TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Cr. App: 12 of 2009

BETWEEN

STEPHEN ROBINSON A/C PSYCHO A/C TONY — **Appellant**

AND

THE STATE — **Respondent**

PANEL:

P. WEEKES, J A

A. SOO HON, J A

R. NARINE, J A

Appearances: **Mr. Hayden St. Clair-Douglas and Mr. K. Saney for the Appellant**
Ms. Dana Seetahal S.C for the Respondent

DATE DELIVERED: Thursday 29th July 2010

JUDGMENT

DELIVERED BY: P. WEEKES, J A

On 12th March 2009 the appellant was convicted of the murder of Anderson John at the Port-of-Spain Assizes and was sentenced to death by hanging.

THE CASE FOR THE PROSECUTION

1. On 16th January 2002 the appellant entered Dinsley Drug Store in Tacarigua. He was wearing a short green pants and an armless t-shirt and carrying a piece of half-inch steel about 3 ½ feet long.

2. The appellant was known to the proprietor of the store, Sheldon Suchit as a destitute. Mr. Suchit usually accommodated the appellant's requests for something to eat. On this occasion Mr. Suchit asked the appellant to leave, indicating that he had already visited the store that day. Mr. Suchit asked the Appellant to leave about seven times. The appellant did not respond. At that time he was standing on a scale, tapping the piece of steel on the ground.

3. He came off the scale went to the doorway, opened the door and closed it back and said to Mr. Suchit **"put me out."** He repeated this about two or three times.

4. Anderson John, the deceased, was a security guard employed at the drugstore. He then spoke to the appellant asking him to **"kindly leave the compound please."** The appellant looked at the

deceased, who was a small-built man, and laughed saying, **"Sheldon cannot put me out, you going to put me out?"**

5. The deceased walked up to the appellant, repeating his request for him to leave. The appellant swung the piece of steel three times brushing the deceased with it in a downward motion. The deceased withdrew his firearm from its holster, put his hand on the neck of the appellant's T-shirt and told the appellant **"boy don't you see what I have in my hand here. I am a firearm security officer, kindly leave the place."** The appellant replied, **"I am not afraid of that, put it on me."**

6. The appellant then made a forceful swing with the steel from behind his back, and hit the deceased at the back of his neck. A gun shot rang out about a second and a half to two seconds after the blow with the piece of steel. Both men fell to the ground, the appellant falling on top of the deceased. The deceased was bleeding from his mouth. The appellant was shot under his arm. The appellant got up quickly, picked up the piece of steel and ran down the Eastern Main Road.

7. Sgt. Koon Koon and another police officer went in search of the appellant. They found him two streets away sitting on the pavement. He appeared frightened. He was trembling. He asked Sgt. Koon Koon, **"You is Carl? You is Carl?"** Sgt. Koon Koon told him of the report and cautioned him. He replied **"I want a smoke to take out a bullet and the pain from my chest."**

8. The deceased died on 24th January, 2002 as a result of blunt force injuries to the head.

THE CASE FOR THE DEFENCE

The accused did not testify. He called two psychiatrists, Dr. Hazel Othello and Dr. Iqbal Ghany who both examined him some time after the incident, and found him to be suffering from schizophrenia. Their evidence will be set out in detail later in this judgment.

THE GROUNDS OF APPEAL

1. ***The learned trial judge erred in law in that he failed to fully and adequately direct the jury on the issue of self-defence***.

   (a) The learned trial judge erred in law in his direction to the jury in that he failed to direct them adequately or at all to consider the proportionality of the response by the appellant to the actual or threatened use of force by the deceased.

   The evidence at trial disclosed that the deceased confronted the appellant, drew his firearm and pointed it at him. In response, the appellant responded to the threat posed by the firearm by making use of an object which he happened to have in his hand at the time of the assault.

   (b) The learned trial judge erred in law in his direction to the jury in that he failed to direct them to consider the appellant's response to the actual or threatened attack by the deceased from the appellant's subjective point of view. The learned trial judge directed the jury to consider whether the appellant may have been acting under the *mistaken belief* that he was being robbed, but failed to direct them to

consider that the more likely situation was that the appellant may have acted under the *delusion* that he was being robbed. In so doing, the learned trial judge failed to direct the jury to consider the extensive evidence at trial which demonstrated that the appellant was suffering at the time of commission of the offence from chronic schizophrenia.

These failures were likely to have prevented the jury from considering the nub of the appellant's defence, which was whether he had acted disproportionately in replying *(sic)* to the actual or threatened use of a firearm by striking with a piece of steel.

2. The verdict of murder by the jury is unsupported by the evidence in so far as that evidence related to diminished responsibility.

   The jury had no competing evidence to contradict the evidence of the appellant's mental abnormality. There were no facts or circumstances which could throw doubt on that evidence.

GROUND 1

The basic complaint of the appellant is in relation to the adequacy of the judge's directions on the issue of the proportionality of the appellant's response to the actual or threatened use of force by the deceased. In addition, the appellant contends that the judge should have directed the jury to consider whether the appellant may have acted under the delusion that he was being robbed, as opposed to the mistaken belief that he was being robbed.

The classic exposition of the law of self defence is contained in the much cited dictum of Lord Morris of Borth-y-gest in the case of **Palmer**

v. The Queen (1971) 1 All E.R. 1077, a decision of the Privy Council sitting on an appeal from Jamaica:

> **"It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but may only do, what is reasonably necessary. But everything will depend upon the particular facts and circumstances. Of these a jury can decide. It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack, it would not be common sense to permit some action of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in imminent danger, he may have to avert the danger by some instant reaction. If the attack is all over and no sort of peril remains, then the employment of force may be by way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may no longer be any link with a necessity of defence. Of all these matters the good sense of a jury will be the arbiter. There are no prescribed words which must be employed in or adopted in a summing-up. All that is needed is a clear exposition, in relation to the particular facts of the case, of the conception of necessary self-defence. If there has been no attack, then clearly there will have been no need for defence, If there has been attack so that defence is reasonably necessary, it will be recognized**

that a person defending himself cannot weigh to a nicety the exact measure of his necessary defensive action. If a jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought was necessary, that would be most potent evidence that only reasonable defensive action had been taken."

The basic principles to be derived from **Palmer** are:

1. A person who is attacked is entitled to defend himself.
2. In defending himself he is entitled to do what is reasonably necessary.
3. The defensive action must not be out of proportion to the attack.
4. In a moment of crisis a person may not be able to weigh to a nicety the exact measure of his necessary defensive action.
5. In a moment of anguish a person may do what he honestly and instinctively thought was necessary.
6. If there has been no attack then the issue of self defence does not arise.

On behalf of the state, Ms. Seetahal submitted that the issue of self defence does not arise on the evidence. The only evidence of the incident is that of state witness Sheldon Suchit as recorded above.

The appellant gave no evidence on his own behalf contradicting the account given by the state witness, or setting up any evidential basis that he was under actual attack, or that he held the honest, though mistaken belief that he was under attack. Having regard to the state of the evidence, we agree with the submission of the state, that there was no evidential basis for the issue of self-defence to arise.

The trial judge however, quite generously in our view, left the issue of self-defence with the jury and directed them in his summing up on the question of whether the appellant may have honestly believed that he was under attack, and the proportionality of his response:

> **"You must first ask whether the accused honestly believed that it was necessary to use force to defend himself at all. This would not be the case if the accused acted in revenge or knew that he did not need to resort to violence. If you are sure that the accused did not honestly believe that it was necessary to use force to defend himself, he cannot have been acting in lawful self-defence, and you need consider this matter no further. But what if you think that the accused did honestly believe, or may honestly have believed that it was necessary to use force to defend himself? You must then decide whether the type and amount of force used by the accused was reasonable.**
>
> **Obviously, a person who is under attack may react on the spur of the moment, and he cannot be expected to work out exactly how much force he needs to use to defend himself. On the other hand, if he goes over the top and uses force, out of all proportion to the anticipated attach on him or more force than is really necessary to defend himself, the force used would not be reasonable. So you must take into account both the nature of the attack on the accused and what the accused then did."**

The trial judge further dealt specifically with an issue which arose in the cross-examination of Mr. Suchit by defence counsel, where it was suggested to Mr. Suchit that when the deceased drew the firearm, the appellant asked him, **"why all yuh don't go and look for work instead of looking to rob people?"** The suggestion was rejected by the witness. There is in fact no evidence in the case that the appellant made this remark to the deceased.

Again, quite generously in our view, the Judge directed the jury to consider whether the appellant was or might have been labouring under a mistake of fact that the deceased was about to rob him. The judge went on to relate the possible mistaken belief of the appellant to the amount of force that he used.

> **"Now, taking you back to the evidence, Jurors, you would remember that in the cross-examination of Mr. Suchit, it had been suggested to him at one point that the accused had said to Anderson John, when Anderson John drew his firearm, "why all you don't go and look for work instead of looking to rob people?" And Mr. Suchit's response was, "not at all." In other words, he did not agree that the accused told Anderson John those words, "why all you don't go and look for work instead of looking to rob people?"**
>
> **You will consider, Mr. foreman and members of the jury, based on this evidence in cross-examination whether the accused was or might have been labouring in his mind, under a mistake of fact, that Anderson John was about to rob him and drew his firearm for that purpose. If the**

accused may have been honestly mistaken as to the facts, he must be judged according to his mistaken belief of the facts. That is so whether the mistake was, on an objective view, a reasonable mistake or not.

Where a defendant is not under actual or threatened attack but he honestly, in his mind believes that he was, then you must consider whether the decree of force used by the accused was commensurate with the degree of risk which he believed to be created by the attack under which he believed himself to be."

In spite of the fact that the appellant received the benefit of a direction on the possible mistaken belief that he was about to be robbed, which did not arise on the evidence, Mr. Douglas submitted that the trial judge should have gone further and directed the jury to consider whether the appellant may have acted under **"the delusion"** that he was being robbed, and to consider the proportionality of the appellant's response in that context.

In support of his submission Mr. St. Clair-Douglas referred to the case of **R. v. Martin (2003) Q.B. 1**, a decision of the English Court of Appeal. In that case the appellant had shot two intruders at his home, one of whom died. He was convicted of murder and wounding with intent. At his trial he had raised the issue of self-defence. Upon his appeal, he sought to introduce fresh psychiatric evidence which showed that his mental characteristics at the material time, were such that he would have perceived a much greater danger to his physical safety than the average person.

The judgment of the court was delivered by Lord Woolf C.J. The following paragraphs of the judgment provide some assistance in the case at hand:

> **67. "We would accept that the jury are entitled to take into account in relation to self-defence the physical characteristics of the defendant. However, we would not agree that it is appropriate, except in exceptional circumstances which would make the evidence especially probative, in deciding whether excessive force has been used to take into account whether the defendant is suffering from some psychiatric condition**.
>
> **71. It is plain that whilst eccentricity and extremes of eccentricity are likely to be within the experiences of a judge or jury a specific diagnosis of paranoid personality disorder and the possible consequences thereof is scientific information which is likely to be outside that range. But in this case the distinction between the doctors is only one of degree, since Professor Maden accepts that Mr. Martin's feelings were consistent with severe anxiety although he would not describe this as a paranoid personality disorder. In this case, as will be the position in most cases where self-defence is raised, it is what the defendant believed was his situation which is important and not the scientific jargon which is most appropriate to describe his mental state. In our judgment, if the medical**

issues had been deployed at the trial, far from assisting the jury it would have tended to confuse them and would have distracted them from their task."

Having concluded that the medical evidence would not have assisted the jury on the issue of self-defence, the court went on to substitute an alternative verdict of manslaughter by reason of diminished responsibility on the basis that the jury must have been satisfied of facts which proved him guilty of that offence in accordance with section 3 of the Criminal Appeal Act 1968 (U.K.).

It is interesting to note that in **Martin,** the appellant testified at his trial as to what he believed the situation to be when he fired the shots. The court held that it was irrelevant whether the psychiatrist thought that his account was honest, and it did not matter what scientific jargon was used to describe his mental condition. It is what the appellant believed at the material time that was important.

In this case, the appellant gave no evidence as to what he believed to be happening at the material time. As a matter of evidence, the question as to whether he was labouring under a mistake of fact or whether he was acting under a delusion, simply did not arise for the jury's consideration. Accordingly, there is no merit in this ground.

Before we leave this ground there is an interesting issue which was raised by state counsel in her written submissions, but which were not fully developed. It is whether an accused person should be entitled to rely on self-defence, where he kills another while acting under a delusion

that he is under attack, having regard to the fact that the law of self-defence assumes rationality on the part of the person under attack. It must be reasonably necessary for him to defend himself, and in doing so he is entitled to use reasonable force. In such a case we agree that the appropriate defence may be diminished responsibility, which in fact was the verdict substituted in **Martin** (supra).

GROUND 2

No complaint has been raised with respect to the judge's summation on the issue of diminished responsibility. The essence of this ground is that the jury had no competing evidence to contradict the evidence of the appellant's state of mind at the time of the commission of the offense as given by the expert witnesses. There were no facts or circumstances that could throw doubt on the evidence. Accordingly the jury were not entitled to reject the evidence of the appellant's abnormality of mind.

THE MEDICAL EVIDENCE

The appellant called two psychiatrists to give evidence at his trial. Dr. Iqbal Ghany first examined the appellant in May 2002, (four months after the offense) and found him to be suffering from schizophrenia. He testified that this was a very serious illness characterized by thought disorder, hallucinations delusions, persecution or grandiose illusions, incoherence of speech, agitation, anger and poor contact with reality. A patient may display restlessness, over-activity, aggressive behavior and neglect of hygiene. The records of the St. Anns Hospital, to where Dr. Ghany was attached revealed that the appellant had been admitted on many occasions prior to the incident, between 1985 and 2000. The notes suggested a diagnosis of schizophrenia.

In cross-examination, Dr. Ghany opined that a person suffering from schizophrenia may suffer from delusions and hallucinations for short spells as well as long spells. A patient may have lucid spells, but this may happen infrequently. Dr. Ghany further admitted that it was possible, but unlikely, that the appellant may have been lucid at the time of the incident. It is possible that the appellant was acting perfectly rationally at the time of the offence, but in the doctor's opinion that did not happen in this case. To a large extent the opinion of the psychiatrist was based upon what he perceive to be truthful and reliable responses from the patient. Dr. Ghany was cross-examined on the account of the incident which was recorded in a report prepared by him. He admitted that the account given by the appellant appeared on its face to be rational. Dr. Ghany also testified that the appellant had changed his story several times. In his opinion, this reflected the appellant's disordered thinking.

Dr. Hazel Othello examined the appellant for the first time in June 2006, some 4½ years after the incident. Her opinion was that the appellant was suffering from an abnormality of mind that seriously affected his mental responsibility at the time of the offence. In her view he had had a relapse of schizophrenia. At the time of the first examination, Dr. Othello had had about two years experience at the Forensic Unit of the St. Anns Hospital. Based on the records of the hospital, the appellant had been admitted to the hospital on several previous occasions, the first being in 1984. Persons suffering from schizophrenia are usually treated with anti-psychotic drugs for lengthy periods, quite often for life. A break in the course of treatment is likely to result in a relapse. The records of the hospital revealed that the appellant

last attended the outpatient clinic in December 2000, more than a year before the incident.

Dr. Othello was also cross-examined on the issue of a patient having lucid intervals. The relevant part of the evidence is set out in full:

> **"Q. Now, chronic schizophrenia is a continuous disease?**
>
> **A. It is.**
>
> **Q. I see. And I want to ask you, a person suffering from chronic schizophrenia, would they have lucid intervals where they are fully in touch with reality?**
>
> **A. At times when they are stable on medication, that is possible.**
>
> **Q. So, a person may have chronic schizophrenia and may have intervals where they are lucid, correct, when they are on medication, as you say?**
>
> **A. If treated, yes.**
>
> **Q. If treated. And, if not treated, are you saying that they would be deluded all the time, continuously?**
>
> **A. That would depend on the period of time for which they have been off treatment".**

Dr. Othello was of the opinion based on all the information at her disposal which included the records of the Forensic Unit, all the notes and reports of Dr. Ghany, that the appellant's "judgment would quite likely have been impaired by his illness due to the fact that he had a

longstanding psychiatric illness for which he had not received treatment for over a year."

THE LAW

The following principles of law are to be gleaned from the authorities that were cited to us:

1. Section 4A (1) of the Offences Against the Person Act Ch. 11:08 establishes the defence of diminished responsibility. Section 4A (2) places the burden on the accused to prove that at the time of the commission of the offence, he was suffering from an abnormality of mind that substantially impaired his mental responsibility for his acts. As with all cases in which there is a burden of proof on the accused, the standard of proof required is on a balance of probabilities.

2. Jurors are not bound by what medical witnesses say, but at the same time they must act on the evidence. If there is nothing before them, no facts and no circumstances which throw doubt on the medical evidence, then that is all that they are left with and the jury, in these circumstances must accept it: per Lord Parker C.J. in **R. v. Bailey (1961) Crim. L.R. 828**.

3. If there is unchallenged evidence that there is abnormality of mind and consequent substantial impairment of mental responsibility, and no facts or circumstances appear that can displace or throw doubt on that evidence, then the court is bound to conclude that a verdict of murder is unsupported by the evidence. However, if there are facts which would entitle a jury to reject or differ from

the opinions of the medical experts, the court would not disturb the verdict: per Lord Goddard C.J. in **R. v. Mathison (1958) 1 WRL 474 at 479**.

4. In considering an issue of diminished responsibility, the jury are bound to consider not only the medical evidence but the evidence of the whole facts and circumstances of the case. These include the nature of the killing, the conduct of the accused before, at the time of and after the killing, and any history of the mental abnormality. It being recognized that the jury on occasion may properly refuse to accept medical evidence, it follows that they must be entitled to consider the quality and weight of that evidence: per Lord Keith of Kinkel in **Walton v. R (1977) 29 W.I.R. 29**, (a decision of the Privy Council sitting on an appeal from Barbados).

5. The jury must consider both the medical evidence and the evidence on the whole of the facts and circumstances in a "broad commonsense way": **R v. Khan (2010) 1 Cr. App. R. 4**.

Having regard to the principles outlined above, the jury were bound to consider the following:

- The medical evidence including the appellant's history of schizophrenia since 1984.
- the actions of the appellant before, at the time of and after the killing.
- any other relevant facts and circumstances.

The medical evidence of the two psychiatrists stands uncontroverted.

It was the task of the jury to weigh up the medical evidence and the evidence of all the surrounding facts and circumstances in **"a broad common-sense way"** and come to a decision on a balance of probabilities whether at the material time the appellant suffered from an abnormality of mind which substantially impaired his mental responsibility for his acts.

The state submitted that the evidence of Mr. Suchit, the only eyewitness to the incident provided evidence on which the jury could have rejected the evidence of the experts as they did in **Walton** (supra) and **Khan** (supra).

Of course, in matters of this kind every case will be decided on its particular facts. In **Walton**, the evidence of the psychiatrist was that she first saw the appellant about two months after the killing and found that he was unable to tolerate stress or frustration. He was extremely suspicious. She made a diagnosis of paranoia. He became confused if he was stressed or pressured. His emotions were at the level of a three year old. He was not a violent person but reacted in a primitive fashion to real or imaginary provocation. In cross-examination, she admitted that the statement given by the appellant sounded rational and coherent as from a person of average intelligence. A second witness, the prison medical officer testified that he had treated the appellant in prison for depression and had recommended that he see a psychiatrist because he was not responding well to treatment. A third witness, a clinical psychologist, administered a number of tests on the appellant and concluded that on certain of these tests, no features of confusion or disorientation were

evident. Average intellectual ability, sound observational ability and clear thinking were indicated. He described the appellant as having an inadequate personality enhanced by emotional immaturity and low tolerance level. He would get vexed more easily than the average person and react in an extra-ordinary way with less provocation. He described this as an emotional disorder.

On this evidence, Lord Keith of Kinkel, who delivered the opinion of the Board, expressed the view that it was, **"plain that the quality and weight of the medical evidence fell a long way short of that in Mathison's case"**, in which the Court of Appeal had quashed the jury's verdict of murder and substituted a verdict of manslaughter by reason of diminished responsibility on the basis that the verdict was not supported by the evidence. Lord Keith also observed that there was no objective evidence of any history of mental disorder. In his unsworn statement, the appellant had spoken of having suffered from severe headaches, black-outs, sleeplessness and lack of memory. Having regard to the evidence, their Lordships concluded that the jury were entitled not to accept the evidence of the psychiatrist as conclusive, and to find that the defence had not been established on a balance of probabilities.

In **R v Mathison** (supra) the appellant killed and disemboweled a boy. He packed the intestines in a suitcase, hid the remains and sent anonymous postcards to the victim's mother in order to torture her. At his trial three doctors gave evidence on his behalf. They were of the unanimous opinion that the appellant was suffering from an abnormality of mind which substantially impaired his mental responsibility. The prosecution did not challenge their opinion, nor did they call any evidence in rebuttal. In view of the unchallenged medical evidence and

the absence of any facts or circumstances that were capable of displacing or throwing doubt on the medical evidence, the criminal Court of Appeal held that the verdict of murder was not supported by the evidence. A verdict of manslaughter by reason of diminished responsibility was substituted.

In **Khan**, the appellant bludgeoned his roommate to death with a cricket bat. Three witnesses gave evidence that they noticed noting unusual about the behaviour of the appellant on the day of the killing. Others gave evidence of odd behaviour, extreme agitation and bizarre behaviour on the part of the appellant. There was uncontradicted evidence that the appellant was suffering from an abnormality of mind induced by disease. He was diagnosed as suffering from paranoid schizophrenia. The issue for the jury to decide on the evidence was whether his mental responsibility for his acts was substantially impaired at the material time.

The court observed that while there was evidence that the appellant was in a schizophrenic state at the time of the killing, the jury had to weigh the evidence against much other evidence which suggested that to a greater or lesser extent, the appellant comprehended the physical acts he was doing and had the power to exercise control over his actions. There was evidence that he had locked the front door after the attack, he had sought a lift to Cardiff and was prepared to go to Birmingham to get away. He had called his relatives in Cardiff to warn them of his arrival, and he had told them that he was leaving Keighley because he had an argument with a friend. Accordingly, there was ample evidence on which the jury could conclude that it was not satisfied on a balance of probabilities that the abnormality of mind of the appellant substantially

impaired his mental responsibility in doing the acts which he did. In the circumstances, the court refused to interfere with the verdict of murder.

It is significant that there was no objective evidence (as in **Walton**) of a history of mental illness. The appellant gave evidence that he had been hospitalized in Afghanistan on three occasions when he was young. His symptoms included agitated behaviour and headaches at that time.

In the case at hand the jury would have had to weigh up all of the evidence. On one side of the scale they would have had to consider:

- the uncontradicted evidence of the psychiatrists that at the time of the examination the appellant was suffering from schizophrenia;

- that in their opinion he was suffering from schizophrenia at the time of the incident;

- that schizophrenia is an abnormality of mind that can affect one's mental responsibility for one's actions;

- that the opinion of both psychiatrists was that the appellant's mental responsibility for his actions was in fact affected at the material time;

- that it was not in dispute that the appellant had a history of schizophrenia since 1984, and was an outpatient of St. Ann's Hospital from 1984 to December 2000;

- that his last visit to the hospital was more than one year before the incident;

- that where there is a lapse in treatment a patient may suffer a relapse;

- that on the day of the incident the appellant paid a second visit to the pharmacy;

- his behaviour was unusual in that this was the first occasion on which he was armed;

- his physical condition and state of dress was unkempt, which is consistent with Dr. Ghany's evidence of the symptoms of schizophrenia;

- when he stood on the scale, Mr. Suchit asked him to leave about seven times before he responded, by coming off the scale, opening the door, rocking it three times allowing it to close, and then saying to Mr. Suchit, **"put me out"**;

- he expressed no fear or concern for his safety when the deceased withdrew his firearm from his holster, saying, **"I am not afraid of that, put it on me"**;

- after the incident, he was found two streets away sitting on the pavement in full view, not attempting to conceal himself or avoid detection;

- he was rocking backward and forward, in an agitated state.

- he asked Sergeant Koon Koon, **"You is Carl? You is Carl?;** and

- he told Sergeant Koon Koon that he wanted a smoke to take out a bullet and the pain from his chest.

Against this evidence, the jury would have had to consider:

- the evidence of the psychiatrists that it was possible for a schizophrenic to have lucid intervals;

- the evidence of Dr. Ghany that the appellant's account of the incident, as contained in his report, appeared to be rational on the face of it and that the appellant had given different versions of the incident;

- the appellant appeared to understand Mr. Suchit's request to leave the premises, as he eventually went to the door before challenging Mr Suchit;

- the appellant appeared to appreciate the difference in size between Mr. Suchit and the deceased, and how this related to the ability of either one to remove him from the premises; and

- the appellant appeared to appreciate that the deceased had a firearm in his hand.

- The appellant did not strike until the deceased put his hand on the appellant's neck and asked him again to leave.

- The appellant responded correctly and appropriately to police inquiries with respect to his name, address and age.

Section 44(1) of the Supreme Court of Judicature Act gives this court the power to set aside the verdict of a jury on the ground that the verdict is unreasonable or cannot be supported having regard to the evidence. It is a power that the court exercises cautiously, always mindful that it must not usurp the function of the jury and where the jurors on mature consideration of the evidence with the drawing of reasonable inferences could reasonably have decided as they did the Court of Appeal will not disturb their verdict.

The evidence that was clearly rejected by the jury's verdict was that the appellant at the time of the offence, was suffering an abnormality of mind that substantially impaired his responsibility for his actions. They might well have accepted that he suffered from an underlying condition of schizophrenia but the medical experts did not assert that no lucid periods could or did occur at the material time. Looking at all that transpired that day it was open to the jury to find as they did.

They were required to approach the evidence in a *"broad common sense way."* They are persons from across our society in which unfortunately there is no shortage of mentally ill persons who homelessly roam the nation's streets engaging in anti-social behaviour and whom the jurors would from time to time have the opportunity to observe and draw general conclusions. They were well placed to make a judgment on the appellant's actions on that day as against the backdrop of medical evidence.

We are unable to conclude that there were no facts or circumstances which could displace or throw doubt on the evidence of the psychiatrist and so find that the verdict was unsupported by the evidence. The jury was entitled to find as it did.

Accordingly, the appeal is dismissed, the conviction and sentence are affirmed.

Before departing we feel it necessary to express the view that it is unfortunate that the application of clear legal principals should result in the imposition of the death penalty on an individual who, on the evidence, has a long outstanding mental disability. The apparent harshness of the result of our decision might best be ameliorated, not by a distortion of the law, but rather by petitioning the appropriate authorities, that is, the Mercy Committee.

P. Weekes
Justice of Appeal.

A. Soo Hon
Justice of Appeal.