30 November 2016

PRESS SUMMARY

R v Golds (Appellant) [2016] UKSC 61
On appeal from [2014] EWCA Crim 748

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Reed, Lord Hughes, Lord Toulson, Lord Thomas

BACKGROUND TO THE APPEAL

The appellant Mark Golds was convicted by a jury of the murder of his partner. The medical evidence was that he had an abnormality of mental functioning arising from a medical condition. He admitted in court that he had killed his partner. The sole issue in the case was whether he had been in the grip of a psychotic condition when he did so, so as to satisfy the requirements for the partial defence of diminished responsibility and reduce the charge of murder to manslaughter. The law to be applied was section 2 of the Homicide Act 1957 after its revision by the Coroners and Justice Act 2009, with the relevant test being whether the appellant's ability to understand what he was doing, to form a rational judgment or to exercise self-control was "substantially impaired" **[5]**.

The trial judge correctly identified the questions which the jury needed to address, and provided a written summary of the ingredients of diminished responsibility. On the issue of substantial impairment, the judge told the jury that he was not going to give them specific guidance on the meaning of the everyday word "substantially", unless it created difficulty and they requested assistance. The jury did not ask for further clarification or assistance.

The appellant appealed against his conviction, including on two issues relating to the correct approach to the statutory test. Firstly, where a defendant, being tried for murder, seeks to establish that he is not guilty of murder by reason of diminished responsibility, whether the Court was required to direct the jury as to the definition of the word "substantial" in the phrase "substantially impaired" in s.2(1)(b) Homicide Act 1957, as amended by s.52 Coroners and Justice Act 2009? Secondly, if the judge is required to, or if the judge of his own accord chooses to, direct the jury on the meaning of the word "substantial", is it to be defined as "something more than merely trivial", or alternatively in a way that connotes more than this, such as "something whilst short of total impairment that is nevertheless significant and appreciable"?

The Court of Appeal dismissed his appeal. There was no authority requiring the judge to give direction on the meaning of "substantial", and if he had done so it would have been wrong to direct that it would suffice if the impairment was more than merely trivial. Mr Golds appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses Mr Golds' appeal. Lord Hughes gives judgment, with which the rest of the Court agrees.

REASONS FOR THE JUDGMENT

In a murder trial where diminished responsibility is an issue, the judge is not ordinarily required to direct the jury beyond the terms of the statute, and should not attempt to define the meaning of "substantially". However, if there is a risk that the jury will misunderstand the meaning of substantial, then a direction is required. Whether this risk arises is a matter for the judge. This may be the case where the jury has been introduced to the question of whether any impairment beyond the trivial will suffice, or has been introduced to the concept of a spectrum between greater than trivial and total. The judge must direct that while an impairment must be more than merely trivial to be substantial, it is not the case that *any* impairment that is more than trivial will suffice **[43].**

Lord Hughes carries out a comprehensive review of the treatment of the expression "substantial impairment" in the context of the diminished responsibility defence in cases from both England and Scotland (from whose common law the English defence was derived). This included the old formulation of the defence in the Homicide Act 1957 before it had been amended by the Coroners and Justice Act 2009. In the earlier formulation the phrase "substantially impaired" applied to the global concept of mental responsibility, rather than to the ability to do one or more specified things, as it now does **[6].** There is no indication that Parliament wished the same expression to carry a different meaning in the new the formulation of diminished responsibility, or therefore that the authorities on the old formulation should not apply to the new law **[30-35].**

In ordinary usage, "substantial" is capable of meaning either (1) "present rather than illusory or fanciful, thus having some substance", or (2) "important or weighty". Either sense can be used in law making, and the word may take its meaning from its context. The review of the authorities clearly shows that in the context of diminished responsibility the expression "substantially" has always been held to be used in the second of the two possible meanings **[27].** This meaning of the expression also accords with principle – there must be a weighty reason for a reduction from murder to the lesser offence of manslaughter, and not merely a reason which just passes the trivial **[36].**

In the authorities reviewed, the expression "substantially impaired" has been consistently treated as a question of degree, and one that should be left to the jury. The cases repeated and re-emphasised, but did not attempt to re-define the statutory expression. However, they did proceed on the assumption that "substantially" in this context meant impairment which was of some importance, or a serious degree of impairment. It was not contemplated in any of the cases considered that it was sufficient that the impairment merely passed triviality **[9-26].**

Where triviality was mentioned, as in *R v Lloyd* [1967] 1 QB 175, it was in the context of a direction to the jury that "substantial impairment" fell between two extremities: more than merely trivial, but less than total. It is clear from the decision in that and other appeals that there was no intention to direct that any impairment beyond the trivial sufficed, or that the reference to the extremities of possible impairment should provide a definition of substantial impairment. Beyond the merely trivial, what amounted to a substantial impairment was a matter of degree for the jury.

There is usually no need for the jury to be directed on the meaning of ordinary words: any attempt to find synonyms or re-define such words complicates the jury's task and leads to further debate. There will be many cases where the need for elucidation does not arise, for example where the suggested impairment, if it existed, is clearly substantial. If the need does arise, the judge may offer help on what the expression means, but must avoid substituting a single synonym, and it is usually better to avoid the "spectrum" referred to in *R v Lloyd* **[37-42].**

References in square brackets are to paragraphs in the judgment