnosis was paranoid schizophrenia. They rejected the matters put to them by Mr Wright QC in cross-examination, for example the extent of the planning, the circumstances of the killing, the applicant's lies, the attempts to avoid detection, the fact that the applicant had not told the police about hearing voices until a significant way through the interview process as undermining the diagnosis. They pointed to a number of factors. They included:

1. Someone suffering from paranoid schizophrenia may be too distressed, ashamed, confused or embarrassed to admit their condition.
2. The appellant had never been known to act violently and therefore his actions in Nottingham and Manchester were only explicable on the basis he was mentally ill.
3. Patients with psychiatric illness like schizophrenia are frequently unwell for months or years before they present to mental health services and about four in ten of the

homicides committed by people with psychotic illnesses occur before treatment.

4. About two-thirds of Dr Silva's patients do not have a family history of schizophrenia.
5. It is a common misperception that someone with schizophrenia would not be able to lie, think straight or plan. Psychotic patients are well able to lie and to plan but their reasoning behind their planning is impaired under the influence of their psychosis.
6. There was independent evidence that the applicant had become socially withdrawn and isolated in the months preceding the assaults. The applicant's belief that his family had a hidden agenda against him was said to be typical of the paranoia experienced by those with paranoid schizophrenia. The applicant's brother reported he had seen him laughing to himself for no reason and described him as becoming more aggressive.
7. The evidence of this behaviour had continued during the applicant's time in custody and at Broadmoor Hospital. The applicant had been seen mumbling to himself and responding to some form of outside stimulus when he was unaware he was being observed. He had also been isolated with little emotional expression, a flattening of his tone, he sat awkwardly and he declined food. This was all consistent with a person suffering from paranoid schizophrenia. The doctors also stated that the description of the type of voices he claimed he heard were characteristic of and consistent with those suffering from this condition.

Whilst neither doctor could rule out conclusively the possibility that the applicant was faking his symptoms, it was their opinion that he was genuinely experiencing the voices and the other behavioural evidence was consistent with their diagnosis. They also stated this opinion was shared by all those who were responsible for the applicant's care at Broadmoor and was why he had been prescribed antipsychotic medication which had eventually appeared to decrease his symptoms.

The appeal

Extension of time

The extension of time of nearly 5 years is sought on the basis that there has been a change of representation, which has been funded privately. Ms Sarah Forshaw QC now represents the applicant. She invited us to note that the experts who remain involved in the applicant's care including Dr Sengupta confirm that he continues to suffer with paranoid schizophrenia. Their opinion and material from the Mental Health Review Tribunal support the proposition that the original diagnosis was correct. If so, Ms Forshaw invited us to find that there is a good reason now to question the safety of the jury's verdict.

Ms Forshaw placed emphasis on two decisions of this Court in R v Brennan [2014] EWCA Crim 2387 and of the Supreme Court in R v Golds [2016] UKSC 61 to explain the delay in launching the appeal. Neither case had been decided at the time of conviction and whilst she conceded they did not represent a clear change in the law, she argued they clarified the correct approach to cases involving mental health considerations outside the jury's experience.

It was her contention that had the judge and the advocates at trial had the benefit of those judgments they would have been obliged to focus more on the importance and unanimity of the medical evidence and the fact that both Courts have held the prosecution should only and can only challenge that medical evidence if there is a rational basis to do so underpinned by evidence.

Grounds of appeal

If we were minded to grant the extension of time Ms Forshaw advanced two grounds of appeal.

Ground 1

There was no proper evidential basis upon which the jury could reject the unanimous expert psychiatric evidence at trial. Accordingly, and exceptionally, the trial judge should have withdrawn the case from the jury at the close of the evidence.

We were taken to a great deal of background material on the applicant that shows all the experts involved in the applicant's care from remand through trial and to the present day have tested him for malingering. He had been seen by seven consultant psychiatrists by the time of the trial and none of them formed the conclusion that he was faking his symptoms. Dr Chesterman, for example, said that the applicant's actions were consistent with genuine schizophrenia and "a very convincing type of account of someone with a genuine psychosis". They all agreed he suffered with paranoid schizophrenia, which was treated with antipsychotic medication.

All three consultant forensic psychiatrists who examined him for the purposes of the trial, two of whom gave evidence at trial, concluded that he was suffering with paranoid schizophrenia and were of the view that as a result of his highly disturbed and aroused mental state his ability to form a rational judgment was impaired. They also believe his ability to exercise self-control would have been substantially impaired. All three agreed the abnormality of mental functioning provided an explanation for the killing.

In the context of that overwhelming body of medical opinion supporting the diagnosis and its impact relevant to the killing, Ms Forshaw came close to arguing that Mr Wright should not have proceeded with the prosecution and should have accepted the plea to diminished responsibility but ultimately drew back from that argument. However, even if Mr Wright was justified in testing the evidence, she sought to persuade us that at the end of the evidence the judge should have intervened and of his own volition withdrawn the charge of

murder from the jury.

She took us to passages of the cross examination in which Mr Wright had attempted to test the evidence called by the experts and had put to them all the factors upon which he placed reliance. The experts gave what she described as carefully reasoned and logical explanations as to why, having considered those factors, they rejected them as undermining their conclusions. Mr Wright's case was, therefore, simply a theory, a theory that was not supported by expert evidence. As a result, the jury were asked to reach their own conclusions as to the applicant's mental condition at the time of the killing. They were invited to act as amateur psychiatrists.

She referred, in brief, to the horrific nature of the killing. Members of a jury are not informed of the consequences of a verdict of murder or of a verdict of manslaughter for such a killing. She argued they may have had an understandable feeling that a very dangerous man should be locked up for life. Accordingly, they may have embarked upon an illegitimate line of reasoning in rejecting the psychiatric evidence.

She placed reliance on two decisions of this court: R v Bailey (1961) 66 Cr App R 31 at paragraph 59 and R v Barry Pearce [2000] (unreported), the only reference we have is WL 281235, in support of the proposition that it is not sufficient for the prosecution to suggest theories. The theories may be attractive to the lay person but if they have been positively contradicted by expert opinion the prosecution must have more. They should not simply invite speculation that the experts had been successfully duped.

Ground 2

The judge's directions were inadequate

In her second ground of appeal Ms Forshaw argued that the judge's directions were flawed in that they did not comply with the guidance given by Lord Hughes in his judgment in Golds. She accepted that at the time of the trial the judge's directions were fair and measured. However, in the light of Lord Hughes' remarks. She argued the judge should have given the jury a careful direction about not acting as amateur psychiatrists and that where there was undisputed expert evidence they would probably wish to accept it, unless there was some identified evidential reason for not doing so.

In this case, the judge left the competing arguments to the jury to be evaluated "carefully and using your collective good sense and knowledge of the world". They were directed to "take into account all the other evidence in the case". Yet, there was no other evidence that had not been considered by the experts and it was Ms Forshaw' contention that, if so, the judge's directions were tantamount to an invitation to the jury to substitute their personal opinions on a matter of psychiatric evaluation.

Grounds of opposition

On behalf of the prosecution, Mr Wright did not accept this is one of those rare cases where the judge should have intervened to stop the prosecution for murder. He maintained the same stance he maintained at trial, namely that there was a clear evidential and rational basis upon which the jury was entitled to reject the conclusions of the experts and convict the applicant of murder. It came not only from the factors such as the extent of the planning, the applicant's ability to function rationally before and after the killing, his lies and contradictory accounts but also from the undisputed evidence of his presentation at the police station.

Prior to disclosing that he had been hearing voices the applicant was examined by a forensic

medical examiner with a speciality in psychiatric medicine and a nurse with extensive experience of working within a medium secure psychiatric unit. Neither saw signs of mental illness or symptoms associated with paranoid schizophrenia. He rejected Ms Forshaw's attempt to undermine their opinion by referring to the length of time that they had and the circumstances in which they examined the applicant. Mr Wright relied heavily upon their expertise. Furthermore, the applicant was later further examined by a forensic medical examiner. He too found no evidence of psychotic symptoms.

In this case the psychiatrists upon whom Ms Forshaw relies had themselves questioned whether the applicant may be faking his symptoms. If so, Mr Wright claimed he was entitled to challenge their eventual conclusion that he was not faking. In any event, his argument did not stop at the issue. Even if the applicant was not faking his condition, Dr Silva conceded that the condition would not necessarily have impaired his ability to exercise self-control and or to understand the nature of his conduct. Thus, although the issue of whether the diagnosis of paranoid schizophrenia was correct was the first question the jury had to answer, it was far from the only question. There remained the issues of whether the diagnosis provided an explanation for the killing and whether it substantially impaired his responsibility to understand the nature of his conduct, form a rational judgment or exercise self control. These were issues ultimately and primarily for the jury to decide.

Further, he argued the judge's directions, the ambit of which had been notified to both counsel before they were delivered, guarded against the risk of the jury making themselves into amateur psychiatrists and/or unreasonably rejecting the unanimous expert evidence.

The judge reminded them fully of the four elements the defence must establish on the balance of probabilities to reduce murder to manslaughter and on each of these issues explained that the medical evidence would be of importance and "was likely to be crucial". He reminded

the jury they were entitled to take into account all the other evidence in the case and if it conflicted or outweighed the medical evidence they were not bound to accept the doctors' opinions.

Our conclusions

The extension of time.

These applications were referred to the court for consideration of whether we should grant exceptional leave pursuant to the test for change of law cases set out in R v Jogee [2016] UKSC 8 and on the merits. We have considered first whether this is a case to which the exceptional leave test applies.

In our view, it does not and it appears to have been conceded during the course of submission this morning by both counsel that it does not. Neither this court in Brennan nor the Supreme Court in Golds changed the law. In Brennan the court applied to the facts of that case existing principles set out as long ago as R v Matheson (1958) 42 Cr App R 145. In Golds, the Supreme Court was primarily concerned with the interpretation of section 2 (1) (b) of the Homicide Act 1957 (as amended), but in the course of his judgment, with which the rest of the court agreed, Lord Hughes considered the decision in Brennan. Under the heading R v Brennan at paragraphs 49 to 51, he said this:

> "49. Given the answers of the psychiatrist in Brennan and the state of the evidence, it is clear that the Crown could not properly ask the jury to convict of murder unless it was to reject one or more parts of the expert evidence. Certainly a jury is not bound by the expert. In some cases, pre-planning, especially involving meticulous preparations, may indicate self-control which gives grounds for rejecting an opinion that self-control was substantially impaired. In others, there may be legitimate grounds for asking the jury to disagree about the level of impairment. In yet further cases, it may be perfectly proper to ask the jury to conclude that it was the drink or drugs which led to the killing, whilst the underlying mental condition was in the background. That is not by any means an exhaustive catalogue of questions

which a jury may properly be invited to decide. However, as the Court of Appeal rightly held, if the jury is to be invited to reject the expert opinion, some rational basis for doing so must at least be suggested, and none had been at trial nor was on appeal. It is not open to the Crown in this kind of situation simply to invite the jury to convict of murder without suggesting why the expert evidence ought not to be accepted. In particular, it would not have been a proper basis for rejecting diminished responsibility that the circumstances of the killing had been particularly violent or sadistic. It is a well-known factor in such cases that such brutality may (understandably) be taken by a jury to point away from the partial defence; sometimes it may truly do so, but not infrequently it is the product of the mental disorder.

50. It may be agreed that the ordinary principles of R v Galbraith are capable of being applied in a trial where the sole issue is diminished responsibility. A court ought, however, to be cautious about doing so, and for several reasons. First, a murder trial is a particularly sensitive event. If the issue is diminished responsibility, a killing with murderous intent must, ex hypothesi, have been carried out. If a trial is contested, it is of considerable importance that the verdict be that of the jury. Second, the onus of proof in relation to diminished responsibility lies on the defendant, albeit on the balance of probabilities rather than to the ordinary criminal standard. The Galbraith process is generally a conclusion that no jury, properly directed, could be satisfied that the Crown has proved the relevant offence so that it is sure. In the context of diminished responsibility, murder can only be withdrawn from the jury if the judge is satisfied that no jury could fail to find that the defendant has proved it. Thirdly, a finding of diminished responsibility is not a single-issue matter; it requires the defendant to prove that the answer to each of the four questions set out in para 8 above is "yes". Whilst the effect of the changes in the law has certainly been to emphasise the importance of medical evidence, causation (question 4) is essentially a jury question. So, for the reasons explained above, is question 3: whether the impairment of relevant ability(ies) was substantial. That the judge may entertain little doubt about what he thinks the right verdict ought to be is not sufficient reason in this context, any more than in any other, for withdrawing from the jury issues which are properly theirs to decide.

51. Where, however, in a diminished responsibility trial the medical evidence supports the plea and is uncontradicted, the judge needs to ensure that the Crown explains the basis on which it is inviting the jury to reject that evidence. He needs to ensure that the basis advanced is one which the jury can properly adopt. If the facts of the case give rise to it, he needs to warn the jury that brutal killings may be the product of disordered minds and that planning, whilst it may be relevant to self-control, may well be consistent with disordered thinking. While he needs to make it clear to the jury that, if there is a proper basis for rejecting the expert evidence, the decision is theirs — that trial is by jury and not by expert — it will also ordinarily be wise to

> advise the jury against attempting to make themselves amateur psychiatrists, and that if there is undisputed expert evidence the jury will probably wish to accept it, unless there is some identified reason for not doing so. To this extent, the approach of the court in *Brennan* is to be endorsed."

Thus the Supreme Court in Golds endorsed only part of the judgment in Brennan, namely the long-standing principles expressed in Brennan that there must be some rational evidential basis for challenging agreed expert evidence but the decision as to whether a defendant falls within the provisions of section 2 is for the jury not the doctors to determine. The Supreme Court in Golds did not suggest that a trial judge should withdraw a charge of murder from the jury simply on the basis the medical evidence points one way. This Court in R v Blackman [2017] EWCA Crim 190 explained the effect of the judgment in Golds on this issue in this way at paragraph 43:

> 43. It is important to note the emphasis in the *Golds* judgment not only on the prosecution's right (if not duty) to assess the medical evidence and to challenge it, where there is a rational basis for so doing, but also on the primacy of the jury in determining the issue. It is clear that a judge should exercise caution before accepting the defence of diminished responsibility and removing the case from the jury (see paragraph 50). The fact that the prosecution calls no evidence to contradict a psychiatrist called by the defence is not in itself sufficient justification for doing so. In the light of the judgment in *Golds*, we see no reason not to follow the broad approach of this court in ***R v Khan (Dawood)*** [2009] EWCA Crim 1569, [2010] 1 Cr App R 4, to which reference was made in *Brennan*, which we would express as follows: it will be a rare case where a judge will exercise the power to withdraw a charge of murder from the jury when the prosecution do not accept that the evidence gives rise to the defence of diminished responsibility.

Thus, neither the judgment in Golds nor the judgment in Brennan to the extent it survives Golds changed the law. In future we do not expect reliance to be placed on any judgment predating Golds on this issue.

Accordingly, we are not persuaded that this is a case in which exceptional leave is required based on a change of law as per Jogee.

It is therefore a case in which a very lengthy extension of time is required and the usual principles apply. It follows that Ms Forshaw faced a very high hurdle in persuading us that

the merits of the case were so compelling we should grant an extension of time to prevent a miscarriage of justice.

We turn to those merits.

Ground 1- withdrawal of the murder count

Ms Forshaw placed considerable reliance on the decisions in Brennan and Pearce. In both cases this court intervened and quashed a conviction for murder and substituted one for manslaughter. However, both cases were clearly very much decisions on their own facts and without the guidance in Golds and Blackman. Following both, we must assess whether the facts of this case are such that this is one of those rare cases where the trial judge should have withdrawn the murder charge from the jury.

In our view it is not. First, Mr Wright was undoubtedly entitled to pursue the prosecution for murder and to challenge the medical evidence. It was obviously a decision that he did not take lightly and he had material available to him that potentially undermined the experts' opinions.

Second, once he had deployed that evidence, we note that very experienced defence counsel did not make a submission of no case to answer and the very experienced trial judge did not raise the issue of whether the murder charge should be withdrawn. This is no doubt because those at trial were satisfied that given the way the evidence had been presented there was sufficient material for the jury to consider. We are confident all parties would have been aware (even without the benefit of the judgments in Golds and Blackman) that there had to be evidence and a rational basis to challenge the expert evidence.

Third, even if the applicant was not faking his symptoms, one important line of argument remained very much open to Mr Wright. Mr Wright was entitled to argue that the defence

had not established to the relevant standard that all four questions in section 2 had been answered in favour of the applicant. The question remained: was the recognised medical condition sufficient, at the time of the killing, to provide an explanation for the killing and substantially impair his responsibility?

We accept, as Ms Forshaw invited us to do that there are similarities between the facts in this case and in those in Brennan, for example there are similarities in the way in which the prosecution put their case, relying on elements of planning and examples of rational behaviour. However, there are also substantial differences. The appellant Brennan had long-standing personality and mental health issues dating back to his childhood, all objectively verified. He been sectioned under the Mental Health Act when aged just 18. In the build up to the killing he had been off work with stress and had become increasingly depressed and unwell mentally. Prosecuting counsel in that case limited himself to questioning the reasoning of the expert called by the defence but he did not challenge her conclusions and no suggestion was made that the appellant was faking his symptoms.

Unlike Brennan, this applicant did not complain about the symptoms said to indicate paranoid schizophrenia until he had been asked if he heard voices and he realised the extent of the evidence against him. Two doctors and a mental health nurse who saw the applicant close to the killing found no overt signs of mental illness.at that time. It may well be that these were matters the doctors had taken into consideration and gave rational reasons for rejecting but they were also matters that Mr Wright was entitled to challenge before the jury and that the judge was entitled to leave to the jury to determine.

As eloquently as the point was argued by Ms Forshaw for those reasons we reject ground 1.

Ground 2 - the judge's directions

Lord Hughes stated in Golds that trial judges should direct the jury that if there is a proper basis

for rejecting the expert evidence the decision is theirs. It is wise to direct them not to turn themselves into amateur psychiatrists. No doubt had Jeremy Baker J had the benefit of that judgment he would have added the words suggested by Lord Hughes but the fact that he did not add those words does not necessarily undermine the safety of the conviction. We have read the summing-up in its entirety and more than once. We are satisfied it could not have been fairer to the defence. That is no doubt why Mr Webster agreed the directions the judge proposed. The judge emphasised the standing of the doctors called and their experience. He rehearsed in some detail the factors upon which they relied for their conclusions and he set out Mr Wright's rival contentions.

In our judgment, his summing-up covered all the issues appropriately. The jury could have been left in no doubt as to the approach they should adopt in assessing the evidence called before them. We are satisfied the case as presented to the jury and as left to them by the judge provided sufficient safeguards of the kind Lord Hughes had in mind in Golds.

For those reasons we reject ground 2.

We refuse leave and we refuse the extension of time application.

Before leaving this case we should like to express our gratitude to both Ms Forshaw and Mr Wright for their very considerable assistance. Both provided us with persuasive and focused submissions that have considerably assisted us in disposing of this difficult case today.

Mr Hussain, I don't know if you have followed what has happened. I am afraid that your application for leave to appeal has been refused.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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