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IN THE CROWN COURT SITTING AT BELFAST

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THE QUEEN

v

SAMUEL MORRISON

_____

RULING

_____

COLTON J

Introduction

[1] The defendant was initially charged with the offence of murder with the particulars being that he is alleged to have murdered George Morrison on 6 July 2009. He has been found by the court to be unfit to plead under Article 49(4) of the Mental Health (Northern Ireland) Order 1986. These proceedings are what are often referred to as a "trial of the facts". The jury has to determine whether the defendant did the act charged against him as the offence pursuant to Article 49(A) of the Order.

Background

[2] The background to the case is that in the early hours of the morning of 6 July 2009 the police were alerted by the ambulance service that a man had been stabbed at the junction of Brookhill Avenue and Allworthy Avenue in North Belfast. When the police arrived at the scene paramedics were in attendance and trying to assist the man who had been stabbed. Unfortunately there were no signs of life. They observed the man had suffered several stab wounds to the chest and despite attempts they made to resuscitate him en route to hospital, when examined there he was beyond help and he was formally pronounced dead.

[3] The deceased man was George Morrison who is the nephew of the defendant. A post mortem examination was performed by the Deputy State Pathologist for Northern Ireland, Dr Bentley. He concluded that the deceased died as a result of a

stab wound to the chest. That wound was a deep wound which had penetrated the chest cavity and had passed through the main pumping chamber of the heart which would have caused rapid and heavy blood loss and death. However, for a very short period after sustaining injury the deceased would have been able to walk and move but that would have been for a short period before collapse and death. In addition to the fatal wound there were two other stab wounds to the chest. These in themselves would not have caused death. In addition, there was another stab wound at the front of the neck of the deceased and associated with that wound were cuts across the deceased's throat and then a deeper stab wound. The prosecution say that this was in effect evidence of an attempt to cut the deceased's throat. According to Dr Bentley there were no defensive signs or wounds to the body of the deceased.

[4] A number of local residents were at the scene when the police arrived. They had been disturbed by shouting outside their home. At that time they lived at 17 Brookhill Avenue and had been in the kitchen of that house when they heard a commotion from the alleyway to the rear. They saw a male outside who was staggering in the direction of Brookhill Avenue and who had collapsed to the ground. This male turned out to be the deceased. That staggering is consistent with what Dr Bentley's conclusions were in terms of the effect of the wounds. The residents called for an ambulance and the police.

[5] During the course of police enquiries a gentleman by the name of Kevin Galvin, who gave evidence in this trial, indicated that when he was asleep in Allworthy Avenue he was wakened by a noise at the front of his house. He said that there was a bay window in his bedroom and when he awoke he heard someone outside shouting "Geordie, Geordie you are going to get it, you're a paedophile". In the course of cross-examination it was put to Mr Galvin by Mr Montague QC, who appeared with Mr Maguire on behalf of the defendant, that when he spoke to the police shortly after the event he did not use the words "you are going to get it" and the witness accepted therefore that might be a more accurate reflection of what he remembered. In any event he said that a very short time later he heard the sound of glass breaking and he got out of bed. When he looked out of his bedroom window he had a clear view towards the junction but not the actual junction itself. He saw a man walking down the street. This man was bare chested and was wearing what he described as white jeans. He saw that the man was carrying a large knife in his right hand and he met another person at the bottom of the street who was carrying a box of Harp lager before they interacted and moved out of sight.

[6] The prosecution case is that the man Mr Galvin saw is the defendant, Samuel Morrison, and the other man was Samuel Morrison's brother, that is the man who was carrying the Harp lager. The court has also heard and seen evidence relating to CCTV footage which was recovered from Newington Credit Union. The footage shows that at the relevant time shortly after this alleged incident two men are seen passing the building, one is bare chested and is seen to be carrying what looks like a large knife. He is also wearing white trousers. Again, the prosecution

say that this was Samuel Morrison, the man who was seen by Mr Galvin a short time earlier a short distance away and the other person shown on the CCTV footage is in fact the man who met up with Samuel Morrison who was carrying the Harp lager.

[7] The court also heard evidence from Bridget Kelly, who is a neighbour of Samuel Morrison. She gave evidence about what took place earlier that evening to the effect that she had been in the company of Samuel Morrison. She said that there appeared to have been some sort of altercation between Samuel Morrison and his sister and brother who lived in a flat nearby. The defendant at one stage said that he had been in a fight with his brother. Also in the course of the evening it appears that Charlotte, who is the defendant's sister, threw a grip bag out into the hall. The important part of her evidence is that she says that later that morning at about 2 o'clock or thereabouts the defendant left her flat and at that time he was bare chested wearing white trousers. Thereafter, she says that she was awoken by a sound at her bedroom door at about 2:25am or thereabouts. She said that she heard Samuel shouting through her letter box "Bridie, Pat". She opened the door. He came into the living room and he told her that he had killed Geordie. He said that John had beaten the fuck out of him and that he had stabbed him five times and then slit his throat. She asked him about why he did that and he said it was because he had raped his sister, that is Charlotte. She was amazed at this and did not believe him. She said she would have expected to have seen more blood. She also gave evidence that he asked her to wash his trousers. She took his trousers from him and put them on top of the wash but did not wash them on that night. She also said she noticed blood on his chest and he asked for a baby wipe which she gave to him. She told him that Geordie was lying up the street but did not say which street. She asked about what he had done with the knife and he said that he had put it down a drain. She further gave evidence that Sam said something to the effect that he would end up in the barracks tonight. That is her unchallenged evidence in terms of the conversation that took place after Mr Morrison's return.

[8] The following morning the police recovered white tracksuit bottoms and some blood stained baby wipes from the flat of Bridget Kelly who identified the items to the police when they arrived at the scene. The police then went to the flat occupied by the defendant and as they were unable to gain entry they had to force the door. The evidence was that when they entered the flat the door had been blocked from the inside by some wood. The defendant was arrested. He was given a caution but did not reply. As he travelled to the police station it was noted that he seemed to have shaved and had a number of cuts and scrapes on his face. He was cautioned again and asked to account for the marks and he said "how the fuck do you think I got it I fucking had a shave". He was taken to the custody suite of Antrim Road police station and placed in a cell. At one stage he asked why he had been arrested and when reminded he had been arrested on suspicion of the murder of George Morrison he said "he was given every opportunity to leave the country and he never listened to me, sex offender bastard, harden him".

[9] The baby wipes and tracksuit bottoms were recovered from Bridget Kelly's flat and examined by forensic scientists on behalf of the police. Blood was found on the baby wipes which was consistent with being the defendant's blood. The blood stain on the tracksuit bottoms in the area of the front thigh level was found to be consistent with being the blood of the deceased. A large stainless steel knife was found in a drain close by when the police searched the area subsequently.

[10] The defendant was interviewed and the jury has heard the summary and some specific details of the interviews. Importantly for this application, in the first interview the defendant said to the police that on the night in question he recalled being attacked with a golf club and a knife and was scared so he does not know what happened – "it is just a blank". He said that he remembers seeing George with a golf club and a knife in his hand. He was swinging it at him saying things about him. George whacked him on the shoulder and he grabbed the knife from George. He said he does not remember anything after this and ran home, locking himself in. He does not remember if he stabbed George or what happened. He thought this was all a dream in his head. That is the only part of the interviews that I propose to refer to at this stage.

[11] It is right to say however that he was asked about some injuries that were found on him when he was examined by the police, that is an injury to his shoulder and an injury to his back he said at that time that they were from a fight with his brother James. There is also agreed evidence in the case which is relevant to this application. It is agreed that the deceased, George Morrison, suffered from schizophrenia. It is agreed that that illness had in the past led to aggressive behaviour on his part. It is agreed that there is evidence to show that he had a knife in the past on some occasions when he had acted aggressively towards members of his own family. It is also agreed that on examination an injury was found on the defendant, that is a bruise to his left shoulder, which is consistent with having been struck on the shoulder by a hard object. There is also evidence that a walking stick was found close to the deceased when he was found there by the paramedics and the police.

[12] This is just a summary of the important evidence in relation to this matter. In very simple terms it is the prosecution case that the defendant stabbed the deceased resulting in his death.

[13] I am obliged for the written and oral submissions from counsel in this case. Mr Terence Mooney QC appeared for the prosecution with Mr Gary McCrudden. Mr Turlough Montague QC appeared with Mr Conor Maguire for the defendant. Their submissions were thoughtful, to the point and helpful.

Can the defendant raise the issue of self-defence?

[14] The prosecution say that the only issue for the jury to determine is whether it is satisfied beyond reasonable doubt that the defendant did the act of stabbing the

deceased in accordance with the procedure under the Order. The defence say that the jury should also consider the issue of self-defence. It is argued that the jury should be able to determine whether the prosecution have proved beyond a reasonable doubt that the defendant, if in fact he did stab the deceased, was not acting in self-defence. The prosecution say that self-defence should not be left to the jury under this procedure. The basic principle is that in an Article 49 hearing the jury is not concerned with any mental element of an offence but solely with the actus reus of the offence and this is apparent from the use of the word "act" in Article 49 rather than the word "offence". However, a review of the authorities demonstrates that the application of this principle has not been straightforward by any means.

[15] The starting point for the consideration of this issue is the decision of the House of Lords in *R v Antoine* [2001] 1 AC 340 which is the leading authority on the procedure and remains good law. I consider that I am bound by this decision. In that case the court held that once a jury had determined pursuant to section 4(5) of the 1964 Act (which is the equivalent provision to our Article 49) that the accused was under a disability he was no longer liable to be convicted of murder and the defence of diminished responsibility under section 2 of the 1957 Act did not arise. Accordingly, it could not be raised at the hearing under the procedure. Secondly, it was held that it was clear from the use in the relevant provision of the word "act" rather than "offence" and consistent with the purpose of section 4(A) that the jury at the hearing under section 4(A)(ii) was not concerned with any mental element and were not required to consider whether the accused had done the act or made the omission charge against him with mens rea.

[16] The dilemma faced by a court determining this issue is well encapsulated in the judgment of Lord Bingham in the Court of Appeal in *Antoine* where at page 359 paragraph A he says that:

> "The true legislative purpose of section 4(A) is to protect the community from the danger of a potential offender who has ostensibly committed the act of crime but is mentally unfit to be tried for it, to protect that potential offender from restrictions on his liberty if he has in fact done nothing wrong, to provide the community of the potential offender with the proper opportunity to have the allegations tried out, if and when he recovers, and at the same time to protect the mentally unfit defendant from the rigours of a full trial and the stigma of deferred criminal allegations of which he could properly be acquitted forthwith."

[17] He then looks at the potential degrees of evidence that might be applicable in a murder case. He describes the first degree as the option of proof of the act simpliciter which he says cannot have been intended by Parliament as it is insufficient to safeguard the defendant from receiving a restriction order despite

having done nothing wrong. He says that if during the prosecution case it became clear that he had caused injury to another person by pure accident or in manifest self-defence or picked up another's brief case by pure mistake the mere fact of having caused the injury or taking control of the item would not be sufficient justification for an order under the Act which could operate to deprive him of his liberty. He then looks at the opposite end of the scale of degrees, that is of proving all the elements of the crime in full, specifically including the mens rea of the crime. By the very nature of the proceedings findings of fact as to the specific mental processes of the defendant in the course of the alleged crime are likely to be inappropriate and must therefore be irrelevant to such an inquiry. Issues such as intent, basic and specific, foresight of consequences, recklessness, dishonesty etc could be impossible to judge as part of the prosecution case and being largely subjective matters peculiar to the defendant himself impossible to rebut, distinguish or explain in the absence of his participation in the trial. In those circumstances it would be futile and unfair to embark on a meaningful enquiry into the mental element of the offence charged.

[18] The third of the possible degrees of depth of proof for the prosecution case, that of the unlawful act, is that which Parliament intended. Only those acts that were unlawful, in particular not done by accident or by way of self-defence, were to amount to acts done within the meaning of the Act. The same applies to proceedings under section 4(A) of the 1964 Act. The "unlawful act" interpretation is not without its logical difficulties. It appears that the majority of the elements of the offence of murder and the excuses or justifications therefore are predicated on the defendant being of sound mind. Therefore attempts to apply strict logic in order to marry them with the statutory provisions specifically designed to cater for a defendant's mental incapacity make it difficult to produce consistent results. He then analyses the cases of accident or mistake and also discusses self-defence and he says at page 361 paragraph H:

> "A similar difficulty arises with self-defence. This excuse can operate even though all the other ingredients of the crime may be established. The classic pronouncement on the law relating to self-defence in Palmer makes it clear that the test of whether the force used in self-defence was reasonable contains a distinct subjective element. Thus, here again in order for the prosecution to establish that the actus reus of killing was not done by way of self-defence it might well have to prove a mental process on the part of the defendant which might be incongruous in the circumstances of the proceedings. Thus, the same dilemma arises as in the case of proving that the killing was not accidental."

[19] Lord Bingham does not provide a solution to that dilemma but it was specifically addressed by the House of Lords on appeal and in the judgment of Lord

Hutton. Lord Hutton sets out the purpose of a section 4(A) hearing in similar terms to that of Lord Bingham but specifically deals with the question of self-defence in this way. He says at page 376 paragraph F:

> "In their full and helpful submissions counsel raised a further issue on which they invited the guidance of Your Lordships. The issue is this, if on a determination under section 4(A)(ii) the jury are only concerned to decide whether the defendant did the act and are not required to consider whether the defendant had the requisite mens rea for the offence, should the jury nevertheless decide that the defendant did not do the act if the defendant would have had an arguable defence of accident or mistake or self-defence which he could have raised if he had not been under a disability and the trial had proceeded in the normal way. The difficulty inherent in this issue is that such defences almost invariably involve some consideration of the mental state of the defendant. Thus, in Palmer when considering self-defence, Lord Morris referred to the defendant doing what he honestly and instinctively thought was necessary to defend himself. But on the determination under section 4(A)(ii) the defendant's state of mind is not to be considered. How then is this difficulty to be resolved? I would hold that it should be resolved in this way. If there is objective evidence which raises the issue of mistake or accident or self-defence then the jury should not find that the defendant did the act unless it is satisfied beyond reasonable doubt on all the evidence that the prosecution has negatived that defence. For example, if the defendant had struck another person with his fist and the blow had caused death it would be open to the jury under section 4(A)(iv) to acquit the defendant charged with manslaughter if a witness gave evidence that the victim had attacked the defendant with a knife before the defendant struck him. Again, if a woman was charged with theft of a handbag and a witness gave evidence that on sitting down at a table in a restaurant the defendant had placed her own handbag on the floor and, on getting up to leave, picked up the handbag placed beside her by the woman at the next table it would be open to the jury to acquit. But what the defence cannot do in the absence of a witness whose evidence raises the defence is to suggest to the jury that the defendant may have acted under a mistake or by accident or in self-defence and to submit that the jury should

> acquit unless the prosecution satisfies them that there is no reasonable possibility that the suggestion is correct."

That is the approach that should be taken by a court when looking at self-defence in the context of this type of hearing.

[20] In the case of *R v Grant* [2000] QB 1030 the Court of Appeal considered this issue in the context of a defendant who sought to rely on provocation as a potential defence to a finding under section 4(A)(ii). The headnote demonstrates how the court dealt with the issue of provocation:

> "While the jury could not consider the question of intent and could not therefore reach a conclusion on whether all the other elements of murder were made out the defence of provocation could not sensibly be considered, that it would be unrealistic and contradictory in relation to a person unfit to be tried for a jury to have to consider what effect the conduct of the deceased had on the mind of that person, that although the distinction between actus reus and mens rea was not clear cut the defence of provocation fell clearly on the mens rea side of the dividing line and it was not open to the jury to consider issues of mens rea whatever the circumstances and in that case therefore the defendant was not entitled to raise the issue of provocation."

[21] A number of other cases dealing with this issue have confirmed that this is not a criminal procedure in the normal way and that, as a result, Article 6 of the ECHR does not apply to the proceedings.

[22] Applying *Antoine* in this case, is there objective evidence which raises the issue of self-defence? In considering this matter the court derives considerable assistance from the judgment in the case of *R v Wells and Others* [2015] 1 WLR 2797. In that case the Court of Appeal in England and Wales specifically looked at the question of self-defence in the context of this type of hearing. There is a very lengthy judgment from Sir Brian Leveson looking at this particular issue, and in particular, looking at the issue of what is meant by objective evidence. In that case the objective evidence relied upon by the defence were comments made by him to police at the scene, in the police station and in interview, which it was argued should have been left to the jury. It was argued that although he had a mental disorder at the time of the killing he had not been so disordered so as to make it impossible to assess his account that he had acted in self-defence.

[23] The court dismissed the defendant's appeal. Nonetheless, the court held that where a defendant's disability impacted on his ability to take part in a trial but he was not otherwise affected by a psychiatric condition such as rendered what had

been said in interview unreliable the jury could hear such evidence. Whether or not the delusional traits were apparent on the face of the interview there was no reason why the jury should not hear such evidence albeit with an appropriate warning that when considering the extent to which evidence of such an interview should be admitted it remained relevant to consider all the circumstances, but that in that case there was no objective evidence of self-defence and accordingly no basis on which it would have been open to the judge to leave self-defence to the jury.

[24] In his judgment Sir Brian Leveson considers the case of *Antoine* and refers to the formulation of Lord Hutton in relation to self-defence which he says generates a number of problems one of which raises in stark terms what is meant by the words "objective evidence". He follows by saying that arising from that question is a further issue as to the consequence of the presence of such objective evidence on the admissibility of evidence emanating directly from the defendant who may at the time of the incident have been suffering from serious mental illness and by definition at the time of the trial is under such a disability as to be unfit to take part in the trial. He was grappling with many of the issues that arise in this case. What is objective evidence and how does that objective evidence relate to the admissibility of evidence emanating directly from a defendant who is unfit to take part in the trial? There is extensive discussion in the judgment as to the difficulty in separating the actus reus from the mens rea which is useful background material but on the issue of what is meant by objective evidence he says at page 2805, paragraph [15] relating to the issue of objective evidence:

> "It concerns the nature of objective evidence as described by Lord Hutton in *R v Antoine*. His examples were of independent eyewitness evidence but it would certainly include a wide range of other evidence CCTV, cell site, scene of crime or expert forensic evidence are all available to assist a defendant. Thus, evidence of a fight with similar injuries on both sides or evidence of the type suggested by Lord Justice Judge in *Attorney General's Reference No:3* would all be relevant and admissible in a section 4(A)(ii) hearing.
>
> What would not fall within the category of objective evidence are the assertions of a defendant who, at the time of speaking, is proved to be suffering from a mental disorder of a type that undermines his or her reliability and which itself has precipitated the finding of unfitness to plead.
>
> These assertions need not themselves be obviously delusional; to repeat the example provided by Judge LJ, it is not necessary that the defendant assert that he or she is a deity being attacked by the devil. The exclusion of

> evidence outside this category may put the defendant at a disadvantage; however this is balanced by the fact that these are not criminal proceedings and the disposals are accordingly limited."

There is no evidence before me that the defendant at the time of his interviews was in fact suffering from a mental disorder of a type that undermines his or her reliability which of itself has precipitated the finding of unfitness to plead in this case, although his fitness to be interviewed was an issue in the trial.

[25] He then goes on to discuss concerns about these hearings expressed by the Law Commission. The Law Commission observes that the approach in *Antoine* could lead to unfairness and he says, when discussing objective facts, at page 2805 paragraph 17:

> "Objective facts will of course include the background to the incident, the antecedents of the complainants and the circumstances of the fight as evidenced, for example, by the injuries. In the example given there will also be the evidence of the co-defendant, but that does not apply here. That is not to say that other protection could not be devised provided the result does not mean that the Crown have to prove all the ingredients of the offence rebutting the subjective assertions of a defendant who at the time of his interview suffered such psychiatric illness as to lead to his or her being unfit to plead."

He goes on to say at paragraph 18:

> "That is not to say that the same approach should be taken to an interview of a defendant who at the time of interview was not suffering from such psychiatric illness, it is not difficult to visualise a defendant of full capacity who is involved in an incident and then provides a full account to the police but thereafter suffers an injury which renders him or her unfit to plead. It is not uncommon for such interviews to be admitted into evidence whatever the strict operation of the principles in *R v Antoine*."

[26] He then refers to the case of *R v Jagnieszko* [2008] EWCA Crim 2065 where the issue left to the jury in a section 4A(2) hearing was self-defence in the context of two allegations of causing grievous bodily harm with intent. There was objective evidence from a witness and the police interview of the defendant, then of sound mind, was admitted without objection. The issue was whether the refusal also to admit an unsigned proof rendered the verdict unsafe which does not really apply in

this case. However, it is relevant that the interview contained considerable detail of the matters going to self-defence as did the cross-examination of prosecution witnesses. The court in *Wells* goes on to say in its judgment at page 2806 paragraph 20:

> "The balance struck by these examples is appropriate. Where a defendant's disability impacts on his or her ability to take part in a trial but he/she is not otherwise affected by a psychiatric condition such as renders what is said in interview unreliable (whether or not the delusional traits are apparent on the face of the interview), there is no reason why the jury should not hear them albeit with an appropriate warning. When considering the extent to which evidence of the interview should be admitted it remains relevant to consider all the circumstances."

[27] Having made these observations the court turned to the facts of the case, many of which resonate with the facts in this case. Mr Wells alleged that he was staying with the deceased in a flat. They were heavy drinkers and drank together the week before his death. At the time Wells was taking substantial medication, he had a butterfly knife that he kept in a cabinet and he had shown it to another witness at one stage. At about 4:55 pm on 11 May a 999 call was made in which the male caller, the defendant Mr Wells, said:

> "I have a dead person in my front room, he has took about 20 or 30 stabs to his chest, neck and back."

In response to further questions he said:

> "He started at me with a weapon. I took the weapon off him and defended myself. He kept coming back and back with the weapon."

[28] He said that the knife belonged to him. When police officers arrived at Wells' address a short time later they found him with blood on his clothing and a cut to his wrist. He said "I have been honest it was self-defence". The deceased was lying on the floor bare chested and the knife was found nearby. There was blood all over him and his clothing. The victim was pronounced dead at the scene. Mr Wells was arrested and cautioned. The transcripts from a body worn camera indicate that he repeatedly maintained that the deceased had attacked him with the knife which he took and used to defend himself. He identified the knife he had taken from the deceased and said that the deceased had been high on drugs and kept saying "do you want to go for me". He showed police his injuries which consisted of a 1" laceration on his right wrist for which hospital treatment was recommended and a small cut to his left little finger. He told them he was schizophrenic, his condition

was not well controlled and he was having a very bad spell. He had not previously been violent as a result of his illness and he was very sorry for what had happened. He was coherent but not everything he said made sense. The judgment refers to various parts of the investigation and at the trial the majority of the evidence was agreed. The pathologist said that the deceased had sustained 38 stab wounds, there were some very serious injuries, the tip of the knife had broken off and was embedded in the deceased's skull, the cause of death was stab wounds to the neck and chest inflicted by a butterfly knife recovered from the scene. Death would have resulted quite rapidly through blood loss. The pathologist said that there could have been a struggle but not for long. He said that both the deceased and Mr Wells had injuries to their hands which could be consistent with self-defence or trying to grab a knife from someone else. He had been given Mr Wells' account of what had happened and agreed that some of the injuries could be explained by that account but many could not. There was evidence that Mr Wells' father received a phone call from Mr Wells who said "I've done it this time, I've actually stabbed someone 26 times. He is dead on the floor in front of me here dying, I want you to come down."

[29] It was submitted on behalf of Mr Wells that the issue of self-defence should have been considered by the jury in determining whether the defendant did the act under section 4A. It was argued that there was objective evidence within the evidence relied on by the prosecution which was capable of raising the issue of self-defence including comments made by Wells to the police at the scene, in the police station and in his interview. The defendant further sought to rely on Wells' injuries and damage to and blood distribution within the flat. The submission was made that this material together with bad character evidence in relation to the deceased should be considered by the jury. Having considered *R v Antoine* the judge ruled that the only areas of evidence capable of being objective were Wells' injuries, damage to the flat and the blood distribution. The evidence as to these issues was not of sufficient cogency as to raise the issue of self-defence and the jury was therefore directed that they could have no regard to the issue.

[30] In the judgment the court indicated that, absent the assertions of self-defence, there was no basis on which it could have been open to leave self-defence and even if there had been on the face of it an excess of self-defence appears unanswerable. In relation to the interviews, defence counsel recognised that they could not be objective evidence on their own. The difficulty for the court was set out in paragraph 39 of the judgment:

> "Self-defence is subjective and if Mr Wells honestly believed that he was acting in that capacity the extent to which it was reasonable for him to act would have to be judged according to that belief and that would generate the very problem identified in paragraph 10 above."

[31] Having decided that there was no objective evidence of self-defence as understood by *Antoine* the court concluded that the matter was properly not left to

the jury. Therefore, in the *Wells* case self-defence was not an issue in the trial as a result of the judge's ruling.

[32] *Antoine* remains good law and this court is bound by it. The court accepts that there is criticism of the application of that decision and a concern that it can lead to unfairness. The obvious unfairness in a trial like this, for example, is that had Mr Morrison been deemed fit for trial he could have raised the issue of self-defence and a jury may have accepted that but if the prosecution are right in their interpretation of *Antoine* he will be denied that opportunity in this hearing. Mr Mooney QC on behalf of the prosecution says that arises from the nature of these proceedings and the judgment in *Antoine*. Any perceived unfairness is tempered by the fact that this is not a criminal trial. There is no finding of guilt and should the defendant subsequently recover he can be tried in a criminal trial. As Mr Montague points out, in the circumstances of this case that is of little consolation to the defendant given the potential consequences of the finding against him in terms of his liberty. Furthermore he is highly unlikely to recover in any event given the medical evidence in this case.

[33] From the application of the principles in *Wells* the court has come to the conclusion that the interviews of the defendant in this case may be admitted, albeit with an appropriate warning. However, on their own the contents of those interviews do not constitute objective evidence. They would be insufficient on their own to leave the question of self-defence to the jury. So what the court has to look for is objective evidence which on its own raises the issue of self-defence. If that evidence is there then the jury can also take into account what was said in interview and place what weight or reliance on it that they determine appropriate. Looking at the circumstances of this particular case, where is the defence of self-defence raised? The starting point is the interviews of the defendant. I have already summarised what he said about self-defence. At this stage the court observes that at its height what it amounts to is an assertion that he was attacked. I consider it is significant that the defendant at no stage goes on to say what actually happened after that attack. He says he does not remember stabbing George. He does not give any evidence about what he did or whether he considered that to be necessary or reasonable in terms of self-defence. That evidence of course sits most uneasily with the other evidence in this case and in particular the un-contradicted evidence of Bridget Kelly that he said he had killed and stabbed Geordie. He made no suggestion whatsoever that that was as a result of any attack on him. He makes no case of self-defence. In fact when asked why he did it he said he did it because Geordie had raped his sister.

[34] The court looks at the other evidence about what he said he did with the knife and about his request that his trousers be washed and his assertion that he might be going to the barracks. The evidence of Kevin Galvin, although challenged, is also inconsistent. Equally, the comments he made to the police prior to interview are in consistent with any case of self-defence. The court therefore looks at the assertion made by the defendant at interview in the context of all the circumstances of the

case. As properly accepted by Mr Montague, on their own, the assertions by the defendant in the interviews are insufficient to raise the issue of self-defence in this type of hearing. The fact that George Morrison, suffered from schizophrenia and that his illness in the past led to aggressive behaviour on his part in their own right do not raise an issue of self-defence. Equally, the fact that there is evidence to show that he had a knife in the past on some occasions when he had acted aggressively towards other members of his own family is not objective evidence which gives rise to an issue of self-defence.

[35] The fact that on examination an injury was found on the defendant which is consistent with him having been struck on the shoulder by a hard object does not on its own raise an issue of self-defence. This evidence is at best on a par with the "objective evidence" relied upon in *Wells*, although there the defendant expressly admitted that he had stabbed the deceased. In considering the evidence in this case I have come to a similar conclusion as the trial judge in *Wells* to the effect that it is not of sufficient cogency so as to raise the issue of self-defence for the purposes of this hearing. At its very height, taken together with the defendant's interviews, the objective evidence relied upon might support an assertion that the defendant was attacked but it falls well short of the type of evidence envisaged by Lord Hutton as being necessary to raise objective evidence for the purposes of raising self-defence in this type of hearing.

[36] In any event the court takes the view that, absent any explanation or account from the defendant of the severity of the injury sustained by the deceased, that is three stab wounds in the chest and a clear attempt to cut his throat, compared to the trivial injuries sustained by the defendant, an excess of self-defence in this case appears unanswerable.

[37] The court has therefore come to the conclusion that the jury should not consider the issue of self-defence in this case.