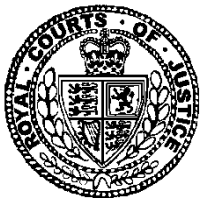
IN THE COURT OF APPEAL
CRIMINAL DIVISION



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CASE NO 2019 04246 B2

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 7 October 2020

LORD JUSTICE HOLROYDE

MR JUSTICE KNOWLES

MR JUSTICE CHAMBERLAIN

REGINA
v
JOE DEREK GYNANE

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MR E HENRY QC appeared on behalf of the Appellant.

MR G PATTERSON QC appeared on behalf of the Crown.

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J U D G M E N T

1. LORD JUSTICE HOLROYDE: On 9th October 2019, after a trial at the Central Criminal Court before HHJ Foster and a jury, this appellant was convicted of offences of murder of Mohamed Elmi (count 1) and causing grievous bodily harm with intent to Abdullahi Mohammed (count 2). He appeals against his convictions by leave of the Single Judge. His grounds of appeal relate to decisions by the judge not to discharge a juror on grounds of actual or apparent bias.
2. For present purposes, the facts of the offences can be briefly summarised. The appellant, now aged 35, has a history of drug abuse and had a number of previous convictions. In March 2019 he was awaiting trial on robbery charges. Having been remanded in custody for a time, he was granted conditional bail on 1st March 2019. He was unable to collect the prescription for methadone which had been issued to him whilst he was in custody. He left the prison and, instead of going to his specified bail address, he went to the Soho area of London.
3. CCTV footage showed that on the night of 2nd/3rd March he was in contact a number of times with Mr Elmi, who was then aged 37. It appears that the appellant acquired drugs from Mr Elmi. The prosecution case was that he subsequently searched for Mr Elmi in order to obtain more drugs. He was armed with a large kitchen knife. Shortly after 5 a.m., he found Mr Elmi and stabbed him in the abdomen and thigh, inflicting fatal injuries. At 11 a.m. that day, he met Mr Mohammed, then aged just 16, who accompanied him into an alley in order to sell him drugs. The appellant stabbed him twice in the thigh, causing serious injury. Mr Mohammed spent some days in hospital and underwent surgery.
4. The appellant was arrested a short time after that second stabbing. He said he had taken heroin and crack cocaine. He admitted the stabbings on a number of occasions. Whilst in police custody, he displayed sudden outbursts of aggressive behaviour.
5. The appellant pleaded not guilty to both charges. In relation to count 1, his case was that he was not guilty of murder but guilty of manslaughter on the ground of diminished responsibility. His case on count 2 was that he had unlawfully inflicted grievous bodily harm on Mr Mohammed but had not intended to cause him really serious injury. He admitted his guilt of the two lesser offences.
6. The appellant gave evidence at trial. He told the jury that he began using Class A drugs when he was aged about 13 or 14, and said that he had lost count of how many times he had tried to stop using drugs. He pointed to his previous convictions as evidence of his addiction to drugs.
7. Two consultant psychiatrists gave expert evidence to the jury. Their respective professional commitments placed some constraints on the timing of their evidence. Dr Farnham, called by the defence, diagnosed the appellant as suffering from polysubstance dependence syndrome, a dissocial personality disorder and cocaine psychosis. His opinion was that these disorders had the effect that the appellant's drug use was involuntary, and on his evidence the partial defence of diminished responsibility was available to the appellant. Dr Blackwood, called by the prosecution, also diagnosed a personality disorder. However, he disagreed with Dr Farnham as to the severity of that disorder and as to the extent of the appellant's dependence on drugs. On his evidence, the partial defence was not available to the appellant.
8. The trial began on 23rd September 2019. The judge gave some initial directions of law

to the jury, including as to the need for them to decide the case only on the evidence which they would hear during the trial. As in this court, Mr Henry QC appeared for the appellant and Mr Patterson QC for the respondent. By agreement between them, Mr Patterson in his opening speech explained to the jury that the appellant would be raising the defence of diminished responsibility, and he explained that the prosecution case was that the killing of Mr Elmi was murder not manslaughter. Mr Henry made a short opening speech in which he too referred to diminished responsibility and made clear that the jury would be hearing about the appellant's drug taking and past offending. Mr Henry urged the jury not to reach any conclusions until they had heard all of the evidence, in particular that of the psychiatrists. After those opening speeches, and before any evidence was adduced, the judge directed the jury to similar effect.

9. A number of notes were sent to the judge in the course of the trial. We are concerned with three of them, all written by a member of the jury to whom we will refer simply as "the juror". We will for convenience refer to the three notes as notes A, B and C.
10. On 25th September 2019 there was a short outburst from the appellant in the dock. The jury were asked to leave court. On their return, the judge explained that the appellant had apologised. He said:

    i. "As you know, in due course you will be hearing from two psychiatrists as to his condition, so I must direct you not to form any view about his conduct until you have heard all the evidence, and that includes the psychiatric evidence, and been directed by me on the law at the end of the case."

11. On 26th September the juror sent Note A, in which he asked eight questions. The first four related to aspects of the evidence which had been given and are uncontroversial. Mr Henry was, however, concerned about questions 5-8, which were as follows:

    i. "5) Is diminishing responsibility morally right and conducive to protecting the general public and helping the defendant realise his crimes and giving the defendant the opportunity to come to terms with them - especially as in the case of the defendant he has been sentenced for crimes of a similar nature on numerous occasions (16 times according to the defendant)? I am questioning the application of diminished responsibility in cases such as this.

    ii. 6) How do you objectively measure one's responsibility? To what degree should the defendant's responsibility be diminished?

    iii. 7) What is the agreed definition of 'addiction' among the scientific community?

    iv. 8) What is the objective diagnosis for discovering the presence of addiction in the human body?"

12. The judge allowed time for counsel to consider this note. At the start of the hearing on

the following day, 27th September, Mr Henry applied to the judge to discharge the juror. He submitted that, despite the judge's clear directions to the jury to keep open minds until they had heard all the evidence, the juror had already formed adverse conclusions, and by the terms of question 5 had displayed bias. The juror had not yet heard the evidence of the appellant or of either psychiatrist but was questioning the application of diminished responsibility to a case such as this. Mr Henry referred to the passage in Archbold which quoted the familiar test of bias expressed in Porter v Magill [2002] 2 AC 357 at paragraph 103:

> i. "... whether the fair-minded and informed observer, having considered the relevant facts, would conclude that there was a real responsibility that the tribunal was biased."

13. Mr Henry acknowledged the reference in Archbold to Gregory v United Kingdom 25 EHRR 577, in which it was held that firm directions to a jury, with particular emphasis on their duty to try the case on the evidence, had been a sufficient guarantee of impartiality. He submitted, however, that in the light of the juror's note, whatever direction the judge might give, an appearance of bias would remain.
14. Mr Patterson resisted the application. He submitted that no necessity to discharge the juror had arisen. The jury had been told that if they had any questions, they should raise them with the judge, and the note was no more than an appropriate request for guidance in relation to diminished responsibility. To this Mr Henry responded with a submission that the juror was not asking for guidance but showing that he had already jumped to a conclusion.
15. The judge refused the application. He pointed out that the jury had not yet been directed about the strict criteria applicable to the partial defence of diminished responsibility, had not yet been told that the burden of proof was on the defendant and had not yet been directed about the relevance of voluntary use of drugs in relation to that partial defence. He was satisfied that the note did not necessarily indicate bias. If it did indicate a view being taken as to the public policy of diminished responsibility, that could be remedied by directions he would give, both immediately and in his summing-up.
16. The jury then returned to court. The judge answered questions 1-4 in the note. He then said that there were other questions relating to diminished responsibility which he did not intend to read out. He continued as follows:

> i. "... of course it is entirely appropriate that at any time you may have any questions that you send me a note and it is very important that you keep an open mind. I have stressed that to you, as has Mr Henry in his opening remarks to you, and I have on a couple of occasions as well. Keep an open mind on all issues in the case until you have heard all the evidence and all the legal submissions and my summing-up.
>
> ii. As I say, you will be directed by me in due course as to the law of diminished responsibility. You must carefully apply the law to the facts as you find them to be. You do not question the rights or

wrongs of the law, this is not a court of morals, the law is what the law is. Whether or not diminished responsibility applies is to be determined by you in due course, having heard all the evidence and carefully applying to the facts the directions of law which I will give you.

iii. You have not yet heard the evidence of the defendant himself -- he is giving evidence -- or of the two psychiatrists and, of course, you must keep an open mind until you have heard all the evidence. It is important not to pre-judge any of the issues. You will recall the oaths or affirmations you made to return true verdicts according to the evidence, and that means according to all the evidence ignoring other considerations and applying to the facts as you find them to be the directions of law which I will be giving to you."

17. On 30th September 2019 the jury were permitted to retire for a time to a private room so that they could read a bundle of medical records relating to the appellant. The judge told them that he would in his summing-up direct them to elect a foreman. He suggested that they might like at this stage to choose "an interim or provisional foreman just to chair your discussions".
18. On 2nd October 2019, at or near the end of the appellant's evidence, the juror sent note B, which contained seven questions. The first was uncontroversial. Questions 2-7 were as follows:

i. "2) Is it true to say that the defendant has never made any sincere wilful attempt to cessate from drugs ever since taking them in 1998?

ii. 3) Does the defendant feel a better person when he's taking drugs?

iii. 4) Why did the defendant need a knife when he confronted the second victim?

iv. 5) Knowing the possible side-effects and potential consequences of taking drugs at the time the defendant started taking them and that he would still choose to take them despite the risks because they are enjoyable, does he not think this behaviour to be wholly irresponsible and demonstrable wilful self-stupefaction?

v. 6) Is this not a demonstration of the defendant taking control and dictating his own life?

vi. 7) Is the defendant not using addiction as an excuse in order to relinquish full responsibility for his crimes?"

19. Mr Henry renewed his application for the juror to be discharged. He referred to his

earlier application, which he acknowledged had been dealt with entirely fairly by the judge. He suggested that the juror's further note was in part a stream of consciousness, though he noted that question 2 contained adjectives indicative of moral and value judgments. He submitted that question 5 went to the heart of the case and showed that the juror had made up his mind before hearing from the psychiatrists. He submitted that question 7 demonstrated prejudice, and that the questions were not really questions at all but were indications of concluded views prejudicial to the defence and of a failure by the juror to comply with the clear directions which the judge had given.

20. Mr Patterson again resisted the application. He submitted that there was no reason to think the juror was not complying with the judge's directions: he was asking obvious questions when the appellant was in the witness box, which related to important issues which the jury would need to consider. The appellant would be able to give evidence answering those questions if he wished to do so.
21. The judge refused the application. He said that the note raised questions going to the issue of voluntary or involuntary intoxication with drugs, about which he would give directions in due course. The questions did not, in his view, show any prejudice or bias. Rather, he said:

    i. "They show preliminary views being expressed or not even that, they are questions being asked on issues that go to the heart of the case, which no doubt will be dealt with to a large extent by the expert evidence."

22. The judge indicated that he would again direct the jury not to form any concluded views until the very end of the trial.
23. The jury then came back into court. The judge did not read the contents of the note, but simply indicated that it asked questions going to some of the issues in the case. He directed the jury as follows:

    i. "Again, as I said before, it is very important that, although quite understandably now you have heard a considerable volume of evidence that you begin to form in your own minds at least preliminary views about the case, what you must not do is reach any final or concluded views until you have heard all the evidence, heard the speeches from counsel, you have heard my summing-up and at the appropriate stage you will be retiring to consider your verdicts in this case. That is the time when you can sit down and talk amongst yourselves and begin to form concluded views. Before that you really must not do so. Although these questions really are important and relevant questions you may feel, they will be dealt with I am sure to some extent by the experts you are about to hear and, furthermore, as regards the law you will get full directions from me in writing on the law of diminished responsibility and other aspects of the case as well."

24. The court sat late that day in order to complete the evidence of Dr Farnham. At the end of the day the juror submitted note C, which contained three questions:

    i. "1) How do you objectively measure just how in or out of control a patient is?

    ii. 2) What is the objective physical evidence for this inability to stop taking drugs?

    iii. 3) Is there not evidence to suggest that there is a significant correlation with psychoactive drugs and violence?"

25. On the following morning Mr Henry submitted that the terms of question 3 suggested some possible expertise or research interest on the part of the juror. He invited the judge to make inquiries of the juror less there be a situation in which the juror was in effect giving expert evidence to his fellow jurors during their retirement. Mr Patterson submitted that there was no basis for inferring any particular knowledge on the part of the juror. The judge decided that he would ask questions of the juror, and arrangements were made as a matter of convenience and practicality for that to be done in chambers in the presence of counsel with the proceedings properly recorded.
26. The judge indicated that he wished to know if the juror had any specialist knowledge or interest, academically, professionally or in any other way, in areas such as psychiatry, mental health issues within the criminal justice system, pharmacology or anything like that. The juror said that he had an interest, but nothing academic. He said he had a troubled upbringing and his mother took drugs during his childhood:

    i. "So through my childhood and my life I have seen the consequences of these things and how they affect not just family life but other people as well. So that is a reason why I have a personal interest in such things."

27. The juror went on to say that in the questions he had asked in his notes he was not saying "these things are true". He explained:

    i. "I am merely saying, is it ... you know, is this true or not? I don't know. But that is why I felt I should put it to the court and put it to you to decide whether any questions I have are true or not. Are they relevant or not? I feel that's important when it comes to deliberating. I don't wish to ask any questions to the jury members that is either misguided, wrong, inaccurate or irrelevant. That is my reasoning."

28. Counsel were given an opportunity to ask any questions of the juror, but understandably neither wished to do so.
29. Counsel then made submissions. Mr Henry again applied for the juror to be discharged. He submitted that the juror clearly found it difficult to restrain his sense of moral

repugnance and there was a danger that that would condition his view of the case. Mr Patterson again resisted the application. He submitted that it would be unrealistic to exclude any juror who had any experience of the harm caused by controlled drugs, and that the questions asked by the juror did not suggest that he would not comply with the judge's directions.

30. The judge in his ruling referred to the juror's expressed wish not to raise anything irrelevant or misleading. He was satisfied that all the juror was doing was bringing to the jury his life experience, as others would do. He ruled that the test for bias or the appearance of bias was nowhere near met. He indicated that he would again stress to the jury the importance of reaching their verdicts on the basis of the evidence and arguments which they heard in court and nothing else.
31. The evidence was then concluded, and in due course the judge summed up. He gave detailed directions of law, with copies in writing, and provided the jury with routes to their verdicts. He again emphasised, as he had said he would do, that the jury must decide the case only on the evidence.
32. As we have indicated, the jury convicted the appellant on both counts. When they returned their verdicts, it was the juror who acted as foreman.
33. The grounds of appeal contend that the juror should have been discharged for actual or apparent bias after note B or after note C. The juror displayed actual bias and entrenched prejudice or at the very least the incontrovertible appearance of bias from the early stages of the trial, thus undermining the safety of the convictions. As the foreman from 30th September onwards, the juror had the opportunity to shape the jury's reception of the evidence they heard from around that time. No judicial direction was capable of remedying this unfairness as the juror had ignored repeated judicial directions.
34. In his written and oral submissions in support of these grounds Mr Henry accepts that in every other respect the judge conducted the trial impeccably fairly and gave the jury clear and correct directions of law. He further accepts that the judge was entitled to refuse the first application to discharge the jury, and he pursues no ground of appeal specifically in relation to that ruling, though he argues forcefully that the terms of note A are highly relevant when considering the judge's later rulings. He submits that the judge was wrong to refuse the second and third applications for the juror to be discharged. The judge, he submits, was led into error by submissions on the part of the prosecution which failed to acknowledge that the juror had clearly displayed actual bias or had at the very least undoubtedly given the appearance of bias. He suggests that the juror was probably the foreman of the jury from 30th September onwards and was therefore able to influence the views of other jurors.
35. Mr Henry has taken us, in addition to the decision in Porter v Magill, to the decision in Abdroikof, Green and Williamson [2007] 1 WLR 2679. He particularly relies on the passage at paragraph 15 of that judgment in which Lord Bingham said that the fair-minded and informed observer must adopt a balanced approach and is to be taken as a reasonable member of the public, neither unduly complacent or naive nor unduly cynical or suspicious.
36. In addition, Mr Henry has taken us to the cases of Khan [2008] 2 AC 13; LS [2009] EWCA Crim 104; KC [2009] EWCA Crim 2458; and Pouladin-Kari [2013] EWCA Crim 158. He attaches particular emphasis to the last of those cases, in which the defendant was convicted of attempting to export restricted goods without the necessary licence.

A juror had sent a note to the judge indicating that in his professional capacity he had supervised similar transactions, and that in his organisation the defendant's actions would have resulted in automatic rejection of the transaction on compliance grounds. The juror in his note expressed concern that he would find it difficult to forget that knowledge and to judge the case on the evidence and that his views might affect the conclusions of other jurors. He said that he was happy to continue to serve on the jury if the judge felt it appropriate for him to do so. The judge refused an application to discharge the jury. An appeal against conviction was allowed. The court held that the juror had taken his responsibilities very seriously and was not biased against the defendant, but a fair-minded observer would have concluded that there was a real possibility of unconscious bias. Mr Henry points out that in contrast to that case, the juror here had not taken any step to bring his relevant personal experience to the attention of the judge. Moreover, Mr Henry submits, when the juror was asked about that matter by the judge the answers which he gave were either untrue or, at best, disingenuous. Mr Henry submits that the answers which the juror gave to the judge could only be regarded as providing any comfort on the issue of impartiality if one were to ignore what Mr Henry suggests is the lack of self-awareness on the part of the juror, reflected in the terms of his questions.

37. Mr Patterson submits that the judge made no error of law, that the issues about which he gave his rulings were facts-sensitive and that he was entitled to reach the decisions he did. He submits that there is no basis for assuming that the juror was the foreman from 30th September onwards, and he points out that at no point in this quite lengthy trial did any of the other eleven members of the jury raise any concern as to the conduct of the juror. Following from that, Mr Patterson emphasises that the verdicts were the verdicts of twelve jurors, not of one. He emphasises that the jurors collectively had been invited to send notes if they wished assistance from the judge. He submits that when the juror was asking questions in note A he did not yet know, because no relevant direction had yet been given, that the appellant would have to surmount a number of hurdles before the partial defence of diminished responsibility could arise. In those circumstances, submits Mr Patterson, it was not inappropriate for the juror to be asking questions about whether the partial defence could apply to a case such as this.
38. Mr Patterson relies upon the familiar decision in Abu Hamza [2007] 1 Cr App R 27, citing the experience of judges as to the ability and willingness of jurors to follow legal directions. Mr Patterson suggests that, whilst the juror's questions might be said to show that the juror was coming to towards a conclusion adverse to the appellant's case, they did not show bias and did not show or suggest that the juror was relying on anything other than the evidence in the case.
39. We are grateful to both counsel for their written and oral submissions, and in particular for the assistance they have both given the court today by their helpfully focused oral submissions.
40. A judge only has the power to discharge a juror where there is an evident need to do so. An evident need may arise if a juror displays actual or apparent bias. Jurors bring with them their life experiences. That is one of the strengths of the jury system. Where a particular juror's life experiences are said to have caused him or her to display actual or apparent bias, the test to be applied is that stated in Porter v Magill. A trial judge must make a judgement of fact as to whether, in the circumstances of the particular case, that test is met.

41. As was pointed out in LS at paragraph 7, this court on appeal cannot interfere with the judgement of the trial judge on an issue of this kind unless it concludes that the decision was outwith the range of reasonable responses to the issue with which the judge was faced. We note that in LS the trial related to alleged offences of historic sexual abuse of young girls. A juror reported that she had suffered panic attacks as a result of the evidence bringing back memories of what had happened to her as a child. The judge, after making inquiries, was satisfied that the juror would give the defendant a fair and impartial trial, unprejudiced by her own experiences. An appeal against conviction on the ground that the juror should have been discharged was dismissed. We regard that case as an important illustration of the need for a trial judge to make a fact-specific judgment as to the specific issue in the case.
42. As Mr Henry realistically recognises, he has to argue that the decisions of the judge refusing to discharge the juror on the applications made after note B or after note C were not properly open to him because they were outside the range of reasonable responses.
43. We accept that some of the questions asked in those notes contain elements of apparent moral judgment, and we understand why Mr Henry was concerned on the appellant's behalf. The issue we have to decide is whether it was open to the judge to conclude, in relation to each of the applications, that there was no actual bias on the part of the juror, and that a fair-minded and informed observer would not consider there to be a real possibility of bias. In resolving that issue, we regard the following points as important.
44. First, Mr Henry rightly accepts that no criticism can be made of any of the directions which the judge gave to the jury or to any other aspect of his handling of the case. In short, save for refusing the relevant applications, the judge did not put a foot wrong. It is therefore evident that he was fully alive to all the issues in the proceedings and fully in control of his court.
45. Secondly, it is accepted that the judge was entitled to reach the decision he did when the first application was made to discharge the juror after note A. We accept, of course, Mr Henry's point that the contents of note A nonetheless remain very relevant to his submissions in respect of the later applications. The relevance of the decision on the first application is that the judge made it on the basis that the questions asked by the juror did not indicate that his mind was already closed, and did not appear to give rise to a real possibility that his mind was closed.
46. Thirdly, the opening speeches of counsel understandably gave the jury no more than an outline of the issue of diminished responsibility. No detailed explanation of that partial defence and no direction as to the circumstances in which a defendant may rely on it were given until the summing-up. There is no suggestion that the juror had any legal training or any other source of information about the partial defence. The judge accordingly had to assess the juror's questions on the basis that they were not informed by any detailed knowledge of the legal concept of diminished responsibility. It would have been wrong to treat any apparent expressions of a moral stance on the concept as being grounded in a full understanding of it.
47. Fourthly, we are unable to accept that there was a clear inference to be drawn that the juror had been in the position of foreman from 30th September onwards. It is not known whether the jury on that date adopted the judge's suggestion of choosing an interim foreman. Even if they did, it is not known whether they choose the juror. Insofar as it is suggested that the juror was in a position to exercise special influence over the other

members of the jury, we therefore reject that argument. We note also that no other member of the jury at any stage expressed to the judge any concern about the conduct of the juror. Nor do we see any substance in the criticism that the juror did not reveal his life experiences until asked. This is not a case in which it was felt necessary or appropriate to make any specific enquiry of the jury panel, on the ground that anyone with a particular experience of the consequences of drug abuse should not serve as a juror on this trial.

48. Fifthly, it is important to view notes B and C in the context of their timing. Note B was written when the appellant had given evidence about his drug use and had asserted that he had made repeated efforts to overcome his addiction but had been unable to do so. The questions asked related to the appellant's attitude to his drug-taking. We agree with the judge that they were questions which were relevant to the issue of whether the appellant's drug use was voluntary or involuntary. Note C was sent after Dr Farnham had given evidence. The questions asked were plainly relevant to the jury's evaluation of that expert evidence. We note that Mr Henry's concern on this occasion was primarily as to whether question 3 indicated some relevant expertise, not whether the questions were indicative of a closed mind.
49. Sixthly, the judge inquired into the suggested possibility that the juror had some expert knowledge. He was in the best position to assess the truthfulness of the juror's answers. It is clear from his ruling that he accepted the juror's answers and was satisfied that the juror could be true to his oath or affirmation. He was entitled to make those findings. We do not accept Mr Henry's submission that the judge was bound to find that the juror was either not telling the truth or was deceiving himself as to the extent to which his childhood experiences had affected his ability to give this appellant a fair trial.
50. In those circumstances, we are satisfied that the judge was entitled to refuse both the relevant applications for the reasons which he gave. He was entitled to view the questions asked in notes B and C as genuine questions seeking guidance and information, and not indicating any concluded view. In contrast to Pouladin-Kari, where the juror concerned had himself doubted his ability to try the case only on the evidence, the juror here had told the judge in chambers that he wanted to know what was and was not relevant, and wanted to avoid raising anything which was incorrect or irrelevant. There is, in our view, no basis on which it could be said that the judge was not entitled to accept those statements or was bound to treat them either as untrue or as revealing a lack of self-awareness. Throughout the trial the judge made crystal clear the duty of the jury to reach their verdicts only on the evidence which they heard in court. The judge found and was entitled to find that the juror could and would comply with those directions. It did not follow from the fact that the juror's life experiences gave him reason to have views as to drug abuse and its consequences that he was, or would appear to the informed bystander to be, incapable of complying with the judge's directions or of remaining true to his oath or affirmation and giving the appellant a fair trial. We do not accept that the questions asked in the notes showed that the juror repeatedly disobeyed the judge's instructions. The judge was entitled to conclude that they were genuine questions, seeking relevant information and guidance.
51. For those reasons, grateful though we are to Mr Henry for his submissions on the appellant's behalf, we reject the grounds of appeal. We would add that the case against the appellant was very strong. We are satisfied that the convictions are safe. This

appeal accordingly fails and is dismissed.

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

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