

Neutral Citation Number: [2012] EWCA Crim 2055

No: 201102990 D4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 14 June 2012

B e f o r e:

LORD JUSTICE MOSES

MR JUSTICE GLOBE

RECORDER OF BIRMINGHAM - HIS HONOUR JUDGE DAVIS QC
(Sitting as a Judge of the CACD)

R E G I N A

v

JAMIE PETROLINI

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(Official Shorthand Writers to the Court)

Mr PR Taylor appeared on behalf of the **Appellant**
Mr M Ellison QC appeared on behalf of the **Crown**

J U D G M E N T

(As Approved by the Court)

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1. LORD JUSTICE MOSES: During the course of a trial which culminated in this applicant's conviction for murder, Dr Eastman (who is now Professor Eastman) said that only time would demonstrate whether the applicant was in the process of developing schizophrenia. The argument at trial was that the applicant was suffering from the early stages of schizophrenia, and that that was the explanation for the murder which we are shortly to describe. The jury rejected that argument, as they were entitled to do, and convicted the applicant of murder by a majority of 10 to 2 on 8 November 1994 at the Central Criminal Court.
2. Professor Eastman was cloaked with accurate medical prophesy and has proved to be correct. Time has indeed demonstrated that not only is this applicant suffering from schizophrenia, but was suffering from that at the time of the killing in issue.
3. This case therefore comes before the court due to the efforts of all the doctors involved, of this man's parents and of the legal team now appearing for him (Mr Taylor and instructing solicitors), seeking an extension of time of 16 years and 16 months and leave to appeal against conviction.
4. We say straight away that we shall grant the application to extend time and grant permission to appeal.
5. The appeal, having been carefully scrutinised by the Crown prosecution solicitor and by Dr Joseph, retained on their behalf, and Mr Ellison QC, is not opposed.
6. The appellant was only 19 when he had the misfortune to meet a man called Elsey and, as a result of his early stages (known as prodromal stages) of schizophrenia, came under the influence of that man, Elsey, while he was a student seeking to improve his A Level standards at a cramming college at Oxford. He was in reality seeking to find an identity, and the tragedy is the identity he found was one fixed under the influence of the man Elsey, who was also convicted of murder.
7. The applicant believed that Elsey was a paratrooper, and he wanted to become a paratrooper himself, undergoing, as he believed, initiative tests that led disastrously to an initiation ceremony on 14 January 1994, when they found by sad and tragic mischance a wholly extraneous and unforeseen victim, a Mr Mohammed el-Sayed. He was driving his motor vehicle alone, and this appellant and the man Elsey got into the back of the car. He was threatened with a knife and the appellant then stabbed Mr el-Sayed to the throat and chest. They then got out, leaving the victim dead in his motor vehicle, and this appellant and the co-accused returned to Oxford.
8. At trial, the appellant called Dr Eastman and another doctor to seek to prove, on the balance of probabilities, that he was suffering from the early stages of schizophrenia. This was opposed by the Crown and by doctors called on behalf of the Crown and, as we have already indicated, the defence was rejected.
9. Thereafter, there was a long history, carefully described in the evidence, as to what happened when the appellant was sent to prison for life with a recommendation of a

minimum tariff of 16 years' imprisonment. The symptoms were shown from an early stage in prison, and it is unnecessary for us to detail them at any length, other than that there were occasions in prison when, clearly, those responsible for his care were concerned at his behaviour: for example, in November 1996, which is only two years after he was sent to prison, Dr Copestake, psychologist, observed his vacuous and confused behaviour, amounting to almost a complete breakdown in his ability to cope. In February 1997 she considered the very possibility of what Dr Eastman had given evidence about at trial, namely prodromal (early stages) of schizophrenia.

10. By 1998, a doctor at Broadmoor had concluded that that was indeed an accurate diagnosis - that he was suffering from schizophrenia in its early stages.
11. There then ensued a very substantial period leading up to 2005 when there was a dispute about the extent to which he was suffering, between doctors at different hospitals, particularly whether his condition was such as required his detention and susceptibility to treatment at Broadmoor. The upshot is that he remained in prison until November 2005, when he was transferred to Broadmoor Hospital pursuant to sections 47 and 49 of the Mental Health Act.
12. His parents lived in Scotland and he was, in October 2006, transferred to the state hospital, Carstairs, where he has remained ever since.
13. The question for the doctors now, and particularly Professor Eastman (as he now is) and Dr Joseph (retained on behalf of the Crown) was whether the undoubted development of schizophrenia in prison and subsequently at Broadmoor indicated that he was indeed suffering from that condition at the time of the killing. There are, as is well-known, cases where those not suffering from diminished responsibility at the time of a crime develop symptoms which, if they had been present at the time of the crime, would have afforded a defence in the case of a killing. So the important question was whether the evidence was such as to indicate that he was suffering from that condition: in other words, the early stages of schizophrenia at the time of the killing such as to affect his responsibility for that killing. Both Dr Joseph and Professor Eastman have taken the view that he was.
14. The evidence of development of the symptoms of schizophrenia after the killing casts light, as Professor Eastman foretold, on his condition at the time. But it is not just that. There is, in our view, ample evidence of the development of symptoms of the early stages of schizophrenia well before he went to the cramming college at Oxford. There were disturbing episodes, with hindsight, even whilst he was at private school, and from time to time when he returned home on holiday from Oxford. For example, his teachers at private school reported that he worked with an intensity and anxiety that a teacher remarked caused worry. He looked from time to time bewildered and perplexed. His parents observed when he came home, not long before the killing at Christmas, that he showed sudden bursts of aggression, and burst on one occasion into a room and asked his parents if they had been talking about him.
15. It was in those circumstances, coupled with one other feature, that both doctors reached the conclusion that he was suffering from the early stages of schizophrenia at the time

of the killing, and it was the unfortunate meeting with the co-accused that caused those symptoms to affect his behaviour so that it was the explanation for this terrible killing of a wholly innocent man. As the doctors said, in a combined statement of response to the issues, "it is much more likely that his prodromal illness made him highly vulnerable to the influence of his co-defendant who essentially directed the killing". He was, in short, not able because of his illness to take decisions for himself.

16. We are therefore quite satisfied that this evidence, looked at as a whole, was not available at the trial. It is plainly capable of belief, and it plainly establishes that this appellant was not responsible for his actions at the time of the killing to the extent that he has established that his responsibility was diminished.
17. For those reasons we shall allow the appeal, quash the conviction for murder and substitute for it a verdict of manslaughter by reason of diminished responsibility.
18. The question then arises as to the appropriate penalty. We have had assistance both from Professor Eastman, although his opinion is necessarily qualified because he has not recently clinically examined this appellant, but also from Dr Joseph and from those who are responsible for reporting to the Ministry of Justice, as to the availability of a bed in Broadmoor (that is Dr Murray).
19. There is no doubt that it is appropriate to make a Hospital Order under section 37 of the 1983 Act. The question then arises as to whether his discharge should be restricted, as to whether we should make a Restriction Order for the purposes of section 41 of the Mental Health Act 1983. To that end, as we are required, we heard oral evidence from Dr Joseph as to the need to make a Restriction Order, and we are quite satisfied, having heard his evidence, taken with the written evidence of Dr Murray and Professor Eastman, that such an order should be made.
20. We are also satisfied, as a result of Dr Murray's evidence, that a bed is available within 28 days at Broadmoor. We should add, of course, that he is at present in the state hospital at Carstairs, and it is the intention that he should remain there without the need of coming down to Broadmoor and then going back. But it is important to emphasise that that is outwith our jurisdiction. We are only grateful for everybody having co-operated, particularly to the Scottish Office and the Ministry of Justice to ensure that the most humane and most efficacious way of resolving this matter can be achieved, so that administrative arrangements will be made so that he need not leave the state hospital at Carstairs. But because the matter is our responsibility, we shall, as the Home Office Circular recommends, make this direction: that if at any time it appears to the person in whose custody this appellant is detained in a place of safety that the appellant might not be admitted to hospital in pursuance of the order within 28 days on the date on which this order is made, that person shall within 21 days of this date, or once it becomes apparent that he might not be admitted to hospital, report the circumstances to the office of the Court of Appeal, and the matter shall be brought before the court forthwith to make such order as is necessary.
21. Perhaps you could draw up that order so that the office has it?

22. MR ELLISON: Forgive me if I missed it, and I only mention it because I did not hear it, I am not sure that your Lordships said the Restriction Order should be without limit of time.
23. LORD JUSTICE MOSES: You are quite right, I did not and I should have done.
24. MR ELLISON: The only other matter is in the event that this goes into the fail-safe situation and it has to come back to the court, the only practical way of that being effective within the timescale is for Mr Petrolini to be required to attend, because he will have to come back into the jurisdiction in order effectively for the court to be able to make an order. Perhaps that can be addressed if that bridge ever has to be crossed.
25. LORD JUSTICE MOSES: Of course it will be a matter for the court presided over by me, so if there are difficulties you can get in touch by phone or e-mail and we will sort it out. I am sure there will not be any difficulties.
26. Thank you all very much indeed.