Neutral Citation Number: [2024] EWCA Crim 1427

202403144 B2
202403414 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT CAMBRIDGE
Mr Recorder Richard Singer
35NT2014423

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/11/2024

Before :

LORD JUSTICE EDIS
MRS JUSTICE McGOWAN
and
HIS HONOUR JUDGE BLAIR KC, THE HON RECORDER OF BRISTOL
Sitting as a judge of the Court of Appeal Criminal Division

- -

Between :

GHEORGHE BADELITA	**Appellant**
- And -	
THE KING	**Respondent**

- -
- -

Claudia-Lauren Williams (assigned by the Registrar) for the **Appellant**
Richard Mandel (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing dates : 15 and 20 November 2024

- -

Approved Judgment

This judgment was handed down in court on 20/11/24.

.....

Lord Justice Edis:

Introduction

1. On the 15 November 2024 we heard applications for leave to appeal against conviction and sentence in this case, which had been referred to the full court by the Registrar. We refused leave to argue some of the grounds and granted leave to appeal in respect of one ground which we required to be re-formulated. We directed that that should happen by close of business on 18 November 2024 and that counsel for the appellant should supply any further submissions she wished to advance in writing by that time. We also directed that the respondent should respond in writing, if so advised, by close of business on 19 November 2024. We caused the case to be re-listed for determination on 20 November 2024 in the afternoon. We also gave leave to appeal against sentence and directed that some further information should be obtained about the appellant's immigration status. We directed that this also should be heard on 20 November.

2. The first thing we wish to do is to thank both counsel for agreeing to this very tight timetable, and for complying with it in the very helpful way they have. We appreciate the stress on busy working lives of additional commitments of this kind and are grateful for what they have both done.

3. On 22 July 2024, in the Crown Court at Cambridge (Mr Recorder Richard Singer), the applicant (then aged 53) was convicted of a series of six offences committed over two days, the 18 and 19 December 2023. He was acquitted of another, which had been count 2 on the indictment. Count 1 alleged an offence of common assault, counts 3, 4, 5, and 6 offences of threatening to kill, and count 7 an offence of criminal damage.

4. On 2 September 2024 the Recorder passed sentences totalling 28 months' imprisonment. There were concurrent sentences on each of counts 1 (8 weeks), 3 (12 months), 4 (28 months), 5 (24 months), and 6 (15 months) and no separate penalty was imposed on count 7. The total term was therefore 28 months. Restraining orders were made for the protection of all four complainants.

The facts

5. Ileana Ciurar was the appellant's wife. They had one child together, Daini Badelita, who is now an adult. Ms. Ciurar had two other children from her first marriage, one of whom was Bianca Chera.

6. On 18 December 2023 the appellant was sleeping in the living room of the home where he, Ms. Ciurar and Ms. Badelita lived. There was some marital disharmony. Ms. Ciurar had been to a midwife appointment with Ms. Chera who was expecting a baby. When they returned there was a rubbish bag in the communal hallway, which Ms. Ciurar believed had been put there by the appellant. She went into the flat and asked him why he had left the rubbish in the hallway. He became angry with her, and Ms. Chera asked him why he spoke to her mum like that. The appellant swore at Ms. Chera, got up and said to her that he would punch her and her baby; he went to hit her and Ms. Ciurar got in between them. This was count 1, common assault, contrary to section 39 of the Criminal Justice Act 1988. He was shouting and screaming at both women, and told Ms, Ciurar that he would kill her: this became count 3 making a threat to kill, contrary

to section 16 of the Offences Against the Person Act 1861. Ms. Chera's two young children were present.

7. Ms. Badelita and Ms. Chera left the property and Ms. Ciurar left about 30 minutes later as the appellant continued to scream and shout and make threats. Ms. Chera went to her own home and Ms. Ciurar and Ms. Badelita met in the town centre. Ms. Badelita did not want to go home and said that she wanted to go to the police. First, they both went to Sarah Saunders' house and Ms. Saunders went with them to the police station. Ms. Ciurar and Ms. Badelita returned to their home, and the appellant was arrested. The police later asked Ms. Ciurar if she was willing to have the applicant back home and she said that she wasn't. After his interview, the applicant had been released on police bail in the early hours of 19 December and there were bail conditions not to go to the family address or contact Ms. Ciurar or Ms. Badelita.

8. Between 9:00 a.m. and 10:00 a.m. on 19 December 2023, the appellant went to his home address and knocked on the door. Ms. Ciurar and Ms. Badelita and Ms. Saunders were at the property. Ms. Saunders asked who it was, and the appellant said (according to his daughter) "Open the door you bitches. I'll kill you all and I will kill myself." She said he was trying to break in through the door, kicking and punching the door really hard. The threats became counts 4-6, three offences of threatening to kill. All three complainants were trying to hold the door so the appellant couldn't get in. The applicant said he would break the door down and went and got a brick and used it use to try and break the door which left marks on the front door, criminal damage count 7. The police were called.

9. The trial began on Tuesday 9 July 2024 with the jury being empanelled just after 2pm. The trial estimate was 4 days. In the event, it took much longer than that, and verdicts were not returned until Monday 22 July 2024. Some of the reasons for the length of the proceedings will appear below, but the need for evidence to be interpreted from and into Romanian, and the need for the assistance of an interpreter every time his lawyers needed to speak to the appellant no doubt played a significant part. Sentence was adjourned with a direction that given the appellant's previous diagnosis of depression, there should be a mental health report for sentencing to identify whether suffers from any impairment or disorder that had any impact on sentencing.

10. The prosecution relied on the oral evidence of Ms. Ciurar and Ms. Badelita who had both been present throughout both incidents. They called Ms. Chera to deal with the events of 18 December and Ms. Saunders to give evidence about going to the police and the incident of the following day, the 19 December. There were photographs of the damage to the door caused during that incident. The jury also considered the content of the 999 calls made on that day. Police Constable Harvey attended to arrest the applicant on 19 December 2023. She was unable to read the caution to him fully because of his behaviour, and the caution was only completed once the appellant was in handcuffs. When the police had arrived, he was shouting towards officers and the home address. The officer in the case said that the appellant had tried to resist placement of the handcuffs on him and force had to be used.

11. The appellant gave evidence in his defence. His case was that he had not threatened to kill his wife on either 18 or 19 December 2023 and had not threatened to kill his daughter, Ms. Badelita either. He said that on 18 December Ms. Chiura and Ms. Chera had attacked him, hitting him in the face.

12. He agreed that on 19 December he did say "I'll kill you" to Ms. Saunders, this was only in response to a threat by her and he did not intend to make her fear that she would be killed. He said that on18 December, he was not the aggressor and was holding up his hands as a joke and thereafter was acting in lawful self-defence. He did not cause any damage to the door on 19 December 2023. He said that he had been a lorry driver but had stopped working about two years ago as he'd had a stroke and that the stroke repeated itself every two or three months. The strokes had changed him a lot and had made him angry and more sensitive.

13. He accepted returning to the family address on 19 December 2023, but this was because he was not assisted by an interpreter in interview and because he was told nothing about his bail conditions. He'd also been told by the people at the council that he could go home. When he got there, Ms. Saunders had threatened him and so he threatened her back as he wanted her to leave and he wanted to go inside; he didn't intend to make her fear that she would be killed and he only said "I'll kill you" to Ms. Saunders; he did not say it to Ms. Badelita or anyone else. He kicked the bottom of the door for a few seconds but he did not cause any damage and the marks were not caused by him.

14. The judge summed the case up on Friday 19 and Monday 22 July. No criticism was made of the legal directions he gave in the original grounds of appeal. They were shared with counsel in advance and given the jury in writing with a written route to verdict in the usual way.

The events which give rise to the appeal and the applications for leave

The treatment of an outburst in court and the appellant's mental state

15. The event which gives rise to the ground of appeal for which we have given leave occurred during the morning of 10 July 2024 during the evidence of Ms. Ciurar. While she was giving her evidence in chief, and describing the incident on 18 December 2024 when the appellant was said to have assaulted Ms. Chera and threatened her baby, the proceedings were interrupted by the behaviour of the appellant. He was in the dock listening to the evidence and, in the words of his counsel, Ms. Williams, there was a:-

> "frenzied, seemingly uncontrollable outburst, during which he threatened to kill Ms Ciurar, slammed his head against the walls of the dock numerous times, continued to scream and had to be physically restrained by dock officers on the floor. He was then physically removed from the courtroom."

16. Defence counsel made an application to discharge the jury and also submitted that the trial should not continue in the absence of the appellant. The judge dealt with the applications by giving oral reasons and the trial resumed on the next day in the absence of the appellant. He decided that the jury would not be discharged, and that the trial would not be delayed while a medical report was obtained, and that the evidence would continue in the absence of the appellant.

17. In a later written ruling, given on 12 July 2024, the judge summarised what happened in this way:-

> "After I had ordered a cooling off period, I was told by the custody staff shortly before 2pm that the Defendant was still extremely disorderly and making threats. It was argued to me that if the Defendant were allowed to be taken back to prison for a report he might have an opportunity to see a mental health practitioner and a report could be prepared for tomorrow. I made such an order. The next day it transpired that no report could be obtained that quickly due to the mental health practitioner's other commitments. It is relevant that, when I ordered that was ordered I had not been given information from the prison that the Defendant had in fact declined any input from the Prison's Mental Health Team when an attempt was made to assess him in June this year – something which I only discovered when the prison replied saying they had not been able to assess him by 11 July. On 11 July counsel made the application to discharge and in the alternative to postpone proceedings to await a psychiatric report. I was told that the Defendant was now willing to comply with a psychiatric assessment.
>
> I gave an oral decision in court, after considering all relevant matters with reference to the principles in *R v Jones (Anthony)* [2002] UKHL 5, that I was not willing to discharge the jury nor was I willing to delay the trial to await a psychiatric report, but I would permit the Defence to explore whether a report could be obtained while the trial continued. I explained I would give a fuller decision which would be uploaded to the Digital Case System." ["DCS"]

18. The appellant was 53 years old and has no previous convictions. The judge summarised what was then known about his medical history in his written ruling in this way:-

> "Here, the Defendant's mental health was something which had been flagged many months ago. He did not attend court on 18 January 2024. He was said to be unwell. The matter was listed before HHJ Lowe on 26 January 2024 for a report from the prison about his mental health to be considered. A report from a mental health nurse was uploaded to the DCS at Part M dated 25 January 2024. That report states (inter alia):
>
> > *"I met with Mr. Badelita this afternoon in healthcare where he has resided since the 17/01/24 the reason for his move from the wing was he was not compliance with his medication and the operational staff were worried due to his medical history he has tablet-controlled diabetes, and he suffered a stroke end of 2021.*
> >
> > *I have read through his records, and he is not known to Psychiatric services, he was seen by liaison psychiatry in January 2022 when he presented at Peterborough city*

hospital due to increased dizziness this was following his admission in December when he had a stroke 2021.

Mr. Badelita's family did report to the Psychiatrist that he did stay in his bed, where he would shout and swear, there was no threats of violence .

Following their assessment, the psychiatrist diagnosed him with Poststroke depression and prescribed antidepressant medication and referred him for talking therapies.

After his assessment with the psychological wellbeing service in March 2022, Mr. Badelita declined any further help for his mental health and said that he has been accessing help for his social needs. He was discharged with the offer he could be re referred if his situation changes.

I spoke to the healthcare officer to understand how he has been since being in healthcare, he has bene compliant with his medication, eating and drinking, although he is not polite in relation to saying thank you or a please, he is not overly rude in his manner.

I did ask why he unfitted for court, I was advised by the Officer and Healthcare nurse that as soon as he was asked to get ready for court he started shouting, became agitated and damaged his TV and broke his radio, he was unfitted for use of force.

I introduced myself and went into his cell, he was initially laying on his bed fully clothed, he presented as having fair mobility, he was able to get off the bed and walk to his sink, when I asked about not attending court he started to shout, he became quite agitated, very loud, shouting about his wife, stating he was innocent, and said court was not for him. Even though I spoke quietly and stayed clam he continued to make derogatory comments in relation to his wife and alluded to her having a boyfriend.

I do believe his behaviour has been exacerbated by the request for him to attend court, one could argue this could be a form of avoidance to hearing his charges. It was difficult to determine any other reason based on how he presented when I tried to engage him to understand his distress."

The DCS records that the Defendant was to have a conference on 9 February 2024 and HHJ Lowe flagged fitness to plead issues being under consideration at that point on 26 January.

However the DCS records that the Defendant was produced for arraignment on 15 February 2024 and it was said that fitness to

> plead issues "have resolved". Not Guilty pleas were entered. The PTPH form makes no reference to concerns regarding the mental state of the Defendant. The Defence Statement was uploaded on 14 March 2024; that mentioned that the defendant had been diagnosed with post-stroke depression and had been prescribed medication. The matter came before me for trial on 9 July 2024 and no preliminary point was taken regarding the Defendant's mental state being a cause for concern in terms of how the proceedings were to be conducted."

19. In the event, a psychiatrist saw the appellant on 23 July, the day after conviction. He wrote to the court on the same day saying this:-

> "When I assessed him he was inappropriately cheerful given his current situation and described his offensive comments to female staff [a fact he had described earlier in his letter], saying that he did not care if they were offended. He told me that his angry outburst in court and banging of his head was because of his wife telling lies about him which had resulted in him being an innocent man in prison. He described his mood as depressed most of the time and he is currently being treated with an antidepressant. There was no clear evidence of a serious psychotic mental illness.
>
> Conclusion
>
> 1. It is my view that the most likely explanation for Mr Badelita's presentation is that he has become disinhibited and irritable as a result of the several strokes that he has suffered, the most significant one being in 2021. Depressed mood and personality changes are well known sequelae of strokes. Although Mr Badelita most significant stroke did not specifically affect the frontal lobes, the area of the brain most associated with personality change, this remains the most likely explanation. I am unable to be definitive on this view as I do not have a detailed longitudinal account of Mr Badelita s functioning over time.
>
> 2. There is a possibility that he is developing a mild degree of elated mood as part of a mood disorder, but in the absence of any history of similar events this does not seem the most likely explanation.
>
> 3. There is no specific treatment for this increased irritability and disinhibition following stroke, although some psychological treatments may assist in developing different coping mechanisms."

20. In his written ruling, the judge had said that one of the factors he took into account in exercising his discretion to carry on with the trial without delay and to carry on in his absence was:-

> "the nature and circumstances of the defendant's behaviour in disrupting the trial, and, the fact that all of the evidence points to his behaviour being deliberate and voluntary."

21. He did not explain what he meant by "all the evidence". It was agreed that the appellant had suffered multiple strokes and there was actually no evidence as to whether they had affected his ability to control himself at the point when the judge made his decision. When Ms. Ciurar was cross-examined, after the initial ruling but before the written ruling, she confirmed that her husband had suffered these strokes and described the adverse effect on his behaviour which had been observed since then.

22. The impact on the jury of what they had witnessed must have been profound. One juror, juror number 7, wrote a note on the morning after it had happened saying that "After yesterday's incident I would please prefer not to attend in the jury. I am so sorry to be asking this but I feel I am not ready for this trial". The judge had her brought into court on her own, but in the presence of counsel, and discussed the problem with her. This exchange took place:-

> RECORDER SINGER: It's OK. It's all right. I mean, obviously you did take an oath, and it's an important civic duty. And - and, you know, sometimes tempers do run high when, you know, evidence is given, and sometimes people can get upset about things.
>
> JUROR: Yeah.
>
> RECORDER SINGER: The dock is secure, and the defendant will be in handcuffs when he is in the room, so he can't get through that door. All right?
>
> JUROR: Yeah - just completely alien to me, this - I - I was nervous to start with, you know. I probably did get upset with the wife - heard her, she was emotional. I am sensitive…

23. The judge then moved to the question of whether the juror would be able to deliver a true verdict. He said this:-

> RECORDER SINGER: Well, I will be giving everyone on the jury ---
>
> JUROR: Yeah.
>
> RECORDER SINGER: --- a direction to put that out of their minds ---
>
> JUROR: Yeah.
>
> RECORDER SINGER: --- and focus on what happened ---
>
> JUROR: Yeah.

> RECORDER SINGER: --- only in the evidence about what happened in relation to those two days in November of last year.
>
> JUROR: Yeah.
>
> RECORDER SINGER: And everyone is required to follow my legal directions.

24. In the end, the juror agreed to carry on and neither counsel objected. The point of setting out this exchange is to record the impact of the outburst and also the way the judge was intending to address its prejudicial effect.

25. It appears that when the jury reconvened to continue the case, they were given a direction along the lines indicated. When, however, the judge summed the case up things took a different turn. Immediately after the good character direction, he said this:-

> The alleged bad character regarding the incident in the court room on the 10th of July 2024. Now, although I previously directed you to ignore the incident that happened in the court room on that day, you have, in fact, now heard evidence from the defendant adduced in evidence-in-chief seeking to address and give an explanation about that behaviour. The defendant said that he became very angry because his wife was telling lies about him which hurt him a lot. He said he did not have any control over himself and described it as a state of madness. The prosecution say that the way in which the defendant behaved is no coincidence and demonstrates a propensity to behave violently, to threaten violence against his wife. If you are sure that the defendant's behaviour in the dock towards his wife on the 10th of July 2024 was so strikingly similar to that alleged against him by the complainants on the 18th and 19th of December 2023, and is no coincidence, then this may show that the defendant has a tendency to behave violently and threaten violence towards his wife and so support the prosecution case that the defendant did so on the 18th and 19th of December last year. If you are sure that the defendant has a tendency to behave violently, to threaten violence towards his wife, then you are entitled to use the evidence of the incident in the court room on the 10th of July, together with his wife's account of the matters giving rise to the charges which the defendant faces, when deciding whether you are sure his wife was assaulted and threatened on the 18th and 19th of December 2023.
>
> However, it is very important to remember that just because the defendant has behaved in a particular way on another later occasion that does not of itself prove he did so on the 18th and 19th of December 2023, but you may use it as some support for the prosecution case. You must not, however, convict the defendant wholly or mainly on the evidence of what you find he did on the 10th of July 2024.

The bad character evidence given by Ms. Cuirar

26. On 12 July a further application was made to discharge the jury which the judge in a written ruling summarised in this way:-

> "The Defence complain that in her oral evidence Mrs Ciurar, mentioned the Defendant having a previous conviction, previously using violence and threats against her on occasions outside the indictment period, and on one occasion referencing strangulation.
>
> It is argued that this coming out in evidence was so unfair that to leave it before the jury would have such an adverse effect on the fairness of the proceedings that the jury ought to be discharged as they could not render a true and fair verdict on the relevant evidence."

27. The reference to a previous conviction was wrong, and later corrected by agreed evidence before the jury. The judge refused this application and this forms one of the grounds of appeal for which we refused leave. The evidence was given by Ms. Ciurar in cross-examination in answer to questions about the general nature of the relationship with her husband at the material time, "particularly after the stroke". We do not criticise Ms. Williams for embarking on the cross-examination, which may have been unavoidable, but having done so and got answers she did not like, she cannot plausibly expect the judge to discharge the jury so that the trial can re-start. This part of the cross-examination was summarised by the judge in summing up in this way:-

> "She was asked whether tensions arose particularly after the stroke, she said "Because of the vertigo he didn't carry on driving. He said he can't carry on." She agreed that there would be a lot of arguments. She was asked whether they would argue and shout at one another and she said "He shouts at me most of the time. Sometimes I would reply but usually I would just stay quiet." She characterised it more as verbal argument from the defendant and no argument was ever started from her and that she'd always wanted to keep things calm."

28. In any event, the judge was plainly right to say, as he did:-

> "Again, in my judgment this is remediable by an unambiguous direction to the jury to focus only on the evidence relevant to the dates in the indictment. On the basis that the PNC is right the jury will in fact be told of the Defendant's previous good character and how that affects their consideration of the case."

29. The appellant did receive a good character direction, but no direction was given specifically about the evidence of previous violence against Ms. Ciurar. In the summing up of the facts on this issue the judge was very fair, and avoids drawing attention to the evidence to which objection was taken. The jury also received a bad character direction, as we have said. At the start of the summing up, the judge said this:

> "Dealing with the absence of the defendant from some of the trial and some other matters which must also be disregarded, the defendant, as you've heard, elected not to be present for some of the witnesses' evidence. His absence must not be held against him in any way and it adds nothing to the prosecution case. You must disregard this completely."
>
> You must also disregard anything you have may - you may have heard a witness say about misconduct on the part of the defendant before the indictment period of the 18th to the 19th of December 2023. Such evidence is irrelevant, adds nothing to the prosecution case, so you must disregard it.
>
> The defendant has no previous convictions or cautions, as you have heard, and I will direct you about his previous good character later.
>
> You must also disregard anything that a witness said that was not seen or heard directly by that witness concerned. Such evidence is irrelevant, adds nothing to the prosecution case, and you must disregard it.
>
> I just pause here, because I know that one of you quite properly wrote a note saying that I previously told you to disregard the incident of - which happened in court on the 10th of July. Things have changed, because evidence has now been adduced on that and part of my directions will be directing you about how you treat that, but we'll get to that in a moment."

The hearsay evidence given by Ms. Saunders

30. In the direction just set out, the judge told the jury to disregard any hearsay material given by a witness of what they had been told. This was done because objection had been taken to evidence given by Ms. Saunders about an account which had been given to her by Ms. Ciurar of what had happened on the night of the 18 December 2023. This had prompted a yet further application to discharge the jury, which the judge refused. Again, this forms one of the grounds of appeal for which we have refused leave.

31. It seems that Ms. Saunders said that Ms. Ciurar had told her that the appellant had punched her during the incident on 18 December. Ms. Saunders was not there at the time, and was consulted about whether or not to go to the police that night after the incident was over. She was stopped in her evidence and told to stick to what she had observed which she thereafter did. The judge gave the direction we have just identified.

32. The appellant was acquitted by the jury of count 2, punching Ms. Ciurar on 18 December 2023.

33. The judge dealt with this question entirely appropriately, and he would have been quite wrong to discharge the jury on this ground.

The grounds of appeal as drafted originally

34. The grounds of appeal against conviction which were drafted on behalf of the appellant are in this form:-

35. The Applicant appeals against his convictions for Common Assault, Threats to Kill and Criminal Damage on the grounds that the conviction is unsafe having regard to prejudice to the Defendant caused by the following decisions:

    i) The Learned Recorder's decision to exclude Mr Badelita from hearing the evidence of three Complainants and properly participating in his trial on the basis he was disruptive, despite there being a plausible basis to suggest his behaviour was involuntary.

    ii) The Learned Recorder, despite ordering an urgent assessment be completed, refused to adjourn the trial and to await an outcome of an assessment, which would have assisted the court in discerning whether it was appropriate to take the significant step of excluding Mr Badelita from the courtroom.

    iii) The failure of the Learned Recorder to properly accede to the Defence applications to discharge the Jury.

    iv) The Learned Recorder's decision to discharge a juror on the first day the juror made the court aware of her illness.

36. We have refused leave in respect of complaints about two applications to discharge the jury included in ground (iii) above, see [26]-[33].

37. Ground (iv) is equally hopeless, but we should say something about it. On 17 July a juror called the court to say that she was vomiting and unwell. She did not attend court, and no enquiries were made to see whether she was likely to be well enough to carry on on 18 July, which was the course suggested by both counsel. The judge decided to discharge her without more ado and to continue with the trial. This ruling was tied up with a ruling about the non-attendance of the appellant that same morning, the court being informed that he had refused to attend from custody. The scheduled evidence for the day was the police evidence, and the appellant himself was eventually called on the following day to give his own evidence. The judge decided that he would suffer no prejudice if he was absent during the police evidence and was, in any event voluntarily absent. He also observed that the jury were quite used to his being absent. He had not been present during the evidence of Ms. Ciurar after the outburst nor for any of the evidence of Ms. Chera or Ms. Saunders. We shall return to that when dealing with the ground for which leave has been given. The jury had been told to ignore his absence from court.

38. We are quite satisfied that the judge exercised his discretion appropriately in deciding to continue the trial on that day in the absence of the appellant and further that this decision has no adverse impact on the fairness of the trial or the safety of the convictions. We refuse leave to complain about that.

39. The decision to discharge the juror in the circumstances which arose was also one which was open to the judge as a matter of his discretion and which did not adversely affect the fairness of the trial or the safety of the convictions. We have only paused before

refusing leave to appeal on this ground, as we do, because of the way the judge expressed himself in giving his reasons. He said this:-

> "I decided however that, given the stage we were at in the proceedings, that the fairest course was to discharge the juror now. There was and is no guarantee the juror would be better tomorrow and I did not know what her illness is precisely, beyond vomiting. It would not be fair to put other jurors at risk from her if what she has is contagious. Also a relevant factor was that, as a Recorder I had only been booked to the end of this week. My judicial commitments as a salaried immigration judge next week meant that, if the trial were to go into next week, (which the parties conceded was likely if the matter were put off in its entirety to tomorrow), other people's asylum or international protection claims or immigration cases may have to be adjourned. While that was something that could be done it was highly undesirable and ideally to be avoided unless the circumstances and the interests of justice mandated it. I find no unfairness or prejudice to the Defendant or to the Prosecution in proceeding with 11 jurors rather than 12, and none was argued by either side. "

40. We sympathise with the judge's desire to meet all his judicial commitments and to avoid disruption to his important work in the Immigration and Asylum Chamber. As events were to prove, the trial was destined to go into the following week anyway, and the jury was not sent out to consider their verdicts until Monday 22 July. This was, by now, the sixth day of a jury trial and after a number of difficulties had been overcome it was nearing its end. It is inconceivable that a decision which was not in the interests of justice could become appropriate because of other commitments of the judge. Of course, balancing different tasks and managing cases effectively to enable all those involved to move on to other work at their conclusion is a very important judicial task, and that includes managing the judge's own schedule. What is not acceptable is a suggestion that a decision on a matter of substance in an ongoing trial might go one way if the judge could come back on Monday, but another if he would felt he needed to be somewhere else by then.

41. In the end, a decision to carry on a trial with 11 jurors when only a few days are left because a juror is unwell is a routine judicial case management decision. It is incapable of affecting the safety of a conviction. Efficiency in the Crown Court is very important and a desire to ensure that a case proceeds without further avoidable delay is a good reason for taking this step. This kind of decision does involve taking into account the practical problems caused by delay in the trial and this was an overrunning trial. The continued availability of jurors does not appear to have been taken into account by the judge and it might have been more seemly to investigate that. The way the judge phrased his decision suggested that his own diary was the only thing which mattered, which was, we are sure, not really the way he was approaching the question. As it turned out, the jury was required to sit into the following week, and there came a time during the summing up on the Friday when the judge said this:-

> "I know there have been some enquiries with you about timings. You're not going to be sent out to reach verdicts today, it's not

> appropriate to do that on a Friday afternoon, so when I've finished the summing-up of the evidence we'll adjourn until Monday and we'll come in at 11 o'clock on Monday and I will give you the directions on verdicts then, and then you'll go out and consider your verdicts, that's our plan, and we'll sit on Monday, usual sitting day finishes at about 4.30 and then, if we need to, we come back on Wednesday, OK, then we'll see where we are."

42. It appears that the problems with continuing into the following week were not limited to judicial availability, and further enquiries would probably have revealed additional reasons why it was preferable to get on with the case without further avoidable delay.

The ground on which leave was given

43. Further to our ruling on Friday 15 November, Ms. Williams has reformulated her ground of appeal as follows:-

> The appellant now appeals his convictions outlined above on the grounds that the Learned Recorder:
>
> a) following the outburst on 10 July 2024 in the presence of the jury, failed to explore options short of exclusion of the appellant from the trial, which might have permitted the trial to proceed without further interruption;
>
> b) having decided to continue the trial before the jury that witnessed the outburst, directed them that they should ignore it. By subsequently directing the jury that they could take that outburst into account as evidence of propensity for the appellant to behave violently towards his wife, an unfair course of action.

44. This involves consideration of the way in which the outburst was dealt with in the trial, and now includes consideration of the bad character direction given in the summing up.

45. Following observations by McGowan J during the hearing, Ms. Williams has included references to the Equal Treatment Bench Book and CPS Guidance in her perfected Grounds. The Grounds say this:-

> The Equal Treatment Bench Book provides guidance to ensure reasonable adjustments are made where a person may be suffering from a mental impairment (irrespective of whether a party or witness meets any particular legal definition) which might interfere with their ability to have a full and fair hearing. Relevant guidance includes, and is not limited to the following:
>
> a) Judges should be alert to any indicators that adjustments might be required (page 74)

b) A person might appear disrespectful, difficult, inconsistent or untruthful, but these impressions might be erroneous if they have a mental health condition. (Page 91)

c) Special measures are available, such as the use of screens, live links, evidence given in private. A defendant may also have access to the live link for their own evidence or for the whole trial and no defence application is needed (page 44)

d) Judges have a general power to make equivalent adjustments for disabled defendants and vulnerable defendants (page 75)

e) It will, in certain circumstances, be necessary to explain to the jury that a witness's demeanour may be indicative of a short attention span due to a mental health condition as opposed to bad behaviour or a "couldn't care less" attitude. It is submitted that this also applies to behaviours such as disruption caused, as occurred on 10 July 2024. (page 96)

The CPS *Legal Guidance for Mental Health: Suspects and Defendants* also provides information concerning the need to ensure effective participation and reasonable adjustments where necessary:

> "CrimPD 1: General Matters (3D-3G) merit consideration: "... the court is required to take **"every reasonable step"** to encourage and facilitate the attendance of witnesses and to facilitate the participation of any person, including the defendant (CrimPR 3.9 (3)(a) and (b)). This includes enabling a witness or defendant to give their best evidence, and enabling a defendant to comprehend the proceedings and engage fully with his or her defence."

46. The exclusion of the appellant from the trial during the resumed evidence of Ms. Cuirar, and all of the evidence of Ms. Chera and Ms. Saunders requires some further explanation. In his written ruling given on 12 July the judge said:-

> "I can and will ensure that the trial is as fair as the circumstances permit. I can and will continue to warn the jury that absence from the courtroom is not an admission of guilt and adds nothing to the prosecution case. I will continue to remind the jury about the burden and standard of proof being on the prosecution.
>
> Since I gave my decision the Defendant has been into court and has been considerably calmer. He articulated a clear wish not to be present for the oral evidence of his wife, his step-daughter Bianca Chira, or the family friend Sarah Saunders, saying that he did not think he would be able to control his temper. He said that he did want to be present for the evidence of his biological daughter Danai who he said he believed that been put up to making the allegations against him by her mother."

47. Ms. Williams told us that actually, the appellant subsequently made it clear that he did wish to be present during the evidence, and that he was eventually excluded from the trial at these stages against his will. We do not have transcripts to enable us to explore this further, but it makes no difference to the outcome of the issue. We will approach it on the basis that the appellant was excluded from these parts of the evidence.

48. We consider that the judge was plainly right to conclude that the appellant had behaved in such a way that steps were required to prevent any recurrence. The witnesses and the jury must be free to perform their functions without distressing, frightening and disruptive behaviour by defendants. That is so whether there is a medical reason for the behaviour or not. A balance had to be struck between ensuring that the appellant's trial was fair and that it proceeded without further incidents of this kind.

49. This all happened quickly and required immediate action by the judge. We commend him for his decisive response. In an ideal world, there would have been more time for reflection and consideration of other ways of ensuring that the appellant could follow the proceedings without being a threat to them. The guidance now relied upon should perhaps have been considered. A videolink from some other location in the court building or the prison might usefully have been tried before excluding him from the proceedings where there was some reason to believe that he may have been vulnerable because of an acquired brain injury. This could have been muted throughout and disconnected if necessary. It might, of course, not have been possible to arrange this, since prison video capacity is quite fully used and this would absorb a large amount of it. If that had not been possible then there was no realistic alternative to the course taken by the judge. Consideration of the materials at [45] above would have been appropriate but it is hard to see what other options there were.

50. There is no evidence, even now, that this appellant is unfit to plead or unable to control his behaviour. The evidence, which is subject to caveats and based on one interview in prison on 23 July 2024, is that he is probably disinhibited. This means that he is responsible for his behaviour on 10 July 2024, and cannot complain if his right to participate in the hearing was restricted so that the prosecution witnesses, to whom he was hostile, were protected from his behaviour while giving evidence. Excluding him from the courtroom during those times was necessary and appropriate. However it was done, it necessarily involved curtailing his ability to give his counsel instructions while she was cross-examining, or about to cross-examine. The fact that an interpreter was involved would be a further restriction which would be exacerbated by his absence from the courtroom.

51. We asked Ms. Williams whether she could identify any particular way in which her cross-examinations were undermined by the exclusion of the appellant from the courtroom and she could not. She had his instructions about their evidence and was able to put his case and to explore such weaknesses as there were in the evidence. That is an important consideration in deciding whether the exclusion renders the conviction unsafe.

52. The judge dealt with the prejudicial effect of the absence of the appellant appropriately in his directions which we have set out above. Whatever he said, the jury must have appreciated, or at least suspected, that he was absent to prevent a repetition of the outburst on 10 July. They would probably have been surprised if he had not been excluded for that reason. Since the exclusion was a consequence of that incident, and

since it was far less impactful than the incident itself, it is the way in which the incident was dealt with which matters.

53. The decision to continue with the trial after the outburst was a highly significant one. The appellant's behaviour in the presence of the jury on that morning is something they are unlikely ever to forget, and is highly probative of guilt. The fact that he threatened to kill his wife in court in the presence of so many witnesses makes it more likely that he did that on 18 and 19 December 2023. It was not merely disruptive behaviour in court, it was a repeat of the same behaviour alleged against him in counts 3 and 4 of the indictment.

54. The judge's initial direction to the jury that they should ignore the outburst because it was irrelevant was unrealistic. It was not irrelevant, and no fact finding tribunal would find it easy to ignore it and to be sure that it had played no part in their decision. This was not a situation where a defendant suffering from some abnormality of mental functioning behaved very badly but in a way which did not precisely replicate the alleged offending. In such cases, a direction to a jury that the behaviour they have witnessed is irrelevant and should be put out of their minds has an obvious sense to it. Juries can see the logic of it and follow it.

55. The first question, therefore, was it open to the judge to continue with the trial? The answer is yes. His decision to refuse to adjourn for a psychiatric report was also a proper one for him to make. He knew that there had been consideration at an earlier stage of the proceedings of whether the appellant was fit to plead, and that this had not been pursued. This, actually, did not tell him anything about whether the strokes may have played a part in causing the appellant to behave in the way he did. All that told him is that, at least when calm, the appellant is capable of the very limited functions which mean that he is fit to plead in law, see the discussion in *R v. Marcantonio* [2016] EWCA Crim 14; [2016] 2 Cr. App. R. 9.

56. The mental state of the appellant could not be properly explored if the trial was to continue to its conclusion, as events were to show. The suggestion that the defence could secure medical evidence during the trial which the judge made did not really achieve anything, nor was it likely to. In the absence of any medical evidence about the impact of the strokes which, it appeared to be common ground on the lay evidence was significant, it was probably sensible to approach the case on that the basis that this was so. This would not actually much help the appellant to secure acquittals. The propensity we have described at [53] above and the hostility to his wife was present at all times after the strokes, and these occurred before December 2023. The fact that he suffered from the acquired brain injury made it more likely that he committed the offences. It may (and does) reduce his culpability but on the issue of guilt it is unhelpful to the appellant. The absence of medical evidence did not therefore disadvantage the appellant during the trial and the judge was correct so to hold.

The bad character direction

57. At some stage before he distributed his draft legal directions, the judge changed his approach to the relevance of the outburst to the decision the jury had to reach. It does not appear that the prosecution made a bad character application or asked the judge to direct that the outburst could be taken into account as evidence in support of the prosecution case. There does seem to have been some discussion about whether bad

character evidence was admissible under section 101(1)(g) because the appellant referred to his wife's "lies" as the trigger for his outburst in the dock. Given that it was agreed that Ms. Ciurar had misrepresented the position in saying that the appellant had a previous conviction, this may not have been clear cut. If that was the thought process, then it is clear that once bad character evidence is admissible it can be used for any other purpose for which it would have been admissible. The direction which the judge gave required the evidence to be admissible under section 101(1)(d) (propensity) but not that it was actually admitted under that gateway.

58. The judge suggested that he changed his approach to the outburst because the appellant had given evidence about it. This was summarised in this way:-

> "He was asked about the incident in the court room on the 10th of July and what happened from his perspective. He said "I told her from the beginning to allow me to return home and to reconcile but she didn't want to forgive me." He was then tried - asked to focus again on what happened in the court room on the 10th of July, he said "My wife was giving evidence and she was saying lies about me, hitting her and the threats to kill, and it was hurting me a lot, everything I've heard her say." He was asked what level of control he felt he had on (inaudible). He said "It was zero, I didn't have any control. She brought me into that state of madness, I don't know."
>
> Asked how he felt after the incident, he said "I felt bad because I knew I was aware it wasn't nice to do something like that in court." He said "I don't know what I said or what I shouted. I was told that I grabbed a lady security officer and pushed her aside and I banged my head against the glass. What I remember" he said "is that officers put me down, put my hands down, and I was shouting, put handcuffs on me. I don't think I did anything else or hurt any." He was specifically "Why did you act in that way?" He said "I did it due to the pain I felt when my wife told all those lies about me, the person you so loved say those things about you and then put you in prison" he said."

59. This caused the judge to tell the jury he had changed the way he would direct them about it, see [29] above. The jury seem to have raised the matter in a note, see the passage quoted at [29] above. We have not seen this note, which is not in the jury note section of the DCS. He then did give the bad character direction which we set out at [25] above. Perhaps what motivated his change of approach was a concern that what the jury saw for themselves was not "evidence" and only became admissible under section 101 of the Act once there was evidence about it given from the witness box. It is unnecessary for us to resolve that interesting question for the purposes of this appeal. We do not have to decide how the jury should have been directed if no evidence had been given about the outburst, and if it was only known to the jury because they were present themselves and witnessed it.

60. There is a concern about the fairness of refusing to discharge the jury after an outburst in court on the basis that the judge will direct them to ignore it, and then waiting until the appellant deals with it in evidence (as he was bound to do) and directing them to

take it into account. The appellant and his counsel do not appear to have been warned that if he dealt with the outburst he would face this consequence. It would also have been better, in the interests of fairness, if there had been a direction telling the jury that the outburst must have had a powerful emotional effect on them and they must make sure that they do not allow that to affect the outcome. The jury could have been directed that because of his strokes it may be that he is unable to control his behaviour in a normal way which may him less to blame for it than otherwise would be the case. It is really because of the way the jury direction about this was developed and formulated that we decided to give leave to appeal on this ground.

61. Having reflected on the way in which the issue was dealt with, we conclude that it was satisfactory in the result. We have unambiguously explained the probative value of the outburst at [53] and [54] above. It follows from that that the direction which was given was correct in law. It also follows that the decision to continue the trial after the outburst does not render the convictions unsafe because it was probative of guilt and not merely prejudicial. The suggested direction not to react emotionally to bad behaviour for which the perpetrator may not be fully blameworthy would, we think, have made no difference to the outcome. This was a very strong case, supported by clear eye witness from the four victims and by other evidence. The appellant's account of the events lacks credibility.

62. In these circumstances we do not find that by reason of these matters the convictions were unsafe and we dismiss the appeal on this ground.

63. We wish to end by saying that this trial was something of an obstacle course for the judge and that, although we have made some criticisms with the benefit of hindsight and time to reflect, he is to be commended for seeing it through to safe verdicts.