

ENGLAND AND WALES / JUDGMENT

Daryl Derek Richardson v R

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Neutral Citation Number: [2026] EWCA Crim 1131 Case Nos: 202400426 B4 & 202400427 B4 IN THE COURT OF APPEAL (CRIMINAL DIVISION) ON APPEAL FROM LEWES CROWN COURT His Honour Judge Jeremy Gold KC Ind. No. T20207095 Royal Courts of Justice Strand, London, WC2A 2LL Date: 28/08/2026 Before : LORD JUSTICE DINGEMANS Senior President of Tribunals MR JUSTICE GOOSE and HER HONOUR JUDGE ROSA DEAN Recorder of Redbridge

- ----- Between : Daryl Derek Richardson
- and - Rex
- -----
- ----- Appellant Respondent Ms Farrhat Arshad KC and Mr Nick Beechey on behalf of the Appellant Ms Jennifer Knight KC and Mr Ryan Richter on behalf of the Prosecution Hearing date : 21, 22 & 23 July 2026
- ----- Approved Judgment This judgment was handed down remotely at 12.00, noon on 28.08.2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Judgment Approved by the court for handing down. Richardson v Rex Lord Justice Dingemans, Senior President of Tribunals :

Introduction

1. 2. 3. 4. 5. In November 2020, Mr Richardson, then a 25 year old man (he is now aged 32 years) who had 17 previous convictions for 32 offences (including robbery, threats to kill and possession of a knife) but who also suffered from ADHD, anxiety and depression, was tried at Lewes Crown Court (His Honour Judge Gold KC and jury) jointly with Bobby Smith, then a 22 year old man. Mr Richardson did not give evidence in his defence, but Mr Smith did. Mr Richardson and Mr Smith were both convicted of murder. Mr Richardson was sentenced to life imprisonment with a minimum term of 25 years less time spent in custody (24 years and 157 days), and Mr Smith was sentenced to life imprisonment with a minimum term of 24 years less time spent in custody (23 years and 157 days). This is the hearing of applications on the part of Mr Richardson for: extensions of time to seek leave to appeal; leave to adduce fresh evidence; and leave to appeal against conviction and sentence, which were referred to the full court by the single judge. On 6 June 2025 directions were given by the full court for the hearing of those applications. The proposed grounds of appeal against conviction on behalf of Mr Richardson are that: (1) an intermediary should have been provided for him at

trial; (2) psychiatric evidence should have been obtained to explore the partial defence of diminished responsibility; (3) psychiatric and psychological evidence should have been adduced at trial which would have showed Mr Richardson's limitations and disorders and that he was not, as the jury might have thought, normal; and (4) he was not properly advised about whether to give evidence. The proposed ground of appeal against sentence is that the minimum term was manifestly excessive. The applications were heard on 21, 22 and 23 July 2026 and we heard oral evidence and considered written evidence, on a *de bene esse* basis so that we could decide whether to admit the evidence as fresh evidence from: Mr Richardson (assisted by Ms McGreevy, an intermediary) who had provided a written statement dated 11 May 2023 contending that the proceedings were not explained to him by his solicitor or barrister, that he did not fully understand the advice he had been given about not giving evidence, that he only saw his barrister and solicitor twice during the trial, and that he had made it clear that he did not want Mr Brian Shaw to represent him, and he was advised that Mr Shaw would only be doing the paperwork and would not be in court; Mr Rutherford KC, leading counsel for Mr Richardson at trial and Mr Shaw junior counsel for Mr Richardson at trial who gave evidence that the proceedings were fully explained to Mr Richardson, that he had been given careful advice about the decision whether to give evidence, which he understood, that he was seen regularly during the trial, as evidenced by the SERCO log recording visits to the cells which Mr Rutherford managed to obtain shortly before the hearing of the appeal, and Mr Richardson seemed content with Mr Shaw representing him at trial; Dr Alexandra Antonesei, a chartered clinical psychologist; Dr Philip Huckle, a consultant forensic psychiatrist; and Dr Oladimeji Kareem, a consultant psychiatrist. There was written evidence from: Paula Backen, an intermediary from the Intermediary Cooperative, who produced reports about Mr Richardson; and Georgiana McCarthy, a legal representative instructed on behalf of Mr Judgment Approved by the court for handing down. Richardson v Rex 6. 7. 8. 9. Richardson, who gave details of the steps taken on behalf of Mr Richardson in pursuing these applications. We record that on the first day of the hearing of the applications we lost half a day because Mr Richardson was not produced from HMP Pentonville. Mr Richardson had been transferred from HMP Swaleside to HMP Pentonville so that he could give evidence before us in support of his applications. It appears that a request for transportation of Mr Richardson had been missed by those responsible for prison transport. We were very grateful to the Governor of HMP Pentonville who arranged for Mr Richardson to be transported to court with two prison officers. However, by the time Mr Richardson had arrived, been admitted to the cells at the Royal Courts of Justice, and had a consultation with counsel, the morning had gone. We were only able to hear evidence from Ms McGreevy and deal with the ground rules hearing for the questioning of Mr Richardson. We were very grateful for the assistance of Ms Arshad KC and Mr Beechey on behalf of Mr Richardson, and Ms Knight KC and Mr Richter on behalf of the prosecution. The killing of Muhammed Jassey On Saturday 4 April 2020, so less than a month after the commencement of the first Covid-19 lockdown, Mr Richardson was in flat 7, at Kite Place West, which is located between Findon Road and Whitehawk Road, Brighton, with Mr Smith. Mr Richardson, who was also referred to on occasions as Callum, had

referred to Mr Smith as his cousin, but although it seems that they were close associates, they were not related. Mr Richardson texted Mr Darin Parker, who gave evidence at trial, at 1352 hours asking Mr Parker whether he would “be on taking me and Romeo St James Street when it gets dark to Robb someone for a ounce of banging weed and we will split it 3 way me you and Romeo”. There was evidence at the trial suggesting that “Romeo” was Mr Smith. Mr Parker said at trial that he understood Mr Richardson was asking him to drive him to St James Street to carry out a robbery of a person selling cannabis. It seems from further texts that Mr Parker thought that Mr Smith was sick on the Saturday, but between 1130 and 1145 hours on Sunday 5 April 2020 various texts were exchanged between Mr Richardson and Mr Parker. Mr Parker was asking for repayment of monies, and explaining he didn’t want people coming back to him because of his number plates. At 1142 hours on 5 April 2020 Mr Richardson texted Mr Parker saying “the guy don’t even know my real name or nank so it’s good I wouldn’t get you involved ...”. The prosecution case was that this exchange of texts showed that Mr Richardson was planning to carry out a robbery of a person to obtain cannabis. 10. Later that day Mr Darin Parker drove Mr Richardson and Mr Smith to a Food and Wine store at 1348 hours. Mr Richardson entered and brought some tobacco. He left his phone and was called back.

11. Mr Smith and Mr Richardson entered a Lidl at 1401 hours. It seems that Mr Smith and Mr Richardson selected various items, Mr Smith left the store and Mr Richardson placed some items on the conveyor belt, left the store and then returned. Mr Richardson and Mr Smith then returned to Kite Place West at about 1415 hours. Judgment Approved by the court for handing down. Richardson v Rex 12. 13. 14. At 1422 hours, Muhammed Jassey, the victim, had received two phone calls from a mobile phone number attributed by the police to Mr Richardson. The phone was found beside a mattress on a bed in flat 7 Kite Place West. Both calls went through to voicemail. At about 1426 hours on Whitehawk Road, Brighton, Mr Jassey was stabbed. Mr Jassey died from a single stab wound to the left side of his chest. The blade used was at least 17cm long and had a width not greater than 2.2cm, with a single edge. The level of force used to inflict the wound was estimated to be severe. There were a number of eyewitnesses and the stabbing was caught on CCTV although the view from the CCTV was partially obscured by branches of a tree. There is a sequence of events and CCTV showing Mr Richardson and Mr Smith leaving Kite Place together. They walk and jog across the road to a corner and Mr Richardson can be seen gesturing towards the area where Mr Jassey must have been, who then comes into the CCTV coverage.
15. Mr Richardson and Mr Smith then crossed the road to the side farthest from the CCTV and the three men can be seen to stand together, and it is at this stage that the branches obscure a clear view. Mr Smith and Mr Jassey begin to struggle together travelling along the footpath back in the direction of where Mr Jassey had come from, so that the branches cease to obscure the view. Mr Richardson walks after them and picks something up off the floor. Mr Richardson approached Mr Jassey from behind and seemed to be patting Mr Jassey’s pockets. There is then a sudden movement by Mr Smith followed by Mr Jassey moving away and clutching his left side with his right hand. Mr Richardson and Mr Smith then run back

towards the flats from which they came, and Mr Smith can be seen to hold his right hand behind his back. 16. Emergency services were called to the stabbing at 1428 hours. The Police attended flat 18 Kite Place West where they arrested both Mr Richardson and Mr Smith, together with Darrin Parker who later became a witness. Both Mr Richardson and Mr Smith had already changed their clothing. In Flat 7 Kite Place West, where Mr Richardson and Mr Smith had been staying, black Nike trainers which matched those worn by Mr Richardson in the CCTV were recovered. These shoes and Mr Richardson's North Face top had Mr Jassey's blood on them.

17. We turn first to the fresh evidence. The evidence from Paula Backen and Dr Antonesei
18. We should note that an expert psychologist was instructed by solicitors acting on behalf of Mr Richardson for the purposes of a proposed appeal. It transpired that there were issues with the reliability of that expert (and indeed that expert's assessment of Mr Richardson's level of intellectual functioning seems to have been simply wrong, according to Dr Antonesei's findings) but it seems that although the solicitors had properly warned other experts about the unreliability of that first expert, some evidence from that expert about Mr Richardson suffering from a possible personality disorder, featured in the report from Dr Huckle, the consultant forensic psychiatrist. 19. Dr Antonesei was a chartered clinical psychologist who worked in both the NHS and private settings. Dr Antonesei carried out a cognitive assessment of Mr Richardson Judgment Approved by the court for handing down. Richardson v Rex using the Wechsler Adult Intelligence Scale – Fourth Edition. Mr Richardson had a full scale IQ test of 105, placing him similar to or above 63 per cent of adults within his age range. He did not present with a global learning disability. Mr Richardson's cognitive profile was, however, not consistent across all indices. He was quite skilled at reasoning abstract and complex information, and Mr Richardson's score for Perceptual Reasoning Index was 125, placing him similar to or above 95 per cent of adults within the same age range. Mr Richardson's score on the Processing Speed Index was 117, placing him similar to or above 87 per cent of adults within his age range. Mr Richardson's score on the Verbal Comprehension Index was 78, placing him similar to or above 7 per cent of adults within his age range. This last index measured ability to listen to a question, to reason an answer and to express complex language. Dr Antonesei diagnosed Mr Richardson with ADHD, a diagnosis which reflected entries in Mr Richardson's notes going back to his childhood. On this basis Dr Antonesei said in oral evidence, although it was not in her report, that she considered Mr Richardson to have severe ADHD. The symptoms were high distractibility, short attention span, high impulsivity and severe emotional dysregulation. This meant that he was less able to think things through, or to reflect on and to analyse critically his actions and to anticipate the immediate and long term effects of his actions. Dr Antonesei concluded that "Mr Richardson might benefit from an intermediary at interview and at trial to facilitate the communication between the parties involved and to ensure that communication is complete, coherent and accurate between the parties". Dr Antonesei recorded that Mr Richardson said that he had "split personality disorder", depression, anxiety and ADHD. The evidence shows that Mr Richardson has suffered from depression,

anxiety and ADHD but there was no evidence to show that he had a split personality disorder. Mr Richardson had said to Dr Antonesei that after year 11 at school (so from about the age of about 15 to 16) Mr Richardson “did nothing, fell into a life of crime and started smoking cannabis”. He had then been in and out of prison, and the only work he had done had been with his father, who was a painter and decorator. Later Mr Richardson said he started using drugs when he used cannabis when aged 14 years. He had started to sell drugs when 15-16 years old. Paula Backen is a registered intermediary at the Intermediary Cooperative, but was not available at the hearing of the appeal. Her written opinion was that Mr Richardson was unlikely to have effectively participated in his trial without an intermediary. An intermediary would have assisted in conferences with the legal team, and would have ensured that information was relayed in a slower and simplified manner, using non- legal vocabulary and shorter explanations. Ms Backen thought that explanations would have been assisted by the use of visual flowcharts, diagrams, lists and pictures to ensure Mr Richardson could use the visual mode to augment his poor retention of verbal input. In Ms Backen’s opinion, an intermediary would have assisted when advice was given. 20. 21. 22. 23. It was in the light of Dr Antonesei’s evidence about Mr Richardson’s scores on the Verbal Comprehension Index, and in order to avoid prejudging issues on the appeal, that an order was made providing for Mr Richardson to have the benefit of an intermediary when giving evidence on the appeal. Judgment Approved by the court for handing down. Richardson v Rex Events at the police station

24. Mr Richardson and Mr Smith were arrested and taken to a police station. Relevant events and information have been obtained from the custody record, and the notes made by Mr Richardson’s solicitors at the police station. Mr Richardson was taken to Eastbourne Police Station and the custody record shows that Mr Richardson was booked in at 1849 hours. Mr Richardson reported that he had an operation on his right hand the month before and had ongoing physiotherapy. Mr Richardson said that he was supposed to be taking medication being “concerta”, which is prescribed for ADHD, and “mirtazapine” which is prescribed for anxiety and depression but said he had run out and could not get any more. He said he was suffering from mental health problems being “ADHD – Depression – Anxiety”. This answer is relied on in support of the applications. An appropriate adult was required for the interview, which is also relied on. 25. At 1903 hours Mr Richardson was read his rights and he requested a solicitor, Mr Paley of Harris Paley Schone solicitors (HPS). It appeared from the evidence of Mr Shaw that HPS was a small firm of solicitors, that specialised in criminal defence work. HPS had represented Mr Richardson in many of his previous appearances before the criminal courts. Mr Shaw gave evidence that he had been put on furlough by 5 April 2020 because of the Covid pandemic, and did not start work again until 1 July 2020. Mr Richardson was detained. He had been handcuffed on arrest but was recorded as being calm and compliant, and was noted at 1916 hours to be calm and compliant. It appears that Mr Paley contacted Mr Richardson at 1930 hours on 5 April 2020 and advised Mr Richardson on his rights and not to say anything before the formal interview.

26. Mr Paley travelled to Eastbourne police station in the early morning of 7 April 2020 and arrived at 0730 hours. It appears he got disclosure and had a consultation with Mr Richardson before the police interview. There is a detailed note of Mr Richardson's instructions before the interview. The first set of instructions talked about what he was getting at Lidl. After further disclosure Mr Richardson set out his instructions to the effect that Mr Smith had spoken to a black male after Lidl and all three had shaken hands, Mr Richardson and Mr Smith had returned to the flat, Mr Smith had said come with me, Mr Richardson had gone out not knowing what the issue was, and that Mr Richardson did not know that Mr Smith had a knife or would use it. Mr Richardson also said he "Didn't want to say it was BS as he is my cousin bur I didn't stab him". Mr Richardson gave evidence before us that he had not said some of the things set out in the attendance note of his instructions. Most importantly Mr Richardson denied that he had said that he did not want to say it was Mr Smith. Another example was that Mr Richardson accepted that he had told Mr Paley that he did say "did not know he had knife or would use it" but did not accept that he had said "don't think I touched him". 27. The note recorded that general advice was given. There was a note saying "consideration of" which included "absence of joint enterprise/outside scope ... DR – Abnormality of mental functioning ...".
28. Mr Richardson was interviewed on 7 April 2020 at 0843 in the presence of his solicitor and appropriate adult. Mr Richardson made no comment to all of the questions. The only intervention during the questioning was from the solicitor who clarified some timings. Mr Smith was separately interviewed and made no comment to questions. Judgment Approved by the court for handing down. Richardson v Rex There was a second police interview about items found at the flat at Kite Place West. Mr Richardson made no comment. Detention at HMP Lewes and the lead up to the trial 29. Thereafter Mr Richardson was remanded in custody to HMP Lewes. Mr Shaw started work again with HPS after his furlough. It is apparent, from emails sent to HMP Lewes for Mr Richardson by Mr Paley, that Mr Richardson was being prosecuted in court on another matter relating to drugs and had been in contact with Mr Paley, both directly and through his father, to make it clear that he did not want Mr Shaw to be involved with his case. Mr Richardson said in evidence that was because he did not like Mr Shaw and had never liked him and Mr Richardson felt that Mr Shaw had never represented him properly. Mr Paley said that Martin (a reference to Mr Rutherford KC) would be representing Mr Richardson in court, and that Brian (Mr Shaw) would be there just to keep a record. Further emails made it clear that Mr Paley would be the solicitor throughout the case, Mr Rutherford would be the advocate in court, and Mr Shaw would be the junior advocate, assisting Mr Rutherford from time to time. Mr Paley said in one email "it is good to have three brains on your case".
30. Mr Richardson said he never changed his mind about wanting Mr Shaw, but both Mr Shaw and Mr Rutherford gave clear evidence that, whatever might have been the position at about the time of the emails, at the trial Mr Richardson was content with Mr Shaw's involvement in the case. 31. As the Covid pandemic continued, prisons were not receiving in person legal visits. The medical notes in the prison relating to Mr Richardson are fully summarised in the

report from Dr Kareem. He was involved in a fight with a wing mate, was put into isolation in May because of a concern that he had Covid, and on 17 August was seeking medication. On 20 and 21 August 2020 he was found to be medically fit for court. Records show that in August 2020 Mr Richardson was complaining that he was not being provided with medication for his ADHD or depression. It seems that it was not until 29 September 2020 that Mr Richardson was issued medication. The doctor who saw him reported that Mr Richardson wished to try an alternative to Mirtazapine and he was therefore prescribed Sertraline.

32. Mr Rutherford said that he first met Mr Richardson online for conferences, but left Mr Shaw to take the proof of evidence. It seems from the emails that there were conferences on 27 July and 12 August 2020. Mr Shaw did take a proof of evidence from Mr Richardson. Mr Richardson said that Mr Shaw had made an error about his birthday, which was recorded as 30 January 1994, when it is in fact 30 March 1994.
33. Mr Richardson gave evidence before us accepting that some parts of the proof were accurate, but saying that he had not said other things recorded in the proof of evidence, for example he denied saying in paragraph 13 of the proof that he had pulled Bobby away by the scruff of his neck. Mr Richardson emphasised that nowhere in his witness statement did he say that he did not want to name Mr Smith. Mr Shaw gave evidence that he had recorded the proof of evidence based on the instructions from Mr Richardson. 34. As appears from Mr Shaw's email dated 12 August 2020 to listing at Lewes Crown Court it was recognised that there were further areas which required exploration with Judgment Approved by the court for handing down. Richardson v Rex Mr Richardson, and which would be better taken directly during a conference. This shows that Mr Shaw was aware of the limitations of taking a proof of evidence remotely, and the potential for error in relation to what had been recorded about Mr Richardson's father's birthday, and the need for an in person meeting. 35. As a result Mr Rutherford and Mr Shaw managed to arrange for Mr Richardson to be produced at the Crown Court for a mention on Friday 21 August. Mr Richardson gave evidence that he was told to read the defence statement and just to sign it, and that he did not really understand it or its importance. This was contradicted by Mr Rutherford and Mr Shaw who gave evidence about Mr Richardson giving the instructions for the defence statement. Mr Rutherford gave clear evidence to the effect that he recognised the wording in the defence statement as having been drafted in his own style of writing, and that it was based on Mr Richardson's express instructions. 36. The material parts of the defence statement were as follows: "The Defendant accepts that he was present with another man who he is unwilling to name when Mohammed Jassey was stabbed. The Defendant was not the person who did the stabbing, nor was he aware at the time that the other man that he was with was carrying a knife. Due to the quickness of the incident it was only once back at the flat that the Defendant became aware for the first time that Mr Jassey had in fact been stabbed." 37. 38. 39. The defence statement was dated 21 August 2020 and Mr Richardson signed the addendum dated 21 August 2020 confirming that he had read the defence statement agreed with its contents, and affirmed that it represented his position. It might be

noted that in the defence statement Mr Richardson claimed that he only became aware that Mr Jassey had been stabbed when Mr Richardson was back at the flat, which was inconsistent with his proof of evidence. In October 2020 Mr Richardson's partner said that she was finishing their relationship. Mr Richardson was very upset by this news, and the Assessment Care in Custody Teamwork (ACCT) report from the prison noted that on 8 October 2020 that Mr Richardson had been found in his cell with a ligature around his neck. It was not clear from the reports summarised by Dr Kareem, and from what Mr Richardson said at the appeal, whether this was a real attempt at suicide or a cry for help, but on any view Mr Richardson was not in a good state of mind. There were suggestions that the break up was causing him mental turmoil and concern, and it is clear that the position must have been made worse by the fact that the Covid-19 pandemic meant that conditions in prison were even more difficult than usual. On 12 October 2020 Mr Richardson said to staff that his head had gone, but "getting better". Various observations showing him not engaging, but reporting at other times that he was fine, were made. On 17 October 2020 Mr Richardson seemed to be in a good mood, and matters seemed to have resolved with his partner. He was assessed as being medically fit for court. On 20 October 2020 Mr Richardson was reported to be back together with his partner and he appeared to be settled. 40. On 21 October 2020 it seems that Mr Richardson managed to access drugs. He was found to be "monged bending over in toilet compartment in cell". A diagnosis of acute Judgment Approved by the court for handing down. Richardson v Rex drug intoxication was made, but by 22 October 2020 he presented with no medical concerns. 41. The trial commenced at Lewes Crown Court. At trial, the prosecution case was that they could not say which of the two men identified by the prosecution as Mr Richardson and Mr Smith had stabbed Mr Jassey, but the prosecution contended that they had acted together in joint enterprise. The prosecution relied on the CCTV which captured the two men going to and from the scene of the incident and the incident itself. There were four eyewitnesses. Three witnesses from Flat 18 gave evidence on the aftermath of the incident.

42. Mobile telephone evidence which included texts between Mr Richardson and Darrin Parker, and as noted above, separately Mr Jassey's phone had been called shortly before the stabbing. There was also forensic and expert evidence from a pathologist and a forensic scientist. 43. 44. There was a psychiatric report which had been obtained pre-trial on Mr Smith from Dr Syed Ali dated 1 November 2020. That report noted that Mr Smith suffered from a schizophrenic illness. An application was made for Mr Smith to have the benefit of an intermediary because he had difficulties dealing with complex questions and seeking clarification of those questions. The judge refused the application for an intermediary holding that the high point of the case is that Mr Smtih "suffers from difficulties of understanding which are by no means uncommon in the criminal courts". It seems that adjustments were made to the court day to accommodate Mr Smith's needs.

45. Mr Richardson's case at trial was in accordance with his defence statement. It was accepted on his behalf that he was present at the time that Mr Jassey was stabbed but he denied an intention to kill or cause really serious bodily harm. 46. At trial Mr Richardson did not give evidence, having decided not to do so in the light of advice given by Mr Rutherford KC and Mr Shaw. When giving evidence before us, he was asked directly whether he would have named Mr Smith if he had given evidence at trial, and said he did not know. Mr Rutherford KC said that there were a number of reasons why he had given advice that Mr Richardson should not give evidence. These included the fact that Mr Richardson did not want to name Mr Smith, the prosecution case had gone as well as it could from Mr Richardson's point of view, there were concerns about Mr Richardson as a witness and there were concerns that he might say something that would lead to his conviction for possession of a knife being adduced. 47. At the trial Mr Smith gave evidence. Mr Smith accepted that the taller person on the CCTV was Mr Richardson, but said he was not the other person present, although he accepted he had been present with Mr Richardson shortly before the stabbing. Mr Smith was not cross-examined on behalf of Mr Richardson.
48. Mr Rutherford and Mr Shaw gave evidence that the proceedings were fully explained to Mr Richardson, that he had been given careful advice about the decision to give evidence, which he understood, that he was seen regularly during the trial so that proceedings could be explained to him, as evidenced by the log recording visits to the cells which Mr Rutherford managed to obtain shortly before the hearing of the appeal. Judgment Approved by the court for handing down. Richardson v Rex They both gave evidence that Mr Richardson seemed content with Mr Shaw representing him at trial. Fresh evidence from Dr Huckle and Dr Kareem 49. 50. Dr Huckle gave evidence in his report that Mr Richardson was fit to plead but would require an intermediary. He said that Mr Richardson had ADHD, conduct problems, anxiety and depression at the time of the offence and at the time of his trial. Dr Huckle referred to Mr Richardson having "borderline intellectual functioning and possible PTSD symptoms" but it seems that this information was derived from the expert whose report was not relied on, and the evidence about borderline intellectual functioning was inconsistent with Dr Antonesei's evidence about Mr Richardson's intellectual functioning. In his written report Dr Huckle identified that Mr Richardson's ADHD, depression and anxiety were all mental disorders that amount to mental conditions, and in combination "amount to an abnormality of mental functioning at the time of the killing as per the Homicide Act 1957". Dr Huckle's evidence in his written report was that the abnormality of mental functioning would have substantially impaired his ability to exercise self-control at the material time in that "he was in crisis, was unmedicated, was diagnosed with ADHD, depression, severe anxiety and possible personality disorder", and that these diagnoses impacted on Mr Richardson's decision-making process. Dr Huckle stated "the combination in mental disorder in my view was a significant contributory factor in causing him to carry out that conduct which led to the index offence ie his decision of being in the wrong place at the wrong time".

51. When cross-examined, Dr Huckle confirmed that he did not know what conduct Mr Richardson had carried out on the day of the killing. Dr Huckle said that when he found diminished responsibility it was usually in relation to the main perpetrator of the killing, and Dr Huckle suggested that he had understood (or misunderstood) that Mr Richardson carried out the stabbing. Towards the end of cross examination, Dr Huckle agreed that his opinion was theoretical and after the event, and he expressly agreed with Dr Kareem's evidence in his report to the effect that he was unable to provide a robust professional opinion whether Mr Richardson's abnormality of mental functioning would have substantially impaired Mr Richardson's ability to understand the nature of his conduct. 52. 53. In re-examination Dr Huckle did confirm that his report had been based on the fact that Mr Richardson had carried out the stabbing, however, Dr Huckle did suggest that Mr Richardson's abnormality of mental functions would have substantially impaired his ability to understand the nature of his conduct. Dr Kareem, a consultant psychiatrist, stated in his report that it was his opinion that Mr Richardson's ADHD diagnosis and impaired verbal comprehension were likely to have impaired his ability to understand the nature of his conduct, form rational judgment and exercise self-control. Dr Kareem stated that he was, however, unable to provide a robust professional opinion regarding whether this would have been at a "substantial" level or would provide an explanation for his acts/omissions in relation to the index offence". Judgment Approved by the court for handing down. Richardson v Rex 54. 55. 56. 57. Dr Kareem also stated that Mr Richardson would (on the balance of probabilities) likely have the capacity to understand the nature of the evidence against him as long as explanations were provided to him in basic terms. In cross examination Dr Kareem confirmed that he was unable to conclude that there had been a substantial impairment of responsibility because he had not carried out an examination at the time, there was no evidence at the time that he was acutely or floridly unwell, and Dr Kareem did not know what state Mr Richardson was in at the material time. Dr Kareem was able to say that Mr Richardson would have had ADHD at the time, because it would not change. Dr Kareem said that anxiety and depression were both remitting and relapsing conditions that could be elevated or relieved by other factors, and Dr Kareem could not confirm that they were relevant. Dr Kareem also confirmed that Mr Richardson would benefit from the support of an intermediary, based on all the information before him, because there was a need for Mr Richardson to take breaks, for questions to be asked slowly, and for words to be explained to him. Our findings on the evidence adduced on the hearing of the applications As appears above there were a number of disputes on the lay witness and expert evidence, and it is necessary for us to set out our findings on these disputes. First we find that Mr Richardson was not a reliable witness. As noted above Mr Richardson had 17 previous convictions for 32 offences, which included offences of dishonesty, and he had abused drugs from his early teens. It was apparent from the medical reports that Mr Richardson had lived a life that might be expected from the result of that sort of drug abuse. Mr Richardson was skilled at reasoning complex and abstract information as demonstrated by Dr Antonesei, albeit combined with a low score on the verbal comprehension index. It was, however, apparent that Mr Richardson's evidence was demonstrably wrong in serious

respects on important occasions. For example one of Mr Richardson's complaints in his witness statement dated 11 May 2023 was that during the trial, he had only seen his barrister and solicitor twice. This was consistent with the number of visits explicitly recorded in Mr Shaw's notes, but both Mr Rutherford and Mr Shaw maintained in their written responses to the criticisms made, that there had been regular visits throughout the trial. Mr Richardson maintained his case that there had been only two visits up until Mr Rutherford produced redacted court visiting logs (which he had managed to obtain from SERCO), showing that Mr Rutherford and Mr Shaw had visited Mr Richardson in the cells throughout the trial. Mr Rutherford said that he had made arrangements to stay in Brighton so that he was close to the court during the trial, so that he could see Mr Richardson regularly, and was the first visitor each day. Mr Richardson might in his own mind have felt that he had just cause to blame his legal representatives because he had been convicted of murder (without giving any thought to his own actions as demonstrated on the CCTV footage in calling Mr Jassey over to Mr Smith before the stabbing) but his evidence about how often he had seen his legal representatives was wrong, and we accept the evidence of Mr Rutherford and Mr Shaw on this, supported by the independent visitor logs. 58. Further, it was apparent that Mr Richardson would give evidence about what he thought should have happened, rather than what did. For example, he gave evidence repudiating part of the proof of evidence to the effect that he had taken Mr Smith by the scruff of Judgment Approved by the court for handing down. Richardson v Rex the neck during the incident, saying that he never said that. Mr Shaw, on the other hand, confirmed that he had completed the proof of evidence based on Mr Richardson's evidence, and we could discern no reason for Mr Shaw to have made up this part of Mr Richardson's instructions. We accept Mr Shaw's evidence that Mr Richardson did say this when giving his proof of evidence. Indeed, at the time Mr Richardson said this to Mr Shaw, this statement would have helped to emphasise how much Mr Smith's actions (Mr Richardson has always said that Mr Smith was the actual stabber) were not part of any plan to which Mr Richardson was a party. Mr Richardson has now watched the relevant CCTV of the incident on numerous occasions and it is not apparent from that CCTV, which is difficult to see in parts, that Mr Richardson took Mr Smith by the scruff of the neck. In our judgment Mr Richardson has now taken account of that CCTV evidence, and then decided that he could not have said what Mr Shaw recorded, and then blamed Mr Shaw for adding to his instructions. All of this makes Mr Richardson a witness who it is difficult to rely on. As to the attendance note in the police station, for the reasons given above, we do not consider Mr Richardson to be a reliable witness. We have not heard evidence from Mr Paley, but that is because no one had raised an issue about the accuracy of Mr Paley's attendance note before the day of the hearing. This is notwithstanding the fact that Mr Richardson had given a witness statement in support of his application for leave to appeal, and there was an opportunity to seek further directions and put in a further witness statement. We did not, however, need to hear from Mr Paley. This is because we have the contemporaneous attendance note and we have all come to the firm conclusion that Mr Richardson is not a reliable witness on the issue of the attendance note. We accept that Mr Richardson may have forgotten telling Mr Paley certain matters (Mr Richardson was giving

evidence about the instructions he gave in a police station over six years ago), but there is nothing to suggest that Mr Paley would have recorded those instructions if Mr Richardson had not said them. Mr Paley had no reason to make up instructions from Mr Richardson. 59.

60. We reject Mr Richardson's evidence about not saying matters recorded by Mr Shaw in the proof of evidence. The position about the mistake about Mr Richardson's birthday is not as straightforward as Mr Richardson suggested, as appears from the report from Dr Kareem at paragraph 5.2. The PNC records two alternative dates of birth for Mr Richardson, being 30 January 1994 or 30 March 1994. Mr Richardson said to Dr Kareem, and in evidence to us, that his date of birth is 30 March 1994. It seems likely that Mr Shaw took the date of birth from the PNC and there was no evidence of a discussion about dates of birth. The date of birth was not relevant to the issues in the trial in the Crown Court. There was also an issue about whether it was Mr Richardson's father's birthday. In the proof of evidence Mr Richardson was recorded as saying that he had met his father for lunch, it being said that it was his father's birthday. Mr Richardson said he had met his father for lunch, but it was not his father's birthday. It is apparent that it was not Mr Richardson's father's birthday on that day, but this error was not material to any issues at the trial. It does not cause us to doubt that Mr Shaw recorded faithfully what he understood was Mr Richardson's evidence about the day, and it was apparent from Mr Shaw's email dated 12 August 2020 that Mr Shaw was aware of the need for a face to face meeting before the defence statement was finalised. 61. There is no reason for Mr Shaw to have made up evidence purportedly from Mr Richardson to put in a proof of evidence. The fact that Mr Richardson cannot now Judgment Approved by the court for handing down. Richardson v Rex 62. 63. 64. remember giving instructions to Mr Shaw does not mean that he did not in fact give them. We note that in the proof of evidence Mr Richardson accepted that he knew that Mr Jassey had been stabbed before Mr Richardson left the scene with Mr Smith. Further the fact that the evidence in the proof was, in some minor respects, different from the instructions given in the police station is not surprising. It is well known that witnesses, both reliable and unreliable, will remember details at different times, sometimes because they have seen CCTV evidence, and may change their accounts. Both Mr Rutherford and Mr Shaw gave evidence which was clear and consistent with their written responses to the matters raised on Mr Richardson's behalf, and with contemporaneous documents and we accept their evidence. As to the defence statement, we accept the evidence from Mr Rutherford and Mr Shaw to the effect that the defence statement was an accurate statement of Mr Richardson's instructions for his defence. This is because Mr Richardson's attendance at court had been arranged so that the defence statement could be finalised. Mr Rutherford gave clear evidence to the effect that he recognised wording in the defence statement as having been drafted in Mr Rutherford's own style of writing. We accept the consistent and clear evidence from Mr Rutherford and Mr Shaw that this was what Mr Richardson had said was his position on 21 August 2020. The fact that his position was different earlier when he had provided his proof of evidence did not mean that Mr Richardson had not said that. It was submitted on behalf of Mr Richardson that there should have been a separate note taken of Mr Richardson's instructions leading up

to the signing of the defence statement. We do not consider that such a separate note was necessary. It was apparent that the defence statement was, in effect, a note of what he was saying and the addendum was signed by Mr Richardson confirming the accuracy of what was said in the defence statement.

65. We also accept the evidence from both Mr Rutherford and Mr Shaw to the effect that, whatever Mr Richardson's concerns might have been about Mr Shaw reported to both Mr Paley and Mr Richardson's father, he was content with Mr Shaw being involved in representing him at trial. This is because this was the evidence of both Mr Rutherford and Mr Shaw, and because it is consistent with the absence of any continued complaint from Mr Richardson about Mr Shaw. It is also consistent with the fact that Mr Shaw was a regular visitor, with Mr Rutherford, to visit Mr Richardson in the cells. It is also because Mr Richardson is not a reliable witness, as appears from our finding above.
66. We find that the trial proceedings were properly explained to Mr Richardson by Mr Rutherford and Mr Shaw, and that Mr Richardson did understand the advice he was given about not giving evidence, supported as it is by the contemporaneous document signed by Mr Richardson. We accept the evidence from Mr Rutherford and Mr Shaw that Mr Richardson did not want to name Mr Smith, and at least in part for that reason Mr Richardson was not keen to give evidence. It was apparent from Mr Richardson's own evidence at the hearing of the applications, that he did not know whether if he had given evidence at trial he would have named Mr Smith. 67. Although Mr Richardson gave evidence before us with the benefit of an intermediary, and we were grateful for Ms McGreevy's assistance, we do not find that it was necessary for Mr Richardson to have the benefit of an intermediary, to decide whether to give evidence at trial. This is because Mr Rutherford had, with the benefit of his Judgment Approved by the court for handing down. *Richardson v Rex* experience over many years, ensured that Mr Richardson was spoken to when he was at his best before trial, had broken concepts down into simple language, and had repeated the information to ensure that Mr Richardson understood that it was his decision, albeit with the benefit of professional advice. We find that Mr Richardson did understand the advice about giving evidence, and came to a clear decision having reflected on professional advice, notwithstanding the absence of an intermediary. We find that Mr Rutherford had a keen awareness of Mr Richardson's intellectual strengths and weaknesses. The advice given by Mr Rutherford and Mr Shaw to Mr Richardson was reasonable and proper advice based on the fact that the trial had gone well, that Mr Richardson did not want to name Mr Smith, and Mr Richardson would have been a poor witness in circumstances where he did not want to name Mr Smith (and was unsure if he would do so in the witness box) and had not, and even before us has not, advanced any explanation for his texts or his gesticulation in the direction of Mr Jassey shown clearly on the CCTV.

68. We find that Mr Rutherford's decision not to cross examine Mr Smith was a reasonable and proper one. Mr Rutherford could hardly put Mr Richardson's case to Mr Smith (that he was in fact present with Mr Richardson) given Mr Richardson's explicit instructions that he was not going to name who was present with him.
69. We find that Mr Richardson's intellectual strengths and weaknesses were accurately described by Dr Antonesei, and that Mr Richardson did have ADHD at material times, which because it had been diagnosed in childhood when the evidence showed that such diagnoses were less often made at the time, might be described as severe. This meant, in Mr Richardson's case, that, as Ms Backen had pointed out, it was important that Mr Richardson had breaks to maintain his concentration, that matters were explained to him simply and carefully, and if necessary were repeated to him. 70. 71. The evidence of Dr Huckle was, by the end of the hearing, internally inconsistent. As appears above, part of the difficulty may have been because Dr Huckle had wrongly believed that Mr Richardson had carried out the stabbing, when Mr Richardson had consistently denied that. In cross examination he then accepted that, as he did not know what Mr Richardson was doing, he could not form an opinion on Mr Richardson's mental responsibility and its impairment, and before, in re-examination, suggesting that he could, and that Mr Richardson's responsibility was substantially impaired. We do not accept Dr Huckle's evidence about diminished responsibility because it was internally inconsistent. By contrast the evidence of Dr Kareem was consistent throughout. He found that Mr Richardson had ADHD, depression and anxiety. He was able to say that the ADHD would have had a consistent effect on Mr Richardson's mental functioning, but that both the depression and anxiety were variable. Dr Kareem was not able, with the passage of time and without evidence about Mr Richardson's thought processes leading up to the killing of Mr Jassey, to conclude that Mr Richardson's responsibility was substantially impaired. We accept Dr Kareem's evidence was a reliable assessment of whether it was possible, on the evidence and this long after the event, to come to any fair assessment about whether Mr Richardson's responsibility for the killing of Mr Jassey was diminished by reason of a mental disorder. Judgment Approved by the court for handing down. Richardson v Rex The test for admitting fresh evidence on appeal 72. Section 23 of the Criminal Appeal Act 1968 provides a power for the Court of Appeal to admit fresh evidence. Relevant considerations which the Court of Appeal should take into account when deciding whether to receive evidence are set out in section 23(2). These considerations are: whether the evidence appears to the Court to be capable of belief; whether it appears to the Court that the evidence may afford any ground for allowing the appeal; whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.
73. We will deal with the admissibility of the fresh evidence when considering the proposed grounds of appeal. Whether an intermediary should have been provided at trial - ground one 74. 75. It is submitted on behalf of Mr Richardson that his mental health at the time of trial was such that he ought to have had the services of an intermediary. The intermediary

would have assisted in particular with the decision as to whether Mr Richardson should give evidence and might have made a difference to the decision as to whether to give evidence. The experts who gave evidence before us, including Dr Antonesei and Dr Kareem, all considered that Mr Richardson would have benefited from the assistance of an intermediary at his trial. The prosecution submit that, in all the circumstances, the absence of an intermediary had no impact on the safety of the conviction. The applicable Criminal Practice Direction in force at the time (Crim PD 1 2015, General Matters 3F (Intermediaries)) made it clear that there was no presumption that a defendant would be assisted by an intermediary, even in cases where such assistance might improve the trial process. It provided as follows: “The court may direct the appointment of an intermediary to assist a defendant in reliance on its inherent powers (C v Sevenoaks Youth Court [2009] EWHC 3088 (Admin)). There is however no presumption that a defendant will be so assisted and, even where an intermediary would improve the trial process, appointment is not mandatory (R v Cox [2012] EWCA Crim 549). The court should adapt the trial process to address a defendant's communication needs (R v Cox [2012] EWCA Crim 549). It will rarely exercise its inherent powers to direct appointment of an intermediary but where a defendant is vulnerable or for some other reason experiences communication or hearing difficulties, such that he or she needs more help to follow the proceedings than her or his legal representatives readily can give having regard to their other functions on the defendant's behalf, then the court should consider sympathetically any application for the defendant to be accompanied throughout the trial by a support worker or other appropriate companion who can provide that assistance ...” Judgment Approved by the court for handing down. Richardson v Rex 76. 77. 78. It is apparent that intermediaries, and reports from intermediaries, have ensured that there is greater consistency in facilitating the principled participation of all those appearing before the criminal courts, whether as witnesses or defendants. Reports from medical practitioners, psychologists and intermediaries can identify particular barriers to effective communication applicable to individuals, and suggest strategies to overcome those barriers. However, as the applicable Practice Direction made clear, there is no presumption that a defendant will receive the assistance of an intermediary. Experience shows that legal representatives spend many hours to ensure that defendants understand and can follow criminal proceedings against them. Having heard from Mr Rutherford and Mr Shaw we are sure that clear explanations were given to Mr Richardson in language that he could understand, about all aspects of the criminal proceedings, so that he could take informed decisions about his defence, and whether to give evidence and, as Mr Rutherford put it, he did not need an intermediary. As appears above, when Mr Richardson gave evidence in support of his applications before us, he had the benefit of an intermediary. The intermediary was able to assist in suggesting a break at one particular point. This was at a time during cross examination shortly after Mr Richardson had said to the court that he did not want a break, when the time for his break had come round. Mr Richardson then gave an answer that was clearly an attempt to speed up the whole process rather than a proper response to the question. The court itself had, however, stopped the questioning so that it could direct that the break be taken. After Mr Richardson had finished giving evidence he

was assisted by his legal representative sitting beside him, and there were regular breaks for Mr Richardson.

79. Mr Richardson made a considered decision not to give evidence at trial, so no issue of an intermediary while giving evidence at his trial arose. 80. 81. Further, Mr Richardson had no need for an intermediary during the rest of the trial. Any potential benefit that an intermediary might have provided for the trial process was achieved through the adjustments made during the trial by the trial judge in response to the needs of Mr Smith, who did give evidence and who had applied unsuccessfully for an intermediary. This ensured that the proceedings were conducted in a clear, accessible, and structured manner. Further, Mr Richardson had the benefit of clear and simple explanations given by Mr Rutherford to Mr Richardson at conferences during the progress of the trial. Although the evidence of all the experts about whether Mr Richardson might benefit from an intermediary was capable of belief, in the light of our findings set out above, there is no basis for concluding that the evidence might afford any ground for allowing the appeal. We therefore will not admit the fresh evidence relating to the need for an intermediary and reject this proposed ground of appeal. Whether psychiatric evidence should have been obtained to explore the partial defence of diminished responsibility – ground two 82. Section 2 of the Homicide Act 1957 provides as follows: Judgment Approved by the court for handing down. *Richardson v Rex* “(1) A person (“D”) who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—
- (a) arose from a recognised medical condition,
 - (b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and
 - (c) provides an explanation for D's acts and omissions in doing or being a party to the killing. (1A) Those things are—
 - (a) to understand the nature of D's conduct;
 - (b) to form a rational judgment;
 - (c) to exercise self-control.” 83. 84. 85. 86. It was submitted on behalf of Mr Richardson that there is evidence from Dr Huckle and Dr Antonesei which shows that a defence of diminished responsibility might succeed, and that the conviction for murder is unsafe. It was submitted on behalf of the prosecution that the partial defence of diminished responsibility could not properly be explored in Mr Richardson's case. This is because Mr Richardson maintained that he had no animosity towards Mr Jassey, he did not set out with Mr Smith to attack Mr Jassey, Mr Richardson did not know that Mr Smith had a knife, Mr Richardson did not become involved in any attack and only made contact with Mr Jassey in an attempt to help him. This has been the consistent theme of Mr Richardson's instructions about the killing of Mr Jassey. Both sides addressed the court on whether it was necessary

for a defendant to have admitted their part in the killing before the defence of diminished responsibility could be advanced, and we were referred to a number of authorities including *R v Erskine* and another [2009] EWCA Crim 1425; [2009] 2 Cr App R 29, which itself reviewed numerous authorities where issues about diminished responsibility had been raised on appeal and *R v Curran* [2021] EWCA Crim 1999. It is apparent that there is no legal requirement for a defendant to admit their part in the killing for the defence of diminished responsibility to be advanced. This part appears from the judgment of the Lord Chief Justice in *R v Erskine* where the defendant suffered from severe schizophrenia and a psychopathic disorder but, in part because of his mental disorder, had refused to admit his role in the killings. However in all but very rare cases, it will be very difficult to make any assessment of whether any mental disorder substantially impaired the defendant's ability to understand the nature of their conduct, to form a rational judgment or to exercise self-control unless there is evidence about the defendant's mental processes at the relevant time and therefore their role in the killing, see generally *R v Curran* at paragraph 39. 87. Similarly if a defendant has not advanced a defence of diminished responsibility at trial there may, in exceptional cases, be circumstances where the defendant can raise the Judgment Approved by the court for handing down. *Richardson v Rex* partial defence on appeal. As was pointed out in *R v Erskine*, it would, however, subvert the trial process if appellants were able to advance on appeal a defence not advanced at trial. Everything will depend on the circumstances but there will need to be a reasonable and persuasive explanation for the omissions at trial. In this case Mr Rutherford made a proper decision on the materials available to him that there was no basis on which the defence of diminished responsibility might succeed. Mr Richardson had ADHD, which is a mental disorder which would have been present at the time of the killing of Mr Jassey, and he was not taking medication for that at the material time. Mr Richardson had suffered from depression and anxiety, but there was no evidence about whether those conditions, which as Dr Kareem pointed out are fluctuating conditions, were present at the material time or what effect they had. There was nothing said by Mr Richardson in his instructions either at the police station or in his proof of evidence which suggested that there was a viable defence of diminished responsibility which could be explored. Further, even with the benefit of expert evidence now obtained for the purposes of hearing these applications, it is apparent that the defence of diminished responsibility cannot be proved on behalf of Mr Richardson, and the fact that Dr Huckle said one thing in cross examination and another thing in re-examination does not make the conviction unsafe. Although the expert evidence on this issue is capable of belief, by the end of the evidence it did not afford any ground for allowing the appeal. There was no reasonable explanation for the failure to adduce the evidence in the proceeding below because there was a reasonable and proper decision not to adduce such expert evidence at the trial. For all these reasons we refuse the application to adduce fresh evidence relevant to this ground of appeal and reject this proposed ground of appeal. Whether psychiatric and psychological evidence should have been adduced at trial before the jury – ground three It is submitted on behalf of Mr Richardson that the jury should have heard the expert evidence contained in Dr Huckle's and Dr Antonessei's reports in relation to Mr Richardson's disorders and the effect

they have on his behaviour, perception and decision-making abilities, and about his verbal communication issues. This is because without this evidence the jury would have thought that Mr Richardson is “normal” and will have judged him by their own standards and behaviours, and not understood the effect of his mental disorders on what, if anything, had been agreed with Mr Smith, Mr Richardson’s subjective intentions and his knowledge about a knife. It is apparent from R v Sossongo [2021] EWCA Crim 1777 that expert evidence about a diagnosis of Autistic Spectrum Disorder (ASD) or ADHD might be relevant, in certain circumstances, to the assessment of the liability of a defendant (in that case a 14 year old boy) as a secondary party for murder. In that case the defendant had given evidence at trial, and his conditions had only been diagnosed after his conviction and imprisonment. As was made clear in R v Sossongo at paragraph 59, mirroring the approach in R v Erskine, everything depends on the facts of the case. In this case the jury could not have been assisted by any evidence about ADHD and its effects on Mr Richardson. This is because Mr Richardson’s case was that, although present when Mr Smith had stabbed Mr Jassey, he had nothing to do with the stabbing. Mr Richardson had decided, with the benefit of expert legal advice, not to give 88. 89. 90. 91. 92. Judgment Approved by the court for handing down. Richardson v Rex 93. evidence. There were no thought processes, failures to appreciate what others might have appreciated, or any other relevant information about Mr Richardson’s thought processes, which would have been affected by expert evidence from psychologists or psychiatrists. For these reasons we refuse to admit the fresh evidence relevant to this ground and reject this proposed ground of appeal. Whether the conviction is unsafe because Mr Richardson was not properly put in a position to be able to consider fully the decision as to whether to give evidence – ground four It was submitted on behalf of Mr Richardson that it was apparent that Mr Richardson was not properly put in a position to be able to consider the decision whether to give evidence. For the reasons already given, we find that the trial proceedings were explained to Mr Richardson by Mr Rutherford and Mr Shaw, and that Mr Richardson did understand the advice he was given about not giving evidence, supported as it is by the contemporaneous note signed by Mr Richardson. We accept the evidence from Mr Rutherford and Mr Shaw that Mr Richardson did not want to name Mr Smith, and at least in part for that reason Mr Richardson was not keen to give evidence. The evidence from Dr Antonesei and Dr Huckle would not have been a basis on which the judge should not have given a direction about Mr Richardson’s failure to give evidence, given Mr Richardson’s motivation to avoid naming Mr Smith. Mr Richardson has a normal overall IQ, albeit with varying strengths and weaknesses. We refuse the application to admit fresh evidence relevant to this ground and reject this proposed ground of appeal. Having considered all the proposed grounds of appeal against conviction individually and cumulatively we are sure that Mr Richardson’s conviction is safe. Whether the sentence was manifestly excessive 94. It is submitted on behalf of Mr Richardson that the trial judge did not have the benefit of the psychiatric and psychological reports when he passed sentence, and he therefore failed to apply the overarching guideline on “sentencing offenders with mental disorders, developmental disorders, or neurological impairments”. It was submitted that if the judge had had sight of the reports it would have led to a reduction in the minimum term imposed

in Mr Richardson's case.

95. We do not accept that the minimum term imposed on Mr Richardson was manifestly excessive. There was no evidence to suggest that Mr Richardson's ADHD, depression and anxiety affected Mr Richardson's culpability, and the judge knew that Mr Richardson had those conditions. The judge, who was the trial judge, concluded that Mr Richardson had the senior role in the enterprise, and this was a conclusion open to the judge on the evidence given the texts about Mr Richardson's plan to rob someone of drugs and Mr Richardson's gesticulation to Mr Jassey to come over to him and Mr Smith, which appears clearly on the CCTV. Mr Richardson had relevant previous convictions, and he had pleaded guilty to another indictment. The judge could have increased the minimum term to reflect those matters, but he did not. The sentence was a proper sentence for this murder. Judgment Approved by the court for handing down. Richardson v Rex Conclusion on the applications for an extension of time, leave to adduce fresh evidence and leave to appeal against conviction and sentence 96. For the detailed reasons set out above we refuse the applications for: extensions of time for leave to appeal, because there are no arguable grounds of appeal; leave to adduce fresh evidence; leave to appeal against conviction; and leave to appeal against sentence.

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