Neutral Citation Number: [2021] EWCA Crim 153

Case No: 202001069 B3

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 February 2021

Before :

LADY JUSTICE SIMLER
MR JUSTICE KERR
and
MR JUSTICE FREEDMAN

- -

Between :

REGINA
- and -
SHANICE ATKINSON

- -
- -

Mr Stephen Knight on behalf of the Appellant
Mr Paul Jones on behalf of the Respondent

Hearing date: 4 February 2021

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 11 February 2021 at 10.30 a.m.

Lady Justice Simler :

Introduction

1. This appeal concerns guilty pleas entered by the appellant on 2 January 2020, in the Crown Court at Isleworth before His Honour Judge Denniss, to one count of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861, two counts of assault by beating, contrary to section 39 of the Criminal Justice Act 1988, and a count of criminal damage contrary to section 1(1) of the Criminal Damage Act 1971. At a subsequent hearing on 21 February 2020 (HHJ Denniss), the appellant was sentenced to a 24-month Community Order with a 40-day rehabilitation activity requirement and a mental health treatment requirement.

2. Despite her guilty pleas, the appellant appeals against conviction by leave of Single Judge who also granted an extension of time. She contends that she should have been permitted to vacate her guilty pleas on the basis that they were ambiguous, and even if not, the court should have exercised discretion to vacate them. The proceedings were a nullity and/or her convictions are unsafe in the circumstances.

3. At the close of the hearing the court announced that the appeal was dismissed. These are our reasons for coming to that conclusion.

4. The appellant was initially represented by Tuckers Solicitors and Mr Michael Forward of counsel. Following pleas being entered on 2 January 2020, the Representation Order was transferred on 31 January 2020 to Rawal & Co and Mr Stephen Knight of counsel. Mr Stephen Knight appears on the appellant's behalf and we are grateful to him for his helpful submissions, both in writing and orally.

Facts

5. The appellant was admitted to hospital under section 2 Mental Health Act 1983 and was a patient at St Charles Hospital. On the evening of 21 June 2019, when staff were beginning their evening rounds, the Prosecution case was that the appellant began to cause a disturbance and took her clothes off. Staff asked her to get dressed and offered a mood stabiliser medication via oral tablet. She refused and it was decided that due to the disruptive behaviour the medication would be given intra-muscular via an injection.

6. The appellant was taken to her room where the medication was administered. After receiving the medication, the appellant ran out of her room and into the dining room, where the first of the alleged assaults occurred. The dining room is covered by CCTV.

7. The CCTV footage, which lasts just over six minutes, is described accurately in a statement by PC Rishav Neupane. We too have viewed the footage. It shows the appellant entering a narrow dining room with a number of patients already present, sitting at tables. She is seen to pace up and down erratically, picking up and throwing or attempting to throw chairs around the room, reckless as to the patients sitting at tables very close by. The other patients present are seen to recoil and one, at least, attempted to reason with her. She is seen picking up plates and smashing them and pushing other furniture over. Nursing staff did not enter the dining room until she appeared to attempt to cut the skin of her forearm with a piece of broken crockery. At that point, two staff members are seen rushing in. They tried to stop her from doing this by restraining her.

As soon as the two members of staff tried to restrain her, the appellant appeared to drop her weight. This took the three to the floor and they are seen crouching with their backs to the camera. During the struggle that ensued, the appellant can be seen punching one of the members of staff and moving to a position consistent with the account of biting we refer to below. A member of staff is seen to hit her, and the appellant is then seen getting up from the floor. She is then seen punching the other member of staff with both hands. The staff members leave and everyone in the room appears to look distressed and scared. The appellant is seen leaving the room and the patients in the room then try and block the door to stop her getting back in. She manages to force the door. This is when the footage ends.

8. The staff members who entered the dining room were Rita Anigbo and Afola Ayinde. The prosecution case was that the appellant struggled when restrained in the dining room and during the struggle, she assaulted the hospital staff, biting and punching Afola Ayinde, and biting Rita Anigbo on the left forearm causing a deep bite mark. There was photographic evidence of this bite mark which we have seen. Other staff arrived and removed the appellant to a treatment room to dress the wound to her wrist. In the treatment room the appellant grabbed hospital staff member Mary Adewunmi-Aina by the chin.

9. We have noted the prosecution witness statements from the staff members. Rita Anigbo describes arriving a few minutes after 9pm that evening. She saw the appellant naked, shouting and pacing up and down the corridor. She was doing the evening snacks when asked by nurse Afola Ayinde and HCA Mary Adewunmi-Aina to assist in giving medication to the appellant as she had refused to take her tablets. She does not describe the administering of the injection. This is described shortly by nurse Afola Ayinde who says the appellant was chaotic, naked and lashing out, so they decided to administer the Lorazepam by injection. They gave her the injection in her room, and she immediately ran from her bed to the dining area.

10. In the dining area, both Rita Anigbo and Afola Ayinde describe the appellant throwing plates, chairs and making threats. When they saw the appellant start cutting her wrist with a broken plate, they went in and grabbed an arm each. There was a struggle. Rita Anigbo describes the appellant opening her mouth wide and sinking her teeth into her left forearm area just above her wrist. She struck the appellant with her fist to stop the biting. She could not recall whether the blow landed, but the appellant then stopped biting her. Afola Ayinde described a violent confrontation when she and Rita Anigbo entered the dining room to restrain the appellant from injuring or even killing herself. The appellant grabbed hold of her lower legs. She saw the appellant trying to place her head towards Afola Ayinde's right wrist area and open her mouth as if to bite her. She then saw the appellant biting Rita Anigbo and describes the struggle as continuing with Rita Anigbo shouting for her to stop. She describes the appellant biting her own right wrist and punching her to the head about four times. Once in the treatment room she described the appellant trying to grab a yellow sharps bin and a further struggle with the appellant punching her several times to the head screaming and shouting. She and others forced the appellant out of the treatment room and others managed to control her after a further struggle and take her back to her room.

11. Another staff member, Mary Adewunmi-Aina, gives a consistent account of the appellant's behaviour in the dining room and subsequently in the treatment room. She described the appellant coming right up to her placing her left hand on Mary

Adewunmi-Aina's chin and lifting her head up shouting, "I will beat all of you". She says as Rita Anigbo approached to help her, the appellant let go and they ran back to the office. She then describes how the appellant was controlled.

12. The treating consultant psychiatrist, Dr Sidhu, described the appellant as having a dissocial personality disorder; knowing what she was doing at the time and that it was wrong.

13. We also note the Crown's bad character application based on previous convictions for common assault and damage to property between 2007 and 2015.

14. The appellant was interviewed with a solicitor and an appropriate adult present, about the allegations on 25 September 2019. She was shown the CCTV footage of the incident, albeit there was a bad connection and the video did not flow as it should have. The case summary notes indicate that approximately 1 ½ minutes were shown to her before her solicitor said that the appellant did not need to see any more. The appellant answered some questions "no comment" but also said she was acting in self-defence. For example, she was asked why she was seen breaking plates, charging at a nurse and scaring other patients with her behaviour and she answered "needed to get away from the nurses self-defence". Later she said "why is it okay for them to GBH me, what's the point of this interview, no one believes me, intended to defend myself".

15. We have also seen a report of Dr Deo, Consultant Forensic Psychiatrist, dated 18 December 2019 who assessed the appellant on 1 November 2019. He describes asking the appellant what she knew about the charges. He records that she knew about the charges and believed there were two assaults, one being ABH with intent. She said "she could not remember much of the offences but said she did recall not being happy during the admission." With regards to the offences themselves, she said "she only remembered defending herself and that she was scared and very unwell. She said she had not been eating much … [and] … was feeling sad and unsafe…"

16. Having assessed the appellant, Dr Deo concluded that she was:

> "well aware of the charges against her and demonstrated a clear understanding of the charges. We discussed the meaning of the terms guilty and not guilty and I was satisfied that she would be able to decide on how to plead and understood the consequences… The appellant stated she was defending herself and called the police herself to say she was being attacked. She then complained to police about them not taking her concern seriously. She denied ever having threatened any patients."

Overall he concluded that she was fit to plead and stand trial. Separately, he recorded that the appellant said she had "very little recollection of the time of the offences", but she believes she was "scared having acted out of defending herself". Dr Deo concluded in light of all the documents and his own assessment that her actions were "primarily driven due to antisocial personality characteristics and a poor stress tolerance threshold." He described her as "quick to become angry" as demonstrated by other incidents of violence, including those listed in her GP notes that he identified in his report.

17. On 26 September 2019 the appellant appeared at Westminster Magistrates Court and entered not guilty pleas. The matters were sent for trial in the Crown Court. On 24 October 2019 a first hearing took place at Isleworth Crown Court. No pleas were taken and the matter was adjourned to investigate the issue of fitness to plead. On 2 January 2020 a second hearing took place at Isleworth Crown Court. By then the report prepared by Dr Ramen Deo dated 18 December 2019 had been obtained stating that the appellant was fit to plead and stand trial.

18. On 2 January 2020 the appellant was arraigned and entered the pleas to the four count indictment that are the subject of this appeal. The matter was adjourned for pre-sentence reports to be prepared.

19. On 31 January 2020 legal aid was transferred to the appellant's new legal team. On 21 February 2020 there was a hearing of the appellant's application to vacate her guilty pleas. This was contested. Counsel for the defence submitted that the account given by the defendant raised a defence. On three earlier occasions she had given an account of self-defence: first to Dr Deo, second in the pre-sentence report (the "PSR"), and third in the police interview. She had changed legal representation very shortly after the plea hearing because she maintained self-defence, and he contended that the guilty pleas should be vacated.

20. The Judge did not have the transcript of the arraignment available to him. He regarded it as inconceivable that he would not have interjected if there was patent ambiguity and said he would have required an adjournment for further instructions to be taken by counsel. However, the appellant had not waived privilege and there was no witness statement from former defence counsel or solicitors, explaining what had occurred prior to the entry of the pleas to the four counts. The Judge referred to the appellant's statement in the PSR that she had very little recollection of what had occurred and conceded that she believed that her violence was not justified. He said,

> "If that is the sort of comment and observation that she can make I only have to think and infer again as to what took place between her and her original legal advisers before she decided to put pleas in of guilty to the four matters that she has pleaded guilty to and, in my judgement, with the restrictive approach to this element of my jurisdiction I should not either find the pleas ambiguous or find that it would be unjust to allow the pleas to stand in their present form. And, in those circumstances, I rule against the application and I do not allow the Defendant to vacate her pleas and change those pleas from guilty to not guilty."

The Judge therefore ruled that the pleas were not ambiguous, and it was not unjust to let the guilty pleas stand. The application was accordingly refused.

21. In view of the criticisms made of trial counsel/solicitors on this appeal, the appellant was invited to and did waive her privilege in respect of trial solicitors and counsel. The substantive response from trial counsel, Michael Forward, (adopted by solicitors) is contained in an email dated 4 August 2020. Mr Forward stated that he made a detailed attendance note following the plea hearing (and wished to correct the impression the appellant's new representatives had, as a result of an email they received from her former solicitors, that no attendance note had been made). He said that at no stage did

the appellant indicate her unwillingness to enter guilty pleas to the indictment. He enclosed the attendance note set out in an email dated 3 January 2020 at 5.15pm (which was itself a response to an email earlier that day from Tuckers solicitors advising him to make a detailed note and referring to two emotional voicemails left by the appellant at 11.50pm on 2 January 2020 saying "she wanted to vacate her guilty pleas and enter not guilty pleas she was acting in self-defence 'Michael' had told her to plead guilty to assist on sentence…")

22. In the attendance note email, trial counsel said that he met the appellant outside the court building at about 1.30pm. They spoke outside for about 20 minutes until her friend Rhona Richards attended. He said he was with her for about 90 minutes and was mindful of the contents of the report of Dr Deo concerning her fitness to plead. He continued,

> "she was fully aware of the incident at St Charles Hospital and the charges she faced on the indictment. She said to me at an early stage of our conversation that she was happy to plead guilty to all counts on the indictment. At no stage was any pressure to plead guilty applied by myself."

23. Trial counsel did not address in any detail the advice he gave and made no mention of self-defence (whether in relation to his discussions with the appellant or the arraignment hearing). He described the case being called on at about 2.30pm and said "the indictment was read out and she pleaded guilty. The judge said he had read the report of Dr Deo and expressed concern for the defendant.… The case was adjourned until 31 January 2024 sentence.…" The note concluded with the statement,

> "throughout my time with SA, to repeat, no pressure was applied on her to enter guilty pleas against her will."

24. There is no witness statement from the appellant. Further, those acting on behalf of the appellant have not sought clarification from trial counsel as to the advice he gave in the course of about an hour or so spent with the appellant; and have not applied to cross examine trial counsel.

The Appeal

25. Mr Knight advanced two grounds of appeal. First, he submitted that this is a simple and straightforward case of a guilty plea coupled with a denial of guilt as appears on the face of the transcript. The convictions are therefore unsafe, and the appeal should be allowed on that basis alone. Although not advanced in writing, Mr Knight submitted orally that the proceedings were a nullity because the appellant was clearly denying guilt and for that reason too, the convictions should be quashed. Secondly, he contended that the judge was wrong to refuse to vacate these ambiguous pleas. Even if there was no ambiguity and the appellant by her pleas clearly admitted guilt, the pleas should have been vacated in circumstances where her defence of self-defence stood real prospects of success. The court had discretion to allow the pleas to be vacated. This was a case where the prosecution's evidence disclosed a real prospect of success for the defence at trial, and it was wrong and unjust not to do so.

26. Developing the first ground of appeal Mr Knight relied on the fact that on five occasions whilst entering her pleas, the appellant said she was acting in self-defence as shown by the following extract from the transcript:

> "JUDGE DENNISS: I think – can we put the indictment first and see what the territory is and then we can discuss outcomes?
>
> THE DEFENDANT: I've never seen Dr Deo's report and I've never seen the video of when I had self-defence.
>
> JUDGE DENNISS: Let us put the indictment and then see where we go from there.
>
> [Count 1 put to the Defendant]
>
> THE DEFENDANT: I do not have hepatitis C. Please check my medical record. I plead guilty.
>
> [Count 2 put to the Defendant]
>
> THE DEFENDANT: Against [inaudible] or self-defence I plead guilty.
>
> [Count 3 put to the Defendant]
>
> THE DEFENDANT: I have never seen Dr Deo's report and I've never seen the video of self-defence. I plead guilty.
>
> [Count 4 put to the Defendant]
>
> THE DEFENDANT: I intended to defend myself as I was being chased and I was locked in a room and then I was being chased and threatened with an injection after being locked up in a room and I was actually attacked, and I done self-defence but I plead guilty.
>
> JUDGE DENNISS: Mr Forward, are you satisfied professionally that those pleas are properly pleas of guilty?
>
> MR FORWARD: I have had the opportunity of spending an hour in the company and I'm grateful for Mrs Richardson, who sits in the public gallery and is a member of her local church which Ms Atkinson attends and has been a very helpful presence. I am happy with those pleas that have been entered and I say no more."

27. In light of the transcript, Mr Knight submitted that her pleas were wrongly recorded as guilty pleas when it is plain they should have been recorded as not guilty pleas. These were clearly ambiguous pleas and based on what the appellant said, the court should have entered not guilty pleas. It was not open to the Judge to question counsel as he did because it was his duty to ensure that proper pleas were entered. Moreover, it was not open to counsel to override the 'not guilty pleas' the appellant plainly wished to enter. However forceful any advice given had been (or not) she was entitled to reject it. Counsel failed in his duty to ensure her pleas were accurately recorded. The proceedings were therefore a nullity. Mr Knight relied on *R v Ingleson* [1915] 1 KB 512 which he submitted, makes clear that where a defendant puts forward a defence to

the charge at the time of entering a guilty plea, then the plea of guilty is wrongly entered and all the proceedings consequent on that plea are "bad."

> "In this case there has been a mistake. The prisoner was charged with stealing and receiving horses; he pleaded guilty and handed up a statement to the recorder which, if believed, was a complete exculpation and which concluded with the words "I am guilty of taking the horses not knowing them to be stolen." If the recorder had read that it would be his duty to explain to the prisoner that his proper course was to plead not guilty and to have that plea entered. We presume that the recorder did not read to the end of the statement. It is most important that a prisoner should not be misled by the plea of guilty. He clearly thought he was guilty without having any felonious intent to steal. The absence of felonious intent is inconsistent with a plea of guilty either to the stealing or receiving. In those circumstances it is quite clear that the plea of guilty was wrongly entered and all the proceedings consequent on that plea are bad."

28. So far as ground two is concerned, Mr Knight submitted that even if the guilty pleas were unequivocal, it would be unjust to allow them to stand: the prosecution's evidence disclosed a real prospect of success for the defence at trial. The appellant's clear and consistent instructions both before and after she had viewed the CCTV were to the effect that she was acting in self-defence. Further, Mr Knight submitted that the court should be aware of the limitations in the evidence when making this assessment. The disclosure exercise was incomplete and only the prosecution evidence was available. The appellant's instructions were that there is CCTV footage of other public parts of the hospital. Moreover, the incident in the dining room was not where the events started. The injection of a drug appears to have been used as a first resort to control the appellant and as a form of corporal punishment done, not because it was in her best interests, or lawfully, but to punish her for interrupting members of staff. That assault by the medical staff was the catalyst for what followed. He submitted that there was cogent evidence that she was acting in self-defence and placed reliance on CCTV footage showing the appellant being punched in the back of the head by a member of staff during the altercation in the dining room as indicative of the violent conduct exhibited by the staff against her. This was not a case of an appellant who was scared of a sentence of imprisonment regretting her guilty plea; nor was it a case of an appellant who was dissatisfied with her sentence. As such, the public interest in finality of proceedings is much reduced.

29. The appeal is resisted. For the respondent, Mr Paul Jones submitted that although the appellant made remarks concerning self-defence during her arraignment, the Judge asked trial counsel whether he was professionally satisfied as to the pleas entered. Experienced counsel, Mr Forward, made clear that he was. The proceedings were accordingly not a nullity and nor were the guilty pleas ambiguous in those circumstances. The contention on behalf of the appellant (made in writing) that Mr Forward must have given no consideration to the question of self-defence was rejected. Mr Jones submitted that the imputation of that is that not only did he mislead the Judge in relation to being satisfied that the pleas were not ambiguous and were freely entered, but that he had not even read the papers, in which the appellant said she was under

attack and defending herself. The respondent submits that it is beyond reason that he would not have discussed that evidence with her. Further, he refuted the suggestion that the prosecution evidence disclosed a reasonable prospect of success for the defence at trial. To the contrary, the prosecution case was overwhelming as the CCTV material demonstrates. There is no material to support the contention that the appellant was resisting the earlier injection; rather she reacted to having received it. Her behaviour as shown by the CCTV footage was out of control. The nursing staff did not intervene until necessary and only did so at the point where she is seen self-harming. They had a duty to intervene and restrain her at that point and having been assaulted, were entitled to use reasonable force. Mr Jones contended that in all the circumstances the Judge made no error in refusing to vacate the pleas; it was not unjust; the convictions are safe.

Analysis

30. It is undoubtedly the case, as Mr Knight submitted by reference to *R v Dodd* (1982) 74 Cr App R 50, that the court has a discretion to allow a defendant to change a plea of guilty to one of not guilty at any time before sentence; the discretion exists even where the plea of not guilty is unequivocal; and the discretion must be exercised judicially.

31. There is also no doubt that this court can entertain an appeal against conviction on the grounds that a tendered guilty plea was a nullity but, as explained in *R v Evans* [2009] EWCA Crim 2243 by Thomas LJ, the jurisdiction is a limited one:

> 52. The applicable general principle is that such a writ will be granted where the proceedings are a nullity, that is to say where a purported trial "is actually no trial at all" (see the opinion of Lord Atkinson in *Crane v DPP* [1921] 2 AC 299 at 330) or where there has been "some irregularity in procedure which prevents the trial ever having been validly commenced" (see the opinion of Lord Diplock in *Rose* (1982) 75 Cr App R 322 at 336.
>
> 53. In our view, the correct approach where the appellant seeks to contend that his plea of guilty should be vacated and the proceedings declared a nullity is that set out in *R v Saik* [2004] EWCA Crim 2936 , specifically at paragraph 57:
>
> "For an appeal against conviction to succeed on the basis that the plea was tendered following erroneous advice it seems to us that the facts must be so strong as to show that the plea of guilty was not a true acknowledgment of guilt. The advice must go to the heart of the plea, so that as in the cases of Inns and Turner the plea would not be a free plea and what followed would be a nullity".

32. Even where the proceedings are not a nullity there are circumstances where a defendant may be permitted to go behind a plea of guilty in an appeal. Those (limited) circumstances are summarised in *R v Asiedu* [2015] EWCA Crim 714, [2015] 2 Cr App R 8 at [19] to [25] though that case was not concerned with equivocal or unintended pleas. Significantly, as this court emphasised in *Asiedu*, a defendant who pleads guilty

is making a formal admission in open court that she is guilty of the offence. She may limit admissions to only some of the facts alleged by the Crown, so long as the facts which necessarily constitute the offence are admitted. Once those facts which constitute an offence are admitted by an unambiguous and deliberately intended plea of guilty a defendant cannot ordinarily appeal against conviction, since there is nothing unsafe about a conviction based on her own voluntary confession in open court. A defendant will not normally be permitted on appeal to say that she has changed her mind and now wishes to deny what she has previously admitted in court.

33. We consider that paragraph 32 of *Asiedu* bears particular emphasis in the context of this appeal:

> "Because it is of cardinal importance that a defendant makes up his own mind whether to confess by way of plea of guilty or not, and because only he knows the true facts, it is not open to him to assert that he was led to plead guilty by mistaken overstatement of the evidence against him. As Sir Igor Judge P observed in *R v H* [2002] EWCA Crim 730 at [81], the trial process is not a tactical game. A defendant knows the true facts; he ought not to admit to facts which are not true whatever the evidence against him, and this will always be the advice he is given. If he does admit them, the evidence that they are true then comes from himself, whatever may be the other evidence advanced by the Crown."

34. There is also the general jurisdiction under section 2(1) of the Criminal Appeal Act 1968. If a defendant who has pleaded guilty can bring themselves within that section, the court will be bound to quash the conviction: see *R v Boal* [1992] QB 591, (1992) 95 Cr App R 272. In that case, in quashing the conviction that followed guilty pleas based on an erroneous factual assumption that went to the heart of the offence, this court concluded that the appellant "was deprived of what was in all likelihood a good defence in law". The court made clear however, that there was a further hurdle to be overcome:

> "This decision must not be taken as a licence to appeal by anyone who discovers that following conviction (still less where there has been a plea of guilty) some possible line of defence has been overlooked. Only most exceptionally will this court be prepared to intervene in such a situation. Only, in short, where it believes the defence would quite probably have succeeded and concludes, therefore, that a clear injustice has been done. That is this case. It will not happen often."

35. The approach in *Boal* has been adopted in other cases, including *R v Sadighpour* [2012] EWCA Crim 2669, [2013] 1 Cr App R 20. However in those cases, having cited *Boal*, this court spoke in terms of there being "no reasonable prospect of a defence [under the particular legislation in question] succeeding". That is a lower threshold than the threshold established in *Boal.*

36. Applying those principles to this case, we start by considering whether the facts are so strong as to show that the pleas of guilty here were not a true acknowledgment of the appellant's guilt so that the proceedings were a nullity.

37. The transcript of her arraignment shows that the appellant appeared to allege self-defence but to concede guilt in the same breath on each occasion. Had that been ignored or overlooked, the position might be different. But it was not. The Judge quite properly sought clarification. He was told in terms by trial counsel, who said that he had had the opportunity of spending an hour with the appellant and her companion, that the pleas were pleas of guilty. In the absence of any contrary evidence, we cannot proceed on any other basis than to assume that experienced trial counsel discharged his duty of not allowing his client to plead guilty unless there was a clear acceptance of guilt, and a fortiori, not to tell the Judge that the guilty pleas were valid unless so satisfied.

38. This case is very different from *Ingleson*. There, the unrepresented defendant made statements that were wholly inconsistent with guilt. In this case, not only did the appellant have the benefit of legal representation (and the Judge was right to seek clarification from counsel in those circumstances), but she did not (at any time) give a complete account that was inconsistent with guilt (unlike Mr Ingleson who did). It is trite law that self-defence requires the defendant to have an honestly held belief that their use of force was necessary, and the nature and degree of force used must be reasonable in the circumstances. The appellant's use of the word self-defence while at the same time stating that she was guilty is entirely consistent with a belief that force was not required or that she had behaved unreasonably and used violence that was not justified (as she conceded in the PSR).

39. Moreover, whatever the nature of her mental health difficulties, the appellant had been assessed by Dr Deo as being well aware of the charges against her and having demonstrated a clear understanding of the charges. Although in her interview with him, she said she was defending herself, she also said she had very little recollection of the time of the offences and *believed* she was scared, having acted out of defending herself. Dr Deo concluded in light of all the documents and his own assessment that her actions were primarily driven due to antisocial personality characteristics and a poor stress tolerance threshold. So far as the PSR is concerned, although the appellant disputed the prosecution account of the offences and said that she reacted to alleged violence towards her by staff members, the report writer described her as offering a "somewhat implausible and contradictory account of her actions" in relation to this matter. Whilst maintaining allegations of violence towards her by staff members,

> "upon being pressed she nevertheless conceded that she believes she herself behaved "unreasonably" and that the violence on her part was not justified.… with the benefit of hindsight, the defendant states that she is "sorry" in her words, for the psychological and physical harm done to staff members and despite the evidence, denies any deliberate attempt to do harm at the time.…".

None of these statements when viewed as a whole and in context, was at odds with her acceptance of guilt.

40. The appellant knew the true facts and what she had done. This was not a complex case. She knew and understood that she should not admit to facts which were not true whatever the evidence against her, and we have no doubt that this was the advice given

to her. We have concluded that there is no basis for finding that her guilty pleas were not a true acknowledgement of guilt. They were neither ambiguous nor equivocal in the circumstances we have described.

41. As to the safety of the conviction, the thrust of Mr Knight's submissions is that the appellant was so poorly advised about the charges and the evidence against her (including not discussing the statements of the witnesses to which we have referred, or enabling her to view the CCTV) and so poorly represented that her conviction for these four offences on her unequivocal guilty plea is unsafe because her defence had real prospects of success. He submitted in effect that her instructions to the effect that she acted throughout in reasonable self-defence were ignored or overridden by counsel and the Judge, and an injustice has been caused.

42. We do not accept these submissions. We remind ourselves that to go behind a guilty plea is an exceptional step. In short, we have concluded that there was overwhelming evidence that the appellant was behaving both disruptively and violently, and her defence of self-defence had no reasonable prospect of success. In reaching that conclusion we bear in mind that the evidence may be incomplete, but even on that assumption, the material so far available presents an overwhelming case against her. Moreover, although the justification for her indisputable violence is claimed self-defence, as we have summarised above, her own accounts vacillate between having little recall of her behaviour and being the subject of an unlawful assault. In the PSR as we have described, she acknowledged that her behaviour was unreasonable and the violence on her part was unjustified.

43. There is no support in the prosecution evidence which we have summarised above, for her contention that drugs were administered merely because she interrupted staff or as a means of administering punishment. Although Mary Adewunmi-Aina refers to the appellant interrupting what staff were doing, the thrust of her evidence, and that of the other staff members, is that the appellant was behaving in an uncontrolled way and causing a disturbance. Nor is there any evidential basis to suggest that force was required to administer the intravenous injection, oral medication having been refused.

44. Moreover, having received the intravenous administration of lorazepam, it is clear from the CCTV evidence that the appellant reacted by running into the dining area and behaving aggressively while there, throwing chairs and crockery around. The appellant spent six minutes in the dining room. During this time there is no evidence of pursuit by staff. Nursing staff only entered the dining room and intervened when she could be seen trying to cut herself with a piece of broken crockery, and it was only after that that nursing staff sought to restrain her as it was their duty to do. The appellant resisted restraint forcefully and on the prosecution evidence (not only the witness statements of the nurses involved, but also the photographic evidence), bit hard on the wrists of a nurse who said she had to strike the appellant to break the bite. The appellant then threw punches and the nursing staff retreated. The CCTV evidence is entirely consistent with that summary. She was taken to a treatment room to have her self-inflicted injury treated. There she assaulted a third nurse by grabbing her under the chin.

45. In all the circumstances, we consider that the Judge was correct to refuse to vacate the pleas in this case for the reasons he gave. The more so in the absence of any waiver of privilege at that stage.

46. Further, this is not one of those exceptional cases where this court should permit the appellant to go behind her pleas of guilty. On the evidence and even adopting the lower threshold test to which we have referred, we are unable to conclude that a defence of self-defence had reasonable prospects of success. All the more, we cannot say it was a defence that would quite probably have succeeded. This is not a case where there is evidence of a defence of such strength as to negate her pleas of guilty. In the circumstances we cannot say that any injustice has been done to the appellant. Her convictions following her guilty pleas are not unsafe.

47. For all these reasons and despite the forceful submissions made on the appellant's behalf by Mr Knight, the appeal is dismissed.