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2018/04525/B1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 20th June 2019

B e f o r e:

LORD JUSTICE HAMBLEN

MR JUSTICE LEWIS

and

HIS HONOUR JUDGE PICTON

(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

CHARLENE SARGEANT

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Mr C Miskin QC appeared on behalf of the Appellant

Mr M Heywood QC and Mr R Price appeared on behalf of the Crown

J U D G M E N T
(Approved)

Thursday 20th June 2019

LORD JUSTICE HAMBLLEN:

Introduction

1. On 5th October 2018, in the Crown Court at Stafford, before His Honour Judge Chambers QC and a jury the appellant was convicted of murder.

2. On 11th December 2018, she was sentenced by the trial judge to imprisonment for life; the period of 4,842 days, or 13 years and 97 days, was specified as the minimum term under section 269(2) of the Criminal Justice Act 2003.

3. She appeals against conviction by leave of the single judge.

The Outline Facts

4. The appellant and her mother, Rocky Sargeant (the deceased), lived together at 2 Sun Street, Cheadle in Staffordshire. She was aged 24 years and her mother was 53. Shortly after 9am on 16th March 2018, the appellant called the emergency services. She said that her mother had committed suicide. Emergency personnel arrived to find the deceased lying on her back at the entrance to the kitchen. She had a knife in her right hand and had multiple stab wounds to her neck. She was pronounced dead at the scene. The appellant said that her mother had been threatening to commit suicide the night before and she had discovered her body at 7am. She became upset and said that her mother had abused her in childhood.

5. After she was arrested the appellant told police "She drove me to it. I killed her" and "I'm guilty... will I go to prison for life... I can't believe that I have done this... She drove me to it". She made no comment in her police interview but in a prepared statement she said that

she had been physically, mentally and sexually abused by her mother from the age of 16. She had tried to escape but her mother prevented her from doing so. On 16th March, the deceased had had mood swings and said that she was fed up with paying the bills. There was an argument, which the deceased had initiated. The statement concluded: "I lost control following eight years of abuse and picked up a kitchen knife from the draining board and I stabbed my mother with the knife. It was a cry for help because I was emotionally unstable. I did not intend to hurt my mother and I am devastated she is dead. I have never hurt my mother before".

6. Dr Lockyer, a forensic pathologist, found the deceased to have a number of old scars, reflective of self-harm. There were fourteen stab wounds directed to the neck and chin, caused during what he described as a sustained attack. The force used was at least moderate. She also had abrasions on her head that were likely to have been caused when she fell. Death was likely to have been caused by a combination of blood loss from the wounds, partially incised damage to veins which would have resulted in an air embolism, and incised damage to the laryngeal structures that allowed blood to enter the respiratory tract, resulting in aspiration.

7. There was an agreed summary chronology, created from Social Services and Housing Association records, and from medical records for both the appellant and the deceased. They demonstrated that the deceased had psychiatric problems, which had manifested in aggression and violence. She suffered from psychosis and had a history of self-harming. This behaviour had a negative effect on the appellant who was exposed to all of this and on two occasions was referred to mental health agencies. Records demonstrated that school and Social Services staff had expressed concerns about the effect that her mother's condition was having on her.

8. Accepting that the appellant had been subject to a history of abuse, which had resulted in a diagnosis of adjustment disorder with features of post-traumatic stress disorder, autistic spectrum disorder and mild intellectual disability, the prosecution case was that on this occasion the appellant had simply lost her temper and had stabbed her mother, following an argument about money.

9. The defence case was that the appellant had been mentally and physically abused by her mother for many years. She relied on the evidence of Professor Elliott who said that she had experienced a range of psychological symptoms as a result of the abuse, representing an "Adjustment Disorder with Post Traumatic Stress (PTS) features". She was more likely to become angry and act impulsively in the circumstance due to her combination of pre-existing aspects of Asperger's syndrome, Adjustment Disorder with PTS features, and the previous abuse. She said that on 16th March 2018, she was in the kitchen with her mother who was angrily shouting about the payment of bills. She appeared to be mentally unstable. She said that the deceased had taken a pair of scissors from the drawer and held them up. Since her mother had previously made threats that she would cut her (the appellant) open with scissors, she feared serious violence. She felt "under the control" of her mother, she felt trapped and unable to escape her predicament. She did not intend to kill her mother. She did not know what she was doing when she stabbed her mother; she was unable to exercise self-control. Further, she was suffering from an abnormality of mental functioning; she had diminished responsibility for the alleged offence.

10. The issues for the jury to determine were: was the appellant acting in lawful self-defence; had she intended to kill or seriously injure her mother; had she lost control; or was her responsibility diminished by reason of her adjustment disorder?

The Evidence at Trial

11. The prosecution evidence included background evidence from Greta Eggleston, the deceased's adoptive mother, and Ashlea Adewumi, a neighbour.

12. Evidence was given of the various accounts given by the appellant from the 999 call, the paramedic Peter Tansey, PC Lauren Amison and bodycam footage, DC Burton and a nurse, Anthony Brown.

13. The appellant's police interview was in evidence. In that interview she spoke about suffering from sexual, mental and physical abuse inflicted by her mother for at least eight years. She said that she felt trapped and unable to escape. She said that she lost control; it was an accident; she did not intend to hurt her mother. Her mother had a complex psychiatric history and had told the appellant that she was a failure as a daughter. She said that the deceased had started an argument about the bills and "My emotions blew out of proportion, and that's why I got the knife out of the drawer and stabbed her with it, and she pleaded [with] me to do it. It was an accident". Her mother had been threatening her with scissors and said that she was going to end the appellant's life. The appellant had put the scissors back in the drawer. She repeated that she her emotions had "flipped" and she had lost control. She had tried to revive her mother and staunch the blood, but there was too much. She was shocked and delusional.

14. The appellant gave evidence in her defence. She said that the night before her mother died, they were at home and they had argued about bills. They had regularly argued about the appellant's bills or debts. They had also argued because she was in touch with her father over social media. She was looking for somewhere else to live as she felt that the abusive

family relationship was a toxic situation. The following morning, the argument started again and escalated. She had tried to take control of the situation but could not. Her mother had taken a pair of scissors from the drawer and she had picked up a knife. She had tried to hug her mother and had tried to cut her. As that had changed nothing, she stabbed her again. Her mother said what a bad daughter she was and was swearing. She had not stabbed with full force. She felt emotionally at breaking point. The argument continued and she stabbed her again. From that moment, it escalated. She thought that she had stabbed her four times by the back door. Her mother had tried to block the knife and had followed her when she tried to escape. They ended up on the other side of the kitchen. They were both upright. Then she "did the final stab to her when I lost control of the knife. I struck next. She collapsed". The appellant had wiped up the blood, called the ambulance and had tried to save her mother's life. At the time she could not face the truth of what she had done. She had lost control.

15. In cross-examination she agreed that she had wanted to move away and had told a neighbour that her mother stopped her. She agreed that the row was about money and that she had told the police that she hoped it was a chance to move on. She was not able to think straight at the time. She had tried to back away when her mother had threatened her. The argument had continued even after she had cut her mother on the hand. She agreed that the scissors had been put back in the drawer, but said that because of her mother's psychosis she did not believe that the threat had gone. She was emotionally not in control of the situation. She said that she had not mentioned the scissors in the prepared statement because she was in an emotional state, she maintained that it was true and denied that she was trying to hide anything. She denied that she had waited to call the emergency services until after she had cleaned up. She had put the knife in her mother's hand because she had panicked.

16. There was various medical evidence before the court. Anthony Brown had carried out a

psychiatric assessment on the appellant, when she was arrested. It was his opinion that she had presented with symptoms of an adjustment reaction disorder due to her current situation which were exacerbated by more persistent depressive disorder from her social circumstances and past abuse. Her depressive symptoms could be trauma-related. They were evidence of her response behaviours, which were maladaptive and disproportionate to the stressor due to being overwhelmed and in emotional distress at the time of the offence. She was able to recognise this and was regretful of her actions as she had never wanted her mother to die.

17. There were various psychological assessments, which evidence was read. Dr Greenhaf said that the appellant had traits of ongoing depressive and self-defeating personality. These features were likely to have resulted from years of having been the carer for a mother with mental illness and the experiences this will have brought her as an adolescent and a young adult. She was likely to continue to experience years of significant stress due to caring for her mother without any professional support or treatment. She had experienced anxiety symptoms as a result of difficulties with her mental and psychological functioning, because of her personality functioning.

18. Dr Beattie said that appellant had met the criteria for ASD diagnosis. She presented evidence of deficits in her reciprocal social interactions, abnormalities in her verbal communication and evidence of restricted or repetitive behaviours.

19. Dr Trent concluded that the appellant was functioning at the upper end of the mild intellectual disabilities range of intellectual functioning, with an additional diagnosis of trauma and stress-related disorder, and a borderline personality disorder. She was likely to demonstrate markedly poor planning and judgment, impulsiveness, emotional lability and anxiety. Testing had indicated a well of anger and hostility, which was likely to have been

generated due to the chaotic and abusive nature of her childhood, if her description was accurate.

20. Professor Elliot gave oral evidence. He said that he agreed with the findings of Dr Trent. The appellant was suffering from autistic spectrum disorder. She had long-standing difficulties in communication, difficulties in social interaction, and difficulties in coping with stress. She may be more prone to acting impulsively and had a mild intellectual disability. She would be able to function on a day to day basis but largely only doing fairly simple things. She had been suffering from an adjustment disorder, adjustment to the stress of her previous abuse with features of post-traumatic stress disorder. This was the product of long-standing exposure to abuse and stress. Observing a parent self-harming would be very distressing and the nature of the distress would be pervasive, would lead to severe expression of inner fear, of tension and dread, which would manifest itself in forms of agitation and impulsivity. This would typically resolve once the source of the stress had been removed. It was the opinion of Professor Elliot that the appellant was suffering from an abnormality of mental functioning that arose from a recognised medical condition. It could have had a substantial impairment on her ability to make a rational decision and could have impaired her ability to exercise rational control. But it did not impair her understanding of the nature of her conduct. He said that it was capable of providing an explanation as to what had happened, if it had happened as the appellant had described. He said that his opinion would not differ even if there had been no threats with scissors. The situation was like a "powder keg" likely to go off at any time. Her attempt to lead the police to believe that her mother had committed suicide had been an immature, child-like attempt to deal with the situation in a way that was likely to be found out very quickly. It was a reflection of her autistic spectrum disorder.

The Grounds of Appeal

21. The Grounds of Appeal are:

1. The judge erred in failing to withdraw the charge of murder at the close of the prosecution case.
2. The judge erred in refusing to admit the evidence contained in a joint statement of Professor Elliott and Dr Kennedy.
3. The judge erred in not giving a propensity direction in relation to the established character of Rocky Sargeant, as relevant to the issue of the precise circumstances of the killing.
4. The judge erred in failing to give a complete and full direction on loss of control, misapplying the ratio of *R v Rejmanski* [2017] EWCA Crim 2061.

Mr Miskin QC, on behalf of the appellant, also applies for leave to add a further ground 5:

5. The judge erred in failing to give appropriate safety warnings in his direction on diminished responsibility.

Ground 1

22. In his ruling that there was a case to answer, the judge noted that it was submitted by the defence that the charge of murder should be withdrawn from the jury, on the basis that the defence psychiatric evidence was unchallenged by the prosecution, namely the evidence of Professor Elliot, supported by a number of psychological reports which were also undisputed.

Reference was made to *R v Brennan* [2014] EWCA Crim 2387 and *R v Golds* [2016] UKSC 61).

23. It was submitted by the prosecution that the incident had occurred as the result of a loss of temper in the context of an argument about money. There was evidence both of an intention to kill and to rebut the defence of diminished responsibility. The deceased had been stabbed repeatedly in the neck. The appellant had given a false account to the police and had taken steps to indicate that her mother had attempted suicide, and that all the injuries were self-inflicted. She had not told the police that her mother had threatened her with scissors, either at the house or in her prepared statement. Further, these scissors had been returned to the drawer by the time of the stabbings, so her mother no longer presented a threat. This formed the basis for a rational explanation.

24. The judge observed that the thrust of the evidence of Professor Elliot was that at the time of the fatal incident, and due to the history of abuse caused by her mother, the appellant was suffering from adjustment disorder with features of post-traumatic stress disorder, autistic spectrum disorder and mild intellectual disability. This diagnosis was accepted by the prosecution. Professor Elliot gave evidence that the diagnosis could have substantially impaired the appellant's ability to exercise self-control. The prosecution did not disagree. However, there was still a live issue as to whether, in fact, it did. Further, the prosecution did not accept that it provided an explanation for the killing. This was still a live issue. The judge ruled that having assessed the evidence there was an evidential basis on which a jury properly directed could return a verdict of murder.

25. Mr Miskin QC submits that, given that the evidence of Professor Elliot was unchallenged, there was an insufficient basis to rebut the defence of loss of control. As it was

before the judge, reliance is placed on *Brennan* and *Golds*. It is submitted that there was no doubt but that the appellant had lost control. The suggested difference between loss of control and loss of temper drawn by the prosecution is semantic. It is submitted that the arguments, whether or not about money, has to be seen in context. The overwhelming impression left by all the evidence was that a very long fuse had blown the powder keg and the argument about bills or money, which had continued overnight, was the spark that blew the keg. It is unreasonable and counterfactual to decontextualize the dispute. Professor Elliot's view was that variations in the appellant's account were not relevant to his overall opinion. Finally, it is submitted that the evidence of an intention to kill is irrelevant to the defence. This last point is accepted by Mr Heywood QC, on behalf of the prosecution.

26. Mr Heywood submits that the judge's decision that there was a case to answer on the charge of murder was correct. Upholding the defence submission would have amounted to a usurpation of the jury's function. The jury's decision would be largely influenced by their view of the particular circumstances surrounding the killing. The issue for the jury's determination was whether the abnormality in fact impaired the appellant's responsibility at the time of the killing; and if so, did it explain the killing so as to reduce her criminal culpability from murder to manslaughter?

27. As stated by Lord Hughes in *Golds* at [9]:

"... the following four questions will normally arise in a case where diminished responsibility is advanced.

(1) Did the accused suffer from an abnormality of mental functioning?

(2) If so, did it arise from a recognised medical condition?

(3) If yes to (1) and (2), did it substantially impair one or more of the abilities listed in section 1A?

(4) If yes to (1), (2) and (3), did it cause or significantly contribute to the killing of the deceased?"

28. In the present case the prosecution accepted that the expert medical evidence established that the appellant suffered from an abnormality of mental functioning and that this arose from a recognised medical condition. On the facts of the present case, that left questions (3) and (4), the relevant ability on the facts of this case being that to exercise self-control.

29. As explained in *Golds* at [50], whether the impairment was substantial (question (3)) and causation (question (4)) are essentially jury questions:

"... 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 paragraph 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."

30. As stated by this court in *R v Blackman* [2017] EWCA Crim 190 at [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 ... 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."

This passage was cited with approval and followed by this court in *R v Hussain* [2019] EWCA Crim 666.

31. In the present case the prosecution did not accept that the medical evidence established that the appellant's abnormality of mental functioning "substantially" impaired her ability to exercise self-control or that it caused or significantly contributed to the killing. It contended that these were matters of fact for the jury.

32. As the judge observed, the medical evidence was that the appellant's ability to exercise self-control could have been substantially impaired, not that it had been. The prosecution advanced a rational basis for contending that it had not been, namely that this was a case of loss of temper in the context of an argument about money rather than loss of control. This was not a matter of semantics. It was the central issue in the case. The prosecution case was that this was a killing in anger, uninfluenced by medical condition. The prosecution contends that there was evidential support for this case, not only in the appellant's own account of the context in which the altercation arose, but in her subsequent actions, explanations and false scene setting, including wiping up bloodstains and clearing up the scene; trying to make it look as if her mother had killed herself; putting the knife in her hand; giving an elaborate initial false account as to what had occurred; and creating what the prosecution contended was an invented back story about being threatened with scissors. This showed a person who

was in control of herself and who was looking for ways to avoid the consequences of what she had done.

33. We agree with the prosecution and the judge that these were matters for the jury to evaluate and decide upon in the light of the evidence as a whole, and that this was not one of those rare cases where the judge should have exercised the power to withdraw a charge of murder from the jury in circumstances where the prosecution did not accept that the evidence gave rise to the defence of diminished responsibility. We accordingly reject Ground 1.

Ground 2

34. This ground has not been developed orally before us, so we shall address it briefly. The statement which it is said should have been put before the jury was made at the direction of the judge and was written before the chronology was compiled and before the prosecution had conceded that the appellant had been abused for many years. It had concluded as follows:

"We agree, that if the offence did not take place as [the appellant] describes it, (e.g. if there was pre-planning and no provocation), that the conditions above may well be irrelevant. We agree that the defence would not be available to the [appellant] if her account is not largely accepted."

It is submitted that this provided important support for the proposition made by Professor Elliot that the exact details of what had occurred in the kitchen were not important to his conclusion. The true "clear blue water test" for the prosecution to rebut, in the defence of diminished responsibility, was whether or not the stabbing was planned. The case should have been properly narrowed to that issue, the provocation being understood to be the wider issue of abuse.

35. For the prosecution, it is submitted that the "joint statement" referred to was simply a memorandum setting out the points about which the experts agreed. It is not accepted that its evidential value was more than minimal. It is observed that it was open to the defence to call Dr Kennedy on the issue, but that its resolution ultimately depended upon the view the jury took of the facts. The jury was repeatedly advised that Professor Elliot's evidence was uncontradicted and it is submitted that the introduction of the "joint statement" would have had no material influence on the verdict.

36. Whether or not to admit this statement was a matter of trial management. The decision to refuse to do so was well within the range of reasonable conclusions open to the judge. The joint statement was prepared in order to identify the extent of agreement between the experts and to clarify whether there was a need for them to be called. In the event, the prosecution decided not to call Dr Kennedy but Professor Elliot was called and could have dealt with these matters himself. His evidence was undisputed. The statement itself begged questions as to exactly what was meant by the appellant's "account", given that she had proffered various accounts. In all the circumstances, the judge was entitled to conclude that the statement should not be admitted. On any view, its non-admission does not call into question the safety of the conviction. We accordingly reject Ground 2.

Ground 3

37. This ground was also not developed orally before us. We shall address it briefly. In relation to the character of the deceased, whilst it is accepted that there was ample evidence of her violent tendencies and her propensity for aggression, it is submitted that the direction would have been helpful to the jury in understanding how the evidence could properly be used. The character and propensity of the two witnesses was important and relevant to the jury's consideration of what had occurred in the kitchen.

38. For the prosecution it is submitted that the jury had ample evidence of the deceased's violent tendencies from various sources, which gave them a powerful insight into her propensity for aggression. A propensity direction about the deceased would have added nothing to the case.

39. We agree with the prosecution. There was a detailed agreed schedule put before the jury which set out in considerable detail the history of the deceased's behaviour over many years and made clear her propensity for aggression. There was no need for the judge to give any formal direction as to how this evidence may be used in relation to the events of 17th March 2018. On any view a failure to do so does not call into question the safety of the conviction. We accordingly reject Ground 3.

Ground 4

40. It is submitted that the judge's direction on self-control failed sufficiently to explain the objective test and left highly relevant matters "in the background". It is said that the key characteristics to be looked at were not those of a temperamental or volatile person arising from a mental malfunction but of one who had been abused and coercively controlled by the woman she killed. It is submitted that the circumstances of the appellant at the point that she lost her self-control were those of an abused daughter in a highly toxic and controlling relationship where her mother knew of her intellectual limitations and had over the years relied on her acquiescence in response to gross provocative behaviour. It required a full and generous direction about the circumstances of the hypothetical 24 year old woman who might have responded in the same way.

41. For the prosecution, it is submitted that the direction on loss of control was legally correct, appropriate and indeed generous to the appellant. The suggested approach would

have flown in the face of the statutory prohibition. The judge directed the jury that the appellant's mental disorders were relevant when it came to their assessment of whether or not she lost self-control and the gravity of the qualifying trigger. Section 54(3) expressly excludes the appellant's mental disorders as matters for the jury to take into account when measuring a hypothetical person's normal degree of tolerance and self-restraint. It is submitted that the judge's approach was entirely in keeping with the approach of the Court of Appeal in *Rejmanski*.

42. The direction given by the judge was given in the following terms:

"If you decide that the [appellant's] loss of self-control was, or may have been, triggered by one or both of these things, you will then have to consider, finally, whether a person of the [appellant's] sex and age, with a normal degree of tolerance and self-restraint, and in the [appellant's] circumstances, might have reacted in the same, or a similar, way to the defendant.

In assessing this third element the [appellant] is to be judged against the standard of a person with a normal degree, and not an abnormal degree, of tolerance and self-restraint. If, and in so far as, her diagnosed mental disorders reduced her general capacity for tolerance and self-restraint, that would not be a relevant consideration. Her diagnosed mental disorders are a relevant circumstance of the [appellant], but are not relevant to the question of the degree of tolerance and self-restraint which would be exercised by the hypothetical person referred to above. However, as part of the [appellant's] circumstances you are entitled to take into account as part of the background that she had a history of having been abused, isolation and feeling trapped, save in so far as that is relevant to her general capacity for tolerance and abuse."

(The last sentence of the direction was added after discussion with counsel at the trial.)

43. The partial defence of loss of control is set out in sections 54 and 55 of the Coroners and Justice Act 2009. Section 54 provides:

"(1) Where a person ("D") kills or is a party to the killing of another ("V"), D is not to be convicted of murder if—

- (a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,
- (b) the loss of self-control had a qualifying trigger, and
- (c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

(2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.

(3) In subsection (1)(c) the reference to "the circumstances of D" is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint."

44. In *R v Rejmanski*, this court considered the effect of section 54(3). Its conclusion was as follows:

"25.....the wording of section 54(1)(c) is clear: in assessing the third component, the defendant is to be judged against the standard of a person with a normal degree, and not an abnormal degree, of tolerance and self-restraint. If, and in so far as, a personality disorder reduced the defendant's general capacity for tolerance or self-restraint, that would not be a relevant consideration. Moreover, it would not be a relevant consideration even if the personality disorder was one of the 'circumstances' of the defendant because it was relevant to the gravity of the trigger (for which, see *Wilcocks*). Expert evidence about the impact of the disorder would be irrelevant and inadmissible on the issue of whether it would have reduced the capacity for tolerance and self-restraint of the hypothetical 'person of D's sex and age, with a normal degree of tolerance and self-restraint'.

26. Fourth, if a mental disorder has a relevance to the defendant's conduct other than a bearing on his general capacity for tolerance or self-restraint, it is not excluded by subsection (3), and the jury will be entitled to take it into account as one of the defendant's circumstances under section 54(1)(c). However, it is necessary to identify with some care how the mental disorder is said to be relevant as one of the defendant's circumstances. It must not be

relied upon to undermine the principle that the conduct of the defendant is to be judged against 'normal' standards, rather than the abnormal standard of an individual defendant. It follows that we reject Mr Griffiths' argument that, if a disorder is relevant to, say, the gravity of the qualifying trigger, and evidence of the disorder is admitted in relation to the gravity of the trigger, the jury would also be entitled to take it into account in so far as it bore on the defendant's general capacity for tolerance and self-restraint. The disorder would be a relevant circumstance of the defendant, but would not be relevant to the question of the degree of tolerance and self-restraint which would be exercised by the hypothetical person referred to in section 54(1)(c).

27. As we have indicated, the most obvious example of when evidence of a mental disorder may be relevant to the defendant's circumstances is the one mentioned in *Holley and Wilcocks*, where the disorder was relevant to the gravity of the qualifying trigger. In *Holley*, the Board accepted that in the case of a woman suffering from 'Battered Woman's Syndrome' or a personality disorder, who killed her abuser, evidence of her condition may be relevant to both the loss of self-control and to the gravity of the provocation for her. In *Wilcocks*, the trial judge, and this Court, accepted that, if a personality disorder had caused the defendant to attempt suicide and he had been taunted by the deceased about committing suicide, then the jury was entitled to take it into account as one of his circumstances in considering the third stage of the defence.

28. We do not exclude the possibility of other circumstances where a disorder might be relevant to the third component, but none have been put before us. This suggests the question is of academic interest only.

29. Finally, the exclusionary effect of subsection (3) is consistent with, and reinforced by, the availability and scope of the partial defence of diminished responsibility in section 2 of the Homicide Act 1957, as amended by section 52 of the 2009 Act. The amended section 2 applies where a mental disorder substantially impairs the ability of the defendant to exercise self-control. The two defences may be presented together as alternatives. The law does not therefore ignore a mental disorder that, through no fault of a defendant, renders him or her unable to exercise the degree of self-control of a 'normal' person."

45. In our judgment, the judge was careful to follow this guidance. He correctly made it clear that the appellant's mental disorders were not relevant to the question of the degree of tolerance and self-restraint which would be exercised by the hypothetical normal person. He

did, however, recognise that they may be relevant to the gravity of the qualifying trigger, as set out in the earlier part of his direction.

46. In relation to background circumstances other than the appellant's mental disorders, the judge recognised that the jury could have regard to them, save in so far as they were only relevant to the appellant's general capacity for tolerance or self-restraint. This accords with section 54(3) and *Rejmanski*. In our judgment the direction given was sufficiently clear and full. We accordingly reject Ground 4.

Ground 5

47. We give leave for this further ground to be raised.

48. In relation to the direction on diminished responsibility, it is submitted that the judge failed to give the safety warnings said to be required as a result of what was said by the Supreme Court in *Golds* at [51], as follows:

"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."

49. It is submitted that in the light of this guidance the judge should have given the following safety warnings:

- (1) Brutal killings may be the product of a disordered mind;
- (2) Planning may be consistent with disordered thinking;
- (3) Not to turn themselves into amateur psychiatrists;
- (4) The jury should accept the expert evidence unless there is some identified reason not to do so.

It is submitted that the judge failed to give such warnings or failed to do so adequately.

50. We would deprecate any suggestion that *Golds* requires specific legal directions to be given in every case involving a diminished responsibility defence. The appellant's suggested warnings (1) and (2) are introduced in *Golds* by the words "If the facts of the case give rise to it". The amateur psychiatrists warning is said to be "ordinarily" advisable, and the failure to add those words did not, for example, call into question the safety of the conviction in *R v Hussain*. What is important is that it is made clear that there is a rational basis for rejecting the medical evidence and what that is.

51. In the present case the relevant part of the judge's direction on diminished responsibility is as follows:

"The defence case, founded on the evidence of the defence

psychiatrist, Professor Elliot, supported by psychological reports, is that, by reason of a history of abuse caused by her mother and witnessing her mother self-harming, at the time of the fatal incident she was suffering from adjustment disorder with features of post-traumatic stress disorder, autistic spectrum disorder and mild intellectual disability. The prosecution accept this diagnosis and that it arises from a recognised medical condition.

The next topic is substantial impairment. Therefore, it is not disputed that at the time she was suffering from an abnormality of mental functioning from a recognised medical condition, but the [appellant's] responsibility was only diminished if you conclude her mental ability to exercise self-control was substantially impaired. The expression 'substantially' is an ordinary English word that imports a question of degree. Whether the impairment in the present case before [it] can properly be described as substantial is an issue of fact for you to resolve. Professor Elliot had given evidence that the diagnoses would have substantially impaired her ability to exercise self-control. The prosecution do not disagree. Therefore, the issue for you to decide is whether it did.

You should reach your decision on the basis of the whole of the evidence, rather than focusing exclusively on the medical evidence. This is not trial by experts, but trial by jury and, whilst you should give careful attention to what the experts have said, you must follow your own judgment. In other words, as well, you are entitled to consider the [appellant's] conduct leading up to the killing and in the aftermath.

Then the final element in relation to a defence of diminished responsibility is explanation for the killing. In order to establish the defence, it is necessary for the [appellant] to prove not only that her mental functioning was substantially impaired, but she must also prove it provides an explanation for the killing. By explanation, the law is that the abnormality of mental functioning was the cause of the killing or was a significant contributory factor in the killing. It does not have to be the sole cause of her conduct, but she must prove that it was more than a trivial cause. The prosecution do not accept that it does provide an explanation for the killing. They say this was simply a loss of temper in the context of an argument about money.

If the defence have made you satisfied, on the balance of probabilities, that the defence of diminished responsibility is made out, your verdict would be not guilty of murder but guilty of manslaughter."

52. On the issue of substantial impairment, the judge correctly pointed out that the medical

evidence was that the appellant's mental disorders could have substantially impaired her ability to exercise self-control and that the issue was whether in fact it did so. As he stated, this depended on an assessment of the evidence as a whole, not merely the medical evidence, which included the appellant's conduct "leading up to the killing and its aftermath".

53. On the issue of causation, the judge identified the alternative rational explanation put forward by the prosecution, namely that "this was simply a loss of temper in the context of an argument about money".

54. As already addressed in relation to Ground 1, this was a case in which the medical evidence effectively answered questions (1) and (2) of the diminished responsibility defence. It did not, however, compel the answer to be given to the jury questions (3) and (4). These were to be answered by the jury in the light of all the evidence, including the medical evidence.

55. In our judgment the judge's direction on diminished responsibility was appropriate and he was not required specifically to set out the suggested safety warnings. In any event, warnings to like effect were given elsewhere in the judge's clear and full summing-up.

56. In relation to suggested safety warning (1), the judge had made this point expressly when giving directions in relation to the jury's approach to the evidence. He said:

"Can I just warn you to be cautious in relation to that matter, in this sense: that the brutality of the attack may assist you on the issue of intent. Equally, it may be a reflection of her mental disorder. That is something that you are going to have to assess."

57. In relation to suggested safety warning (2), this did not arise on the facts since the

prosecution did not contend that this was a case involving pre-planning.

58. In relation to suggested safety warnings (3) and (4), the judge gave the jury clear and appropriate guidance as to their approach to the expert evidence. He said:

"It is for you to evaluate and assess this evidence. It is for you to decide whether it assists you or not. If, after having given the matter careful consideration, you do not accept the evidence of the expert, in theory you do not have to act upon it. This is trial by jury, not trial by expert. While you may accept or reject expert opinion evidence you must not substitute your own opinions for those of the expert. However, in the present case the primary findings of the experts are not in dispute, so you would have to think long and hard before rejecting them."

59. In our judgment the directions given by the judge in his summing-up were appropriate and sufficient on the facts of this case.

60. We would also observe that the summing-up as a whole was a model of clarity and was conspicuously fair to the defence. We accordingly reject Ground 5.

Conclusion

61. Mr Miskin QC has helpfully and persuasively put forward every possible argument that could be said in support of this appeal. However, for the reasons outlined above, the appeal is dismissed.

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

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