A PSYCHIATRIC CONUNDRUM

RICHARD BARRACLOUGH QC has recently finished a lengthy trial where the defendant (Justin) and his co defendant were convicted of murder. Both were homeless and were alleged to have been involved in kicking another homeless man to death in a graveyard.

This case note is based entirely on the evidence provided to the jury.

The defence involved the denial that he did the act and an assertion that if he did it, then he was suffering diminished responsibility at the time.

He said it was not Justin who committed the murder, it was Jason who lived in Justin’s head.

The codefendant said it was he who did it. She did not give evidence.

Once the jury decided that she was involved then diminished was likely to fail because it had to be a planned murder.

Justin had been overheard threatening the victim. It was alleged that he went onto the tent of another homeless person in the middle of the kicking and declared that he was stamping on the victim’s head.

It was argued that this was inconsistent with diminished responsibility.

There is no doubt but that he had suffered trauma as a child. The trauma was such that this other personality Jason occupied his skull. He scratched the inside of the skull. He spoke to him incessantly. He encouraged aggression.

An unrelated arrest not associated with the murder had been filmed by officers.

Justin reported the horror of the abuse he suffered as a small child. He experienced a stabbing, the attempts as he saw it through a child’s eyes to drown him such that he, when in the secure unit had bubble baths to try to frighten Jason just as he had been frightened.

When he was 4 years old his mother had a relationship with a man and ended up seeking refuge in a women’s refuge and living a nomadic life as violence in the home mounted. The male trashed the house, flooded it, smashed the contents and poured oil over everything. When he was 7 years old the man tried to strangle his mother and threatened them both with a shotgun. The mother for her part declared that she wanted to murder her son. She was overheard saying that she was going to kill him. At 1 am one day she took him to a lake where she hoped he would fall in the lake and drown.

The result of this was that according to the psychiatrist he “*regressed to omnipotence. The only guarantee of safety is if he becomes all powerful and destroys all opposition. He can have no trust and his childish needs can never be met if he allows himself to be vulnerable. He is in urgent need of nurture and containment and limit setting”*

An unrelated incident had been filmed by officers. He had been taken into a police vehicle. He was banging his head against the sides of the van. He was slavering. His eyes were wild. Of this the psychiatrist said:

*“It is consistent with what I might expect to see in somebody who was suffering some level of dissociative episode in that there seems to be a disconnection with the present, there seems to be some change in identity, sense of it being like a seizure and dissociative episodes presenting as a type of seizure are something that are recorded in the literature. At some point he says something like why are you calling me Justin, which could have been a confused statement or could have been a representation that he was no longer connected to the identity of (Justin)”.*

On another occasion he consulted a counsellor who reported: “*there are two in his head, that it is not just him. He went on to explain that he has an alter ego called Jason and that his eyes change colour. He looks older when Jason takes over. He explained that it’s been happening all his life. The problem has worsened and Jason has taken over more in the past 3 months as he has woken in a cell around 16 times as Jason is violent and hits people.”*

Thus it seemed that Justin was deteriorating during the months before the murder; that he was becoming violent and that he did not know what was happening to him.

When arrested for the murder he spoke with a nurse when in custody. She reported:

*“He stated that "my friend did it" and pointed behind him as if to infer someone had been detained in the cells. I asked him to confirm what he meant by, “my friend did it” and he stated that "My friend of 30 years, Jason". I asked him to confirm who Jason was. (Justin) had reported consistently about experiencing a voice, which he stated he had experienced since he was 6/7 years of age. He stated that "he ("Jason") must have done it, as I don't remember anything about it". He alleged that he must have "blacked out and Jason took over", saying that "this has happened before" and "I wish I had never met him (Jason)”.*

When in custody he was watched over by an officer who recorded him in his sleep muttering “*for fucks sake*” with legs twitching and shaking and his eyes dancing around like the officer had never seen before, his eyes rolling around so much that his eyelids were twisting around so that the join between the eyelids kept going into an S shape instead of being horizontal.

In prison before the authorities transferred him to the secure hospital it was reported that the voices were more of a command in nature. Jason scratched in his skull. He told the consultant that he was unable to resist Jason’s commands. Jason took control of his body. Jason commanded him to harm himself and others

The consultant prison psychiatrist considered it a complex case of dissociative disorder or complex PTSD

It is not surprising that the psychiatrists for Prosecution and Defence agreed that he suffered a mental condition.

The debate was whether at the time of the murder he suffered a mental condition whether a schizoid disorder, a dissocial with dissociative episodes disorder or an unspecified dissociative disorder with dissociative amnesia, or a personality disorder with dissociative episodes.

So frightening was it that when on the secure unit it was reported: “*…I’ve seen (Justin) at the point when he’s been saying ‘Please chop a piece of my brain out because it’s too distressing and intrusive for me”.*

The defence psychiatrist described the condition:

*“Dissociation is a mechanism of defence potentially that people develop often very young children before the brain has matured to cope with trauma, adversity, overwhelming experiences, in essence if I am placing it in this context, if a child faces something that is overwhelmingly terrifying, potentially life-threatening, they have a number of innate animal instincts to cope with that, some of those would be to fight back but for a young child that is not really possible, one of those is to run away, flight, but again for a young child is unlikely to be possible, so a third way to manage such overwhelming stress is to freeze or dissociate which is to separate from the pain emotion trauma you are suffering – adults would describe it as an out of body experience, which we know people suffer in life threatening situations when they cut themselves off, often looking in on themselves – it’s a way of surviving. Emotions, Identity, behaviour get separated rather than for most of us they are all linked.*

*Disassociative disorder is a way of understanding how an individual copes with chronic emotional or physical abuse in that they cut off from the feelings and experiences that they suffer because they are absolutely overwhelming and terrifying and you often see this in children, and when it becomes a chronic way of being, those experiences and feelings are essentially unconscious and can be triggered at other points in time. And I think that’s what happens with Justin, that there are certain things that trigger those emotions, feelings, defences, that are stuck in that period of time. When that happens, he is overwhelmed by those feelings as if those experiences are happening now, and at that point, that’s when I think, if he has an episode, his level of ability to form rational thoughts, and exercise self-control are impaired, because he is simply overwhelmed by those emotions, because they don’t belong in the present.*

*The video (*of the unrelated incident*) where intoxication is representative, is clearly somebody who is intoxicated, but I also see someone experiencing likely overwhelming emotions, rage which is disproportionate to what is happening at that moment in time.*

*If that’s the sort of episode you’re having, which I would call a dissociative episode, then your ability to form rational thoughts and exercise self-control would be impaired, further impaired by alcohol use, but I think if you are suffering a dissociative disorder I can’t separate them and that certainly has a very significant contribution in my mind if that sort of episode is triggered. And I think that it a diagnosis that (Justin) suffers from. He is liable to those types of episodes if the right trigger is there”*

Two things went to undermine diminished responsibility - awareness and intoxication. He denied extreme drunkenness although his blood alcohol reading was 2.5 times the legal limit for driving and would result in a high degree of intoxication in someone used only to social drinking but a regular heavy drinker may be less affected.

The defence psychiatrist opined:

*“ I think it is really difficult to split up into what percentage was alcohol and what percentage might be a dissociative episode if he had one. If he had one, my view would be that it would contribute to any actions that he took and reduce his responsibility regardless of the alcohol, but as I say it is impossible to disentangle for me and to say it was 50% alcohol, it was 50% this, that’s really difficult to do and I can’t disentangle it any more than to say, if he had such an episode the alcohol in my view doesn’t negate that disorder, impairing his responsibility to some extent and contributing to his actions”.*

As to the role of planning (if any) of the murder the psychiatric view was:

*“Somebody could plan something, then have a dissociative episode, so the two aren’t completely mutually exclusive, but if there was no planning, then it is more likely, if there was no clear reason, then it is more likely that this mechanism was in operation, but it is incredibly difficult to say that without knowing what happened”.*

As regards the evidence that he had announced what he was engaged in when he went into the tent of the other homeless person:

*“If the jury accepted that evidence that would mean that he had a relatively clear memory of what may have happened and that would exclude a dissociative episode.”*

Jason continues to be all pervasive in the secure unit: *“Can you give me some medication that will cure it. Can you cut my head open? Can you cut a bit of my brain out? Can you cut Jason out?”* But then “*I’m not sure I want to get rid of Jason. He’s all I’ve had. I’ve had him for many years and what have I got if he’s got rid of?”*

He was prescribed medication to reduce his agitation to a level where he is able to function and also to a level when he can still do his psychological treatments and in particular an anti-psychotic medication, a sedative medication and an anti-depressant medication. He had also moved to a position where he was a little more accepting of the explanation that the unit was offering of how Jason came to be and what he is, despite still doing some unusual things such as images of being in the bath, being drowned, the bubbles emerging. He started to have bubble-baths because he thinks it frightens Jason and gives him some peace from the torment of the voices. He finds that for a period after he does this, a short period, the voices either disappear, or reduce. He feels that he is somehow torturing Jason with the bubbles.