[2019] EWCA Crim 916
No: 201605604 B2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 28 February 2019

B e f o r e:

LADY JUSTICE HALLETT DBE
Vice President of the Court of Appeal Criminal Division

MR JUSTICE SWEENEY

MRS JUSTICE CHEEMA-GRUBB DBE

R E G I N A
v
GEORGINA SARAH ANNE LOUISE CHALLEN

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd 165 Street, London EC4A 2DY, Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Miss C Wade QC and **Ms L Wibberley** appeared on behalf of the **Appellant**

Ms C Carberry QC and **Mr P Grieve-Smith** appeared on behalf of the **Crown**

J U D G M E N T
(Draft for approval)

LADY JUSTICE HALLETT: This is an extempore judgment because we are conscious of the need to give the result of this appeal and our reasons as soon as possible. The judgment will be perfected at a later date.

Background

On 14 August 2010 the appellant killed her husband of 31 years with 20 or more blows from a hammer. She was charged with murder. Her plea of guilty to manslaughter on the grounds of diminished responsibility was not accepted. The principal issue at her trial was the issue of diminished responsibility and the defence did not argue provocation. Nonetheless, the trial judge, His Honour Judge Critchlow, left to the jury both the partial defences of provocation and diminished responsibility. On 23 June 2011 the appellant was convicted of murder. On 26 June 2011 the judge sentenced her to imprisonment for life with a minimum term of 22 years. On 24 November 2011 the court reduced the minimum term from 22 years to 18 years.

She appeals against conviction on the basis of fresh evidence, namely the diagnosis by a consultant forensic, psychiatrist that she was suffering from two previously undiagnosed disorders at the time of the killing and fresh evidence as to the alleged coercive control by the victim.

The evidence includes a report on coercive control from Professor Evan Stark, a sociologist and forensic social worker dated 19 June 2018; two psychiatric reports from Dr Gwen Adshead dated 16 May 2016 and 14 October 2017; two addendum psychiatric reports from Dr Exworthy, who gave evidence at the trial, dated 19 August 2016 and 26 October 2017, and a report on developments and understanding of coercive control from Professor Marianne Hester, dated 7 January 2019.

The Crown relies upon a post-conviction report from the psychiatrist they called at trial, Dr Paul

Gilluley dated 1 March 2017. We heard from him, Professor Stark, Dr Adshead and Dr Exworthy *de bene esse*.

The facts

The appellant a woman of previous good character, was 57 at the time of the trial. She met Richard Challen when she was 15 and he was 22. They married when she was 25. They had two sons. Richard Challen was unfaithful on several occasions and this caused the appellant considerable distress. She sought medical help over the years and in 2009 was referred to a psychiatrist. He noted excessive alcohol use, marital problems and other "psychosexual stresses", but concluded that there was no evidence of a disorder.

In the autumn of 2009 the appellant left Mr Challen and moved into a property of her own nearby that she had bought using capital from an inheritance. She began divorce proceedings. Mr Challen then began to socialize with people he had met through a dating agency. The appellant found it difficult to cope with the separation. Convinced that her husband was having an ‘affair’, she asked a neighbour to spy on him. In 2010 she found out how to access text messages and voicemails remotely and began to access his emails and voicemail messages. She looked at a dating agency website used by the deceased and looked up the names of women with whom he had contact. She checked his Facebook page. She became obsessive about trying to find out what the deceased was doing and with whom.

In June 2010 he agreed to her request for a reconciliation but on condition that the divorce went through and she entered into a "post-nuptial agreement" on terms that were not favourable to the appellant. The appellant was advised by a solicitor to be cautious about entering into the agreement. Nonetheless, she agreed to her husband's terms. It was then decided that the divorce would be discontinued and on 9 August 2010 a decree nisi that she had

obtained was rescinded at her request. The appellant and the deceased decided to rent out the family home and to go to Australia for six months. At this time they were still living apart and she continued to have her suspicions about the deceased's friendships with other women. She also believed he was being unfair in relation to the financial arrangements.

In the week before the killing, the appellant viewed the deceased's Facebook page several times, and in particular, she saw an entry for a woman whom the deceased had arranged to meet socially and with others on Sunday, 15 August. On Saturday, 14 August the appellant took a hammer with her and she went to the former matrimonial home to help her husband clear out the house and garage. At about 3.30 pm she went out to buy food for lunch.

In her absence the deceased telephoned a woman and left a voicemail message. When she returned, the appellant noticed that the phone had been moved. She called the last dialled number and realised the deceased had called another woman. Knowing he had made arrangements to meet her, the appellant asked the deceased if she could see him the following day. He replied, "Don't question me."

She made them something to eat. As he was eating, she took the hammer from her handbag and repeatedly hit him over the head with severe blows. He must have tried unsuccessfully to defend himself because there were nine sites of injuries to his hand and arms consistent with defensive wounds. She then covered his body with blankets and left a note which said, "I love you, Sally", changed her clothes and went home.

She typed another note, which she took back to the house and left in the kitchen. She spent the evening in her own home, she saw one of her sons, who did not notice anything unusual, and in the following morning she gave him a lift to work.

Shortly before midday, she telephoned her cousin and told her she was calling from the car park at Beachy Head. Her cousin immediately called the police and a chaplain. As the

appellant walked towards the cliff edge, she was approached by the chaplain, Mr Hardy. She told him that she had killed her husband and said, "If I cannot have him, no-one can."

Detective Sergeant Rosser was the police negotiator present at Beachy Head. The appellant told him the deceased had told her to treat his infidelity like a bereavement and 'get over it'. She said she did not like her new property because the rooms were small and there were dogs barking. She said she had sometimes gone back to the family home and set traps, like putting tape on doors, and while in the house she had listened to voicemail messages and accessed the deceased's emails. She said she realised the appellant was intending to meet another woman and that had caused her to flip and carry out a frenzied attack. The appellant felt that she had been treated appallingly badly by the deceased over a number of years and it was that behaviour which had culminated in the recent events. She said, "I should be put in a padded cell somewhere, because I have gone completely off my rocker. I am just so very depressed."

After about four hours she agreed to leave the cliff edge and was arrested. In her vehicle parked at Beachy Head, police found a copy of the note left in the deceased's kitchen. It read:

> "Richard said he would take me back if I signed a post-nuptial agreement. I said I would and we both saw solicitors yesterday. I then found out he was seeing someone and sleeping with them and had no intention of taking me back. It was all a game so he could get everything. He was going to get me to sign and then issue divorce proceedings. I can't live without him. He said it would take time, but he felt the same. Now I find he is seeing women and sleeping with them. He did this in order to get his own back on me. All those prostitutes and other women. How could he? Please look after David, James and Peppy. I'm sorry but I cannot live without Richard. All my love, Sally."

In her interview with the police the appellant gave an extraordinarily full and sometimes rambling account of her marriage and the killing. She stated the marriage had been generally happy, but, "Everything had been on [the deceased's] terms." She performed all

the household tasks and did her best to please him, but he was always critical of her.

She described her husband's infidelity and association with prostitutes and the distress it caused her. Having decided to divorce him, she then realised she could not live without him and was prepared to agree to his terms for reconciliation even if they were unfair.

She had believed he was genuine in his wish for a reconciliation, and therefore, on the day of the killing, when she realised he was still seeing other women, she ‘flipped’. She hit the deceased with the hammer. He was motionless and so she covered him with curtains. She thought he was still breathing and so put tea towel in his mouth to spare him further suffering, she said. She put a cushion under his head, so he would be comfortable. She did not want anyone else to have him if she could not.

The trial

The prosecution case, as advanced by Ms Carberry QC was that the appellant was a jealous woman, whose behaviour in the period leading up to killing had become increasingly obsessive. Her actions were said to be premeditated, as evidenced by her deliberately taking a hammer to the house and about which she had lied to the police in early police interviews.

Dr Paul Gilluley, consultant forensic psychiatrist, was of the opinion that the appellant had not been suffering from any mental illness or abnormality of mind at any time before she killed the deceased. He accepted that she fulfilled the criteria for alcohol dependency syndrome and that had affected her mental health, but not to the extent of causing mental illness or a disorder or depression. He stated that those suffering a depressive disorder were unable to switch it on or off, and he noted that there was no evidence that she had been unable to cope at work and that her son David who lived with her had not noticed any disorder. He accepted that she may have had long-term, low self-esteem and difficulties in her

marriage, that she had had suicidal thoughts at times and that she had feelings of jealousy, anger and resentment. Such feelings and feelings of being unable to cope could lead to depression.

The defence case was based on the evidence of Dr Exworthy, as complemented by evidence from the appellant herself, her two sons, her cousin and friends of the family. The defence argued that the appellant was suffering from a depressive disorder with persisting depressive symptoms in the three to four weeks before she killed the deceased and that she suffered a depressive episode of moderate severity, which in Dr Exworthys' opinion, amounted to an abnormality of mind.

The appellant described in her evidence to the jury the build-up to the killing on 14 August. She said she began to suspect the deceased of being unfaithful in 2004. She became very distressed and consulted her doctor in 2004 and 2007. She was referred for counselling. She was depressed and tearful and waking early in the morning. She said she had not taken any medication because she did not wish to become addicted. In February and March 2008 she was prescribed anti-depressant medication, but by September decided not to attend any counselling sessions because they would be no use. In August 2009 she again went to her general practitioner and was signed off work for a month with stress-related problems. In September she was involved in a grievance at her work place. She went to see Dr Valmana (As heard) a psychiatrist. By the end of October 2009, she said her mood was fine, her sleep had improved. She denied any suicidal thoughts, and was discharged from Dr Valmana's care.

She accepted that at the time of the killing she had a responsible job, presented at work in a well-dressed way, but insisted that in the summer of 2010, after nine months of living apart from the deceased, she felt depressed and flat. She said she did not visit her GP

because she could not get an appointment.

David and James Challen told the jury they thought their father had behaved badly towards the appellant. They described her doing everything for him; he controlled her and decided what they would do as a couple. She had not been a happy woman for about ten years. She became particularly distressed when she discovered that the deceased had been visiting a brothel. She often referred to it and became very suspicious of the deceased and his behaviour. She frequently accused him of infidelity. The deceased refused to engage with the appellant and told her ‘to get over it’ and not question him about it. They knew that the appellant examined Mr Challen's text messages and emails. The deceased himself questioned whether the appellant was mentally unstable, and she began to question herself as to whether or not she was going insane.

Sarah Noble, a friend of the appellant's, was aware that the appellant was stressed and worried about her marriage. She described the appellant as very hyper and always busy, spending money on items she did not need. She thought the appellant was controlled by the deceased.

She spoke to the appellant in the week of 8 August 2010 and the appellant seemed very happy that she was getting back together with the deceased. The appellant had previously emailed her about the conditions imposed by Mr Challen for the reconciliation. The appellant told her that she would rather be with the deceased than without him. In a telephone call in the week of 8 August 2010 the appellant told her that the deceased had agreed to stop seeing other women if they got back together.

Suzanne Anderson, the appellant's cousin, believed that the deceased had pulled the strings in their marriage and the appellant had ‘danced’. She too was aware of the appellant's suspicions of the deceased's infidelity. In 2007/2008 the appellant had found receipts for

meals for two people in his pockets, and she described the appellant as being lonely and unhappy after leaving the deceased in 2009.

Jennifer Turney, a girlfriend of one of the appellant's sons, was close to the appellant, and the appellant told her about the deceased's visit to a brothel and her concerns about his fidelity. The appellant told her that she had low self-esteem and she did not get any reassurance from the deceased. In July 2010 the appellant told her that she was getting back together with the deceased but felt uneasy at the prospect. She saw the appellant on 9 August and it appeared that she had lost a lot of weight and looked drawn.

Inspectors Smith, Pellatt and Williams worked with the appellant at the Police Federation. Inspector Smith found her to be trustworthy and reliable, and Inspector Pellatt thought that although there had been problems in 2009, she was back to her old self by the summer of 2010.

The grounds of appeal

Ms Wade QC, who did not appear in the court below, advanced two grounds of appeal.

1. The fresh evidence on coercive control and the fresh psychiatrist evidence support the proposition that at the time of killing the appellant was suffering from an abnormality of mind. Had expert evidence on coercive control been available at the time of the trial, the jury may have reached a different conclusion on diminished responsibility.
2. The fresh evidence also goes to the issue of provocation in that it helps establish the appellant was provoked to kill the deceased because of his controlling and coercive behaviour.

First, we must consider in summary form the issue of coercive control and evidence from the experts relied on by Ms Wade. She invited us to consider the extent to which the understanding of what has been labelled "coercive control" has improved over the years, so

much so that Parliament enacted s.76 of the Serious Crime Act 2015 to make it a criminal offence to exercise coercive control over one's partner. S.76 criminalises a pattern of abusive behaviour, the individual elements of which are not necessarily unlawful in themselves. This is designed better to protect victims of domestic abuse.

It was Ms Wade's contention, relying on material from Professor Stark and from Professor Hester, that at the time of the appellant's trial in 2011 there was insufficient understanding among criminal justice practitioners and psychiatrists of coercive control as a form of domestic abuse, in which case the jury may not have been aware of the extent of the abuse suffered by the appellant and the psychological impact on her of years of intimidation, isolation, control and occasional violence.

Ms Wade accepted that the courts have recognised the concept of battered person syndrome, but that syndrome focuses on the psychological impact of repeated physical abuse, whereas coercive control focuses on systemic coercion, degradation and control. The lack of knowledge about the theory of coercive control at the time of the appellant's trial, meant that the partial defence of diminished responsibility was not put as fully as it could have been and the defence of provocation was not advanced at all by counsel then representing the appellant. The appellant's actions were not, therefore, put into their proper context. We should emphasise that in advancing these submissions Ms Wade was in no way critical of defence counsel at trial. He could only act on the material before him.

Professor Stark explained in his report and to us yesterday the theory of coercive control. In summary, he stated:

> "In coercive control, abusers deploy a broad range of non-consensual, non-reciprocal tactics, over an extended period to subjugate or dominate a partner, rather than merely to hurt them physically. Compliance is achieved by making victims afraid and denying basic rights, resources and liberties without which they are not able to effectively refuse, resist or escape

demands that militate against their interests."

In cases of coercive control the risk that one or both parties will be severely or fatally injured is a function of a victim's level of entrapment, the degree to which due to fear, violence and/or the extent of control, she has been deprived of or otherwise lacks the non-violent means effectively to resist, refuse, defend against and/or escape from demands, attacks, betrayals. In these circumstances, while the victim's vulnerability weighs the scale against her survival, the sense of having no way out can also fuel a powerful rage against the perceived source of her containment.

Ms Wade sought to persuade us to accept Professor Stark's evidence as fresh evidence within the meaning of s.23(2) of the Criminal Appeal Act 1968. She described it as expert evidence because Professor Stark is a widely published academic sociologist, has expertise in the field of forensic social work and is an acknowledged authority on the issue of coercive control, about which he has written since 2007. He has been accepted as an expert witness on the theory of coercive control in other jurisdictions.

She described it as fresh evidence because it dispels the proposition that the concept of coercive control was within common knowledge at the time of the trial. The cross-Government working definition of domestic abuse was only changed to accommodate coercive control in 2012.

Ms Wade reminded us of various decisions of this court in which it has been accepted that there is a need for expert evidence in cases where there is a background of domestic violence and such evidence meets the criteria for admissibility as expert testimony, as set out in **R v Turner** (1975) 60 Cr App R 834, **R v Hobson** [1998] 1 Cr App R 31, **R v Muscroft** [2001] EWCA Crim 604, R v Smith [2002] EWCA Crim 2671, **R V Thornton** (No.2) 1996 1 WLR 1174.

Dr Adshead specialises in working with violent women and those who suffer from personality

disorders. She was instructed post conviction. Dr Adshead based her opinion on prison inmate records which reveal that in custody the appellant was treated for depression and suffered at least two manic episodes in 2014 and 2016, for which she was treated with anti-psychotic medication; Dr Adshead's own clinical assessment of the appellant; the transcript of the appellant's police interviews, which disclosed a pressure of speech; the appellant's GP records; witness statements, and in particular, statements from Sarah Noble who had suggested in 2009 that the appellant may be bipolar; and from Michael Rowlands and John Cowdy. She also relied upon the results of objective personality assessments conducted by a psychologist.

John Cowdy, a family friend, described the deceased as controlling of the appellant, and Mr Rowlands, who acted for the appellant in her proposed divorce, described her as "Really hyper, talking very quickly and almost unable to keep still". Her instructions to him were erratic.

In Dr Adshead's opinion the appellant suffers and suffered from a personality disorder of moderate clinical severity and has symptoms of a severe clinical mood disorder, most probably bipolar affective disorder. The psychotic episodes the appellant experienced in prison and that lasted several weeks on both occasions support the view that the appellant suffers and was suffering at the time of the killing from a severe clinical mood disorder.

Assuming that Dr Adshead's diagnosis is correct, coercive control is then said to be relevant because of the interplay between the disorders and the effect of coercive control. The interplay means that the more severe symptoms of a mood disorder were masked during the time that the appellant and the deceased lived together. Only since the appellant has lived apart from the coercive control has the true nature and etiology of her personality disorder and mood disorder could be diagnosed.

Dr Exworthy agrees. Unlike Dr Adshead, at the time of his original assessment of the appellant, Dr Exworthy did not have the appellant's prison inmate records or the statements given to her. of Sarah Noble, William Noble, John Cowdy or Michael Rowlands. Although he noted the extensive complaints which the appellant and others had made of coercion and control by the deceased, he was not familiar with the concept at the time. For the purposes of the trial he focused on the issue of depression. Originally, he was of the view that if the appellant had taken a hammer to the house the appellant could not avail herself of the partial defence of provocation. Accordingly, the only possible partial defence that he supported was the one of diminished responsibility on the basis that the depression had constituted an abnormality of mind. In the light of what he has since learned as to coercive control and in the light of Dr Adshead's diagnosis with which he agrees, he is now of the view that both partial defences were available to the appellant. He suggested the jury may not have understood the impact upon the appellant of the disorders from which it is now recognised she suffered and in the context of coercive control.

We also have a statement from Professor Hester. We did not here from her *de bene esse*, but she sets out the development of understanding of coercive control since the trial took place in 2011.

Relying on those reports and the evidence called before us, Ms Wade invited us to find that the issue of coercive control should have been explored at the trial and the appellant was suffered from the additional disorders diagnosed by Dr Adshead.at the time of the killing Had these issues been explored appropriately, issues such as the appellant's claim that she was anally raped by the deceased in 1998 as a punishment, the deceased's visits to prostitutes, his intimidation of her, his financial control of her and his attempts to isolate her would have been put before the jury in far greater detail. These issues were either not

explored at all or were presented to the jury in terms of unhappiness and uncertainty, as opposed to abuse and entrapment.

If we receive the fresh evidence, Ms Wade maintained that it establishes that the appellant suffered from a personality disorder with features of dependency which meant that she was vulnerable to being controlled by the deceased because she could not exist independently of him. She also suffered from a mood disorder that fluctuated, depending on the way the deceased treated her. This would have affected the gravity of the deceased's provocative behaviour to the appellant and it may have affected the jury's approach. This evidence, it is said, would have provided an alternative narrative from that offered by Ms Carberry of an obsessively jealous woman who killed her husband to prevent any other woman having him.

Prosecution Response

On behalf of the Crown Ms Carberry maintained that the reports do not individually or together provide additional support which amounts to fresh evidence that the applicant was suffering from an abnormality of mind or was provoked within the meaning of the Homicide Act at the time.

She called this appeal an attempt to reopen matters that were comprehensively placed before the jury by way of detailed, factual and compendious expert evidence. She reminded us that the appellant's full, relevant medical and social history were placed before the jury at the trial. This included:

i. the fact that the appellant regularly sought help from her GP when she thought she needed it but made no visits to her GP in the ten months leading up to the killing.

ii. Dr Valmana's assessment of her in 2009 was that although she may have been drinking to excess, she was not suffering from a mood disorder or any other psychiatric disorder.

iii. She was assessed by a psychiatric nurse shortly after her arrest and was not found to be suffering from any mental health issues.

iv. Evidence of her demeanour and behaviour in the days and weeks leading up to the killing came from sources close to her. This included her two sons, one son's girlfriend, her neighbour, her closest friend and work colleagues, who spoke about her excellent attendance at work and her high level of competence. She was socially active. She went to the cinema, she visited Wisley Gardens and she went on holiday.

v. Detailed accounts about the deceased's behaviour towards the appellant were put before the jury.

In relation to Dr Adshead's new diagnosis, Ms Carberry placed considerable emphasis on the fact that Dr Adshead did not see the appellant until five years after the killing and then saw her only once. She invited us to prefer the opinion of Dr Gilluley who saw the appellant much nearer the time and who told us yesterday that he considered at that stage whether the appellant might be suffering from what he called battered woman syndrome or post-traumatic stress disorder but concluded that she did not. Had the appellant been suffering from a personality disorder, as Dr Adshead has opined, he would have expected it to have affected at least some of her relationships outside the home and to have affected her functioning at work and socially. Yet, he noted she managed to bring up her children, hold down a job and look after her parents and her in-laws, all of which suggested to Dr Gilluley that she was functioning within normal limits.

Ms Carberry conceded that Dr Gilluley had accepted that the appellant may have personality traits but invited us to note that in his view they were within normal limits and did not reach the level of a disorder. Further, she asked us to bear very much in mind that Dr Gilluley, who saw the appellant, very close to the killing, had seen no evidence to

suggest a diagnosis of bipolar disorder.

Dr Gilluley relied in part on Dr Valmana's assessment and on the fact that, in his opinion, the manic episodes in custody may have been triggered by stress and/or medication. He accepted that there were stresses in her life and, before us, he accepted for the first time that the appellant was abused, but this is far from saying there was evidence of a mood disorder or other major psychiatric disorder. Given the extent of Dr Gilluley's consideration and his expertise, Ms Carberry invited us to find that his opinion was preferable to that of Dr Adshead, and we should reject the fresh evidence put before us.

Furthermore, she reminded us that the defence at trial was diminished responsibility. Very experienced counsel did not pursue and advance any arguments on the issue of provocation, for what Ms Carberry insisted was good reason. The appellant had admitted taking the fatal weapon, a hammer, to the scene of the killing. She had become suspicious through listening to his messages, and internet research that he was in contact with other women. The clear inference which Ms Carberry invited the jury and us to draw was that there was a degree of premeditation in her actions, and this was reinforced by her admission that on an earlier occasion she had entered the house at night with a hammer to check on her husband. Ms Carberry also reminded the court that the appellant had told the police she had killed her husband in anger and that if she could not have him then no-one could.

<u>Conclusions</u>

In deciding whether to receive the evidence from Professor Stark and Doctors Adshead and Exworthy, pursuant to s.23 of the Criminal Appeal Act, we must consider whether it is in the interests of justice to do so. We must have particular regard to: (a) whether the evidence appears to the court to be capable of belief; (b) whether it appears to the court 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 these proceedings.

As this court has observed frequently, any available defences should be advanced at trial, and if evidence, including medical evidence, is available to support a defence it should be deployed at trial. As a general rule, it is not open to a defendant to run one defence at trial and when unsuccessful, to try to run an alternative defence on appeal, relying on evidence that could have been available at trial. This court has set its face against what has been called expert shopping. Nor is it open to an appellant to develop and sometimes embellish their account to provide material upon which a fresh expert can base a new report and diagnosis.

Thus, the hurdle for Ms Wade is a high one in persuading us that the conviction is unsafe on the basis of the fresh evidence. She advanced the appeal principally on the ground that evidence of the theory of coercive control is now available and if adduced at trial would have assisted the appellant significantly in advancing her defence. However, it is important to remember that coercive control as such is not a defence to murder. The only partial defences open to the appellant were provocation and diminished responsibility, and coercive control is only relevant in the context of those two defences.

We emphasise that we were not persuaded that had it stood alone the general theory of coercive control on the facts as presented to us would have afforded the appellant a ground of appeal. However, it did not stand alone. We have focused on Dr Adshead's post-conviction diagnosis that the appellant suffers from borderline personality disorder and a severe mood disorder, probably bipolar affective disorder, and suffered from those

disorders at the time of the killing. If that is correct, it is in that context that the theory of coercive control may be relevant.

We considered, therefore, the circumstances in which Dr Adshead was instructed so as to determine whether this was simply an exercise in expert shopping. We then considered the evidential basis of Dr Adshead's opinion.

First, we accept that Dr Adshead was consulted because of genuine changes in the appellant's condition in prison, namely the manic episodes. Coupled with the history of depression, the episode suggested to the appellant's solicitor a diagnosis of bipolar affective disorder. This was confirmed later by Dr Adshead. It is possible that the manic episodes were triggered by the stress and incarceration and the medication for depression, as Dr Gilluley believes, but in Dr Adshead's opinion the timeline suggests otherwise. If her diagnosis of the two disorders is correct, this was missed by the psychiatrist at trial and there is a reasonable explanation for not adducing the evidence.

Second, we accept that the evidence is credible and would have been admissible in the proceedings. There is a body of objective contemporaneous material that arguably supports Dr Adshead's diagnosis, albeit she made it several years after the killing. Some of that material was before the jury, but its potential relevance was not addressed. We give some examples. Mrs Noble was so concerned about the appellant's erratic behaviour in 2009 that she thought the appellant may be bipolar. This was recorded by the GP in the appellant's notes at the time. The appellant had problems at work in 2009 and was signed off for work for a month that year suffering from stress. She was prescribed medication for clinical depression, and she was referred to a psychiatrist.

The prosecution may well argue that she had recovered by 2010 but there is clear evidence of abnormal behaviour in the build up to the killing, in particular, the obsessive stalking of the

deceased and to her response in 2010 to the reconciliation proposal. One minute she was euphoric, then she was back to what Dr Adshead thought was almost paranoid jealousy. This was all noticed, at the time, by others. Dr Adshead's diagnosis is not, therefore, based on a new account from the appellant.

Dr Adshead also gives an opinion on how, if the appellant was in an abusive and controlling relationship, these disorders may be relevant to both partial defences. Again, there are sufficient independent and contemporaneous references to the possibility of the appellant's having been controlled by the deceased to support the proposition that she was in an abusive relationship. It is now conceded by Dr Gilluley that she was. There may be good arguments against the proposition that the abusive relationship amounted to coercive control (and we can assure Ms Carberry we have given them very careful consideration) but in our view, these are not issues for us to determine. We express no view on whether the appellant was the victim of coercive control and no view, if she was a victim, on the extent to which it impacted upon her ability to exercise self-control or her responsibility for her actions. However, because expert evidence was not available to defence counsel at trial, neither the possibility that she was suffering from these two disorders, nor the issue of the impact upon her of the abusive relationship were explored at trial in any detail. The issue of provocation was not advanced at all.

We have been persuaded, therefore, that the unusual circumstances of this case, and we emphasise they are unusual, we should receive the fresh evidence of Dr Adshead. We intend no discourtesy to Professor Stark in concluding that shall not receive his evidence. As it seems to us, the relevance of the coercive control theory, where a defendant suffers from a mental disorder, is well within Dr Adshead's competence and expertise. We decline to receive Dr Exworthy's evidence because it did not, in our judgment, advance the

appeal significantly or at all.

Having received Dr Adshead's opinion, therefore, we are satisfied that it does undermine the safety of the conviction. We shall quash that conviction.

We have considered the representations made to us as to whether we should substitute a verdict of manslaughter or order a retrial. We have concluded that the only proper option for us, given the issues are not for us to determine, is to order a retrial. We shall say no more because we do not wish to prejudice that retrial.

The Presiding Judges of South Eastern Circuit will decide on the venue and the judge, because his Honour Judge Critchlow has now retired.

We order a retrial on the murder count. We direct that a fresh indictment will be served, and the prosecutor must serve a draft indictment on the Crown court officer not more than 28 days after our order. We direct the appellant be re-arraigned on the fresh indictment within two months.

Given that we have decided to order a retrial, Ms Wade Ms Carberry, we should welcome your submissions on reporting restrictions. We are acutely conscious of the enormous interest in this case and the reporting that has already taken place. Normally, of course, we would impose rigorous reporting restrictions until the conclusion of the retrial. We would welcome your submissions on what we would should order here.

MS WADE: My Lady, I need to consult those who instruct me before I make submissions on that matter. I am just a bit concerned -- we were asked about whether or not we had representations on a retrial yesterday. My understanding was that we would be able to make representations today. All we did was say that we would be obviously opposing any idea of a retrial. We have not actually made any representations about a retrial.

LADY JUSTICE HALLETT: If you wish to make them, we will reconsider.

MS WADE: My Lady, in our submission any retrial of this matter will not be in the interests of just. This appellant has served nine years, almost ten years -- ten years this June in custody since this offence was committed. She is not a danger to anyone. She has been an exemplary prisoner throughout her time in custody. She has been on enhanced status since November 2010.

My Lady, given the shift in evidence from Dr Gilluley, who now states that -- or concedes that this was an abusive relationship in which the appellant found herself, in which the appellant was effectively entrapped, there is a considerable change, we would say, from the evidence at trial. The quality of the evidence which has been received by the court from Dr Adshead militates, in our submission, against a retrial, and finally, any retrial would not in our submission be in the public interest. This is a case where all of the bereaved and the deceased's family are not in favour. There is no pressing for a retrial in this matter. It will be expensive. It will now be some further time until this appellant's retrial.

May I now take instructions from my instructing solicitor. (Pause).

Subject to my submissions on a retrial, we would not want reporting restrictions imposed in this case. Everything is already out there, and they would be otiose in the circumstances.

LADY JUSTICE HALLETT: We should say, Ms Wade, that we had understood that you had made your submissions but we have heard them in full, and in fact, they are all submissions that we assumed would be made and we had taken into account, and we are still minded to order a retrial.

Mr Carberry, where are you on the question of reporting restrictions?

MS CARBERRY: My Lady, there has been considerable press interest in this case since leave to appeal was granted last year. We would urge the court to impose strenuous reporting

conditions to remain in place until the conclusion of the retrial so as not to prejudice any outcome of that case.

LADY JUSTICE HALLETT: The reporting restrictions, as you will appreciate, relate to the judgment.

MS CARBERRY: Yes, I do.

LADY JUSTICE HALLETT: We did wonder, just giving those who wish to report this matter a little more than: "The conviction was quashed" about ordering as follows:

> "The Court of Appeal heard that in the opinion of consultant forensic psychiatrist the appellant was suffering from two mental disorders at the time of the killing. This evidence was not available at trial. The court quashed the conviction and ordered a retrial."

Would you be content with that?

MS CARBERRY: My Lady, yes.

LADY JUSTICE HALLETT: Do you want me to read it again or are you happy? (Pause). Ms Wade?

MS WADE: I would ask your Ladyship to read it again.

LADY JUSTICE HALLETT: "The Court of Appeal heard that in the opinion of a consultant forensic psychiatrist the appellant was suffering from two mental disorders at the time of the killing."

The orders can be specified, if necessary.

> "This evidence was not available at trial. The court quashed the conviction and ordered a retrial."

Has everyone got it?

MS HARRISON: My Lady, it is Sian Harrison from the Press Association. I would, obviously, like to point out there has been at that lot of contemporaneous reporting.

LADY JUSTICE HALLETT: I know.

MS HARRISON: And there has, obviously, more detail than that.

LADY JUSTICE HALLETT: The idea is that the contents of our judgment do not prejudice the retrial. The reporting restrictions apply to the judgment.

MS HARRISON: Thank you.

LADY JUSTICE HALLETT: Is there anything else, Ms Wade?

MS WADE: No, thank you, my Lady.

I am requested to ask for bail at the moment, but I am not sure that the court is in a position to deal with that matter now. My understanding is there will have to be some reports.

LADY JUSTICE HALLETT: No, but what I shall do is try to impress upon the Presiding Judges of the South Eastern Circuit that this case now dates back to the killing in 2010, trial in 2011, and they should try and get the retrial on as soon as possible.

MS WADE: Thank you.

LADY JUSTICE HALLETT: Is there anything else that we need to deal with?

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

165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk