

No: 2004/5368/D1

Neutral Citation Number: [2006] EWCA Crim 1267

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2

Monday, 15 May 2006

B E F O R E:

LORD JUSTICE GAGE

MR JUSTICE FORBES

MRS JUSTICE COX DBE

R E G I N A

-v-

CLIFFORD NORMAN ASHTON

Computer Aided Transcript of the Stenograph Notes of
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(Official Shorthand Writers to the Court)

MR S RIORDAN QC appeared on behalf of the APPELLANT

MR P COOPER appeared on behalf of the CROWN

J U D G M E N T

1. LORD JUSTICE GAGE: Clifford Ashton is now aged 36. On 2nd November 1998 at the Birmingham Crown Court he was convicted of murder and sentenced to life imprisonment. On 11th June 1999 the full court dismissed his appeal against conviction. He now appeals against conviction upon a reference to this court by the Criminal Cases Review Commission under [section 9 of the Criminal Appeal Act 1995](#). The basis of the Reference is that there is now fresh evidence of his psychiatric condition at the time of the offence.

2. The facts in summary are as follows. On 14th February 1998 the appellant was involved in a fight with Trevor Blackwood, in the course of which he stabbed Mr Blackwood nine times with a butcher's knife. Mr Blackwood later died as a result of his injuries. It was the appellant's case that he had acted in self-defence or, in the event that the jury considered the force used to be excessive, that Mr Blackwood's actions had amounted to provocation.

3. The only witness to the incident was the appellant's landlady, Mrs Rowe. She ran the butcher's shop below the appellant's flat. Mrs Rowe had witnessed a number of acts of violence perpetrated by the appellant over previous weeks and she was in fear when a dispute arose over the electricity supply to the appellant's flat on the morning of 14th February 1998. She told the court that her husband had been away and so she had asked Mr Blackwood, a family friend, to accompany her when she went to confront the appellant about this matter. Mr Blackwood had agreed to do so and carried with him a wooden canopy pole in case the appellant turned violent.

4. Mrs Rowe said that the appellant had been rolling dough in his kitchen when she and Mr Blackwood entered the flat. The appellant picked up a knife and there was a scuffle in the course of which Mr Blackwood tried to defend himself. She saw the two men drop their weapons and tumble down the stairs into the butcher's shop. She lost sight of the men while she went down the stairs entering the shop in time to see the appellant plunge a knife into Mr Blackwood. During the final stages of the struggle, the appellant struck Mr Blackwood with a knife a number of times while falling away towards the door. Mrs Rowe gave evidence that the knife that the appellant

had used was one she had left on a chopping board in the shop having chopped some meat with it that morning.

5. The appellant did not give evidence at trial. In his police interviews he acknowledged that he had been present, that he had inflicted the wounds upon Mr Blackwood and that when he had done so he had been aware of what he was doing. It was his case that Mr Blackwood had been the aggressor, that he had seen Mr Blackwood looking towards a row of knives in the shop and that fearing he might use these to attack him, he had picked up one to defend himself. Of his actions he said: "It was controlled anger because I had to do what I had to do in the line of defence."

6. Following his conviction he sought leave to appeal. The single judge granted leave and the Court of Appeal, on 18th June, dismissed his appeal. The ground of appeal was a misdirection in relation to certain evidence of statements made by the appellant at interview. The court considered that it was a technical misdirection and in the circumstances dismissed his appeal.

7. He applied to the Commission on 14th October 1999 for a review of his conviction, arguing that Mrs Rowe's evidence had been beset with inconsistencies and untruths. The Commission in June 2000 wrote to the appellant in informing him of its final decision which was not to refer his conviction to the Court of Appeal.

8. The appellant submitted a fresh application to the Commission on 28th May 2003. This time the application was based on fresh psychiatric evidence on the basis that is now before this court.

9. Before this court there are reports from four consultant forensic psychiatrists. Two of them, Drs Holloway and Hopley, conclude that the appellant suffers from paranoid schizophrenia. One, Dr James Collins who saw the appellant shortly before his trial, concludes that the appellant suffers now from schizophrenia. The fourth Dr Fearnley, the responsible medical officer treating the appellant at Ashworth Hospital, believes that the appellant is suffering from schizophrenia but points to the difficulties of making a diagnosis in his current state. All three of Dr Collins, Dr Holloway and Dr Hopley are of the opinion that the appellant's condition pre-existed

the killing in February 1998. Dr Collins explained that due to the shortage of time before trial he had insufficient time to make a proper diagnosis before the trial. He did, however, in his report dated 8th September 1998, state:

"Whilst it is impossible to point to any conclusive evidence that he suffers from a mental illness, the above consists of a significant body of evidence that he might well have developed a paranoid psychosis in recent years."

Following his conviction, the appellant was transferred to Ashworth hospital and has been there ever since. Dr Hopley, in a report dated 17th January 2005 commissioned by the Crown Prosecution Service, gave his opinion in the following terms:

"13.6. Unfortunately Mr Ashton was only detained in Ashworth Hospital for two weeks prior to his trial. This was an inadequate time period to facilitate a full psychiatric assessment of his mental health and his likely mental state at the time of the alleged offence. Therefore it is unsurprising that a mental illness was not diagnosed and no psychiatric defence was raised at the time of his trial.

13.7 With the benefit of hindsight, it can be demonstrated that Mr Ashton's paranoid schizophrenia impaired his ability to consider all available defences to him at the time of his original trial. Mr Ashton's absolute lack of insight at the time led to him instructing his defence team to pursue the defences of self-defence and/or provocation. He would have believed with absolute conviction that he was being persecuted and that therefore he had been provoked and/or was acting in self-defence."

All the doctors who expressed the opinion that the appellant suffered from schizophrenia or paranoid schizophrenia conclude that at the time of the killing he was suffering from an abnormality of mind such as to diminish his responsibility for the killing. The prosecution now accept that if the court admits the fresh evidence the conviction of murder must be quashed and a verdict of manslaughter by reason of diminished responsibility substituted.

10. Mr Cooper, who appears for the prosecution today and was junior counsel at the trial, submits that this court is entitled to receive this fresh evidence in the interests of justice. We do so. We are quite satisfied that in

the circumstances of this case that is a proper course for the court to take. We admit the evidence of the four doctors. We deem it expedient to do so in the interests of justice. Having done so, we are satisfied that the verdict of murder must be quashed and a verdict of manslaughter by reason of diminished responsibility substituted.

11. We now turn to the question of disposal. This morning we have heard from Dr Collins. In addition to giving evidence about matters which are set out in his report which go to the question of the appellant's condition pre-trial, he has also given evidence as to his opinion on the proper order that this court should make. Accordingly, we are satisfied that the conditions and terms relevant to sections 37 and 41 of the Mental Health Act are satisfied. There is a report from Dr Fearnley who, as we have already said, is the appellant's responsible medical officer. There is a bed for him where he is currently residing at Ashworth Hospital in Liverpool. In the circumstances what we propose to do is make an order that he be treated at that hospital under the supervision of his responsible medical officer, namely Dr Fearnley. The hospital is, as we have said, the Ashworth Hospital. We also make an order under section 41 that he resides there without limitation of time. For those reasons the appeal is allowed and those orders made.