IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT WOOD GREEN.
(HER HONOUR JUDGE GREENBERG KC) [01QK1219923]
[2026] EWCA Crim 383
Case No 2024/02220/B3 & 2024/02241/B3

Thursday 5 March 2026

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE PICKEN

HIS HONOUR JUDGE DREW KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R EX

- v –

MATTEO BOTTARELLI

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Mr N Rasiah KC appeared on behalf of the Appellant

Mr S Larkin KC and Mr T Dyke appeared on behalf of the Crown

J U D G M E N T
(Approved)

Thursday 5 March 2026

LORD JUSTICE MALES:

1. This is an appeal against the appellant's conviction for attempted murder, brought with the leave of the full court. The issue is whether the judge failed adequately to direct the jury in relation to voluntary intoxication in the context of an offence of specific intent. In addition, if the appeal against conviction is unsuccessful, the appellant seeks an extension of time (21 days) in which to apply for leave to appeal against his sentence of 30 years' imprisonment imposed by the trial judge, Her Honour Judge Greenberg KC, on 30 April 2024, following his conviction.

2. The appellant is Matteo Bottarelli, who is now aged 46. On 11 October 2023, in the Crown Court at Wood Green, he pleaded guilty to two counts of wounding with intent (counts 4 and 6), one count of affray (count 7), and one count of having an offensive weapon (count 8). The pleas to wounding with intent were not accepted and so he faced trial on four counts: three of attempted murder (counts 1, 3 and 5) and one of attempting to cause grievous bodily harm with intent (count 2). The appellant was acquitted of count 1, but convicted on counts 2, 3 and 5 on 21 February 2024.

The Facts

3. In June 2023 the appellant was working as a gardener and maintenance man, employed to maintain and carry out gardening at the Central Middlesex Hospital. His co-workers described him as a good worker who sometimes had personality issues but, although he sometimes became angry and shouted, he had never been violent, and he was a conscientious worker.

4. On Wednesday 21 June 2023, the appellant was in possession of a mattock, which is similar to a pickaxe, and a scalpel which he used to attack, and attempt to attack, several of his

co-workers. The attacks appeared to be motiveless and out of character. There was no evidence of any past animosity with his colleagues.

5. On that day, shortly before the attacks, the appellant approached a colleague, Shafiq Shah, at the hospital and said, "Today is your lucky day, Shafiq". At around 1 pm the appellant was carrying the mattock. He was observed to be sweating profusely, perhaps understandably as it was a hot day and his work was manual. However, just prior to this the appellant had been to his home nearby and had taken a very large quantity of Class A drugs (heroin and crack cocaine) before he returned to the hospital.

6. He walked past a colleague, the complainant Mark Quigley, who made an innocent comment to him. The appellant then ran back towards Mr Quigley with the mattock raised, ready to hit him. Mr Quigley turned round and saw the appellant. He thought that it was a joking gesture by him and said, "What are you doing, you silly sod?" That incident was the subject matter of counts 1 and 2.

7. A short time later the appellant went to the staff canteen. He was still carrying the mattock. The complainant Gideon Tesfay was having his lunch. He commented on why the appellant was bringing the mattock to the place where people were eating lunch. The appellant then left the mattock near the door and approached Mr Tesfay. He was in possession of a scalpel, which might have been something he routinely carried for use in his job. He put one hand on the back of Mr Tesfay's neck and, using the scalpel in his right hand, he stabbed Mr Tesfay in the throat. That was the subject of counts 3 and 4. Mr Tesfay ran outside and the appellant followed him and chased him around some parked cars. The appellant had retrieved the mattock as he left the canteen. Eyewitnesses described him as appearing angry and sweating profusely. Mr Tesfay was able to escape and made his way to the Accident and Emergency department where he received treatment.

8. Still in possession of the mattock, the appellant then made his way to a first-floor office where the complainant Trevor McGuire, the general manager, was based. The appellant struck Mr McGuire at least twice to his head with the mattock. That was the subject of counts 5 and 6.

9. Following the attack on Mr McGuire, the appellant returned home with the mattock. When the police arrived, they found him with self-inflicted injuries to his neck and hand. He was covered in blood. The mattock was in the hallway outside his flat and a number of scalpels were found inside the flat. Part of the ceiling of the flat had been damaged, which the appellant later explained that he had caused because he believed that he was being watched with a camera in the ceiling.

10. Mr McGuire sustained the most serious injuries. He was taken to St Mary's Hospital. He had three wounds to his head, the largest to his left temporal region, approximately 10 centimetres by 3 centimetres, which had been sutured by the pre-hospital team because of profuse bleeding. He had a small wound over his left eyebrow and one wound of approximately 3 centimetres in length over his occiput. His left eye was swollen closed. Following a CT scan he was found to have a depressed skull fracture, a left eye socket fracture, a contusion of his brain and a traumatic subarachnoid haemorrhage.

11. Mr Tesfay sustained a 1 centimetre graze to his Adam's apple, a superficial wound measuring 4 to 5 centimetres in length to the front of the neck, which was cleaned and closed with eight sutures, and a superficial wound to the left index finger, which was treated with steristrips.

12. Mr Quigley sustained no physical injuries.

13. The appellant was interviewed on 22 June 2023. He was represented by a solicitor and had the assistance of an appropriate adult. He exercised his right to silence to all questions asked.

The Prosecution Case

14. On these facts the prosecution case was that the appellant intended to kill Mr Tesfay and Mr McGuire, and to cause serious injury to Mr Quigley. He was charged with the attempted murder of Mr Quigley, Mr Tesfay and Mr McGuire, with alternative counts of wounding with intent.

The Defence Case

15. The appellant pleaded not guilty to attempted murder, but entered pleas of guilty to the counts of wounding with intent. So far as the incident with Mr Quigley was concerned, he pleaded not guilty on the basis that he had not intended to do anything to him.

16. In his Defence Statement, dated 13 November 2023, the appellant said this:

> "The [appellant] has pleaded guilty to wounding Gideon Tesfay (count 4) and Trevor McGuire (count 6) with intent to do grievous bodily harm to each of them. He accepts by his pleas that at the time of attacking each of them he meant to hurt them badly as he was emotionally distraught and affected by drugs he had consumed. However, he was aware of what he was doing and formed the intent for those offences he has pleaded guilty to."

17. Subsequently, the appellant served an Addendum Defence Statement, dated 19 January 2024. In this he gave a detailed account of the events of the day in question. He recalled what he was doing during the day, why he was doing it and with what intention. In relation to the

offence concerning Mr Quigley, he said that he passed Mr Quigley, who said something to him, and the appellant became suddenly very angry, believing that everybody was laughing at him. He continued:

> "The [appellant] accepts that as Mark Quigley walked off, he moved towards him intending to hit him with the mattock. He was, however, able to stop himself and he did no more than raise the mattock for a moment before he was able to control himself and withdraw. He did not wish to cause any harm to Mark Quigley and he had no reason to intend to harm him. The [appellant] did not intend to kill and his actions were merely preparatory to causing injury to him."

18. He continued by referring to the incident with Mr Tesfay. He said that Mr Tesfay had made a comment about bringing the mattock into the canteen and that he suddenly became angry again. He continued:

> "On this occasion, however, he was not able to control himself. He accepts that he took a scalpel from his pocket and caused the cut to Gideon Tesfay's throat. He accepts that he did so as he wanted to cause Gideon Tesfay some serious harm, but he did not intend to kill him. He is unable to explain why he acted the way he did. He did not believe that he was able to control his erratic behaviour."

He accepted that he had pursued Mr Tesfay into the car park carrying the mattock and that for a period in the car park he was "preparing to harm Gideon Tesfay further, but he gave up after a short time and returned to the building".

19. In relation to the incident concerning Mr McGuire, the appellant said that he went to the office where Mr McGuire was working. He continued:

> "The [appellant] accepts that he assaulted Trevor McGuire with the mattock in an unprovoked attack. When he went in, Trevor

> McGuire was standing up with his back to him and he hit him from behind. His memory was that he only hit him once, but he accepts that he may have hit him more than once. The [appellant] cannot explain why he assaulted Trevor McGuire. He bore no malice against him and did not otherwise wish him any harm. The [appellant] simply found that he was overwhelmed by anger and wanted to hurt somebody. He believed that his work colleagues somehow know about the cameras in his ceiling and someone [was] watching what he was doing. The [appellant] accepts that in his assault upon Trevor McGuire he intended by his actions to cause Trevor McGuire really serious harm, but at not stage did he intend to kill him."

20. The appellant then described going home, taking some more heroin and saying that realisation at what he had done "made him feel suicidal and he took a scalpel and two knives and cut his own throat and other parts of his body".

21. There has been no criticism in this appeal of trial counsel who represented the appellant either as to the circumstances in which the pleas of guilty to wounding with intent were entered, or as to the content of the Defence Statements which were prepared and served.

The Trial

22. The prosecution evidence at the trial, which included CCTV footage of the incident concerning Mr Tesfay, was not challenged.

23. The appellant gave evidence. In the course of his evidence he said that he "might have thought to hurt" Mr Quigley, but "I thought, 'No, don't do it'. I stopped myself". He said that he was "very angry – very angry" when he encountered Mr Quigley. Describing his state of mind before the attack on Mr Tesfay, he stated: "It was the way Mr Tesfay looked. I thought they'd know I was doing drugs and I'll lose my job", and that he had tried to puncture Mr Tesfay. "I was trying to harm him. I wasn't thinking of what kind of harm I'd do." He said that he did not know why he had hit Mr McGuire, and "There's no reason for me to want to

harm him". He specifically denied any intention to kill Mr Quigley, Mr Tesfay or Mr McGuire.

The Judge's Directions

24. The judge directed the jury on the issue of intention in the following terms:

> "Intention – how must you approach reaching a conclusion on what, if any, intention the [appellant] had? The defence has not made any substantial challenges to the prosecution evidence of what took place on 21 June of last year. However, it is submitted on behalf of the defence that the evidence does not prove the [appellant] had the intentions alleged by the prosecution. The prosecution relies on the totality of the evidence of the [appellant's] conduct before, during and after the attacks as demonstrating that the [appellant] knew what he was doing and what he intended to do at the time he carried out the attacks. It is the prosecution case that the irresistible inference from the totality of the evidence provides overwhelming proof that the [appellant] intended to kill or at least to cause grievous bodily harm to Mr Quigley and that he intended to kill Mr Tesfay and Mr McGuire.
>
> You must decide the [appellant's] intention in respect of each of the four counts you are considering in this trial. You must decide the [appellant's] intention at the time he was holding the raised mattock as he approached Mr Quigley from behind – did he intend to kill him; did he intend to cause him really serious bodily harm; or may he have had neither intention? You know that the [appellant] has pleaded guilty to having the intention to cause Mr Tesfay and Mr McGuire grievous bodily harm – that is really serious bodily harm. In his evidence to you he said he only had the intention to cause some harm. When he attacked and injured Mr Tesfay and Mr McGuire using weapons to do so the decision for you to make is whether it was his intention to go further and kill them or either of them; or may he only have intended to cause them grievous bodily harm or just some harm?
>
> It is agreed evidence that the [appellant] had voluntarily consumed drugs at some point on 21 June and before the events with which this trial was concerned, but this is not a case where the [appellant] can say, or even has said, that drugs made him incapable of making decisions because you know, on his own admissions, he has agreed that he intended to inflict harm on two of his colleagues. The law is clear – voluntarily consumed drugs does not provide the [appellant] with a defence. It is no defence for a defendant to say that he would not have acted in a particular way or he would not have formed an intention to kill or to cause really serious harm if he had not been under the influence of drugs. The law is that an intention to kill or to cause really

> serious harm is nevertheless an intention, even though a person would not or may not have formed that intention had he been sober and not under the influence of drugs.
>
> So you decide the [appellant's] intention by examining the whole of the evidence and that requires you to examine the [appellant's] behaviour and what he said and did, both before, during and after each incident; what weapons he used; the nature of any injuries he caused; the nature of any force he used to inflict those injuries.
>
> In any case where there is an issue as to what was the defendant's intention, it is likely that there will be no direct evidence such as a defendant announcing, for example, he intends to kill. Jurors are invited to draw an inference from the whole body of the evidence and this is just such a case. You examine the whole of the evidence and drawing the various pieces of evidence together you will be able to decide whether the prosecution has proved the intention alleged in the count on the indictment you are considering."

The Submissions

25. The sole ground of appeal against conviction is that the judge failed adequately to direct the jury in relation to voluntary intoxication in the context of an offence of specific intent.

26. For the appellant, Mr Nathan Rasiah KC submits that the judge's direction was inadequate. He refers to *R v Sheehan and Moore* (1974) 60 Cr App R 308, *R v Aidid* [2021] EWCA Crim 581, and paragraphs 9.4 and 9.5 of the Crown Court Compendium – a passage which was approved in *Aidid.* He submits that attempted murder is an offence of specific intent, that the appellant was heavily intoxicated by drugs at the material time (which was not in issue), and that there was plainly sufficient evidence to make his state of intoxication from drugs a potential issue as regards intent. He submits, therefore, that the judge ought to have directed the jury to decide whether the appellant had the intention to kill Mr Tesfay and Mr McGuire, not merely by reference to all the circumstances of the case, but specifically including reference to the appellant's intoxication, in accordance with the directions indicated in *Sheehan and Moore* and *Aidid*, and that the judge's failure to do so renders the convictions for attempted murder unsafe.

27. The direction which Mr Rasiah submits should have been given is in two limbs as follows:

> "… first, to warn them that the mere fact that the [appellant's] mind was affected by drink so that he acted in a way in which he would not have done had he been sober does not assist him at all, provided that the necessary intention was there. A drunken intent is nevertheless an intent.
>
> Secondly, and subject to this, the jury should merely be instructed to have regard to all the evidence, *including that relating to intoxication*, to draw such inferences as they think proper from the evidence and on that basis to ask themselves whether they feel sure that at the material time the [appellant] had the requisite intent."

28. Developing his arguments, Mr Rasiah submitted that the requirement for such a direction is not limited to cases where the defendant's case is that they were incapable of forming the relevant intention and that such a direction should be given whenever there is sufficient evidence of drug or alcohol consumption to make intent a potential issue in the case and that this is so regardless of what defence is being run. He submits that it is for the jury to consider that question, regardless of the case which the defendant is advancing, so that the only question for the judge to consider is whether there is sufficient evidence to require the direction.

29. Mr Rasiah distinguishes between the intention required for the purpose of the offence of wounding with intent, under section 18, and the intention to kill, which is required for an offence of attempted murder. He submits that a jury might infer that a defendant was able to, and did form the intent necessary for section 18, but did not to intend to kill, and the fact that the appellant in this case pleaded guilty to the section 18 offences does not amount to any concession on his part that he was able to form the intention to kill. He submitted that in the circumstances of this case, where the judge had observed that the appellant's evidence was not on all fours with his plea, or with the content of his Defence Statement, the requirement for a

specific direction on intoxication was all the greater and should have been considered at the close of the evidence.

30. Here there was, Mr Rasiah submitted, undoubtedly sufficient evidence of intoxication to make it a potential issue. It was not a case where the appellant was merely mildly under the influence, or disinhibited, as a result of his consumption of Class A drugs. Rather, he had consumed a very considerable amount, and more than he usually did. He was developing paranoid thoughts and acting out of character in a way which had no rational explanations in view of his normally good relationship with his colleagues. Mr Rasiah also made clear, however, that the appellant does not resile from his guilty pleas.

The Case Law

31. In *Sheehan and Moore*, the two appellants had been convicted of murder in relation to the death of a man who had been doused with petrol and set alight. Both had had a lot to drink and the alleged principal claimed to have no real recollection of the material events. The judge directed the jury in relation to intoxication as follows:

> "… drunkenness is only a defence to an act which would otherwise be criminal if a person has drunk so much that he is incapable, not nearly, but incapable of forming the intention to do the particular act."

32. The Court of Appeal held this to be a misdirection and quashed the convictions. The judgment sets out the appropriate direction on this issue:

> "Indeed, in cases where drunkenness and its possible effect upon the defendant's *mens rea* is an issue, we think that the proper direction to a jury is, first, to warn them that the mere fact that the defendant's mind was affected by drink so that he acted in a way in which he would not have done had he been sober does not assist him at all, provided that the necessary intention was

there. A drunken intent is nevertheless an intent.

Secondly, and subject to this, the jury should merely be instructed to have regard to all the evidence, including that relating to drink, to draw such inferences as they think proper from the evidence, and on that basis to ask themselves whether they feel sure that at the material time the defendant had the requisite intent."

33. Numerous subsequent cases have examined the circumstances in which such a direction should be given. These cases were examined in detail in the decision of this court in *Aidid*. We gratefully adopt the analysis which is there set out. The Court of Appeal identified two situations. At [86] Lord Justice Fulford, giving the judgment of the court, said:

"… The position is straightforward if the accused's case is that he or she was too drunk to know what he or she was doing and had not formed the necessary intent. A direction is then clearly necessary. …"

He went on to refer to the second situation:

"However, the difficultly arises when it is not part of an accused's case that as a result of intoxication he or she was incapable either of forming the relevant intent or knowing what he or she was doing. In these circumstances, there is tension in the jurisprudence. …"

He went on to refer to cases which had fallen on different sides of the line as to when a specific direction as to intoxication should be given. He continued:

"On the basis of these authorities, it would appear that the potential significance of clear evidence of varying degrees of drunkenness or the effects of drugs may be neutralised by the accused's case that he or she had sufficiently known what they were doing (for instance, by acting in self-defence) thereby rendering a direction unnecessary. On the other hand, the decisions in *Sheehan and Moore*, *Bennett, Brown and Stratton*,

> *Groark* and *Mohamadi* indicate that if there is evidence of drunkenness/intoxication which might give rise to an issue as to whether specific intention could be formed by the accused, a direction should normally be given to the jury that (i) a drunken intent was nevertheless an intent, but (ii) that they had to feel sure, having regard to all the evidence, that the defendant had had the intent. In these five authorities, the court reached this conclusion even though it was not the accused's defence that he or she had been so affected (in *Sheehan and Moore*, *Bennett, Brown and Stratton* and *Groark*, the defendants said they knew what they were doing notwithstanding the consumption of alcohol and in *Mohamadi* the defendant said he had not been present). This court determined a direction, nonetheless, should have been given, leaving it for the jury to decide, on the basis of their conclusions on the evidence, whether intoxication may have resulted in the accused not having the necessary intent."

34. Lord Justice Fulford went on to explain that before the threshold, which requires such a specific direction about alcohol (or drug) consumption to be given, is crossed, there must be an issue in the case about that – that is to say, about whether alcohol or drug consumption had extinguished the defendant's necessary *mens rea*.

35. We should set out also the conclusions reached at [88] and [89] of the judgment:

> "88. Juries in criminal cases are not limited in their consideration of the evidence to the arguments advanced by the prosecution and the defence. They are the finders of fact and it is open to them to reach conclusions that do not match the particular contentions advanced by the parties. They are free, for instance, to reject an accused's account but nonetheless to acquit him or her (or convict of a lesser charge) because they conclude that they are unsure that one or more of the ingredients of the offence of specific intent have been made out. A defendant, for instance, who had been drinking heavily may have advanced a case that he or she knew exactly what was happening when the victim was killed, and that they had acted in lawful self-defence. If the jury reject self-defence, they would still need to consider whether they were sure he or she had the intent to kill or to cause really serious bodily harm, notwithstanding the consumption of alcohol or drugs. The judge must avoid conjuring fanciful factual scenarios, but if there is sufficient evidence as to the consumption of alcohol or drugs such as to make it, viewed realistically, a potential issue as regards intent, then regardless of the nature of the accused's defence, in our judgment the

> correct position was described by Waller LJ in *Groark*: 'if there is evidence of drunkenness which might give rise to an issue as to whether specific intention could be formed by the accused, a direction should normally be given to the jury that a drunken intent was nevertheless an intent, but that they had to feel sure, having regard to all the evidence, that the defendant had had the intent'. Or as the court observed in *Bennett*, 'voluntary intoxication had to be treated like any other evidence which tended to show the defendant may have lacked the state of mind necessary to support the offence'.
>
> 89. It follows that that we reject the prosecution's contention that a direction as to the effect of drunkenness on intention was unnecessary in the present case."

36. We draw attention to the reference to the need to avoid conjuring fanciful factual scenarios and the requirement to take a realistic view of the evidence, as well as to the fact that the position approved was that a direction should normally be given to the jury to consider the matter in the particular circumstances of each case.

Discussion and Conclusion

37. The present case is unlike any of the previous cases in that here it was positively accepted that the appellant was able to form, and had formed, the specific intent necessary to commit the offence of wounding with intent. That was expressly accepted, not only by the appellant's guilty pleas to the alternative counts, but in clear and unequivocal terms in the Defence Case Statement and in the addendum to that statement. In *Aidid* and in the other cases examined in that judgment, the defence case was that the defendant was unable to form the necessary intent at all; or, alternatively, that there was evidence which might have enabled the jury to reach that conclusion.

38. The case with which we are concerned is one where the appellant's case was that he did know what he was doing, and he intended to cause really serious harm. The issue was whether he had the specific intention to kill, as distinct from the intention to cause really serious harm,

which he had admitted by his pleas and his Defence Statement. As the judge correctly pointed out to the jury, the appellant's defence was not that voluntary intoxication by taking drugs had made him incapable of forming the necessary intent, but that the intention which he had formed was to cause really serious bodily harm and not to kill. Although in some parts of his evidence the appellant appeared to retreat from this acceptance, even there he had accepted that he had acted with anger and had intended to cause some harm. Other aspects of his Defence Statement refer to him forming various intentions to do things during the course of the day. There has not at any stage been an application to vacate the appellant's pleas of guilty to the alternative section 18 offences, and, as we have said, it was confirmed by Mr Rasiah in his submissions today that the appellant does not seek to vacate those pleas, but stands by them.

39. Accordingly, if this appeal were to succeed, the section 18 convictions would stand. Against that clear acceptance there is in this case no real evidence of an inability to form the intent required for attempted murder. There was a psychiatric report available to the defence at the trial, but the decision was made not to adduce that evidence. No criticism has been made of that decision, which no doubt is understandable as the report in many respects was not helpful to the appellant, for its conclusion is that his offending conduct had been caused by his consumption of drugs. In the event, therefore, there was no such psychiatric evidence before the jury.

40. The trial judge accurately summed up the effect of the appellant's evidence as follows:

> "In addition to pleading guilty to the offences of wounding Mr Tesfay and Mr McGuire with the intention to cause each grievous bodily harm, the [appellant] repeated those admissions in his signed defence statement dated 19 January of this year. In that defence statement he said that he intended to cause Mr Tesfay serious harm and intended to cause Mr McGuire really serious harm. However, when the [appellant] was giving evidence he appeared to be putting forward a different account, only admitting to an intention to cause the two men some harm,

not serious harm."

41. In these circumstances we conclude that it was unnecessary for the judge to make specific reference to the appellant's intoxication when directing the jury on the issue of intention. It is of some significance (albeit not decisive) that neither counsel at trial considered that such a direction was required. It would have been unrealistic to proceed on the basis that, despite the appellant's guilty pleas to wounding with intent and despite his acceptance that he intended to cause harm – indeed really serious harm – he was, or might have been, unable to form the intention to kill. There was nothing before the court to suggest any meaningful difference between his capacity to form the intention which he had admitted and his capacity to form the intention necessary for a conviction for attempted murder.

42. Accordingly, on the facts of the present case there was no issue raised as to whether the appellant was able to form the intent required for attempted murder. Any such case was clearly neutralised by the evidence of the appellant's own admissions that he knew what he was doing and intended to cause harm. That is so whether the harm which the appellant intended to cause was really serious harm, in accordance with his Defence Statement and guilty pleas, or merely some harm, as parts of his evidence had suggested.

43. However, even if such a direction would have been appropriate, that is not necessarily the end of the matter. This court in *Aidid* considered what the consequence would be if such a direction ought to have been given but was not. It concluded that:

> "The Third Question: *what are the consequences of not giving a direction when one is considered to have been necessary*?
>
> 93. For the third question, it is important immediately to emphasise that in *Sheehan and Moore* the appellants' convictions for murder were quashed and convictions for manslaughter substituted, not because of a failure to direct the jury on the

> relevance of drunkenness to intention but because the judge had positively and fundamentally misdirected the jury on that question. Similarly, in *Brown and Stratton* the judge had misdirected the jury on the issue of alcohol by suggesting it was irrelevant to intent. There is nothing in either of these judgments to suggest that an omission to give a direction of the kind recommended by the court would, by itself, have been sufficient to render the convictions in those cases unsafe. …"

44. Whether the failure to give the direction results in an unsafe verdict will depend on all the evidence and the issues in the case, along with the directions otherwise given by the judge. In the present case the judge's direction on intention made specific reference to the appellant's voluntary consumption of drugs. The judge directed the jury that they needed to decide the appellant's intention by examining the whole of the evidence, including what the appellant said and did both before, during and after each incident.

45. The jury would have had in mind – and clearly did have well in mind – that this included the appellant's consumption of drugs. This is reinforced and, in our view, not undermined by the response to the jury's request during their deliberations whether drug addiction could be argued to cause diminished responsibility; and if so, how that related to the issue of intent, as the defence had argued that drugs were the cause of what had happened. The judge's response was that drug addiction did not cause diminished responsibility in this case and that a drug-induced intention was just as much an intention as any other intention. Both prosecution trial counsel and defence trial counsel were content with that answer to the jury's question. It was apparent from their question that the jury had the appellant's intoxication very much in mind when considering the question of intention. It is striking that here too the defence did not suggest that the judge's direction in response to the jury question was inadequate.

46. It is true that the judge only asked counsel whether they needed to say anything after she had given her answer to the jury question. It would have been better had she discussed this

with counsel before doing so. Nevertheless, however, there was still a clear opportunity for counsel to object if there was anything wrong with the direction and response which the judge had given.

47. Moreover, the nature of the attacks on Mr Tesfay and Mr McGuire speak for themselves. Unless it were to be said that the appellant did not know what he was doing – a case which has never been raised, and indeed which could not be raised in view of the clear acceptance in the Defence Statement that he did know what he was doing – cutting a man's throat and striking a man at least twice to the head with a mattock are acts which speak for themselves, and which the jury was well able to consider. The jury would have been entitled to conclude that, unless he did not know what he was doing, the appellant must have intended by his acts to cause at least really serious injury. Any other conclusion would have been surprising. As it was, the appellant admitted this. But if he was able to form that intention, there was no reason in principle why he should not have formed the intention to kill. Whether he did so was a question for the jury. We reject Mr Rasiah's submission that there is in this respect a relevant distinction between capacity to form an intention to cause grievous bodily harm and capacity to form the intention to kill.

48. We would conclude, therefore, that even if the direction to consider specifically the appellant's intoxication when deciding on the issue of intention ought to have been given, the fact that it was not does not render the convictions unsafe.

49. For these reasons, despite the careful and eloquent submissions of Mr Rasiah, the appeal against conviction is dismissed.

The Application for Leave to Appeal against Sentence

50. When sentencing, the judge read the two psychiatric reports in which the appellant's long-

standing heroin addiction and harmful cocaine habit was considered. They stated that it was likely that he had been suffering from an underlying psychotic illness for several years.

51. The author of the pre-sentence report concluded that appellant presented a high risk of causing serious harm of death or serious injury to members of the public.

52. The judge decided to impose a sentence on count 5 which reflected the overall criminality of all counts. She found that count 5 was a category B high culpability offence and that, given the nature of the injuries, it fell within category 1 harm, with a starting point of 30 years' imprisonment. She concluded that for count 3 the sentence was a concurrent term of 20 years' imprisonment, which was the starting point for an offence which the judge found to be one of category C culpability and category 2 harm. She held that the offences were aggravated by the fact that they were committed when the appellant was under the influence of drugs, and that they were attacks on persons working in the public sector.

53. In mitigation the judge noted that the appellant had no relevant criminal record, no history of violence, and was genuinely remorseful.

54. The judge imposed "no separate penalty" on counts 4 and 6, which represented the guilty pleas to the lesser offences of wounding with intent, in respect of which attempted murder convictions were subsequently entered. As these were alternative counts, and following *R v Butler* [2023] EWCA Crim 676, the judge should have ordered these offences to lie on the file.

55. The appellant argues that the judge erred in failing to make some reduction to reflect the fact that he suffered from a mental disorder, which lowered his degree of culpability, and that in all the circumstances the sentence of 30 years' imprisonment was manifestly excessive. In this regard he relies on an expert psychiatrist's report to the effect that the appellant's psychotic

illness provided important context within which the alleged offences occurred, while accepting that the major influence upon the appellant's mental state on the day of the alleged offences and at the material time was likely to have been heroin and cocaine intoxication.

56. The appellant accepts that the appropriate category within the applicable guideline is category B1, with a starting point of 30 years. That was the sentence which the judge ultimately imposed, after taking account of relevant aggravating and mitigating features, and bearing in mind that the sentence had to reflect the very serious offences against the other victims.

57. Despite the submission that this sentence paid insufficient regard to the appellant's underlying psychotic illness, we conclude that the judge considered carefully the psychiatric evidence, bearing in mind the significant uplift from the starting point which would have been required to take account of the offences against the other victim. We see no basis to conclude that insufficient regard was had to this psychiatric evidence.

58. It is not arguable that the sentence of 30 years' imprisonment was manifestly excessive for such serious offending. We refuse the application for leave to appeal against this sentence. Accordingly, there would be no purpose in granting an extension of time, which is refused.

59. However, although this will not affect the overall sentence, we need to deal with the sentences of "no separate penalty" which were mistakenly entered on counts 4 and 6. We therefore grant leave, limited to counts 4 and 6, we quash these sentences and order that these offences lie on file.

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

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