Neutral Citation Number: [2025] EWCA Crim 668

Case No: 202302462-B3-8

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM the Crown Court sitting at Northampton
The Hon. Mr Justice Johnson
T20227261

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/05/2025

Before :

PRESIDENT OF THE KING'S BENCH DIVISION
THE HON. MR JUSTICE GOSS
and
THE HON. MRS JUSTICE CHEEMA-GRUBB

- -

Between :

Louis de Zoysa	**Applicant**
- and -	
Rex	**Respondent**

- -
- -

Imran Khan KC and **Chloe Gardner** (instructed by **Imran Khan and Partners**) for the **Applicant**
Duncan Penny KC and Jocelyn Ledward KC (instructed by **CPS Prosecution Unit**) for the **Crown**

Hearing dates : 8 May 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Dame Victoria Sharp, P.

1. On 23 June 2023, following a two-week trial before Johnson J and a jury at the Crown Court sitting in Northampton, the applicant, Louis de Zoysa, was unanimously convicted of the murder of Police Sergeant Matthew, "Matt" Ratana. On 27 July 2023 he was sentenced to life imprisonment. A whole life order was imposed pursuant to paragraph 2 of Schedule 21 to the Sentencing Act 2020.

2. Applications for leave to appeal against conviction and sentence were refused by the single judge. Those applications were renewed before the full court, and at the conclusion of the hearing we announced that those renewed applications were refused. There follow our reasons.

The facts

3. The applicant was stopped by police in London Road, Norbury at about 1.30am on the 25 September 2020. He had travelled alone on two busses from his home in Banstead and was not far from his parents' address. He was carrying a brown bag. He told the police that he had cannabis on him. He did not tell them that he had bullets on his person, or a loaded antique revolver (the gun) in a holster under his left armpit. He had bought the gun on the internet in June 2020 and made ammunition to use in it (other live ammunition made by the applicant was discovered following a later search of his home). He was searched and seven rounds of loose live ammunition were found in a draw-string bag in his breast pocket. These were suitable for firing from the gun, but he told the police they were not real. The applicant was arrested and handcuffed to the rear. He was placed in a police van and taken to Croydon police station. Once the van arrived in the secure car-park the van doors were left open and he was left alone in the van for about eight minutes, with no distractions. The internal video footage from the van shows the applicant moving about in what turned out to be a successful attempt by him to retrieve the gun from its holster. When the applicant gave evidence he said he did not know if he was trying to get hold of the gun at that time, or if he wanted to use it to shoot anybody. He did not know if he was moving his hands to change which hand was on top or whether he was hiding one of his hands under his coat and he said he did not know if the gun was in his hand when he got out of the van.

4. The applicant was taken from the van into a holding cell. En route to the holding cell, as captured on video footage, he walked sideways and kept his back to the wall.

5. The two arresting officers accompanied the applicant into the holding cell where they were joined by Sergeant Ratana who was the custody sergeant on duty. Once in the holding cell the applicant was told he would be searched again.

6. Within two minutes of entering the holding cell the applicant produced the gun, aimed it at Sergeant Ratana and shot him at very close range. He did this after Sergeant Ratana had asked him to stand up. The first bullet entered Sergeant Ratana's chest and travelled through the heart and other organs, causing fatal bleeding, before lodging in the spine. As the other two police officers reacted by throwing themselves on the applicant and attempted to get the gun, the applicant aimed the gun at Sergeant Ratana again after Sergeant Ratana had fallen to the ground, and fired a second shot. This second shot entered Sergeant Ratana's right leg and buttock. A third shot was fired immediately afterwards and hit the wall. The first three shots were fired within three seconds. As the

two police officers struggled to disarm the applicant, he fired a fourth shot some sixteen seconds after the third. The fourth shot hit the applicant's neck and dissected his left carotid artery. He was finally disarmed by the use of a taser. The applicant had remained handcuffed to the rear from the moment of his arrest until the firing of the fourth shot.

7. All the events in the holding cell were captured on high quality video footage. As the trial judge was later to observe when sentencing the applicant, he had been treated with conspicuous compassion and kindness throughout, including by Sergeant Ratana.

8. The fourth shot caused the applicant a severe and life-threatening injury. A blood clot travelled into a cerebral artery resulting in a stroke and some permanent brain damage. As a consequence, the applicant has considerable communication difficulties as well as weakness in the right side of his body which makes it necessary for him to use a wheelchair. He has receptive and expressive aphasia, and apraxia of speech as well as some cognitive impairment. These mean he has some difficulty both in understanding language spoken to him and in finding the appropriate spoken language to respond, as well as in making the sounds of words he intends to articulate.

9. The applicant was born on 17 July 1997 and is now 27 years' old. He has autism spectrum disorder diagnosed in childhood. He was bullied at school and there were real difficulties in his home life, including violence by his father. However, he was intelligent and overcame his difficult start in life to achieve three 'A' grades at A level in chemistry, physics and maths. He began, but did not complete, a university degree. By the time of his arrest in September 2020 he was living alone and had been working as a coding analyst for HMRC for sixteen months. He was 23 years' old and had no previous convictions but had been arrested twice previously without any unusual incident. On one of those occasions he was detained in the same custody suite of the same police station.

10. On 13 November 2020, the applicant was arrested while in hospital, for the murder of Sergeant Ratana. He was not fit to be interviewed. He was charged with murder and nine related firearms offences on 29 June 2021. However, the prosecution elected to try only the single charge of murder and a fitness to plead hearing took place in November 2022. Jeremy Baker J (as he then was) heard contested evidence and on 18 November 2022 found the applicant both fit to plead and fit to stand trial. The judge gave directions including for a ground rules hearing on 24 April 2023 and for the provision of an intermediary, to ensure that the applicant was able to play a full part in the proceedings.

11. By the time the trial began, the applicant was 25 years' old. The Crown's case was that he had deliberately fired twice at Sergeant Ratana intending to kill him or cause him really serious harm. In a defence statement dated 25 May 2023 the applicant admitted firing the gun and stated he had done so because of "panic autistic spectrum disorder meltdown." The prosecution was put to proof in relation to the necessary intention for murder and the partial defence of diminished responsibility was relied on. The basis for that partial defence was that "at the time of the gun being fired Louis De Zoysa was suffering from an abnormality of mental functioning" namely autism spectrum disorder, and "at the material time, Mr De Zoysa suffered from an autistic meltdown."

12. The applicant's case on diminished responsibility was grounded on the expert opinion of Dr Dinesh Maganty, a consultant forensic psychiatrist who provided a report dated 27 March 2023 and two addendum reports. It was his opinion that the most likely

explanation for the applicant's actions at the material time was that when he was facing severe stress his autism spectrum disorder led to an autistic meltdown namely an intense, involuntary response to an overwhelming nervous system overload. Such a reaction is severe, cannot be controlled and is released by outbursts. Dr Maganty also said that should the trial judge take the view that the applicant had to have at least a basic understanding of the following matters, in order to instruct his legal team and enter a plea, then he was unfit to plead. These were the way that the applicant's abnormality of mind substantially impaired his responsibility for his action and the basis for this leading to a defence of diminished responsibility, combined with the shift of the burden of proof to the defence on the balance of probabilities.

Conviction

13. Three grounds of appeal against conviction are advanced. First, that Johnson J was wrong to find that the applicant was fit to stand trial. Second, that the judge was wrong not to allow the jury to view the site of the shooting. Third, that the judge failed to direct the jury to consider autism when considering unlawful act manslaughter.

14. Connected to the first ground of appeal was an application to admit fresh evidence which was served after the refusal of leave by the single judge. This consisted of a report from Simon Baron-Cohen, a professor of developmental psychopathology. The fresh evidence application was withdrawn by Mr Khan KC for the applicant, at the outset of the hearing before us. Mr Khan quite properly took responsibility for the late withdrawal of the application. It is regrettable however that the application was made at all. The report was based on only a small subset of the relevant trial material; it added nothing to the material already before the court, and did not come close to meeting the legal criteria for the admission of fresh evidence.

15. We turn then to the first conviction ground.

16. The 24 April 2023 hearing, initially intended to set ground rules for the trial, became the hearing of a further argument on the applicant's fitness to plead and stand trial. Jeremy Johnson J heard evidence from Dr Maganty for the applicant and from Dr (now Professor) Nigel Blackwood for the prosecution. He also had available an intermediary's report prepared in March 2023 which set out the applicant's considerable difficulties in consistently understanding spoken sentences, processing and retaining verbal information and communicating his own thoughts and memories. These difficulties could be ameliorated to a degree by the use of visual support for what was said to him. At the end of the hearing the judge decided that the applicant remained fit to plead and provided reasons in a comprehensive written ruling.

17. The judge observed that the scope of the trial was particularly limited despite the gravity of the allegations. He said:

> "8.13 The essential sequence of events spans 1 hour and 40 minutes. It is summarised at paragraph 2.3 above. The relevant events are captured on video, by means of a combination of CCTV and police officers' body worn video. The video is, generally, of high quality. Audio is also captured which, again,

> is generally of reasonable to high quality. The audio visual evidence has been compiled into a single chronological subtitled sequence which lasts for 1 hour and 20 minutes. In addition, there is evidence as to the items that were found at the defendant's home. There is no issue as to identity. There is no bad character evidence or hearsay evidence. There is no circumstantial evidence. There is no complex forensic evidence. There is no expert or scientific evidence save possibly (if an admission is not forthcoming) on an isolated issue of ballistics, and also on relatively straightforward topics such whether the defendant's self-control was substantially impaired by an autistic meltdown. There is unlikely to be any complex issue of law. Subject to the question of diminished responsibility, the prosecution's aim is to avoid calling any evidence beyond the compilation of audio-visual material. Whether that aim can be achieved depends on the admissions that are forthcoming, but it is unlikely that there will be a great deal of additional evidence. If diminished responsibility is a live issue, then an expert will be called on that issue, but it is unlikely that it would require the introduction of any other additional material.
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> 8.14 The issues for the jury are likely to be whether the defendant fired the gun by accident (in circumstances where he had, whilst handcuffed with his hands behind his back, retrieved the gun from its holster, stood up when directed to do so, pointed the gun at PS Ratana's chest, and pulled the trigger), and whether (in those same circumstances) he had intended to kill PS Ratana or cause him really serious harm. In the event that the issue of diminished responsibility is raised, and taking Dr Maganty's report as a template, the additional issues that are likely to arise are whether the defendant set out to kill anyone that day, whether he was obsessed with firearms (as part and parcel of his autism), whether he had an autistic meltdown and whether his self-control (or judgement) was thereby substantially impaired."

18. A number of adaptations to the proceedings were envisaged by the judge. These included trial at a venue that required no more than 10 minutes travel by the applicant, physical reworkings to the court room, and simplification of the case beyond what would ordinarily be expected - such as, to a high degree, in the language to be used at all points in the trial including the opening, agreed facts, formulation of questions to the applicant and directions to the jury. The intermediary was to have a prominent role.

19. Johnson J concluded:

> "9.1 The defendant's capabilities (particularly in relation to communication, but also information processing) are

> significantly compromised by a combination of Asperger Syndrome and brain injury.
>
> 9.2 The issues in this case are straightforward. The evidence is limited and does not involve any complexity. Many adaptations have been made to assist the defendant. Further adaptations can be made.
>
> 9.3Taking account of the compass of the trial, and the adaptations that can be made, the defendant has not shown that any single one of the six Pritchard criteria are beyond his capabilities. Like Jeremy Baker J, I am satisfied that the defendant is fit to be tried."

20. No challenge was made before us as to the findings of Jeremy Baker J. Indeed Mr Khan agreed the *Pritchard* criteria (see para 23 below) were met in respect of a murder trial *simpliciter*. It was submitted however that the introduction of the issue of diminished responsibility, which had not been a feature of the expert evidence in November 2022, should have led to a different outcome because the nature and extent of the evidence and issues in the case had fundamentally changed.

21. Mr Khan acknowledged that the trial judge carried out a careful analysis. He submitted however that the introduction of a possible partial defence of diminished responsibility, based on an autistic meltdown at the time of the shooting, made the decision as to plea more complex, and despite the adaptions proposed to the trial process, were such that the applicant could not be fairly tried.

22. The situation facing the court was highly unusual and required particular care. The trial judge gave it that care.

23. The applicable law is laid down in *R v Pritchard* (1836) 7 C&P 303, 304 to 305. The courts have refined the test laid down in *Pritchard* into six fundamental criteria: see for example, *R v John M* [2003] EWCA Crim 3452 at paras 21 to 24; and *R v Marcantio*, *R v Chitolie* [2016] EWCA Crim 14; [2016] 2 Cr.App.R. 9 at paras 7 and 8. When considering whether a defendant is fit to stand trial, the court must be satisfied that the defendant has the following capabilities: to understand the charges, to decide whether to plead guilty or not, to exercise the right to challenge jurors, to instruct solicitors and counsel, to follow the course of the proceedings and to give evidence in his own defence. The court must undertake an assessment of the defendant's capabilities in the context of the particular proceedings.

24. The judge identified each of his findings on the *Pritchard* criteria, and the evidential basis for his findings. His reasoning has not been subjected to any rational criticism except by way of simple disagreement. A fair trial is the baseline. The judge certainly had this firmly in mind. The judge heard expert evidence and he was entitled to prefer the evidence of Professor Blackwood. Professor Blackwood considered this issue in a report dated 17 April 2023. He disagreed with Dr Maganty that diminished responsibility was available as a defence and also criticised the analysis of the impact of that potential partial defence on the applicant's fitness to plead and stand trial. Dr

Maganty had interviewed the applicant for three hours with just two short breaks and without the assistance of an intermediary. Even under those circumstances the applicant had provided new information: about the background to his carrying a gun for example, that he had purchased an antique gun and believed possession of it was legally a 'grey area', and that he was holding the gun for drug dealers who were also arms dealers.

25. Professor Blackwood did not agree that the applicant's ability to instruct solicitors and counsel sufficiently to satisfy the *Pritchard* criteria was negated because of his difficulty in considering the law concerning murder/manslaughter and the legal test for diminished responsibility. This was because it was not necessary for any defendant, let alone someone with the applicant's disabilities, to understand the law and this was not a consideration psychiatrists would usually address as part of the criteria.

26. In our judgment the proposed arguments are simply repetition of the submissions made and considered fully by the trial judge. We see no error of approach or disregard of a significant feature. The judge was unarguably correct when he assessed the impact of the defence on the applicant:

> "8.44 I have no doubt that the defendant does not have the capacity to comprehend, retain or articulate a detailed analysis of the law of diminished responsibility. Few defendants would be able to do so. In the particular circumstances of this case, however, the application of the law of diminished responsibility, as it impacts on the defendant, is straightforward.
>
> 8.45 First, there is the question of whether the defendant was suffering from an abnormality of mental function which arose from a recognised medical condition: section 2(1)(a) of the Homicide Act 1957. That is not in issue: Dr Maganty and Dr Blackwood both agree that the defendant satisfied this condition. It is not therefore relevant to the question of plea (in the sense of the defendant having to make a judgement about it). In any event, it is clear from the evidence (including the interview with Dr Deeley) that the defendant recalls and understands that he was diagnosed with Asperger Syndrome, and there is no evidence to suggest that he does not understand that this impacted on his mental functioning (albeit this would need to be expressed in a simpler way).
>
> 8.46 Second, there is the question of whether Asperger Syndrome substantially impaired his ability to exercise self-control (or, possibly, exercise a rational judgement or to understand his conduct): section 2(1)(b) and 2(1A) of the 1957 Act. Dr Maganty posits the possibility that the defendant had an "autistic meltdown" such that he lost his self-control. That is an easy enough concept to convey in simple language. The defendant now claims to have a recollection of the incident. He said that he shot PS Ratana as a result of "panic". As Dr Maganty accepts, this is a coherent explanation. It is not obviously

> redolent of impaired control or rational judgement. Dr Maganty said that the defendant was unable to explain his thought process. Asked in those terms, in the context of a 3 hour interview without an intermediary, it is perhaps not surprising that the defendant found it difficult to articulate his precise thought processes. I do not, however, accept that it has been shown that he is unable to communicate whether (for example) he got the gun when he was in the van, whether he hid he gun from the officers, whether he fired the shot deliberately, or whether he lost control."

27. We are unable to accept that understanding the charges and being able to decide how to plead means being able to understand the legal complexities of a diminished responsibility defence and the detail of medical evidence in support of such a defence. Many defendants will come before the court and not have the ability to understand complex legal issues or nuanced expert evidence, whether for reasons of intellectual deficiency, mental health, youth or otherwise, and they do not need to. What is required is different and will vary depending on the specific circumstances of the case. In general it is being able to understand the questions their lawyers ask and give intelligible answers. It is being able to decide whether to accept the advice they are given, aware that the role of their lawyers is to protect their interests. It is to be able to be witnesses of fact in their own case, if they choose to give evidence.

28. Nor do we accept that because the applicant said in his defence statement that he did not understand all the words used in that document, or all the content relevant to diminished responsibility this meant he was unfit to plead.

29. There is no question but that every possible step that could be thought of was taken to ensure the applicant's participation met the strict requirement of a fair trial. We have set out what the judge expected to occur and with the benefit of a retrospective view it is plain that those directions were effective. Counsel on both sides used plain language, and an appropriate pace. We particularly commend the way in which the cross examination of the applicant was conducted by Ms Ledward KC for the Crown. The court days were truncated whenever required. Counsel prepared straightforward written documents, including for example, simplified versions of submissions. The court appointed an intermediary who ably assisted the applicant throughout the preparation of the case, the trial and his evidence.

30. Twice, on 9 June and 26 June (close to the start and the end of the trial) the intermediary provided a written update report. The first report summarised the positive impact of steps the judge had taken to ensure the applicant's understanding was maintained, including providing a simple introduction to each stage of the proceedings, directed at the dock. The proposed events for each day were given to the applicant in writing the day before and explained in meetings with defence counsel as well as by the intermediary. These were reinforced by the judge repeating what was proposed immediately before it happened at the start of the day's hearing. The intermediary noted the simplified form in which spoken information was being communicated in the trial, not just directly to the applicant himself. The second report mentioned that the applicant was able to understand the contrasting positions of the prosecution and the defence when stated separately, although he could not follow the more complex content even

when simplified verbally and with the support of visual aids. He was fixated on a few topics. Although there were times when the intermediary was concerned about the level of the applicant's energy and focus, the short breaks temporarily refreshed him.

31. The applicant gave instructions and entered a not guilty plea himself. Mr Khan never found himself in the position of having to tell the judge that he was unable to receive instructions from the applicant. No submission was made at any point in the trial, which lasted from 6 to 23 June, to the effect that the applicant had become unfit. There was video evidence of what happened in the cell. It was not in dispute that the applicant was armed and had failed to indicate his possession of a loaded firearm at any point up until he used it to fire at a police officer at close range. In those circumstances, the number of legal issues the applicant had to understand sufficiently to participate in his trial was, as anticipated, limited.

32. The applicant was able to give evidence, consistent with his defence of diminished responsibility, with careful adjustments to the process including the availability of a white-board for him to use and breaks whenever required. The intermediary was actively involved throughout. The questioning on the limited issues was prepared by counsel skilfully so that the applicant did not have to listen to, comprehend, and then answer conceptually complicated or detailed questions. To the contrary, all topics were broken down into simple and short questions. The applicant told the jury he had not intended to kill Sergeant Ratana or cause him really serious harm, how he responded to stress, his movements leading up to his arrest, how he felt when he was stopped by the police, why he had not told the police he had a gun and although he admitted firing the gun, that he had not meant to or wanted to. When asked, "Why did you fire the gun?" he replied, "panic attack." He was able to expand on this account both under careful cross examination and in re-examination. He used the terminology he had used to Dr Maganty. The respondent has set out a detailed chronology of the trial and full cross-references to the applicant's evidence which was heard over the course of three mornings with frequent breaks.

33. We are able to confirm all this because, uniquely, this court has been able to see and hear the applicant's evidence following the judge's order that it be recorded so that the psychiatric experts could view it in full before giving their evidence at the trial.

34. Returning to the application made on the first day of the trial, the judge heard expert evidence from consultant psychiatrists on the applicant's ability to communicate intelligibly and to give instructions and evidence to advance the potential defence and he was entitled to reach the conclusions he did. As we have seen for ourselves, nothing that occurred after the trial had begun, required those conclusions to be revisited. We are not persuaded that the judge was arguably in error when he concluded that the nature of the case remained straightforward despite the introduction of the partial defence.

35. We are not persuaded that the judge's approach was arguably incorrect either in terms of the facts of this case or the law. Indeed, in our opinion, his ruling on this aspect of the trial was immaculate. Accordingly, leave to appeal on this ground was refused.

36. The second proposed ground is that the judge wrongly deprived the defence of a view of the locus in quo. An application was made for the jury to visit the holding cell where the shooting took place on the grounds that in a case where the applicant had a restricted ability to express himself it was important that the defence could deploy all material

that could assist in supporting his case. The application was first mooted on 24 May 2023. Arrangements were made for a view to take place, should the judge direct one would be of assistance to the jury. Having heard argument on 6 June 2023, the first morning of the trial, the judge refused the application. Mr Khan sought leave to argue that this decision was wrong. He drew a contrast between the judge's decision to refuse this application but to allow an application by the prosecution to permit the jury to handle the firearm, including an invitation to pull the trigger, despite defence objections.

37. Mr Khan accepted that the Crown had produced high quality and high definition 3D imagery of the locus in quo which the jury could navigate their way through. Rather than diminish the benefit to the jury of a visit to the cell itself, Mr Khan submitted that this underlined the fact that a view was necessary.

38. We have not been told how a visit to the holding cell would have assisted the defence being considered by the jury. Plainly, a juror's individual reaction to being in the confined space where a man had died in a violent and unexpected event was irrelevant to the trial and potentially distressing. What then was the positive benefit to be? We note that it was not the applicant's case that being in a police station or a cell was more likely to cause him to have a meltdown. The evidence was, as we have said, that he had been arrested and taken to the police station twice before without incident.

39. In his ruling the judge applied the overriding objective of dealing with cases justly so as to convict the guilty and acquit the innocent and in a way that takes account of the gravity of the offence alleged, the complexity of the issues and the severity of the consequences for the defendant, as well as efficiently and expeditiously. Having dealt with each of those factors in turn, he focused in particular or whether there was a material prospect that a site visit would significantly improve the jury's understanding of the evidence. This included of course the evidence that the defendant might give.

40. The judge had been told that when leading counsel for the Crown visited the site it looked bigger than it appeared in the materials prepared for the jury, and Professor Blackwood said the same in one of his reports. Mr Khan however, said he thought the holding room seemed smaller and more claustrophobic. The critical issue however was not how any individual, including a juror, felt when they visited the holding room. It was what the impact was on the defendant and whether he suffered an autistic meltdown. The judge concluded the jury could determine that issue on the basis of the evidence of the defendant and the medical experts, using the range of visual aids to be made available to them. He then said:

> "2.21 Accordingly, I do not consider that there is a material prospect that a site visit would significantly improve the jury's understanding of the evidence. If I had reached the contrary conclusion, I would have directed a site visit, irrespective of the disruption and cost.
>
> 2.22 The fact that I do not consider that a site visit would significantly assist the jury does not necessarily mean that a site visit should be refused. I have already said that the fact that the defendant's representatives have asked for a site visit is itself a factor (in the particular circumstances of this case) to be weighed

> in the balance. It is, however, a factor of limited weight. On the other side is the cost, operational impact on the police, the disruption, the inconvenience to the jury and the delay to the trial that a site visit would cause. Balancing those factors in the round, and applying the overriding objective, I consider that the interests of justice militate against holding a site visit.
>
> 2.23 For the reasons I have given, the subjective impressions of those who have visited the scene are not relevant to the issues in the case. Accordingly, the prosecution should not be permitted to adduce, from Dr Blackwood, his subjective impression of the size of holding area when he visited the scene. That deals with one of Mr Khan's concerns."

41. We derive no assistance from the comparison with the judge's decision to allow the jury to hold the gun and pull the trigger (in safe circumstances). That was a separate argument on different submissions. In particular, the defence did not concede the shooting was deliberate or that the applicant intended to cause really serious harm or kill. In circumstances where these fundamental ingredients of the offence remained in issue, and expert evidence for the Crown indicated that the trigger was hard to pull, (making it less likely therefore that the gun was fired accidentally) the prosecution was plainly entitled to invite the jury to make a limited but appropriate examination of the firearm concerned.

42. While we appreciate that in some situations a view of the scene provides a substantial benefit to a jury that outweighs the inconvenience and disruption that this entails, we find no flaw in the judge's approach to what was a late application and no arguable merit in this ground of appeal.

43. Finally, we turn briefly to the third ground of appeal. A complaint is made that the legal directions to the jury on the alternative crime of manslaughter were inadequate. The intention for murder not being admitted, the prosecution invited the judge to direct the jury on a second route to a conviction for manslaughter. The defence agreed but asked the judge to amend the usual terms of the direction so that the test for realisation of harm or dangerousness of the unlawful act (here the firing of a loaded gun at another person at close range), should bear in mind that the jury was dealing with an autistic person. Mr. Khan relied on the fact that trial processes are frequently adapted, as they were in this case, to meet the needs of neurodiverse participants. His bold submission in writing at least was that the substantive law should be adapted similarly. In his oral submissions he acknowledged that his submission was contrary to settled law; but invited us to give leave to give him the opportunity to argue that the law required amendment.

44. In our judgment, the judge correctly rejected Mr Khan's submission. It is contrary to law, and it would be for Parliament to decide whether the long-established law on unlawful act manslaughter needs to be changed: see *R v Nica* [2021] EWCA Crim 1719, at [28]. In any event the jury convicted the applicant of murder and they were therefore satisfied that he had the requisite mental element for murder. The point Mr Khan wished to advance is therefore irrelevant to the verdict of the jury.

Sentence

45. The sentence application is made on the following grounds: the sentence was wrong in principle and/or the sentence was manifestly excessive having regard to the applicant's background, the adverse impact of custody, and the impact on his family.

46. In particular, it is submitted that a whole life term was not justified because there was mitigation available which should have led the judge to conclude that a minimum term could be imposed. It is said that the judge failed to have regard to the facts of the case as a whole, the applicant's poor upbringing and background, his age and immaturity, his autism and injuries, the adverse impact of custody on him due to autism and the impact of the sentence on his family.

47. There can be no question but that the judge correctly identified the starting point of a whole life order. The applicant was aged over 21 when the offence was committed and he was convicted of the murder of a police officer acting in the course of his duty. Where a court passes a life sentence the order must be a whole life order if the offender was aged 21 or over when the offence was committed, and the court is of the opinion that because of the seriousness of the offence it should not make a minimum term order: see section 321(3) of the Sentencing Act 2020. Section 322(3) required the judge to have regard to the general principles set out in Schedule 21 to the Sentencing Act 2020. Paragraph 2(1) of Schedule 21 states that if the court considers that the seriousness of the offence is exceptionally high the appropriate starting point is a whole life order. Cases that would normally fall into that category include "The murder of a police officer or prison officer in the course of his or her duty, where the offence was committed on or after 13 April 2015": see paragraph 2(2)(c) of Schedule 21." Paragraph 7 of Schedule 21 provides that any aggravating or mitigating factors which have not already been allowed for in the choice of starting point, should be taken into account. Paragraph 8 states that detailed consideration of such factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

48. We have read the sentencing remarks in this case. The trial judge was undoubtedly in the best position to assess the gravity of the murder and it is patently clear that he did so. In the course of his sentencing remarks he considered whether the applicant's culpability was reduced by reason of his autism spectrum disorder and determined that it was not. The reasoning for this conclusion was fully set out: it included the efforts the applicant made to retrieve the gun while handcuffed and the period of time that he had to decide what he was going to do (over 50 minutes, between the time of the initial stop by police and the shooting). Having heard the evidence, the judge was entitled to conclude that this was a deliberate cold-blooded killing. The judge went through the ways in which autism impacts on an individual's interaction and communication with others and made rational findings that none of them were relevant to culpability in this applicant's case.

49. The judge correctly identified the use of a firearm as an aggravating factor. Mr Khan suggested that because murder using a firearm would attract a starting point for a minimum term of 30 years this factor should have led the judge to draw back from a whole life order. We find this submission illogical. The requirement for a minimum term of such a considerable length is a mark of the gravity of such an offence, whoever the victim is. Where the victim is a police officer acting in the course of his duty the offence is more, rather than less serious.

50. This was a case with other aggravating features. There was a danger created to others (including other police officers and members of the public) by the applicant acquiring the firearm and creating the ammunition for it before carrying it loaded in public, and the judge was entitled to find that there was some premeditation.

51. We have listed the mitigation Mr Khan relied on but the judge specifically referred to these features and his judgment as to what amounted to effective mitigation and what did not was within reasonable bounds and open to him on the material before him. He did not ignore the impact of autism for those serving a custodial sentence for example, and took it into account in the applicant's favour.

52. Mr Khan also criticised the judge's application of the guidance provided by this court in *R v Stewart* [2023] 1 Cr App R (S) 17. He submitted that the judge adopted a 'tick-box type exercise' and failed to heed the warning that justice cannot be done by rote. In that connection we can do no better than repeat the conclusion of the single judge, with which we agree:

> "The judge conducted a thorough review of all the relevant matters and his approach was fully in accordance with the guidance in Stewart. The judge was required to assess whether the seriousness of this murder was "exceptionally high". He concluded it was. That assessment was not arguably wrong. He was required to assess whether there was nevertheless any justification for departing from the consequent starting point of a whole life order. He concluded there was not. That assessment was not arguably wrong. As was made clear in Stewart, at [19(xv)], the assessment of seriousness is solely for the sentencing judge. The judge was unarguably entitled to reach the conclusion he did."

53. Having considered the proposed grounds of appeal against sentence independently for ourselves, we could see no merit in them and accordingly refused leave.

54. It is rare for a police officer to be murdered on duty in this country. This was a shocking crime and a profound catastrophe for the family of Sergeant Ratana and for his colleagues. We extend our sympathies to them.

55. We conclude by thanking counsel for their assistance in this matter.