



Neutral Citation Number: [2021] EWCA Crim 929

Case No: B3/2019/03826

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SWANSEA
Mr Justice Nigel Davis
T20070507

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22nd June 2021

Before :

VICE PRESIDENT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE FULFORD)
MRS JUSTICE CUUTTS
and
MR JUSTICE SAINI

Between :

Adrian Jones (Deceased)
- and -
Regina

Appellant
Respondent

Mr Paul Taylor Q.C. (instructed by Lanyon Bowdler) for the Appellant
Mr John Price Q.C. (instructed by CPS Criminal Appeals Unit) for the Respondent

Hearing date: 27 April 2021

Approved Judgment

Lord Justice Fulford VP:

Introduction

1. On 17 July 2008 in the Crown Court at Swansea (before Nigel Davis J and a jury) the appellant was convicted of the murder of Kelly Hyde. On 18 July 2008 he was sentenced to be detained at Her Majesty's Pleasure (he was then 17 years of age). The period of 11 years and 79 days was specified as the minimum term under section 269(2) Criminal Justice Act 2003.
2. On 9 March 2009 the single judge granted the appellant leave to appeal against his conviction. The full court dismissed the appeal on 21 October 2009. He died on 18 February 2019.
3. At trial, the appellant denied any involvement in what had been a brutal and random killing. On 17 October 2019, the Criminal Cases Review Commission ("CCRC") referred his conviction under section 9 Criminal Appeal Act 1968 ("CAA") to the Court of Appeal (Criminal Division). This was on the basis that the appellant, contradicting his evidence on oath before the jury, now accepted responsibility for Ms Hyde's death and there is new expert psychiatric evidence, which had not been available at trial, concerning his mental state at the time of the offence. It is submitted this material tends to demonstrate his responsibility had been substantially impaired at the time of the offence and the circumstances of his mental state provide a reasonable explanation for this defence not being advanced at trial.
4. On 22 November 2019, Fulford LJ VP approved the deceased's mother, Diane Jones, to pursue the appeal in accordance with section 44A CAA.

The Facts

5. On the morning of Thursday 27 September 2007, Kelly Hyde, having taken her car to a garage, set off shortly after 9am to walk home with her dog. She was murdered later that morning. Her body was found by police officers on 30 September 2007. It had been placed in a river, and her coat, which had been weighted down with stones, was discovered in the water near to the body. The pathologist observed multiple lacerations and injuries to the deceased's head and face, which were the result of multiple blows. There were signs of defensive injuries on the deceased's arms. Linear abrasions on Ms Hyde's body were consistent with dragging.
6. A 2.5 kilogram barbell weight, made by "YB", which had been used to attack the deceased was found close to her body, covered by leaves. DNA on the weight linked it to the deceased, albeit there was no similar link with the appellant. It was not disputed that an incomplete set of YB weights were found at the appellant's home address. The set was missing three of the 2.5 kilogram weights. The Crown relied on evidence of sightings of the appellant close to the area in which the body was found on the day the deceased went missing, including evidence that he was in the same area as a young woman (who was said to be Ms Hyde) and her dog sometime after 9.30am. The deceased's DNA was found in traces of blood on the appellant's trainers. These deposits were unlikely to have been the result of walking through wet blood, although this possibility could not be entirely excluded. The expert's opinion was that the shoes had been cleaned since coming into contact with the blood. There were traces of the

deceased's blood on the appellant's hooded top (one of the cuffs). The deceased's blood-stained dog lead was found in the appellant's attic. The DNA of the blood matched the deceased. A shoe mark, found close to the relevant part of the riverbank, had the same sole pattern as the appellant's trainers.

7. The appellant's case was that he had not murdered Kelly Hyde. He claimed they had not encountered each other and that he had been at home at the time she was killed. Accordingly, on his case she had been murdered by someone else. As set out hereafter, he sought to advance innocent explanations for the discovery of her DNA on his clothing, the blood-stained dog lead bearing her DNA in the attic, the shoe mark and the barbell.
8. On arrest, the appellant said, "*Murder. You have got to be joking*". He was medically examined and a scratch was found on his right finger. Bruising, a few days old, was found on his knees.
9. During the first three interviews when in custody, the appellant gave an account broadly consistent with his evidence at trial (see [10] below), although he failed to mention in these early interviews finding the dog lead or noticing a pool of blood on the bridle path. In the fourth interview, the appellant gave a prepared statement whilst answering "*no comment*" to various questions put to him. He maintained he had nothing to do with the murder of the deceased. In the fifth interview, the appellant said that he had no idea how the deceased's blood came to be on his trainers. Later in the interview, however, he posited that he could have walked through some blood on the path, although he was unaware of having done so or, indeed, of having seen any blood. In the sixth interview, the appellant continued to deny being involved in the murder of the deceased. He set out the details of the walk he took on 27 September 2007; he said that whilst on the bridle path "*suddenly ... there's another woman on the path I have a chat with her. I walk straight past home*". He went on to give an account of noticing a pool of blood and finding the dog lead, which he then threw into the attic.
10. The appellant indicated in evidence at trial that he had been unemployed in September 2007. He spent a good deal of time indoors and tended not to get out of bed much before 10.30am. On 27 September 2007, he took his dog out for exercise at about 11.30 am. He walked along the bridle path smoking a "*joint*" and he saw a lady on a horse as he entered a wooded section of the route. He stepped to the side of the bridle path to allow her to pass, and he noticed a dog which was not on a lead. There was a pool of wet blood on the path which he walked through, and he picked up a dog lead lying nearby (he did not see any blood on it). He then walked home, and he described his movements for the remainder of the day. The only person he had encountered whilst out walking was the horsewoman. He denied the suggestion that he had taken a YB weight with him on 27 September 2007. The one found near the deceased had, therefore, not come from what he described as an incomplete set which he had previously been given (as set out above, three of the 2.5 kilogram YB weights were missing).
11. He had been in the area of the riverbank where the shoe mark and Ms Hyde's body were found on one or two occasions with his dog, including in the two to three weeks before the 27 September 2007.

12. Posters of the deceased's missing dog appeared and he became aware that a body had been found by police on Sunday 30 September 2007. He had not thought of telling anyone about the blood he had seen on the bridle path or the dog lead he had picked up. He now realised the matter may be serious, involving murder, and he was worried that he might be wrongly implicated. He had thrown the dog lead into the attic, trying to hide it, as he had not been "*thinking right*".
13. On Monday 1 October 2007 he had been washing cars while wearing the same trainers which potentially explained how some of the blood had been wiped from them. The appellant attributed the scratch found by the police doctor on his finger to his "*messing around*" with motorbikes. He suggested the bruising to his knees have been caused by other activities, such as when having sex. He claimed he had lied to police during his interview because he had been afraid of being wrongly implicated in the murder. We note this was a clear and coherent account, and the two psychiatrists who had seen him did not diagnose any mental illness (see [24] below).

The Appeal: The Submissions

14. As set out above, it is contended by Mr Taylor Q.C. that there is new expert evidence – unavailable at trial – which is relevant to the appellant's mental state at the time of the offence. This comprises a psychiatric report from Dr Qurashi, a consultant forensic psychiatrist, dated 28 September 2018, supplemented by emails dated 29 November 2018 and 13 September 2019. Dr Qurashi additionally gave oral evidence before us on 27 April 2021 *de bene esse*. He suggests the appellant's responsibility was substantially impaired at the time of the offence for the purposes of section 2 Homicide Act 1957 ("1957 Act"). Mr Taylor argues that it is in the interests of justice for the court to admit this evidence under section 23 CAA. Section 2 1957 Act, as in force at the relevant time, provided:

"Persons suffering from diminished responsibility.

(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

[...]"

15. Section 23 CAA provides:

Evidence.

(1) For the purposes of an appeal [...] the Court of Appeal may, if they think it necessary or expedient in the interests of justice—

[...]

(b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and

(c) receive any evidence which was not adduced in the proceedings from which the appeal lies.

[...]

(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—

(a) whether the evidence appears to the Court to be capable of belief;

(b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;

(c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and

(d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.

[...]”

16. Dr Qurashi was the appellant’s responsible clinician for six years whilst he was staying at Ashworth Hospital (he was admitted on 9 July 2009). There were references within the medical records, beginning in October 2007, to the appellant being paranoid and fearful, and having experienced psychotic symptoms. Dr Qurashi considered that from January/February 2007 there were clear indications that the appellant had developed transient psychotic symptoms in the form of odd thoughts that were not delusions (albeit he suffered from transient visual disturbances). He dismissed any suggestion that the appellant had been suffering from a drug-induced psychosis, which he opined manifests in a significantly different way to what was observed as regards the appellant, and which would have led to drug withdrawal post arrest (an event that did not occur). His mental state deteriorated following the trial, and during 2009 he was diagnosed by Dr Kent as suffering from schizophrenia. Soon after his admission to Ashworth Hospital, he described having experienced “*witches talking to him in a derogatory manner*” and he believed that the devil was involved in persecuting him.

17. It is important to highlight that Dr Qurashi's evidence was based on his clinical assessments of the appellant, the various relevant reports (including from Drs Kent, Gavin and Janas) and the appellant's own account as to his mental state at the material time once he had undergone extensive treatment with clozapine and psychotherapy, along with his description of the circumstances of the killing. Dr Qurashi indicated he put "*a good deal of weight*" on what the appellant said about the incident, and formed the view that as time passed, he was able to distinguish between fact and fiction. Critically, the appellant suggested in April and May 2011, once he was feeling more mentally stable than hitherto, that he had heard the voices of witches "*in his head*" commanding him, first, to carry out the killing and, thereafter, to remove the organs of the deceased; that if he did not act in this way towards a stranger, someone close to him would be the appointed victim. He maintained that usually the voices stopped when he took cannabis, but they became more intense during the weeks leading up to the killing. He said that on 27 September 2007 he took Valium, smoked cannabis and drank rum. He saw and killed Ms Hyde, put her in the water and returned home to collect a knife. He was unable to complete the instruction to remove her organs because of the presence of other people. He had been scared to mention the witches at the time of the trial in case they harmed his close family.
18. More generally, the appellant reported that he had heard disembodied voices and he described auditory and visual hallucinations. He suggested to Dr Kent in 2009 that he believed others were looking at him, talking about him and plotting against him. He thought he was being called names and he could hear talking behind doors. Although he could not make out the voices clearly, he understood he was going to be attacked and he was accused of having committed rape.
19. Dr Qurashi took into account the reports of family members as to the appellant's behaviour in the period before the killing. They described a change in his demeanour and presentation, which included black moods and anger over trivial matters. He tended to isolate himself, he appeared blank and he laughed inappropriately. His artwork was described as "*distinctly odd*", including a self-portrait in which he split his head in three. It was suggested that these symptoms were consistent with an impending mental illness. Dr Qurashi bore in mind the extent to which the appellant refused food and self-harmed at the time of his arrest (*e.g.* banging his head against the wall, pirouetting across his cell, kicking the wall and throwing himself on the cell floor); his behaviour in prison following charge, and after his conviction; and the persistence of psychotic symptoms for many years thereafter.
20. Dr Qurashi could not detect any hint of sexual motivation for this offence.
21. Against that background, Dr Qurashi suggests that the appellant had an abnormality of mind at the time of the offence that substantially impaired his responsibility, in that it is likely that the appellant had been suffering from prodromal schizophrenia at the time of the offence. He contends, furthermore, that the appellant failed to disclose details of his mental state prior to and at the time of his trial because of his then state of mental health which included symptoms of paranoia and psychosis, with associated auditory and visual hallucinations and paranoid delusions that adversely influenced his reasoning and his understanding of the trial and his plea (although he was fit to plead). The argument is that this information only became available after a substantial improvement in his mental health following the prescription of the only effective treatment for resistant schizophrenia (*viz.* clozapine), along with psychotherapy. It

was, therefore, only after effective treatment that the appellant had been capable of providing a detailed account of his state of mind in the period prior to and at the time of the offence.

22. In summary, it is suggested that at the time of the offence, the appellant's symptoms were characteristic "*full blown*" schizophrenia, which had developed beyond the prodromal phase. His symptoms of paranoid schizophrenia were "*substantial*", in accordance with the requirements of section 2(1) 1957 Act. In Dr Qurashi's view, his actions at the material time were "*substantially*" attributable to the early stages of psychotic illness. The doctor observed that medical literature has established a higher prevalence of violent behaviour and an increased risk of homicide in the first episodes of psychosis.
23. In Dr Qurashi's opinion although any use of alcohol or diazepam can cause disinhibition of actions, and cannabis can aggravate/cause psychotic symptoms and may therefore have been contributory factors, the substantial factor with the present offence was the appellant's then-untreated schizophrenic mental illness. Furthermore, neither alcohol nor illicit drugs had a material effect on his memory of events; rather his account prior to being effectively treated for the schizophrenic illness was a consequence of a severely disordered state of mind.
24. The Crown instructed Dr Cumming, a consultant forensic psychiatrist, who provided reports dated 15 February 2020 and 7 March 2020, along with two addendum reports. He also gave evidence before us *de bene esse*. Although he did not have the advantage of having spent time with the appellant, he did not share Dr Qurashi's view that the symptoms of a mental illness were clear when Ms Hyde was killed, and he had no confidence in the suggested presence then of the prodromal stage of schizophrenia. He observed that the "*reports of his presentation are quite light and (have been) interpreted through the lens of the later diagnosis when in prison and hospital.*" For Dr Cumming, other explanations were more credible such as the use of illegal drugs ("*the elephant in the room*"), particularly given the appellant attributed his difficulties to drugs. He emphasised that the appellant had taken drugs at the time of the offence, something he had mentioned at Rampton Hospital. Dr Cumming suggested that drugs can cause very disturbed mental states, and he noted the appellant continued to use them in prison. These were matters which the psychiatrist set store by. In all the circumstances, and particularly bearing in mind the appellant's symptoms did not emerge until he was sent to prison, it was plausible in Dr Cumming's view that the illness simply was not present at the time. In this regard he emphasised that the diagnosis and the severity of the condition was not evident at the time of the offence. In a similar vein, the reports of the witches and the associated hallucinations were made retrospectively, a number of years after the death of Ms Hyde. Dr Cumming observed that there was no independent corroboration that the relevant symptoms, as suggested by the appellant after April/May 2011, were present at the time of the offence. The appellant was seen by two psychiatrists whilst on remand and neither found clear evidence of mental illness (Dr Sandford and Dr Janas, in October and November 2007 respectively), and there was no evidence that mental illness adversely affected his ability to give an account of his actions at the time of the offence, to provide a proof of evidence or to give instructions. The suggested mental illness, moreover, did not prevent him providing a coherent evidence at trial. In summary, Dr Cumming is of the view that there is no, or insufficient, evidence of mental illness

before April 2009 and he cautioned against using a current diagnosis to “*look back*”, attempting thereby to establish a potential earlier illness. Put otherwise, there was a danger of making the facts fit a narrative. He accepted that various factors were “*consistent*” with a diagnosis of schizophrenia, but he was of the view that even put together these features were not determinative, and he preferred alternative explanations such as the effects of drugs or that the illness simply was not present at the relevant time.

The Appeal: Discussion

25. We considered the evidence of Dr Qurashi *de bene esse*, along with the reports and documents to which he refers, because it is arguable that his evidence and the material on which it is based is capable of belief and may afford a ground for allowing the appeal. His account would, furthermore, potentially have been admissible in the trial and there is, *prima facie*, a reasonable explanation for the failure to adduce this evidence at trial, given Dr Qurashi considers the appellant failed to disclose details of his mental state prior to and at the time of his trial because of his then state of mental health. Dr Cumming’s evidence is clearly relevant in these circumstances, in order for the court to have a more complete picture given the significant differences between the psychiatrists.
26. It is important to have in mind the test to be applied in an appeal involving the consideration of fresh evidence. In *Dial v Trinidad and Tobago* [2005] UKPC45; [2005] 1 WLR 1660, Lord Brown of Eaton-under-Heywood observed:

“31. In the Board’s view the law is now clearly established and can be simply stated as follows. Where fresh evidence is adduced on a criminal appeal it is for the Court of Appeal, assuming always that it accepts it, to evaluate its importance in the context of the remainder of the evidence in the case. If the court concludes that the fresh evidence raises no reasonable doubt as to the guilt of the accused it will dismiss the appeal. The primary question is for the court itself and is not what effect the fresh evidence would have had on the mind of the jury. That said, if the court regards the case as a difficult one, it may find it helpful to test its view “by asking whether the evidence, if given at the trial, might reasonably have affected the decision of the trial jury to convict”: *R v Pendleton* [2002] 1 WLR 72 , 83, para 19. The guiding principle nevertheless remains that stated by Viscount Dilhorne in *Stafford’s case* [1974] AC 878 , 906, and *affirmed* by the House in *R v Pendleton* :

“While ... the Court of Appeal and this House may find it a convenient approach to consider what a jury might have done if they had heard the fresh evidence, the ultimate responsibility rests with them and them alone for deciding the question [whether or not the verdict is unsafe].”

32. That is the principle correctly and consistently applied nowadays by the criminal division of the Court of Appeal in England - see, for example, *R v Hakala* [2002] EWCA Crim 730 , *R v Hanratty, decd* [2002] 3 All ER 534 and *R v Ishtiaq Ahmed* [2002] EWCA Crim 2781 . It was neatly expressed by Judge LJ in *R v Hakala*, at para 11, thus:

"However the safety of the appellant's conviction is examined, the essential question, and ultimately the only question for this court, is whether, in the light of the fresh evidence, the convictions are unsafe."

27. It will be unusual for a convicted defendant to be permitted to advance the defence of diminished responsibility on appeal when it was not raised at trial. As Lord Judge CJ observed in *R v Erskine; R v Williams* [2009] EWCA Crim 1425; [2009] 2 Cr App R 29:

"89. Assuming that the defendant is legally represented (and in cases like these, he will normally be represented by leading and junior counsel, as well as solicitors) his legal representatives are the persons best placed to decide whether to raise the issue of fitness to plead, and indeed to seek medical assistance to resolve the problem. There is a separate and distinct judicial responsibility to oversee the process so that if there is any question of the defendant's fitness to plead, the judge can raise it directly with his legal advisers. Unless there is contemporaneous evidence to suggest that notwithstanding his plea and the apparent satisfaction of his legal advisers and the judge that he was fit to tender it, and participate in the trial, it will be very rare indeed for a later reconstruction, even by distinguished psychiatrists who did not examine the appellant at the time of trial, to persuade the court that, notwithstanding the earlier trial process and the safeguards built into it, the appellant was unfit to plead, or close to being unfit or that his decision to deny the offence and not advance diminished responsibility can properly be explained on this basis. The situation is, of course, different if, as in the *Erskine* case, serious questions about his fitness to plead were raised in writing or expressly before the judge at the trial."

28. It follows that our role is to assess, in the light of the fresh evidence which the appellant seeks to introduce, whether the conviction is unsafe, bearing in mind the caution expressed by Lord Judge CJ in *Erskine & Williams*, as just set out.
29. Dr Qureshi accepted that if the appellant had told him the truth, he had always known he had killed Ms Hyde, and he had lied to his lawyers, the doctors who saw him at the time, the police and the jury at his trial (*viz.* he told the jury he had been at home at the time Ms Hyde was killed and following his conviction he told those responsible for the Individual Psychological Intervention Report – that is until the time of his first "confession" in April/May 2011 – that he could not recall what had happened). Furthermore, when he had started to "confess", Dr Qureshi considers he simultaneously invented a false account of being involved in a cult when he was 14 or 15 years old. He described individuals wearing suits and black robes (one woman and three men, about 30 years old) taking him into the woods and engaging in "*strange things such as rituals that involved cutting wrists and pouring the blood into a bowl*". He reported being "*paranoid*" that his stepfather, Nigel Calford, was involved with the witches. Indeed, he suggested that the voices of the witches were those of people who had been friends of Mr Calford. They had been involved in black magic, they used Ouija board and they played with tarot cards at his stepfather's home. There was no evidence to support these suggestions, which Dr Qureshi dismissed as untrue. He suggested they were either a "*delusional memory*" or "*a recollection of a visual hallucination*".

30. Dr Cumming emphasised that psychiatrists are reliant on “*self-reporting*” by the patient, along with other material, given the diagnosis of schizophrenia is something of a “*jigsaw*” exercise, conducted over time. He expressed the view that psychiatrists are no better than others at detecting if their patients are lying.
31. The conclusions of Dr Qureshi are critically dependent on the account given by the appellant, and particularly in the years since April/May 2011 as to the hallucinations he claimed he experienced involving the instructions from the witches. Mr Price Q.C. for the respondent submits that there are extensive reasons for disbelieving the relevant statements of the appellant following the dismissal of his first appeal to this court on 21 October 2009. By way of summary, it is suggested that his explanation as to the circumstances of the killing by the appellant is not credible. By way of example, there are, it is contended, strong reasons for disbelieving his account as to why he did not return to the scene of the crime to complete the witches’ instructions (the removal of Ms Hyde’s organs), given she was not reported missing until 18.37 on 27 September 2007. There is no satisfactory explanation as to why he went armed to attack a victim with a 2.5 kilogram weight instead of a knife, since the witches’ instruction was to remove the organs of his victim. The route he in fact took home (the back route through the fields) is inconsistent with the appellant’s last account. The appellant failed to provide a justification for the removal or disturbance of two items of the victim’s clothing (*viz.* her jacket and a right pull-on boot). Furthermore, at the same time that it is suggested he was “*telling the truth*” concerning his reasons for killing Ms Hyde, he was inventing a wholly fictitious account of occult activities that involved his step-father.
32. It is sometimes the case that there is clear and undisputed evidence, unknown at trial, which the court accepts demonstrates diminished responsibility (*e.g.* *R v Borthwick* [1998] Crim LR 274, *R v Gilfillan*, unreported 7 December 1998 and *R v Weekes* [1999] 2 Cr App R 520; in the latter case the essential fact was the “*plain and undisputed*” evidence at trial that the defendant’s decision not to allow diminished responsibility “*to be canvassed*” was significantly affected by his mental illness.) That is not the position in the present appeal. The respondent does not accept that the appellant has told the truth since April/May 2011 as to what occurred on 27 September 2007, and Mr Price suggests that without the opportunity to investigate the appellant’s account on oath the court should not conclude that the appellant has demonstrated that his conviction is unsafe. It is emphasised that Dr Qurashi was significantly dependent on the account the appellant gave to him (as set out above at [17], Dr Qurashi explained, he put “*a good deal of weight*” on what the appellant said about the incident). We agree with Mr Price. In light of the appellant’s regrettable demise, there is no proper basis for concluding the conviction is unsafe. In the absence of agreement between the parties – agreement, moreover, which is accepted by the court – in order to reach such a conclusion it would have been necessary for the appellant’s present account to be tested by way of questioning. It is clear that the appellant told significant lies, either in one or more of his original accounts or in what he has more recently said to Dr Qurashi and others. There is no proper basis for the court to distinguish truth from lies in these circumstances. This is untested evidence, in the sense that it is for the court (the judge or the jury, depending on the issue) and not the expert to decide whether an appellant is telling the truth in a situation such as the present, when his or her honesty is not accepted. That issues such as this are for the court and not the expert, in the context of the role of the jury in a trial, was

emphasised by the Privy Council in *Walton v R.* (1978) 66 Cr App R 25; [1978] AC 788, *per* Lord Keith of Kinkel at 30 and 793:

“These cases make clear that upon an issue of diminished responsibility the jury are entitled and indeed bound to consider not only the medical evidence but the evidence upon the whole facts and circumstances of the case. These include the nature of the killing, the conduct of the defendant before, at the time of and after it and any history of mental abnormality. It being recognised that the jury on occasion may properly refuse to accept medical evidence, it follows that they must be entitled to consider the quality and weight of that evidence.”

33. Similarly, in *R v Golds* [2016] UKSC 61; [2017] 1 Cr App R 18 the Supreme Court emphasised that the decision as to whether the elements of diminished responsibility are satisfied is for the jury, so long as there is a proper basis for their conclusion (see Lord Hughes at [49] – [51]). In the absence, therefore, of agreement by the respondent (agreement, we add, that is acceptable to the court) or the opportunity for any proper investigation as to the integrity of the appellant’s explanation by way of questioning as part of the appeal, there is no basis for deciding that an account of sufficient credibility had been given to Dr Qurashi which justifies the conclusion that the conviction is unsafe. We note, moreover, the court would have needed, if Dr Qurashi’s evidence had been admitted, to consider carefully the contrary opinion of Dr Cumming.
34. Given the uncertain factual basis on which Dr Qurashi has founded his conclusions, with due respect to him, it follows that his evidence – for this reason alone –could not afford a ground for allowing the appeal. As matters presently stand, Dr Qurashi’s evidence on the issue of diminished responsibility would not have been admissible in the trial (given a critical element of the factual underpinnings of his conclusions in this regard could not be properly tested) and the explanation for the failure to adduce this evidence at trial has been insufficiently demonstrated (owing to the absence of an assessment of the credibility of the appellant’s explanation).
35. We consider it was entirely understandable that this case was referred by the CCRC given these unusual circumstances and we are greatly indebted to both Dr Qurashi and Dr Cumming for the considerable assistance they provided to the court. Mr Taylor and Mr Price have guided the court with skill through a factual, psychiatric and jurisprudential labyrinth. For the reasons set out above, we dismiss this appeal.”