Neutral Citation Number: [2020] EWCA Crim 396

Case No: 201901158 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM LEEDS CROWN COURT
HHJ MILFORD
T20077701

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/03/2020

Before :

THE VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE FULFORD)
MR JUSTICE LEWIS
and
SIR PETER OPENSHAW

- -

Between :

Nicholas Ian Roddis	**Appellant**
- and -	
The Queen	**Respondent**

- -
- -

Mr Jonathan Rose (instructed by **LP Evans Solicitors**) for the **Appellant**
Mr John Price QC (instructed by **CPS Appeals & Review Unit**) for the **Respondent**

Hearing dates: 27th February 2020

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Approved Judgment

Lord Justice Fulford:

Background

1. The appellant, whose case has been referred to this court by the Criminal Cases Review Commission ("CCRC") has faced criminal charges on a number of occasions over the last 12 years as summarised below, along with the instances when this court and the CCRC have been involved.

2. On 17 July 2008, in the Crown Court at Leeds before Judge Milford Q.C. and a jury, the appellant was convicted of placing an article with intent (a "hoax" bomb) (count 1) and engaging in the preparation of an act of terrorism (count 2). These are the convictions with which we are principally concerned in this case.

3. On 18 July 2008, he was sentenced to 7 years' imprisonment.

4. On 12 March 2009, the full court refused his referred application for leave to appeal conviction, which had been advanced on count 2 only.

5. On 18 March 2011, the Criminal Cases Review Commission ("CCRC") declined to refer the appellant's application as regards the 2008 convictions to the Court of Appeal.

6. On 20 February 2013, at the Central Criminal Court, the appellant was acquitted of engaging in the preparation of an act of terrorism. The prosecution relied on the appellant's previous conviction in 2008 as bad character evidence (*viz.* demonstrating propensity). The defence case in this regard was that the 2008 conviction was wrong, and it was contended the appellant was not a terrorist and did not have the intention to commit an act of terrorism.

7. On 9 April 2014, the appellant submitted a second application to the CCRC in respect of the 2008 conviction. This application has led to the present appeal.

8. On 4 May 2016, in the Crown Court in Sheffield before Judge Moore, the appellant pleaded guilty to possession of a firearm by a convicted person (count 2) and was sentenced to 18 months' imprisonment. An offence of possession of a bladed article was ordered to lie on the file (count 1). The appellant made a successful application to stay the prosecution as an abuse of process for an offence of possession of an explosive substance (count 3).

9. On 24 May 2016, this court dismissed the prosecution's appeal against a terminating ruling under section 58 Criminal Justice Act 2003, confirmed the ruling of the trial judge and ordered that the appellant be acquitted of count 3.

10. The Decision to Refer under section 9 Criminal Appeal Act 1995 was made by the CCRC on 25 March 2019 (see [7] above).

The present proceedings

11. Nicholas Roddis, accordingly, now appeals against his conviction for the 2008 offences. This is on the sole basis that a post-trial diagnosis of Autistic Spectrum Disorder may affect the safety of his conviction. The accompanying application to rely on fresh evidence (Dr Blackwood) pursuant to section 23 of the Criminal Appeal Act 1968 has been referred to the court by the CCRC. At the outset of the hearing, we permitted this evidence, along with the evidence of Dr Joseph, the respondent's psychiatrist, to be given *de bene esse*, reserving our decision on admissibility.

12. The relevant facts are straightforward. On the 8 May 2007, around 9.30pm, the appellant, dressed in an obviously false beard and thick glasses, left a hoax bomb inside a bag on a bus in Rotherham. The fake device was composed of bags of sugar wrapped in tape, along with wires and an alarm clock, and it was packed with nails. A message attached to the imitation bomb, written in Arabic, was to the following effect "There is no god but Allah, Mohammed is the messenger of Allah. God is great, God is great, God is great, Britain must be punished". It was signed by "The Al Qaeda organisation of Iraq". The other passengers were evacuated and the police were called. A number of passengers gave evidence that they were shocked or terrified when they looked inside the bag. The device was destroyed in a controlled explosion. The appellant was not apprehended at the time.

13. On 5 July 2007, the appellant met with former work colleagues. He was wearing an Arab scarf and was speaking in Arabic. He produced a number of railway fog signals (small explosive devices used to alert railway workers of an advancing train) which he said were landmines, along with some imitation bullets. In due course, he was to say that he took the fog signals from a train in a shunting yard in Doncaster and he purchased the bullets on eBay.

14. The appellant returned to his former place of work on 11 July 2007 for an interview with another company in the same building. Some of his former colleagues, who were concerned as to his activities, called the police. He was arrested.

15. The police searched his accommodation in Rotherham. They found bottles of hydrogen peroxide and acetone, which, if combined with sulphuric acid, could be used to make the explosive TATP. The police discovered that the appellant had made enquiries on the internet about buying sulphuric acid and making explosives. They also recovered extensive material from his telephone and computer relating to the war in Iraq, insurgency and terrorism. In particular, he had 19 graphic video clips of beheadings, including the execution of a UK hostage, stored on his telephone. The appellant had filmed footage from a television or computer screen of the bombing of the Iraq Parliament, the murder of an Iraqi parliamentarian and the detonation of an explosive device. There was a folder containing material downloaded and printed from the internet on how to make explosives. The police found a word document created by the appellant which included observations on bombs "to hit" Rotherham, a bomb in Rotherham market and a "second bomb", with related comments

on “electric alarm clock, electric motor, wire, explosive ingredients”. There were 35 intact railway detonators.

16. The appellant was interviewed for many hours following his arrest. He denied any intention to engage in terrorist activity. He also denied having accessed bomb-making websites and said he did not know how to make a real bomb.

17. The prosecution case at trial was that the appellant was an isolated and angry young man, preparing to commit an act of terrorism. It was suggested he identified with the ideology of Islamic militants and had personally sourced two of the three components necessary to make an effective explosive device, which he intended to set off. In all the circumstances, it was argued that he was not a harmless fantasist but a dangerous man “poised for action”.

18. As part of the prosecution’s case, friends and acquaintances gave evidence of his interest in explosives and his desire to join the parachute regiment. He had told at least one colleague at work that he intended to convert to Islam. Text messages were seen on his mobile telephone about putting a bomb on Hellerby bridge, bombing his own home, and threatening a friend. In that context, first, an explosives expert testified that the appellant had the right quantities of some of the ingredients necessary to make TATP and, second, a pharmaceutical expert confirmed that hydrogen peroxide can be used as mouthwash but normally at a lower strength than that possessed by the appellant (this was to rebut his explanation that the hydrogen peroxide was for teeth whitening). Furthermore, in order to meet another of the appellant’s contentions, he testified that acetone has no therapeutic use for treating warts. There was extensive documentary and electronic material, showing, *inter alia*, the appellant’s internet searches and the material he had downloaded. The prosecution relied on a number of lies told by the appellant in interview, in which he tried to downplay the incriminating evidence gathered by the police.

19. There was evidence at trial that the defendant had taken a friend to an old railway line where, wearing a balaclava and chanting a slogan similar to “Allahu Akbar” (God is Great), he had set off rockets. There was another video of the various locations where the bombs which were fatally detonated in London in July 2005 had been made. The prosecution at trial highlighted that a component of these lethal devices had been the same primary explosive, TATP. There was a further video labelled “Al Qaeda”, and yet others with footage of the detonation of explosives. The police exhibited diary entries relating to the preparation of bombs.

20. The defence case was detailed and varied. The appellant gave evidence that he had been upset following the divorce of his parents and their refusal to allow him to live with either of them. He had worked for a firm called Loans Assured from November 2006 to March 2007 when he was dismissed. He claimed that someone from a local library had given him a copy of the Koran which was in his possession. It was suggested on his behalf that he had an innocent interest in military matters and was prone to engage in childish behaviour. He accepted that he had left the hoax bomb on the bus but claimed it was meant as a joke. It was suggested that he was obviously in fancy dress and that other passengers were laughing at him. He contended that he did not intend for anyone to take the bomb seriously.

21. He maintained that he had no intention to engage in terrorism. Instead, he had an interest in Islamic militancy but only because he wanted to join the Parachute Regiment who were fighting in Iraq and Afghanistan at the time. He said he started recording and viewing a wide variety of items and events in 2006 with his first mobile telephone, some of which he shared with his friends at work. He denied that he had any terrorist or harmful intention as regards any of the items either found in his room or on his electronic devices. Instead, he had a wide range of interests such as nuclear fission, warfare (including particularly World War Two), human motivation, writing a novel and gaming. As described in [18] above, he suggested the hydrogen peroxide was for use as a mouthwash and the acetone to treat warts. It was claimed on his behalf that showing the items to his work colleague was attention-seeking behaviour, somewhat contrary to what would be expected of a terrorist.

22. Against that background, it is important to have in mind the real issues in this case. On count 1, given the appellant agreed he left the hoax bomb on the bus, the issue was whether he intended that others on the bus should believe it was a genuine bomb which was likely to explode causing damage or injury. On count 2, the jury needed to be sure that the appellant intended to commit terrorist acts and that with that intention acted in a way that was preparatory to committing terrorist acts.

The Appeal

The Expert Evidence

23. As indicated above ([11]), this appeal is argued on a single basis, namely the post-trial diagnosis by Dr Blackwood in his report of 21 December 2018 of the appellant's autistic spectrum disorder. He has summarised his conclusions as follows:

> "The absence of an understanding of his impaired appreciation of the social world and his fixed interests, abnormal in intensity and focus, clearly impacted upon the conduct of his defence. This potentially calls the safety of the original convictions into question"

24. Before the 2008 trial, a clinical forensic psychologist, Doctor Michael Heap, prepared a report dated 6 June 2008 on the instructions of the appellant's solicitors. Dr Heap described what the appellant said about the bomb hoax (paragraph 11.24):

> "He asserts that the hoax bomb was the result of his liking for playing practical jokes and dressing up in disguises. When he planted the hoax bomb he had dressed similarly before then. As in his statement, he told me that he had had the beard for three or four weeks; he wore it when he was out and people used to laugh and point at him and he thought this was funny. He agreed that he looked 'like an idiot', but that did not bother him. He said that he did not think that the hoax bomb incident would be taken seriously, especially because it took place in Maltby, not London."

25. Dr Heap considered that the evidence he had seen did not indicate that the appellant was diagnosable with a mental disorder or learning disability. Instead, he was clearly very immature and was psychologically vulnerable. He suggested that the appellant might have

been acting out the fantasy of being an Islamic militant while not intending to undertake anything harmful. However, as Dr Heap observed, this was not the appellant's defence.

26. Dr Bloye, a consultant forensic psychiatrist, was also instructed before the trial by the appellant's solicitors. He diagnosed a personality disorder, as defined within its broadest terms but the distribution of abnormal traits did not correlate closely with any specific disorder. He identified the following overlapping categories of personality disorder: schizoid (excessive preoccupation with fantasy and introspection, preference for solitary activities, insensitivity to prevailing social norms and conventions, little interest in having sexual experiences), emotionally unstable (intense and unstable emotional attachments, excessive efforts to avoid abandonment, suicidal gestures), histrionic (self-dramatisation and theatricality, suggestibility, attention seeking behaviour and continual seeking of excitement), and dependent personality disorder (fear of abandonment, allowing others to make life decisions). Given its relevance to our conclusions, we emphasise at this stage the schizoid trait of "insensitivity to prevailing social norms and conventions". He concluded:

> "Mr Roddis denies the main substance of the criminal allegations in respect of having the intention to commission, prepare or instigate an act of terrorism. Mr Roddis is fit to plead and there is no evidence to indicate that he lacked the capacity to form intent at the material time. The question of intent is therefore a matter for the court."

27. Prior to his trial in February 2013 (see above), in November 2012, Dr Heap was once again instructed to provide a psychological report. He confirmed his original findings and concluded:

> "… I have concerns for his future mental health, there are indications that the abnormalities in his personality are intensifying and that he is becoming increasingly alienated and more detached from everyday realities. Thus in the long term he is at high risk of developing a serious mental illness."

28. Dr Bloye saw the appellant the same month. He observed that there had been no developments that would undermine his original diagnosis and he considered it noteworthy that a number of professionals in the community had observed a pattern of preference for solitary activities, insensitivity to prevailing social norms and conventions, a limited interest in relationships and problems with his mood. He did note, however, that there were a number of indicators that his mental health had deteriorated. He considered it difficult to make a definitive diagnosis but he observed increasing anxiety and paranoia that was associated with tension and hypervigilance.

29. Dr Al-Attar conducted a detailed autism assessment at HMP Manchester on 30 October 2013. She identified a multitude of autistic traits although she did not confirm this diagnosis. Dr Richard Smith, a consultant psychologist, on 25 January 2014, decided that he met the criteria of having a "high-functioning autism spectrum disorder (Asperger Syndrome) due to difficulties with social interaction, social communication, flexibility of thought and sensory experience. A senior clinical psychologist, Dr Rachael Collins, on 25 October 2015 confirmed the diagnosis of autism and suggested that the appellants autism appears to have impacted adversely on all areas of his life including at school, at home, with his peers and as regards his

own mental health and well-being. He has found it difficult to fit in and has tried to impress others. He has struggled with social communication and he has what are described as "excessive interests".

The Impact Assessments

30. In evidence, Dr Blackwood indicated that his research work involves neuro-developmental disorders, a field about which there is now greater understanding than at the time of the appellant's trial in 2008. A group of people who were once thought of as "odd" and for whom there was a diagnosis of a personality disorder, will now often be diagnosed as autistic. A less serious version of autism used to be referred to as Asperger syndrome; currently, it is viewed as coming at the "mild end" of the autistic spectrum. Dr Blackwood rehearsed in his report and in his evidence what he described as the appellant's "deficits in social communication and social interaction", such as social-emotional reciprocity, non-verbal communicative behaviours and his difficulties in developing, understanding and maintaining relationships. These findings are distinct from his neuro-developmental disorder. Dr Blackwood had seen all of the reports which are summarised above. He considered the conclusions of Dr Bloye and made no criticisms of his findings. In the "opinion" section of his report there are a number of "**Impact Headings**" which contained the questions that he was asked to consider. We have analysed his responses in turn.

> **Impact 1**
> **"The potential impact of the autistic spectrum disorder on the actions that resulted in his conviction for the index offences: firstly, on the placing of the hoax bomb"**

31. It is necessary to set out Dr Blackwood's conclusions in this regard in full:

> "Mr Roddis's interest in explosives is one of his long-standing intense interests, emerging in childhood. He is socially naïve, and prone to misjudge social relationships. When Mr Roddis attempts to engage others, he typically does so in a socially gauche way which may include "shock" behaviours. Historically, practical jokes had gained him a degree of acceptance within his family and social care group. He struggles to fully understand the intentions, desires or beliefs of others, and to separate his own understanding from theirs. The hoax could be thought of as the action of a man who enjoys the attention and possible acceptance of others which derives from "prankish" behaviours. The "prankish" nature of the hoax is supported by the "dressing up" element: there is clearly no carefully considered attempt to act covertly on the night in question. The mentalising deficits arising from the disorder are such that he considers that others will find his act as amusing as he does. He does not consider the context of heightened fear towards such materials in the minds of others arising from recent domestic terror incidents. Thus, he appears to have produced a hoax bomb designed to look realistic, in the hope that he will provoke laughter or shock, but without fully recognising the extent of others fears of an explosion which are likely to emerge in the context of the time."

32. Particularly relevant to Impact 1 and count 1, therefore, is that – in a mild form – he struggles fully to understand other peoples' position and he fails to appreciate the effect on others of his clownish and prankish behaviour. This is because he is dominated by his own mental state with the result that he does not take into account his effect on others. In the context of a hoax, therefore, he would not necessarily understand or think about how frightening this behaviour would be. The appellant may have thought that his activities on the bus were a joke from the outset.

33. Dr Blackwood accepted his inability to understand the effect he has on others may explain why he is indiscreet in his actions, such as adopting his unusual costume on the bus and making seemingly unguarded statements to colleagues at work .

34. Whilst the diagnosis of autism, which post-dates the trial, has seemingly given a broader understanding of the appellant's clinical position, in many respects the main elements of Dr Blackwood's conclusions, as relevant to Impact 1, were known before the 2008 trial. By way of general matters, Dr Heap in his report of 6 June 2008 referred to the appellant's innocent explanations for his behaviour, including the suggestion that his obsession with Islamic militancy was due to his ambition to serve his country in the army; his claim that the purchase of the hydrogen peroxide and acetone had been for legitimate purposes; that he had been merely showing off to his friends when showing the bullets and the fog signals; and his contention that the planting of a bomb hoax was a prank and he did not predict the drastic consequences. Dr Heap observed that "his assertion that he was merely showing off to his friends is consistent with his need for attention, as with the very public way he set about planting the hoax bomb, this action also according with his excitement seeking propensity. I am limited in any psychological comment I can make on his claim that he did not anticipate the serious consequences of this. I do not consider that lack of intelligence is an explanation. He is, however, immature and naïve about life and this may be relevant. This is as far as I can take this point."

35. Critically, Dr Heap went on to suggest:

> "There is another explanation for Mr Roddis's behaviour which is consistent with a more benign interpretation than that he was seriously committed to terrorism. This is that he was acting out the fantasy of being a terrorist or terrorist sympathiser while not actually intending to engage in any real acts of terrorism, and that he wanted others to give him some degree of attention or recognition as being involved in this role. This is not dissimilar to his fantasising about being a soldier and acting out the role with his friends in play even beyond his childhood years.
>
> In my opinion this is a credible explanation; for some people, acting out fantasies in this way is a means of fulfilling important psychological needs that they have difficulty satisfying otherwise. Of course people differ in the lengths that they go to and the extent to which the resulting behaviour is dysfunctional. For Mr Roddis to be acting in this manner would make a great deal of sense from what I have come to understand about his personality and psychological needs."

36. When Dr Heap suggested this possibility to the appellant, he denied that it was the case. But, as Dr Heap observed, the appellant's stance does not necessarily invalidate the explanation, as "(the appellant) is motivated to represent himself in the most innocent of lights".

37. As set out above, Dr Bloye in his report of 24 June 2008 agreed with Dr Heap in his central conclusions, and he noted that one of the relevant categories of personality disorder was "schizoid", which included an insensitivity to prevailing social norms and conventions. However, the degree of personality dysfunction, in his view, was not severe.

38. Dr Joseph, instructed by the Crown for the purposes of this appeal (report dated 1 July 2019), expressed the view:

> "20. The appellant is now diagnosed as suffering from autistic spectrum disorder, whereas previously he was described as an immature and psychologically vulnerable young man, with a range of personality traits which amount to a mixed personality disorder, predominantly schizoid, histrionic and dependent. In my opinion either diagnosis is applicable in this case, both diagnoses point to the appellant experiencing developmental problems, probably related to adverse childhood experiences, which have led to impairments in his ability to interact socially with others. The appellant's immaturity and socially inappropriate behaviour are a product of either diagnosis and in my opinion making a diagnosis of autistic spectrum disorder rather than personality disorder does not assist in determining the appellant's state of mind when he committed the offences."
>
> and:
>
> "24. […] regardless of the diagnosis in this case, the appellant had sufficient social understanding to know that by placing a hoax bomb on a bus, people would be alarmed because initially they would think it was real. Bearing in mind the appellants love of pranks it is clear to me that this was the reaction he was looking for when he placed the hoax bomb on the bus."

39. There are two critical observations to be made based on the matters set out above. First, notwithstanding there has been a change in diagnosis (ASD as opposed to a personality disorder), there are a number of common features in both diagnoses, and most particularly in the context of Impact 1, "the insensitivity to prevailing social norms and conventions" (per Dr Bloye, as a feature of the personality disorder) and "the inability fully to recognise the extent of others fears" (per Dr Blackwood, as a feature of ASD). Dr Blackwood accepted in his evidence that although autism involves consideration of a broader set of criteria than a personality disorder, both contain the element of a lack of social reciprocity. Dr Bloye could have been called to give evidence on this issue, which was available at the time of the trial.

40. This leads us to the second critical consideration: if an expert is called, his or her evidence cannot be limited artificially by the party calling the witness. Once in the witness box, the psychologist or psychiatrist would have been available to be questioned about all relevant matters, and in this case that included the likely conclusion that the defendant was acting out a

terrorist fantasy, as he had previously acted out the fantasy of being a soldier. The appellant could not sensibly have called evidence that would have directly contradicted his own case (he rejected the suggestion that he was acting out any fantasy). Although it is impossible 12 years after the event to know exactly what evidence would have been called if the ASD diagnosis had been available at the time of his trial, there is no suggestion that Drs Heap and Bloye are incorrect in their conclusions as regards the acting out of an Islamic fantasy, and it is to be assumed that other experts would have been of a similar view. Indeed, Dr Blackwood has proceeded on the erroneous basis that the defence case included the assertion that he was a lone fantasist, influenced by Islamic or Al Qaeda literature.

41. It follows, therefore, that the critical conclusion on the part of Dr Blackwood as regards Impact 1, namely that the appellant may not have appreciated the impact of his actions on others, had been revealed in the pre-trial reports in 2008. This area of evidence was available to be developed if the appellant's legal team at trial had wished to pursue it. However, if Drs Heap and Bloye, or other similar experts, had been called, the appellant would have risked providing the prosecution with the opportunity of advancing the plausible theory that, contrary to his case, he was not only someone who indulged in terrorist fantasies but that he had decided to turn those fantasies into reality. It is to be surmised that an entirely sustainable tactical decision was taken in these circumstances not to explore any of these issues.

42. In summary, for the purposes of Impact 1, this material was available at trial and it is entirely explicable that the appellant's counsel decided not to call an expert who may well have given evidence which contradicted a fundamental aspect of his case. Finally, as Dr Joseph has indicated, whatever the diagnosis, the appellant understood the potential impact of this hoax.

Impact 2
"The potential impact of the autistic spectrum disorder on the actions that resulted in his conviction for the index offences: secondly the acts resulting in the conviction for preparing an act of terrorism"

43. In this context it is necessary to observe that Dr Blackwood has insufficiently taken into account the importance of the detail of the appellant's defence. Dr Blackwood referred in his report to the appellant's interest in militant Islam and in explosives as being "fixated" interests that were abnormal in their intensity and focus, and which are to be observed with autism. He described in some detail the extent of the materials relating to Islam and Al Qaeda which he suggested undermined the defence case that "he was a simple isolated fantasist". Dr Blackwood has indicated that the appellant may have had this material because he wanted to shock, albeit he observed the appellant does not appear to have developed any deeply held beliefs in this regard. None of this, however, was accepted by the appellant. Dr Blackwood also suggested that the appellant had a long-standing and intense interest in explosives. This did not fairly represent the appellant's case at trial. Although he accepted that he had some interest in this area because, for instance, of his researches into World War Two and nuclear fission, he denied that they were anything other than of academic concern or idle curiosity. Dr Blackwood completed this section as follows:

> ""The jury in the original trial may thus have misread these narrowed interests as evidence of markers firstly of ideological conviction or fanaticism and secondly of a settled intention to manufacture a bomb to further such convictions. An understanding of the "narrowed interests" diagnostic feature of his ASD would have enabled a more nuanced understanding of these behaviours
>
> The sharing of replica bullets and detonators with his former work colleagues is again explicable as a socially gauche attempt to shock or impress".

44. As just set out, an expert called to support this analysis would have given evidence that ran contrary to the appellant's core defence on the issue, by undermining his own account given under oath. The appellant could not have called a witness to explain "narrowed interests" which he did not accept he held. Dr Blackwood may be correct in his diagnosis but given the appellant's consistently held defence to these two charges, it did not constitute evidence that he realistically could have introduced.

45. We add as regards count 2, that although Dr Blackwood was of the view that autism explains why the appellant might have become obsessed with a particular issue or activity, he accepted the diagnosis would not throw light on why he became interested in the first place.

Impact 3
"The potential impact of Mr Roddis' autism on his ability to understand the potential consequences of pursuing his interests in terrorism to the extent that he did"

46. Dr Blackwood described this in the following way:

> "Mr Roddis viewed (and continues to view) his behaviours as a simple exploration of his intense narrowed interest in the army, and, in the political context of the time, the main terrorist organisation attracting significant public attention. The highly restricted nature of his interest at that time is characteristic of the disorder, and his preoccupation would have been experienced by him as necessary and unremarkable. He would not have thought through the potential concerns that others would have had about his collection and investigation of such material. He continues to view such "research" as "within my rights"."

47. These may be valid conclusions but they are essentially irrelevant to the issues that the jury had to decide, which related to his "intention" as regards counts 1 and 2. The "potential concerns" of others as regards his investigation and collection of some highly incriminatory material was not an issue in the case.

Impact 4
"The aspects of the prosecution case which could not simply be accounted for by Mr Roddis's autism"

48. In this section, Dr Blackwood makes observations that there were elements of the case which were unrelated to the appellant's autism diagnosis:

> "[…] it is worth noting that Mr Roddis's mild autistic spectrum disorder does not mean that he is unable to dissemble or deceive. Equally, it does not preclude the possibility that he may have planned to manufacture and to attempt to detonate a bomb at some point (I note for example the materials already acquired; the texts concerning bombs in Rotherham; the "London bombings were blessed" graffiti). The interest in aspects of Islamic militancy clearly extended beyond a simple intense interest in the activities of the British Army. The medical purposes of the acetone and peroxide (in the precise amounts dictated by the TATP "recipe") could be (and would be) called into question. His interest in explosives clearly went beyond the "academic". The notion that his interest in procuring "recipes" for explosives was simply related to his interest in the ease with which such information could be obtained appears potentially disingenuous. The listing of the mosques solely to "Track down" the donor of the Koran again appears potentially disingenuous."

49. These observations are self-explanatory and do not require any analysis as part of this judgment.

Impact 5
"The impact … Mr Roddis's autism had on his ability to give instructions, understand instructions and to understand and effectively engage in the trial process in 2008"

50. Although Dr Blackwood refers to the possibility that an intermediary could have been appointed to assist the appellant, there is no suggestion that the trial process was flawed or unfair because this step was not taken. Indeed, Dr Blackwood observes "there do not appear to have been any oddities in the coherence of his evidence or weaknesses emerging either because of his mentalising deficits or his over literal style which takes insufficient account of context. The account which he gave in his evidence in chief and on cross-examination does not substantially differ from the account which he continues to give." Dr Blackwood accepts that it is likely he would have been found fit to plead.

Impact 6
"How significant was it that neither instructed expert diagnosed autism in 2008?"

51. Dr Blackwood expresses the view that the appellant may not have been convicted of either offence, and particularly count 2, had the court and the jury been aware of the impact of his autism on the way he behaved. For the reasons set out above, with respect we disagree with that observation. There was directly relevant material available at the time of the trial as to the lack of understanding on the part of the appellant as to the consequences of his actions which his counsel understandably chose not to use (*viz*. his insensitivity to prevailing social norms and conventions). Additionally, the suggested "mobilisation of expert psychiatric and psychological opinion" concerning the nature and impact of his autistic deficits would have been unusable because it would have involved introducing evidence that did not align with – indeed, to a significant extent directly contradicted – the appellant's defence at trial.

52. We have been referred to a number of authorities. In *R v H* [2002] EWCA Crim 730, this court stressed that a defendant will only be allowed on appeal to present a factual case that is inconsistent with his instructions and testimony at trial in exceptional circumstances (see paragraph 82 of the judgment of the Lord Chief Justice). No reason has been advanced to justify this appellant relying as part of this appeal on a defence inconsistent with his testimony before the jury. Furthermore, as observed by the Lord Chief Justice in *R v Janhelle Grant-Murray and Alex Henry; R v Joseph McGill, Corey Hewitt and Andrew Hewitt* [2017] EWCA Crim 1228 at paragraph 53 it is necessary to remember that cases involving a post-trial diagnosis of autism will turn on their own facts and that decisions such as *R v Thompson* [2014] EWCA Crim 836 in which appeals have been allowed on the basis of a later autistic diagnosis do not lay down binding principles that are to be applied in other cases. *Thompson* did not involve either of the issues that we have discussed in the preceding paragraph, which are determinative of this appeal.

53. Finally, we would add that when, following a trial, there is a diagnosis of autism and consideration is given to mounting an appeal on this basis, it is important to focus on the issues in the case and the extent to which the new diagnosis relates to those issues. Additionally, there needs to be careful examination as to whether the relevant "behaviour" or "behaviours" may have been revealed in expert reports in advance of the trial, possibly in the context of a different diagnosis (which may, in turn, overlap with the new diagnosis).

Conclusion

54. We are grateful to Drs Blackwood and Joseph for the assistance they have provided and to Mr Price Q.C. and Mr Rose for their focussed advocacy.

55. For the reasons set out above, in our judgment the post-trial diagnosis of autism does not render the convictions in this case unsafe and the appeal is dismissed.