IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/00958/B3
[2023] EWCA Crim 1626

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 13th December 2023

B e f o r e:

VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE TURNER

SIR ROBIN SPENCER

R E X

- v -

HARRY TURNER

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Mr A Ford KC appeared on behalf of the Appellant

Mr M McKone KC appeared on behalf of the Crown

J U D G M E N T
(Approved)

Wednesday 13th December 2023

LORD JUSTICE HOLROYDE:

1. On 22nd February 2023, following a trial in Crown Court at Teesside before His Honour Judge Adkin and a jury, the appellant was convicted of the murder of his wife, Sally Turner. He was sentenced to life imprisonment, with a minimum term of 17 years and 120 days.

2. He now appeals against his conviction by leave of the single judge.

3. As in the court below, we shall refer to the deceased as Sally. We recognise at the outset the grief suffered by all those bereaved by her death. We are very conscious of the human realities of this case, but we are sure that all concerned will understand that we must reach our decision dispassionately and in accordance with the law.

4. The appellant and Sally came together in 2016 and married in 2017. They were then aged in their late forties or early fifties. Each had adult children by previous relationships. One of Sally's daughters, to whom we shall refer as Ronnie, lived nearby. Ronnie was herself the mother of two young children, who were aged about four and a half and nearly three at the time of Sally's death. We shall refer to them collectively as "the children".

5. The elder child unfortunately suffers from serious medical problems, as a result of which she requires a high level of constant care. Concerns arose about Ronnie's ability to care for the children. In about 2019 the Social Services Department of the local authority made a Special Guardianship Order ("SGO"), which entrusted the care of both children to the appellant and Sally as a couple, though Ronnie continued to have contact with the children.

6. As part of the care arrangements for the children, two taxi drivers regularly attended at the

matrimonial home and drove the older child to and from her school. We shall refer to them simply as "Phil" and "Malcolm".

7. It appears that strains developed in the marriage. The appellant's case was that the causes of these strains included his concerns about the care of the children, his concerns about Sally's use of some of the funding provided by the local authority under the SGO, and his belief that Sally was having an affair with one of the taxi drivers.

8. The prosecution evidence included many text messages, including in particular messages passing between the appellant and Sally, and between Sally and Phil. The prosecution case was that the text messages showed that the appellant had an obsession with Sally and her sex life. Sally's text messages provided evidence, and the respondent accepted, that she was in a sexual relationship with Phil. The content of some of the messages passing between them was highly sexualised.

9. Around Easter 2022 the relationship between the appellant and Sally was at a very low ebb. On Good Friday Sally returned her wedding rings to the appellant and told him that their marriage was over. The appellant subsequently told a friend that he and Sally were splitting up as she was having an affair with one of the taxi drivers. The appellant said that he was devastated by this development and was having suicidal thoughts. At around this time the appellant also sent messages to other friends in which he spoke of beginning to hate his wife, though his evidence at trial was that he did not mean it and had always loved her. He also asked friends to assist him in his attempts to note Sally and Phil's movements and to record what was happening in the house when he was not there.

10. The appellant nonetheless continued to live in the matrimonial home, albeit that he slept in a different room, and he and Sally continued to have a sexual relationship.

11. In early June 2022 the appellant went to the offices of the local authority to report his concerns about Sally. He left the younger child alone in the house whilst he did so. As a result of that neglect, the local authority required the appellant's contact with the children to be supervised. For a time he moved out of the matrimonial home, and Ronnie moved in to help with the children.

12. Later in June, however, the relationship between the appellant and Sally improved, and in the days preceding the murder Sally's text messages showed that she was committed to the appellant as his wife and was looking towards their future together. Unbeknown to the appellant, the evidence showed that she was during the same period exchanging sexualised messages with Phil.

13. On the morning of 22nd June 2022 the appellant and Sally went together to a café. CCTV captured them holding hands as they went. At exactly the same time, Phil was sending a sexual message to Sally.

14. From the café, the appellant and Sally went to the matrimonial home. All appears to have been well between them. Sally trimmed the appellant's beard for him. A witness who spoke to Sally on the telephone around 10 am described her as sounding normal and not distressed.

15. Just before 11 am, the next door neighbour heard a woman's voice screaming very loudly for several seconds. The neighbour then heard footsteps within the house, followed about a minute later by another scream. The house then went quiet. It was the prosecution case that the screaming marked the time of the appellant's fatal attack on Sally. The appellant's evidence was that the killing occurred about an hour later.

16. The appellant's case was that at the house he and Sally had sat together in the sitting room and had kissed. Sally then prepared to leave to meet the older child, but she then whispered in the appellant's ear that he would never see the children again. The appellant said that this took him by surprise and that he did not know why she said it: it came out of nowhere. He said that he could not remember what happened then. He said the next thing he remembered was that he was standing over Sally's body, not knowing whether she was dead or alive. He did not remember anything about a knife, although he accepted from the evidence that he must have stabbed Sally repeatedly. Nor did he remember ever taking off his wedding ring. He changed his clothes, washed his hands and left the house to meet Ronnie nearby. He rang the police.

17. Police officers quickly attended the scene. Shortly afterwards Sally was declared dead.

18. Post-mortem examination of Sally's body showed that her death was caused by stab wounds to the face and neck and to the front and back of her torso. There were also wounds to her upper limbs, including defensive wounds. The pathologist identified a total of 78 incised wounds caused by at least 68 separate uses of a knife or knives. On the pathological evidence, all the wounds could have been caused by the same knife. Some of the wounds had broken or damaged bones, and must therefore have been inflicted with severe force. The jugular vein and trachea had been damaged, as had the lungs, the spleen and a kidney, resulting in fatal blood loss. The evidence indicted that there had been a slash wound across the throat which must have occurred at or near the end of the attack.

19. Examination of the scene showed that Sally had first been attacked in two different areas of the living room, and then further attacked as she moved into the hallway and towards the front door. A bloodstained knife, the blade of which was bent by impact on a hard object,

was found in the kitchen. A second knife, which had also been used to injure Sally, was found underneath her body. The appellant's wedding ring was found on the floor beside the body.

20. The appellant was arrested and interviewed under caution. On the advice of his solicitor, he made no comment throughout.

21. As the trial date approached, the appellant served a defence statement in which he admitted inflicting the fatal injuries, but raised the partial defence of loss of control. He asserted that Sally had told him that he would never see the children again.

22. At the start of the trial, the indictment was amended by adding a count of manslaughter. The appellant pleaded guilty to that count. The plea was not accepted, and the trial proceeded on the charge of murder. The fact that the appellant had admitted manslaughter was before the jury.

23. The appellant had been seen by psychiatrists instructed by both prosecution and defence. No medical issues were raised at trial, but there were agreed facts before the jury which included the fact that the appellant had said to both psychiatrists, when each had asked why he might have stabbed his wife, that "maybe she said something". The appellant accepted in cross-examination that he had not told either psychiatrist that Sally had told him he would never see the children again.

24. Further agreed facts stated that the appellant had described to both psychiatrists the importance to him of caring for the children. It was also an agreed fact that the appellant had no previous convictions or formal cautions.

25. At the conclusion of all the evidence, including the evidence given by the appellant, the judge gave a detailed ruling in which he held that insufficient evidence had been adduced to make out the partial defence of loss of control, because in his opinion the jury, properly directed, could not reasonably conclude that the defence might apply. The judge considered in turn each of the three elements of the partial defence, taking account of submissions made to him by both counsel. Having concluded in relation to the first element that there was insufficient evidence of a loss of control, the judge acknowledged that he was not required to say more. Nonetheless, he went on to indicate his conclusions on the second and third elements. In relation to each, he similarly concluded that there was insufficient evidence to go to the jury.

26. Thus the only issue which the jury had to decide was whether, at the time of the repeated stabbing, the appellant intended to kill or at least to cause grievous bodily harm to Sally.

27. The judge declined to give any direction to the jury about the fact that the appellant had no previous convictions.

28. As we have said, the jury convicted the appellant of murder.

29. We have had the considerable assistance of written and oral submissions from both leading counsel who appeared at the trial. On behalf of the appellant, Mr Ford KC argues two grounds of appeal: first, that the judge was wrong to withdrew from the jury the partial defence of loss of control; and secondly, that the judge was wrong not to give any form of good character direction.

30. As to the first of those grounds, Mr Ford submits respectfully that the judge fell into error at each stage of his ruling. Mr Ford emphasises very properly that he seeks only to argue that

there was sufficient evidence for the partial defence to be left to the jury for their consideration, not to argue that it would be bound to succeed. He points out that there was no evidence of any history of violence between the couple, save for one row between them. The appellant was a quiet man, described by witnesses who knew him as "unflappable" and a "gentle giant". Given those facts, and the evidence that the appellant and Sally had been on good terms only a short time earlier that morning, Mr Ford submits that the circumstances pointed to a loss of control as the explanation for the fatal attack. He further submits that, in giving his ruling, the judge made findings and drew inferences in relation to matters which should have been decided by the jury. Moreover, he submits that the judge's ruling was an inappropriate dismantling of the appellant's case of loss of control, rather than a rigorous evaluation of what findings a jury might properly make on the evidence.

31. Mr Ford goes on to argue that the result of the judge's ruling was that the appellant was deprived of the only defence which he had put forward. Given the nature of the attack upon Sally, he suggests that it was highly likely, if not inevitable, that the jury would find the necessary intent proved.

32. As to ground 2, Mr Ford submits that the judge was further in error in refusing, in relation to that remaining issue for the jury, to give any direction about the approach the jury should take to the appellant's previous good character, even in relation to its relevance to his credibility as a witness. Given that the appellant had been of positive good character up to the moment when he began the fatal attack, and that he had given evidence and been cross-examined at considerable length, it is submitted that there should at the very least have been a direction that good character was relevant to the credibility of his account of the relevant events.

33. On behalf of the respondent, Mr McKone KC opposes both grounds of appeal. As to

ground 1, he submits that the judge was plainly correct to rule as he did, and that this was an obvious case for withdrawing the partial defence of loss of control from the jury. He submits that all the evidence pointed to the true trigger for the appellant's acts being his wife's sexual infidelity, which cannot be a qualifying trigger. Moreover, Mr McKone submits that the statutory provisions, using terminology such as "extremely grave" and "seriously wronged", set a very high bar which the appellant could not surmount. He further submits that the appellant's reaction to anything Sally may have said plainly went far beyond the way in which a person with a normal degree of tolerance and self-restraint, and in the circumstances of the appellant, might have reacted.

34. As to ground 2, McKone submits that it would have been artificial to give any good character direction in relation to a man who had admittedly killed his wife by stabbing her so many times. The admission of unlawful killing, he submits, impacted both credibility and propensity. He acknowledges, however, that it would have been open to the judge to give at least a direction regarding the relevance of good character to credibility.

35. We are grateful to counsel for their assistance. We have summarised their submissions extremely briefly, but we have in mind all of the points which each has made.

36. The relevant statutory provisions are contained in sections 54 and 55 of the Coroners and Justice Act 2009:

> "**54. Partial defence to murder: loss of control**
>
> (1) Where a person ('D') kills or is a party to the killing of another ('V'), D is not to be convicted of murder if—
>
> (a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,

(b) the loss of self-control had a qualifying trigger, and

(c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

(2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.

(3) In subsection (1)(c) the reference to 'the circumstances of D' is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint.

(4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.

(5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.

(7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.

…

55. Meaning of 'qualifying trigger'

(1) This section applies for the purposes of section 54.

(2) A loss of self-control had a qualifying trigger if subsection (3), (4) or (5) applies.

(3) This subsection applies if D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person.

(4) This subsection applies if D's loss of self-control was attributable to a thing or things done or said (or both) which —

(a) constituted circumstances of an extremely grave character, and

(b) caused D to have a justifiable sense of being seriously wronged.

(5) This subsection applies if D's loss of self-control was attributable to a combination of the matters mentioned in subsections (3) and (4).

(6) In determining whether a loss of self-control had a qualifying trigger —

(a) D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence;

(b) a sense of being seriously wronged by a thing done or said is not justifiable if D incited the thing to be done or said for the purpose of providing an excuse to use violence;

(c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

(7) In this section references to 'D' and 'V' are to be construed in accordance with section 54."

37. There are thus three stages to be considered. Although sexual infidelity cannot itself provide a qualifying trigger for a loss of control, it may, and in an appropriate case should, be taken into account as part of the context when considering the second and third elements of the partial defence: see *R v Clinton* [2012] EWCA Crim 2, at [31] and [39].

38. The overall effect of the statutory provisions was explained as follows by the Lord Chief Justice, giving the judgment of the court in *R v Dawes* [2013] EWCA Crim 322 at [49]:

"When a person kills or is party to the killing of another person, unless he has acted in a considered desire for revenge, he is not to be convicted of murder, but of manslaughter, if each of three distinct ingredients which comprise the defence may be present. If evidence sufficient to raise an issue in relation to all three ingredients is adduced, the prosecution must disprove the defence. But the evidence is not sufficient for this purpose

> unless, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply. If so, the defence must be left to the jury and the prosecution must disprove it. …"

39. It is therefore clear that there must be sufficient evidence (not merely some evidence) to raise an issue in respect of each of the three elements of the partial defence. Under these provisions the court must take a stricter approach than was the case under the former partial defence of provocation under the Homicide Act 1957. A trial judge must perform a gatekeeping role involving what Lord Thomas CJ described in *R v Gurpinar* [2015] EWCA Crim 178 as "a much more rigorous evaluation of the evidence" to determine whether or not there is an issue which can properly be left to the jury, and must set out his conclusion in a reasoned judgment. Provided that is done, this court will not readily interfere with the judgment of the trial judge who had the advantage of seeing and hearing the witnesses: see *Gurpinar* at [16].

40. The role which the statute requires a judge to perform can be a difficult one. The nature of the judge's duty was explained by Davis LJ giving the judgment of the court in *R v Goodwin* [2018] EWCA Crim 2287 at [33]:

> "(1) The required opinion is to be formed as a common sense judgment based on an analysis of all the evidence.
>
> (2) If there is sufficient evidence to raise an issue with respect to the defence of loss of control, then it is to be left the jury whether or not the issue had been expressly advanced as part of the defence case at trial.
>
> (3) The appellate court will give due weight to the evaluation ('the opinion') of the trial judge, who will have had the considerable advantage of conducting the trial and hearing all the evidence and having the feel of the case. As has been said, the appellate court 'will not readily interfere with that judgment'.
>
> (4) However, that evaluation is not to be equated with an

> exercise of discretion such that the appellate court is only concerned with whether the decision was within a reasonable range of responses on the part of the trial judge. Rather, the judge's evaluation has to be appraised as either being right or wrong: it is a 'yes' or 'no' matter.
>
> (5) The 2009 Act is specific by section 54(5) and (6) that the evidence must be 'sufficient' to raise an issue. It is not enough if there is simply some evidence falling short of sufficient evidence.
>
> (6) The existence of a qualifying trigger does not necessarily connote that there will have been a loss of control.
>
> (7) For the purpose of forming his or her opinion, the trial judge, whilst of course entitled to assess the quality and weight of the evidence, ordinarily should not reject evidence which the jury could reasonably accept. It must be recognised that a jury may accept the evidence which is most favourable to a defendant.
>
> (8) The statutory defence of loss of control is significantly different from and more restrictive than the previous defence of provocation which it has entirely superseded.
>
> (9) Perhaps in consequence of all the foregoing, 'a much more rigorous evaluation' on the part of the trial judge is called for than might have been the case under the previous law of provocation.
>
> (10) The statutory components of the defence are to be appraised sequentially and separately; and
>
> (11) And not least, each case is to be assessed by reference to its own particular facts and circumstances."

41. To that, if we may respectfully say so, masterful analysis of the earlier case law, we would add only one point. In a circumstantial case, the second sentence of Davis LJ's seventh point should be understood as recognising also that a jury may draw or decline to draw inferences in the way which is most favourable to a defendant.

42. Further useful guidance as to the nature of the judge's task is to be found in the judgment of the court very recently given by McGowan J in *R v Drake* [2023] EWCA Crim 1454.

43. In the present case, the judge, having briefly stated the law, summarised the evidence as to the relationship between the appellant and Sally, the build up of events leading to 22nd June 2022 and the evidence – including the appellant's evidence – relating to that day. In doing so, he stated at [21] that two knives were used in the attack and continued :

> "A reasonable inference is that he selected a second knife from the block that was used to continue the attack on [Sally]. [The appellant's] account that he took the second knife back into the kitchen and put it on the work surface does not explain how or why a second knife had been selected. The second knife was selected because the first knife broke."

44. The judge's analysis of the first element of the partial defence can be summarised as follows:

(1) The appellant's case depended on an inference being drawn that he had lost his self control. The appellant himself said that he had no memory of what happened during the attack and there was therefore no evidence from him of a loss of control. That was a powerful point against the partial defence arising: see *Goodwin* at [40].

(2) The fact that the attack was "frenzied" did not necessarily prove a loss of control. The number of blows here suggested that there was, in truth, no loss of control, because, said the judge:

> "… the ready inference is that [the appellant] was in control enough to leave the lounge with the coffee cups, arm himself with a large knife, pause the attack when that knife stopped working, go back to the kitchen, select a second weapon from the knife block and then recommence stabbing her as [Sally] tried to escape."

(3) Although the defence relied on the contrast between the events of 22nd

June 2022 and the evidence of workmates that the appellant was "a gentle giant", there were limitations to that evidence and some of the text messages "could suggest that [the appellant] planned to harm" Sally. Text messages also showed him to have "an obsession bordering on paranoia" with Sally.

(4) The judge also found it

> "… reasonable to infer that [the appellant] targeted [Sally's] throat towards the end of the attack with a slashing injury which cut her windpipe. Individuals who have lost control are unlikely to be able to target vulnerable parts of the body."

(5) The appellant could not explain why his wedding ring had been placed beside Sally's body and, the judge said:

> "The inference is that [the appellant] was making it clear that the marriage was over, he had finished it by killing her, and he wanted to make that known to whoever would discover the body. Careful thinking about what he had done and about leaving a sign to others is not consistent with loss of control".

(6) After the killing the appellant left the house calmly, without checking whether Sally was alive and without calling an ambulance.

45. With all respect to the judge, we see force in the criticisms made of some of his reasons. Later in his ruling, the judge acknowledged that the jury might properly find that Sally had said words to the effect that the appellant would never see the children again. We have no doubt that he was correct so to acknowledge. In the reasoning which we have just summarised, however, the judge may have lost sight of that point when considering what inferences the jury might properly draw: for example, as to the frenzied nature of the attack. Further, it seems to us that in a number of his findings, the judge, in seeking to make the necessary rigorous evaluation of the evidence, fell into the error of focusing on his own

assessment of the evidence rather than on the findings which it would properly be open to the jury to make. It seems to us that the jury could quite properly have differed from the judge's views in their conclusions as to whether the appellant had paused in his attack to collect a second knife after the first had been damaged, rather than having had both knives in his hands from the outset; or as to whether the cutting of Sally's throat had been a targeted blow rather than one of the many wounds inflicted to various parts of Sally's body during the attack; or as to whether the appellant's wedding ring had been symbolically positioned rather than simply discarded; or as to whether the appellant's demeanour after the attack may have been explained by the fact that he had suffered a loss of control and did not fully appreciate what he had done. Those were all matters which in our view the jury should have been able to consider, whatever their ultimate decisions may have been.

46. Turning to the second element, the judge understandably placed emphasis on the fact that the appellant had not mentioned Sally's alleged remark about the children to either of the two psychiatrists. That is true; but it is of limited relevance for present purposes, because the judge went on to accept that the jury might properly find that the words may have been spoken. The basis of his ruling that there was no qualifying trigger was that, although there was no doubt that the appellant had great affection for the children, Sally's words were not of an extremely grave character and could not produce a justifiable sense of being seriously wronged. The judge's reasons for reaching that conclusion were, in summary, as follows:

> (1) The appellant knew that Sally could not prohibit him from seeing the children because that was up to the local authority; it was therefore a hollow threat.
>
> (2) The appellant's evidence was that Sally had made a similar threat on Good Friday, but that had had little impact. It was therefore difficult to see how a

similar remark on 22nd June 2022 could be of an extremely grave character.

(3) The appellant's own act of reporting Sally to the local authority could have had the result of his not seeing the children again;

(4) The appellant had accepted in cross-examination that he would have applied to the local authority to care for the children, which was inconsistent with any thought that he would not see them again; and

(5) The evidence strongly pointed to the trigger being anger about infidelity – a non-qualifying trigger under the Act – particularly bearing in mind what the appellant had said to Dr Barlow and the position of the wedding ring at the scene.

47. Again, with respect to the judge, we see force in the criticisms which Mr Ford makes of this part of the ruling. The jury were entitled to accept that the threat was uttered by Sally to a man who was very fond of the children, who felt it very important to be able to care for them, and who understood that if he and Sally were to separate the SGO would come to an end and different arrangements would be made for the care of the children. The jury were entitled to take the view that such a man, in the heat of the moment, might not be able to engage in the cool rationalisation of the judge's reasoning. In all the circumstances of this case, and having regard to the older child's needs and the appellant's previously expressed concerns as to Sally's priorities, the jury were also entitled to view the threat that he would not see the children again as constituting circumstances of an extremely grave character and causing the appellant to have a justifiable sense of being seriously wronged.

48. As to the judge's emphasis on what the appellant had said to Dr Barlow, it seems to us

that the relevant agreed fact on that point was equivocal in its terms, and the judge's ruling did not take into account that in cross-examination the appellant had specifically denied that the agreed fact should be interpreted in the way the prosecution, and here the judge, interpreted it. Again, those are matters which should in our view have been considered by the jury, whatever findings they might have made.

49. As to the third element of the partial defence, the judge said that if a man of the appellant's age, with a normal degree of tolerance and self-restraint, and in the circumstances of the appellant, had heard the words which the appellant attributed to Sally: "… he might respond by a short-lived loss of temper or by saying 'See you in court'. They would not stab their partner 68 times".

50. We recognise that at this stage of his ruling, the judge was deliberately dealing only briefly with a matter which he felt it was unnecessary to mention at all because of his earlier conclusions. We make every allowance for that when considering the judge's economy of expression. We do, though, think it important to note the specific words of section 54(1)(c) of the 2009 Act, which in the context of this case required consideration of whether a jury could properly find that a man in his early 50s, with a normal degree of tolerance and self-restraint and in the circumstances of the appellant, might have reacted in the same or in a similar way to the appellant by stabbing his wife. We also think it important to note that, in addressing this third element, the judge appears not to have taken into account, as part of the appellant's circumstances, Sally's infidelity, the older child's needs, and the importance of the SGO. With all respect to the judge, who understandably felt that this third element needed only brief mention in view of his conclusion as to the first element, the statute required a careful consideration of all the circumstances and of the findings which were properly open to a jury in the light of all those circumstances.

51. After careful reflection, we have concluded that the judge fell into error in his ruling on this third element, and ruled against the appellant on matters which ought properly to have been considered by the jury, again whatever findings they might have made.

52. It follows that we accept the submission that the judge reached a wrong decision in ruling that sufficient evidence had not been adduced to raise an issue with respect to the partial defence of loss of control. The conviction is, accordingly, unsafe.

53. We can address ground 2 briefly. In our judgment, the judge should have given a good character direction, albeit one limited to the relevance of good character to the appellant's credibility, and suitably tailored to the circumstances of this case. We think it unsatisfactory that there was an agreed fact before the jury to the effect that the appellant had no previous convictions, and that Mr Ford properly addressed the jury about that fact and about evidence of the appellant's good character, but the jury were not assisted by any judicial direction as to how they should approach that evidence. Given our decision on the first ground of appeal, we need not say more, and in particular need not consider whether ground 2 alone would have been sufficient to cause us to allow the appeal.

54. For those reasons, this appeal succeeds and the conviction must be quashed.

(The Crown applied for a retrial on the charge of murder)

(The court retired to confer)

LORD JUSTICE HOLROYDE:

55. We thank counsel for their assistance. We are not persuaded that there is such a substantial risk to the administration of justice in a retrial as would justify our making any order under section 4(2) of the Contempt of Court Act. Accordingly, this appeal may be

reported. We think that, in truth, it is highly unlikely that any juror would be perusing it between now and the date of any retrial.

56. We make the following orders:

1. We allow the appeal.

2. We quash the conviction of murder.

3. We order a retrial on the charge of murder.

4. We direct that a fresh indictment be served in accordance with rule 10.8(2) of the Criminal Procedure Rules, which requires the prosecutor to serve a draft indictment on the Crown Court officer not more than 28 days after this order.

5. We direct that the appellant be rearraigned on that fresh indictment within two months after this order.

6. We direct that the venue for retrial and the judge to whom it is allocated should be determined by the Presiding Judges for the North Eastern Circuit.

7. We direct that the appellant be held in custody; any bail application to be made on notice in the usual way to the Crown Court.

8. We direct that a transcript of the sentencing remarks must be provided by the prosecution to the judge conducting any sentencing hearing after the retrial.

57. That, we think, covers everything, gentlemen, unless either of you has spotted anything we have omitted?

58. **MR McKONE:** No, thank you, my Lord.

59. **MR FORD:** No, my Lord, thank you.

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

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