

# CASE THREE

## Summary and preparation

This is a case of grievous bodily harm involving a defendant with an autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD). There are two reports each from the defence and CPS: the first consider the defendant's fitness to plead and the addenda his capacity to form intent.

## Clinical issues

ADHD (including symptoms, subtypes and persistence into adulthood); ASD; rating scales and diagnostic instruments referred to in the reports; autistic meltdown.

## Legal issues

This case raises two main legal issues. The first is fitness to plead – see the summary for case 1 for relevant reading materials, but **R v M (John) [2003]**<sup>2</sup> is again the key case law to be familiar with. In this case, the use of reasonable adjustments including an intermediary are considered.

The second legal issue is of capacity to form intent. This, in very simple terms, refers to whether the defendant was able to intend to do something (in this case inflict serious harm), or if he was so mentally disordered that he was incapable of doing so. This is relevant in this case as clearly he cannot be convicted of inflicting GBH with specific intent if he was incapable of forming that intent. Online resources and the reading materials described at the end of this pack provide further detail on intent, but for a detailed ruling on it see *R v Woollin* [1998]<sup>9</sup>.

Intoxication is relevant to capacity to form intent, and is one of the few areas of law in which voluntary intoxication can form part of a defence (to specific intent offences only – e.g. see **DPP v Majewski 1976**). In this case neither expert believes that the defendant was so intoxicated as to be unable to form specific intent, but there is some consideration of the various contributions of alcohol and diazepam to his intoxication. See the Resources section for further reading on intoxication in law.

Initial defence report

**Dr Junior Savastano BSc MBBS MRCPsych  
Specialty Registrar in Forensic Psychiatry**

**PSYCHIATRIC REPORT**

**ON**

**STEPHEN SMITH**

**DOB: 22<sup>nd</sup> June 2000**

**DATE OF REPORT: 10<sup>th</sup> July 2022**

**CHARGES:**

- 1. Unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1861**
- 1. Inflicting grievous bodily harm with intent to cause grievous bodily harm, contrary to section 18 of the Offences Against the Person Act**

## **SECTION 1: INTRODUCTION**

### **The author**

1. The author of this report is Dr Junior Savastano. I am a Specialty Registrar in Forensic Psychiatry in the Central London training scheme, currently working in the Oxford Circus Community Forensic Team. I am approved under section 12(2) of the MHA as having special experience in the diagnosis and treatment of mental disorder, and am fully registered with the GMC.
2. I understand that my primary duty in written reports and giving evidence is to give objective, unbiased opinion on matters within my expertise in order to help the court to achieve its overriding objective. I understand that this duty overrides any obligation to the person from whom I have received instructions or by whom I am paid. I have complied and will continue to comply with that duty.

### **Source of instructions**

3. This report was commissioned by Trotter's Independent Solicitors for Mr Smith's defence.

### **Summary of the case**

4. Mr Smith is alleged to have committed grievous bodily harm against a former co-worker after punching him in the face and breaking his jaw. He has a previous diagnosis of autism, so the matter of his fitness to plead has been raised.

### **Summary of conclusions**

5. Mr Smith has an autism spectrum disorder and attention deficit hyperactivity disorder (inattentive subtype).
6. The confluence of these disorders is such that he is unfit to plead or meaningfully participate in the court process. He is unable to understand the section 18 charge, follow the course of proceedings, instruct his legal representatives, or

give evidence in his own defence. Reasonable adjustments would assist to some degree with his understanding of what was taking place in court, but cannot sufficiently reduce the risk of autistic meltdowns, in which he would be entirely unable to follow the course of proceedings, instruct a lawyer, or give evidence in his own defence.

7. An autistic meltdown appears to have occurred at the material time.

### **Disclosure of interest**

8. I know of no potential or actual conflict of interest with this case.

### **Confidentiality issues**

9. The normal doctor-patient confidentiality commitment is lawfully breached as my primary duty is to the court. I explained this to Mr Smith on 10<sup>th</sup> June 2022, telling him that anything he told me could be included in a report to the court. I explained the purpose of the report in simple terms, i.e. to assess his mental health, and to provide a view on his ability to engage with the court process.

## **SECTION 2: ISSUES TO BE ADDRESSED**

10. I have been asked to address the following issues:

- i) A full psychiatric assessment;
- ii) Mr Smith's fitness to plead to the current charge.

## **SECTION 3: DOCUMENTS STUDIED**

11. I have studied the following documents:

- i) Case bundle including the transcript of police interview, Police National Computer Record, and witness statements;
- ii) The medical and psychiatric notes held on his GP practice's electronic notes system.

## **SECTION 4: BACKGROUND HISTORY**

### **Interview**

12. I assessed Mr Smith at his solicitor's office on 10<sup>th</sup> June 2022 for around three hours for the preparation of this report.

### **Background history as given by the defendant**

13. Mr Smith was born and raised in west London. He lived with both parents until, aged three, his father left the home as "he was always fighting with Mum, until one day she called the police and he never came back". He has since lived with his mother. His father is white British and his mother is of Trinidadian descent.

14. In later life he discovered that he has two half-brothers from his father's subsequent relationships. One is currently serving a life sentence in prison for murder, and the other has lived abroad with his own mother for the last ten years. Neither he nor his father has any contact with his half-brothers: "Dad said they don't get on".

15. His father has a criminal record and has served a number of prison sentences for violent and acquisitive offences. His mother works as a maths teacher and has had no police contact. Neither is known to have any diagnosed physical or mental health issues, although he recalls his mother stating that his father has "anger issues". Mr Smith stated that his father uses drugs and alcohol, and has spent much of his adult life unemployed, spending most of his time acquiring and using substances, primarily crack cocaine.

16. Mr Smith struggled in primary school due to issues with concentration and making friends. He was bullied until "my Dad taught me to stand up for myself" and he fought the bullies. At this point he was assessed for and diagnosed with an autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD).

17. He was treated for ADHD and transferred to "a special autism school". He found this a much more suitable environment, enjoying subjects such as maths and

science and experiencing no further bullying. He made a friend there, Eric, whom he remained in contact with until his arrest. There was one incident when Mr Smith “thought Eric was bullying me”, so attacked him by punching him in the face repeatedly “like Dad told me to do”. He subsequently realised that he had misunderstood what Eric had said, apologised, and they have remained friends since.

18. He and Eric would play computer games together. Mr Smith tried to talk to him about his other main interest, cars, but Eric seems disinterested. He played chess at his school as a teenager but has not since leaving education, stating that over the last couple of years he “can’t concentrate on it”.

19. Aged 16, Mr Smith completed GCSEs in English, in which he obtained a grade D, science (grade A\*), and maths (grade A\*). He attempted to continue his studies in maths and science to A-level, but was bullied on return to college and so left soon after the term began.

20. Since leaving school he has lived with his mother, playing computer games, meeting with Eric, and watching television. He has made no other friends and stated that he has never had an intimate relationship or any form of sexual contact. He has never previously been in contact with the police. He drinks once per week on Saturday afternoons, when he drinks six cans of Etoile Polaire lager. He denied ever using illicit substances.

21. He has been employed on two occasions: at a car wash and a supermarket, both seeming to have failing due to his autism. He stated that he began drinking alcohol with colleagues whilst at the supermarket, and that they began to bully him “like when I was at school”. One of them, Mr Sainsbury (the alleged victim of the current offence), “was rude about me having autism” in a pub on one of these occasions, to which he attacked him “to stand up for myself”. He quit his job after this incident.

### **Past psychiatric history according to medical records**

22. Mr Smith was diagnosed with ASD and ADHD aged eight following behavioural and interpersonal issues at his school. The assessment included use of the gold standard diagnostic instruments the Autism Diagnostic Observational Schedule (ADOS) and Autism Diagnostic Interview (ADI).
23. He was then transferred to a specialist school for children with autism and commenced on treatment for ADHD with Concerta XL 54mg (a stimulant drug). Following a trial without treatment aged 18 he was found to continue to exhibit symptoms of ADHD and was recommenced on the medication, until he discontinued it aged 20. He has not taken treatment for ADHD since then.
24. He was prescribed diazepam 5mg aged 20, after discontinuing treatment for ADHD, to be taken when needed for “situational anxiety”.

### **Screen for current symptoms of ADHD using the Barkley Checklist**

25. Due to Mr Smith’s history of being diagnosed with ADHD, which has been felt to continue into adulthood, and the fact that he is not in receipt of treatment for it, I screened him for current ADHD symptoms. This was conducted using an instrument known as the Barkley Adult ADHD Rating Scale-IV (BAARS-IV).
26. Mr Smith presented with elevated scores in the inattentive and impulsive domains of the test, but not in the hyperactive domain.

### **Autism Spectrum Quotient**

27. I also administered a tool known as the Autism Spectrum Quotient, or AQ-50. This is a 50-question screening tool for those with suspected ASD. Mr Smith scored 42/50 in this test, a score consistent with a diagnosis of ASD.

## **SECTION 5: ALLEGED OFFENCE**

### **Victim's statement**

28. Mr Sainsbury reported that on 23<sup>rd</sup> May 2022 at around 4pm he was walking his dog with a friend in a local park. He saw Mr Smith drinking beer and, although he felt anger towards him as he was assaulted by him the last time they met, was aware of his mental health difficulties (“he’s not the full ticket”) so greeted him “with an old joke...I used to call him ‘Billy’”.

29. He then alleges that Mr Smith ran towards him, seeming a little unsteady on his feet, and punched him in the face. Mr Sainsbury fell to the floor, subsequently attending hospital where he was diagnosed with a fractured jaw. Mr Smith fled the scene.

### **Mr Smith's account of the alleged offence given at police interview**

30. Mr Smith made no comment at interview.

### **Mr Smith's account of the alleged offence as given to me**

31. On 23<sup>rd</sup> May 2022 at 2:30pm he was due to meet with Eric online to play computer games. They would meet weekly at this time, but Eric had either not attended or been very late over the preceding few weeks, causing Mr Smith significant anxiety. He recalled that his GP had prescribed him medication (diazepam) to be used in such situations, which he had only used once before as “it made me fall asleep”. However, he decided to try it again on this occasion, taking it at around 2:20pm.

32. Eric did not log in at the allotted time. Mr Smith waited for a further 15 minutes, becoming increasingly “wound up” as he waited, before deciding to buy some beer (“as it was Saturday”) and go for a walk. He drank two of the six cans of beer he had purchased as he walked around a local park, becoming increasingly frustrated with Eric and feeling as though he should make a new friend, but becoming angry with himself as he felt he did not know how.

33. He then saw Mr Sainsbury walking with a friend, and began to feel both scared (in case of reprisals from their last altercation) and angry, recalling Mr Sainsbury's persistent past bullying. Mr Sainsbury then shouted "ah look, it's Billy No-Mates", to which both he and his friend began to laugh at him. Mr Smith felt overwhelmed and intimidated, approaching Mr Sainsbury who "told me to hit him – so I did", punching him once in the face before running away.

34. On arriving home he described feeling overwhelmed, rocking on the floor and shouting. His mother calmed him down, asking what happened, and he described the incident. She took him to the local police station where he handed himself in, admitting to the incident.

## **SECTION 6: PROGRESS SINCE ARREST**

### **In police custody**

35. Mr Smith slurred his words and on one occasion tripped over on arrival to the police station, so was deemed unfit for interview and left to sleep. On waking he was interviewed with an Appropriate Adult, following which he was released under investigation.

### **Mr Smith's account**

36. After being released from police custody, Mr Smith reported feeling "scared of everyone". He has since remained at his mother's home, largely in his bedroom, only coming out for essential legal appointments which have caused him significant anxiety. He reported feeling confused about why he had been arrested: although he was aware that "you shouldn't hit people", he felt that to do so was justified in the circumstances as he "was being bullied", he had only hit Mr Sainsbury once, and had done so at Mr Sainsbury's invitation.

### **Attendance note from defence barrister Miss Pinkerton-Smythe**

37. Miss Pinkerton-Smythe described her experience at court with Mr Smith on 1<sup>st</sup> June 2022 as follows:

*“I struggled to take instruction from Mr Smith. In discussion prior to the initial hearing he became extremely aroused and agitated, repeatedly stating that he had done nothing wrong. He demanded that the charges against him be dropped, repeating that he had done nothing wrong, and failed to grasp the role of the court process in establishing this.*

*I am concerned about his ability to engage in the court process. For example, when the prosecution, barrister began to outline the facts of the case, Mr Smith repeatedly interrupted her by shouting his version of events.*

*His presentation escalated further from this point. At the end of the hearing, when a date was booked for the next attendance, Mr Smith began screaming, again shouting “I am not a criminal”, before ripping his t-shirt off and rocking on the floor of the court.”*

### **SECTION 7: ASSESSMENT OF FITNESS TO PLEAD**

38. The legal tests for fitness to plead are known as The Pritchard Criteria, derived from R v Pritchard (1836), and have been interpreted in the modern day (R v M (John) [2003] EWCA Crim 3452 Court of Appeal) as to include the following, which will be addressed with respect to Mr Smith in turn:

- i. Ability to understand the charges;
- ii. Ability to plead to the charges;
- iii. Ability to challenge a juror;
- iv. Ability to instruct a lawyer;
- v. Ability to follow the course of the proceedings;
- vi. Ability to give evidence in his own defence.

39. Ability to understand the charges: After some encouragement Mr Smith was able to state that he had been charged with “hitting someone”, and that in doing so he had “broken his jaw”. Eliciting this information from him was challenging, however, due to repeated assertions that he was “standing up for myself”, that he is “not a criminal”, and that Mr Sainsbury “gave me permission to hit him”.
40. However, despite repeated attempts at explaining it to him by a variety of means, he was unable to demonstrate an understanding of the concept of intent. I tried to explain this to him in simple language, i.e. that it was the difference between “meaning to do something and it happening by accident”, but the concept was too abstract for him to grasp.
41. I believe that Mr Smith is able to understand the section 20 charge, but not the mental element of the section 18 charge.
42. Ability to plead to the charges: Mr Smith became increasingly aroused as I attempted to elicit his understanding of the meaning and consequences of entering a guilty plea. He stated that he is “not a guilty person, I can’t go to jail”, and queried whether I was trying to convince him to “go guilty”.
43. He was granted a short break, after which I adopted a different approach. He then explained that he intends to enter a not guilty plea as he wishes to communicate to the court his view that “I’ve done nothing wrong”. He was able to state that someone who has done something wrong should enter a guilty plea.
44. He stated that his father has told him that entering a not guilty plea results in “it going to trial, where they decide if you are lying or not”, and that entering a guilty plea means that “the judge decides on your punishment, if you go to prison or not”.
45. I am satisfied that, with adjustments, Mr Smith is able to decide on how to plead.

46. Ability to challenge a juror: Initially explaining this concept to Mr Smith was challenging, as he felt that if any of the few people he knew were on the jury, he would like them to remain there as “I only know my family and Eric, and they know I’m not a guilty person”. After patient explanation he was able to understand that if someone he didn’t get on with was in the jury, it would be unfair for them to remain there and he would tell his lawyers, who could ask them to leave. He can challenge a juror.
47. Ability to instruct a lawyer: Due to Mr Smith’s level of arousal and inability to appreciate others’ perspectives, I do not believe that he would be able to instruct a lawyer (see attendance note from his barrister, Miss Pinkerton-Smythe). When evidence is presented against him or that contradicts his view, and in the context of the stress of the court environment, he becomes so agitated that he cannot satisfactorily apply his mind to questions asked of him by them. He thus cannot instruct a lawyer.
48. Ability to follow the course of the proceedings: Due to the level of arousal and agitation he exhibits in stressful situations, compounded by his attentional deficits resulting from his ADHD, he is unlikely to be able to follow what is said by counsel in the court environment.
49. When I attempted to describe the roles of the court participants to Mr Smith he was unable to focus sufficiently to be able to repeat it back to me. As I persisted he became visibly frustrated, standing up and pacing back and forth in the room, telling me to “move on”. Such behaviour is likely to occur in the court also.
50. On the balance of probabilities, I believe Mr Smith would be unable to follow the course of proceedings.
51. Ability to give evidence in his own defence: Even when not being challenged, and the court process was being described to him, Mr Smith became aroused and agitated. Although he was able to give his account of the incident to me, when the

prospect of attending court to give a similar account, and to be asked questions by the prosecution barrister was raised, he again stood up and began pacing the room, proclaiming his innocence and stating “I’m autistic, this isn’t fair”.

52. He was again granted a short break. Following this the subject was returned to, but again he could not discuss it, saying “I’m becoming upset now, move on”.

53. Although able to state his account to me, on balance I believe that the stress of the court environment is such that he would not be able to satisfactorily give evidence in his own defence.

#### **SECTION 8: MENTAL STATE ON 10<sup>TH</sup> JUNE 2022**

54. Mr Smith is a 22-year-old bespectacled man of dual heritage. He was kempt and appropriately dressed. His eye contact was poor and he made little use of gestures. He was agitated and aroused to varying degrees throughout the assessment, especially so when the prospect of his attendance at court was raised. His attention span was poor, requiring patient re-explanation and returning him to the point. Due to his poor attention span and degree of agitation he required several breaks during the assessment.

55. His speech was monotonous at times when he was less aroused, but otherwise broadly within the normal bounds of rate, rhythm, and tone.

56. There was no evidence of mood disorder, although he is understandably stressed about the ongoing court case.

57. I elicited no evidence of psychosis. There was a degree of paranoia as to the intentions of others, which I feel is best understood in the context of his diagnosis of autism and his history of being bullied (i.e. struggling to understand others’ motives and applying negative connotations to their behaviours, based on his experience of maltreatment).

58. He was oriented to time, place, and person, and insightful into the nature of his diagnoses.

## **SECTION 9: OPINION**

59. Mr Smith has a diagnosis of an autism spectrum disorder (ASD). This is a lifelong neurodevelopmental disorder characterised by deficits in social interaction and communication, and restrictive and repetitive behaviours and interests.

60. Mr Smith has struggled with interpersonal relationships and interaction throughout his life. In primary school he made no friends and was bullied; following transfer to a specialist school he made one friend and performed well only in subjects that fall within his range of ability and interests (maths and science). His issues with social interaction and communication appear to have resulted in him leaving college prematurely, and to conflict with colleagues whilst working in a supermarket. His diagnosis of ASD in childhood was made with the gold standard diagnostic tools, and he scored 42/50 on the Autism Spectrum Quotient administered by me, a screening tool designed to identify ASD, significantly above the threshold indicating further investigation (32/50). I am satisfied that he does have an ASD, and that it has a significant impact on his day-to-day function.

61. At the same time that he was diagnosed with ASD he was diagnosed with attention deficit hyperactivity disorder (ADHD). This is also a neurodevelopmental disorder, the core features of which are deficits in attention, impulsivity, and hyperactivity. After treatment for ADHD was commenced in childhood, Mr Smith's presentation changed markedly, with him becoming less disruptive and better able to concentrate.

62. ADHD is not always a lifelong condition, but in some it does persist into adulthood. This appears to be the case for Mr Smith. Following a medication-free trial aged 18 the symptoms of ADHD were noted to have returned, so he was

recommenced on treatment, although discontinued it of his own volition aged 20. When seen for this interview he gave elevated scores on the Berkley Adult ADHD Rating Scale-IV (BAARS-IV) in the inattentive and impulsive domains, and his qualitative presentation was also in keeping with such a diagnosis. I believe he meets the criteria for ADHD, inattentive subtype.

63. I believe that the symptoms of ADHD such as inattention are negatively impacting on his ability to meaningfully engage in the court process. Similarly, emotional dysregulation and anxiety are described as non-core features of ADHD, which are also having a negative impact on his fitness to plead. I have asked Mr Smith if he would be willing to recommence treatment, offering to write a letter to his GP seeking a re-referral to the ADHD service. He stated that he is unsure, as he believes he should not take medication if he intends to drink alcohol.

64. I am aware that the issue of Mr Smith's fitness to plead has been raised by the defence and so the burden of proof is on them to show that, on the balance of probabilities, Mr Smith is unfit to plead.

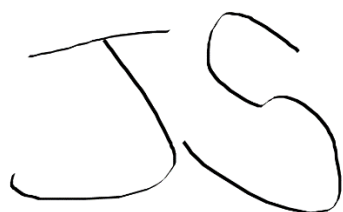
65. I believe that he is unfit to plead, as he does not satisfy the following limbs of the Pritchard criteria: ability to follow the course of proceedings, instruct his legal representatives, and to give evidence in his own defence. I also believe that he is unable to understand the section 18 charge as he cannot understand the concept of intent.

66. I have considered whether any reasonable adjustments would be sufficient to empower Mr Smith to be fit to plead, including the assistance of an intermediary, regular breaks, and the use of simple language and sentence structure. I do not believe that these would be sufficient. Even if these adjustments were able to assist him to satisfactorily understand the charges and what was taking place in court, I believe that he is predisposed towards further autistic meltdowns if challenged or stressed in the court environment, and cannot see how any adjustment could mitigate this risk.

67. An autistic meltdown is an intense response to an overwhelming situation, leading to someone with autism suddenly losing control of their behaviour. This can manifest as shouting, screaming and crying, as well as with physical aggression. I believe that this is what happened at the material time, leading to the incident described, and is liable to recur if placed under further stress in court.

### **STATEMENT OF TRUTH**

68. I confirm that I have made clear which facts and matters referred to in this report (of 15 pages, signed by me) are within my knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions that I have expressed represent my true and complete professional opinion on the matters to which they refer.

A handwritten signature in black ink, consisting of the letters 'JS' in a stylized, cursive font.

Dr Junior Savastano BSc, MBBS, MRCPsych

Specialty Registrar in Forensic Psychiatry

Supervised by Dr Christopher Moltisanti

10/07/2022

### **DECLARATION**

1. I understand that my duty is to help the court to achieve the overriding objective by giving assistance by way of objective, unbiased opinion on matters within my area of expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in this report.

4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I have shown the sources of all information I have used.
6. I have set out in my report what I understand from those instructing me to be the questions in respect of which my opinion as an expert is required. All of the matters on which I have expressed an opinion lie within my field of expertise.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report. I have covered all relevant issues concerning the matters stated which I have been asked to address. Absence of any comment in this report does not indicate that I have no opinion on a matter. I may not have been asked to deal with it.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualification to my opinion.
9. Where, in my view, there is a range of reasonable opinion, I have indicated the extent of that range in the report and given reasons for my own opinion.
10. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.
11. At the time of signing the report I consider that it is complete and accurate. I will notify those instructing me immediately, and confirm in writing if for any reason I subsequently consider that the report requires any correction or qualification or if between the date of this report and the trial there is any change in circumstances which affect my declarations at 3 and 4 above.
12. I understand that:
  - i. My report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath;
  - ii. The court may at any stage direct a discussion to take place between the experts;
  - iii. The court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with a summary of the reasons for disagreeing;

- iv. I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;
  - v. I am likely to be the subject of public adverse criticism by the judge if the court concludes that I have not taken reasonable care in trying to meet the standards set out above.
13. This report is provided to those instructing me with the sole purpose of assisting the court in this particular case. It may not be used for any other purpose, nor may it be disclosed to any this party, other than the National Probation Service, without my express written authority or that of the court.
14. I have read Part 19 of the Criminal Procedure Rules and the accompanying Practice Direction, and I have complied with their requirements.
15. I confirm that I have acted in accordance with, the Royal College of Psychiatrists' College Report CR193 Responsibilities of psychiatrists who provide expert opinion to courts and tribunals (2015) and the General Medical Council's Good Medical Practice, which includes 'Giving evidence as an expert witness'.

A handwritten signature in black ink, consisting of stylized letters 'JS'.

Dr Junior Savastano BSc, MBBS, MRCPsych  
10/07/2022

Initial prosecution report

**Dr Jennifer Bracco MSc MBBS FRCPsych  
Consultant Forensic Psychiatrist and Medical Psychotherapist**

**PSYCHIATRIC REPORT**

**ON**

**STEPHEN SMITH**

**DOB: 22<sup>nd</sup> June 2000**

**DATE OF REPORT: 10<sup>th</sup> August 2022**

**CHARGES:**

- 2. Unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1861**
- 3. Inflicting grievous bodily harm with intent to cause grievous bodily harm, contrary to section 18 of the Offences Against the Person Act**

## **SECTION 1: INTRODUCTION**

### **The author**

1. The author of this report is Dr Jennifer Bracco. I am a Consultant Forensic Psychiatrist and Medical Psychotherapist working at the Regency Clinic in central London, where I specialise in the assessment and treatment of men with neurodevelopmental disorders exhibiting violent and sexual offending behaviours.
2. I am approved under section 12(2) of the MHA as having special experience in the diagnosis and treatment of mental disorder, and am fully registered with the GMC.
3. I understand that my primary duty in written reports and giving evidence is to give objective, unbiased opinion on matters within my expertise in order to help the court to achieve its overriding objective. I understand that this duty overrides any obligation to the person from whom I have received instructions or by whom I am paid. I have complied and will continue to comply with that duty.

### **Source of instructions**

4. This report was commissioned by Mr Paul Sirico, a paralegal officer, on behalf of the Crown Prosecution Service.

### **Summary of the case**

5. Mr Smith is charged with assault occasioning grievous bodily harm, both with and without specific intent, after allegedly assaulting someone previously known to him in a park.

### **Summary of conclusions**

6. Mr Smith has an autism spectrum disorder and attention deficit hyperactivity disorder. Providing the various reasonable adjustments outlined below, he would be fit to plead.

### **Disclosure of interest**

7. I know of no potential or actual conflict of interest with this case.

### **Confidentiality issues**

8. The normal doctor-patient confidentiality commitment is lawfully breached as my primary duty is to the court. I explained this to Mr Smith on 13<sup>th</sup> July 2022, telling him that anything he told me could be included in a report to the court. I explained the purpose of the report in simple terms, i.e. to assess his mental health, and to provide a view on his ability to engage with the court process.

### **SECTION 2: ISSUES TO BE ADDRESSED**

9. Mr Brief has asked that I address the following issues:
  - i) A full psychiatric assessment;
  - ii) Mr Smith's fitness to plead to the current charge.

### **SECTION 3: DOCUMENTS STUDIED**

10. I have studied the following documents:
  - i. Case bundle including the transcript of police interview, Police National Computer Record, and witness statements;
  - ii. The medical and psychiatric notes held on his GP practice's electronic notes system;
  - iii. Dr Savastano's fitness to plead report.

### **SECTION 4: BACKGROUND HISTORY**

#### **Interview**

11. I assessed Mr Smith at his solicitor's office on 13<sup>th</sup> July 2022 for around two hours for the preparation of this report.

#### **Background history as given by the defendant**

12. Mr Smith was born at St Mary's hospital in Paddington, west London. He was unaware of any issues with his birth or development.

13. He was initially raised in Acton in west London, where he lived with his mother and father. His mother has worked as a maths teacher in a local secondary school for over thirty years, and his father has been unemployed throughout his adult life, struggling with alcohol and subsequently crack cocaine use.
14. Mr Smith's father was violent towards his mother when he was a child, eventually leading to their relationship ending when he was three years old. He has continued to have contact with him since then.
15. His father has a history of substance misuse and police contact, most notably spending three years in prison for a conviction of "section 18 GBH" when Mr Smith was 11 years old. He stated that one of his father's friends had stolen and sold his mobile phone, as a result of which his father stabbed him in the abdomen. Mr Smith's mother has no history of police contact, and neither parent has any other known mental or physical health issue.
16. Mr Smith was raised as an only child, although he subsequently discovered that he has two younger half-brothers on his father's side. He has met them briefly but has little contact with them.
17. He described getting into trouble frequently in primary school, stating that teachers found him "disruptive" and "hyperactive". He struggled to focus in lessons and did not perform academically. He did not readily make friends which, in combination with his disruptive behaviour annoying other pupils, led to him being bullied. His father found out about this and became angry with Mr Smith, telling him that he must stand up for himself, following which Mr Smith began to get into fights with other pupils.
18. At the age of eight Mr Smith was diagnosed with autism and attention deficit hyperactivity disorder ('ADHD'), and was transferred to a specialist school where he fared much better.
19. He described his behaviour improving in the specialist school, and that he had been prescribed treatment for ADHD which made him feel a lot calmer and more focussed. He experienced no bullying there and only got into one fight, which was due to "a

misunderstanding”. He made one friend during his secondary school years, Eric, who attended the same school and would play computer games with him.

20. In his spare time Mr Smith has enjoyed playing the football computer game ‘FIFA’ since he was a child. He is also interested in cars, and described owning a collection of miniature models of them which as a teenager he enjoyed arranging in order of the light spectrum, from red to violet. His only other interest is playing chess, which he enjoyed playing as a teenager, but has not done so for many years as “my concentration isn’t as good as it used to be”.
21. After achieving grade A\* GCSEs in science and maths, Mr Smith attended a mainstream college where he had enrolled in an A-level course in physics, chemistry, and maths. However, he was bullied at the college, which was attended by some of the same pupils as his primary school, and so left after one week as he “didn’t want to start fighting again”.
22. He worked for two weeks in a car wash aged 18 but was asked to leave as he “kept getting in trouble for spending too long on each car – I wanted them to look like the models I have at home”.
23. He also worked for six months in a supermarket aged 20, where he struggled in customer-facing roles and so was eventually allocated a job “on the back door” unloading deliveries. He found this work to be physically demanding, spending much of the day in large fridges lifting heavy crates, and was invited by some of his colleagues to relax by visiting a local pub after work which is where he first tried drinking alcohol. He visited the pub with them each Saturday afternoon after working an early shift for a few months, with his alcohol use increasing over that time, such that he would leave the pub “quite drunk” towards the end of his time working there. He initially felt these encounters with his colleagues to be friendly, but over time when intoxicated he increasingly “didn’t understand what they were saying, they called it ‘banter’” and began to feel that he was being mocked by them. On one occasion this led to him responding to a colleague’s (the alleged victim of the current offence, Mr Sainsbury) behaviour with violence, punching him in the face repeatedly, following which he felt unable to return to working at the supermarket.

24. Aside from work he has spent the last six years living at his mother's home, playing FIFA (often alone, but at times with Eric), and watching repeats of television shows about cars such as Top Gear.
25. Since leaving his role at the supermarket he has continued to drink alcohol each Saturday, at times alone but also with Eric on occasion. He described drinking six cans of Etoile Polaire lager each Saturday afternoon "to relax". There was no evidence of alcohol dependence and he denied the use of other substances, citing his father's issues with substances as a deterrent.
26. Mr Smith has been in no romantic relationships, and denied a desire to seek one. He has no previous criminal convictions.

#### **Past medical and psychiatric history**

27. Mr Smith was born at St Mary's hospital in west London in 2000. He was born by emergency Caesarean section, although the reason for this is not stated.
28. There was evidence of developmental delay as a young child: he did not respond to his name being called until he was 18 months old; rarely made eye contact; was not observed to smile reciprocally to his parents; his speech was delayed; and he played with the same toys (model cars) repeatedly, developing tantrums if he was prevented from doing so.
29. Between the ages of three and five he was noted to not engage in imaginative play, and not understand turn-taking when playing around other children. In primary school he did not make friends, was noted to display poor concentration, continued to develop tantrums, and fought physically with other children.
30. Aged eight he was referred to CAMHS, who conducted an Autism Diagnostic Interview (ADI) and an Autism Diagnostic Observational Schedule (ADOS), alongside a detailed history and clinical interview with a specialist psychiatrist. The result of this assessment was that he was diagnosed with an autism spectrum disorder (ASD), with a concurrent attention deficit hyperactivity disorder (ADHD). His Intelligence Quotient was tested and found to be slightly above average (he scored 110).

31. Mr Smith was commenced on treatment for his ADHD with methylphenidate MR 54mg ('Concerta XL') in 2008 and transferred to a school for children with Special Educational and Behavioural Needs.
32. He had a short break from medication in 2018, when the Concerta XL was discontinued and his ADHD symptoms re-assessed. He was found to continue to suffer from symptoms of ADHD and so treatment was reinstated. He continued to take the Concerta XL until 2020, stating to his GP then that he wished to discontinue it as he had begun to drink alcohol, and had been told by a colleague that mixing medication with alcohol was dangerous. He has not taken it since.
33. After leaving his role in the supermarket in 2020 he described feeling more anxious around others, stating that he felt he had been bullied by his colleagues and that their behaviour had reminded him of how he had been treated in primary school. His GP prescribed diazepam 5mg orally on an as required basis, for him to take on occasions when he felt more anxious than usual.

## **SECTION 5: ALLEGED OFFENCE**

### **Mr Smith's account as given to me for the preparation of this report**

34. Mr Smith stated that on 23<sup>rd</sup> May 2022 he had been due to meet Eric online for a gaming session, but that after waiting 15 minutes for him he had not signed in. Mr Smith said that this had happened repeatedly over the preceding few months, and had caused him significant stress and anxiety when it had happened. As he was beginning to feel anticipatory anxiety prior to the allotted sign-in time, fearing that Eric would not attend, he had taken one of the diazepam tablets as prescribed by his GP.
35. After waiting 15 minutes past the agreed time he became angry and signed out of his games console, deciding that he would buy some beer from his local shop and go to the park, as "it was time to make some new friends". He bought six cans of Etoile Polaire from his local corner shop, and drank two of them as he began to walk to and around the park. He stated that he had begun to feel "a bit drunk" after the second can, which was unusual as he would typically drink more than this before feeling intoxicated.

36. After around 30 minutes of walking around the park he saw Mr Sainsbury walking his dog with another former colleague from the supermarket in the park. Mr Sainsbury, on seeing Mr Smith, began to taunt him, mocking him for being “a weirdo” and calling him “Billy No-Mates”. Mr Smith became extremely angry, walking towards Mr Sainsbury with clenched fists, when Mr Sainsbury shouted “go on then, fucking hit me!”. Mr Smith then punched Mr Sainsbury in the face, stating that he fell to the ground.

37. Mr Smith then fled the scene, running home. He told his mother what had happened, who encouraged him to report himself to the police, and they walked straight to the police station to do so.

#### **Victim’s statement**

38. Mr Sainsbury provided a brief statement in which he reported Mr Smith “just ran up to me in the park when I was walking my dog and smacked me on the jaw”. This caused him to fall to the ground, and Mr Smith fled.

39. Mr Sainsbury immediately reported the alleged offence to the police, who attended soon after. He described being in excruciating pain, as a result of which he visited his local Emergency Department, where he was diagnosed with a fractured mandible (jaw bone).

#### **Mr Smith’s account of the alleged offences given at police interview**

40. Mr Smith began to respond to the first question, when asked what had happened prior to his arrest, but was interrupted by his solicitor who advised him to respond “no comment” to all questions, which he did thereafter.

### **SECTION 6: PROGRESS SINCE ARREST**

#### **In police custody**

41. Mr Smith was described as appearing to be intoxicated with alcohol on arrival to police custody. He was calm and polite towards police station staff, but noted to be slurring his words and quite un-coordinated. He slept for six hours, and after waking presented

without evidence of intoxication, and was deemed to be fit for interview with an appropriate adult.

42. He was released under investigation following the interview.

### **SECTION 7: ASSESSMENT OF FITNESS TO PLEAD**

43. The legal tests for fitness to plead are known as The Pritchard Criteria, derived from R v Pritchard (1836), and have been interpreted in the modern day (R v M (John) [2003] EWCA Crim 3452 Court of Appeal) as to include the following, which will be addressed with respect to Mr Smith in turn:

- i. Ability to understand the charges;
- ii. Ability to plead to the charges;
- iii. Ability to challenge a juror;
- iv. Ability to instruct a lawyer;
- v. Ability to follow the course of the proceedings;
- vi. Ability to give evidence in his own defence.

44. Ability to understand the charges: When asked what he had been charged with, Mr Smith initially struggled to respond to the question, repeating that he had done nothing wrong and wanted to go home. After some encouragement he was able to state that he had been charged with “punching someone”, and with encouragement was able to identify that the alleged assault had caused “a broken bone”.

45. However, he was unable to describe the more abstract concept of intent. When asked whether he had “meant to” cause a broken bone or do serious harm, Mr Smith repeated that Mr Sainsbury had been mocking him, and had then “told me” to hit him. Repeated attempts to explore his understanding of the difference between something happening accidentally and deliberately were unsuccessful, with him repeating the above narrative and becoming increasingly aroused. Although he was not able to describe the meaning of intent to me, I am of the opinion that with the assistance of his legal team and an intermediary he would be satisfactorily able to understand it.

46. Ability to plead to the charges: Mr Smith understood that to plead not guilty is to assert “I haven’t done anything wrong”, and to plead guilty is to “admit you’ve broken the law”. He initially seemed unaware of the consequences of pleading guilty and not guilty; when the trial process was explained to him he became agitated and aroused, pacing around the room and again repeating that he had done nothing wrong so the matter should not be pursued.
47. He took a break, after which the subject was returned to. He was able to state that if he pled not guilty that there would be “a trial”, and if he pled guilty the case would go to “sentencing”. However, his understanding of these terms could not be explored as he again began to become aroused and asked to “move on”. In spite of this, I believe that he is satisfactorily able to plead to the charges.
48. Ability to challenge a juror: Mr Smith was unaware of his right to challenge a juror, but when it was explained to him was able to repeat back “if I see someone I know in the jury I can ask them to leave”. He is able to challenge a juror.
49. Ability to instruct a lawyer: Mr Smith described no paranoia or concerns about his legal team’s motives. He would be able to communicate his plea to his legal team. I can foresee potential issues with Mr Smith’s ability to understand questions asked of him by his lawyer, and he may benefit from the assistance of an intermediary to help put abstract legal concepts into terms he can understand. Providing the presence of an intermediary I am satisfied that he would be able to sufficiently understand his lawyer’s questions, apply his mind to them, and convey intelligibly the answers he wishes to give. He would then be able to instruct a lawyer.
50. Ability to follow the course of the proceedings: Mr Smith was unaware of the roles of the various court actors. As I tried to explain them to him he became agitated, again repeating that he is innocent and so should not go to court. I believe that this agitation is likely to persist throughout the court process, and is likely to impair his ability to follow the course of proceedings. Furthermore, his ability to follow proceedings would be impaired by his attentional deficits.

51. He would struggle to understand what is said by counsel without the assistance of adjustments. The use of complex language and sentence structure would exacerbate this.

52. I believe that these issues could be overcome, providing the following adjustments:

- i) The use of short sentences and simple language, spoken slowly and clearly;
- ii) Regular breaks;
- iii) The assistance of an intermediary to explain the roles of the court participants, what is being said, and to assist him with communicating with his legal team.

53. He would then be able to follow the course of proceedings.

54. Ability to give evidence in his own defence: Mr Smith was able to provide an account of the day leading up to the incident, and I believe would be able to continue to give his account of what took place prior to his arrest. The main impediment to his ability to give evidence effectively in his own defence is the degree of arousal and agitation he experiences when his position is challenged, or when another perspective is given that contradicts his account. This is likely to be due to his issues with theory of mind, and understanding that others may perceive a situation in a different way to himself. However, I do not consider this to amount to an *inability* to give evidence in his own defence.

55. Providing a patient approach, the use of simple, clear language, regular breaks, and arranging for him to give evidence at the beginning of the day when his attention may be better, and for no longer than is necessary, I believe that he would be able to give evidence in his own defence.

56. For my conclusion regarding his fitness to plead see opinion below.

## **SECTION 8: OTHER DOCUMENTS VIEWED**

### Previous psychiatric report

57. Dr Savastano assessed Mr Smith's fitness to plead to the current charge on 1<sup>st</sup> July. Dr Savastano found him to be unfit to plead, regardless of any adjustments the court is able

to provide, including the provision of an intermediary, regular breaks, and the use of simple language. He took the view that Mr Smith would be unable to follow the course of proceedings, instruct his legal representatives, or give evidence in his own defence, due to the degree of agitation he would present with in court. He also found him to be unable to understand the section 18 charge as he could not grasp the concept of intent, although was able to understand the section 20 charge. He agreed with the previous diagnoses of an autism spectrum disorder and attention deficit hyperactivity disorder, inattentive type.

Attendance note from defence barrister Miss Pinkerton-Smythe

58. Miss Pinkerton-Smythe described her experience at court with Mr Smith on 1<sup>st</sup> June 2022 as follows:

*'I struggled to take instruction from Mr Smith. In discussion prior to the initial hearing he became extremely aroused and agitated, repeatedly stating that he had done nothing wrong. He demanded that the charges against him be dropped, repeating that he had done nothing wrong, and failed to grasp the role of the court process in establishing this.*

*I am concerned about his ability to engage in the court process. For example, when the prosecution barrister began to outline the facts of the case, Mr Smith shouted over her repeatedly.*

*His presentation escalated further from this point. At the end of the hearing, when a date was booked for the next attendance, Mr Smith began screaming, again shouting "I am not a criminal", before ripping his t-shirt off and rocking on the floor of the court.'*

**SECTION 9: MENTAL STATE ON 13<sup>TH</sup> JULY 2022**

59. Mr Smith presented as a moderately kempt 22-year-old man of medium build, dressed casually in jeans, a t-shirt with an image of a car painted with a rainbow on it, and black Nike trainers. He wore glasses throughout the assessment, and made very occasional, sporadic eye contact. He appeared anxious and fidgety, and made little use of gestures, tending to use his hands to fiddle with an elastic band or pen rather than for emphatic or descriptive purposes.

60. After approximately one hour of the interview he appeared to be struggling to focus, and so requested a short break, which was granted. His concentration improved thereafter, but again began to wane towards the end of the second hour.
61. His speech was rather monotone, but spoken rapidly. He was not particularly attentive to the needs of the listener, tending to speak at length about subjects of interest to him, requiring interruption to be returned to the subject matter at times.
62. His affect was congruent and reactive and he presented as objectively euthymic. There was some evidence of literal interpretation of questions: for example, when asked how he'd been feeling recently, he replied "with my hands, mostly". There was also some evidence of alexithymia, with him struggling to describe his recent mood state.
63. There was no evidence of formal thought disorder, abnormal perceptions or beliefs, or any other psychotic symptoms.
64. He was oriented to time, place and person. A brief, informal test of his literacy and numeracy identified no issues with his ability to read English fluently or to do basic mental arithmetic.
65. He is aware that he is diagnosed with an autism spectrum disorder.

## **SECTION 10: OPINION**

66. Mr Smith is a 22-year-old British man who was raised in London, initially by both parents and latterly by his mother alone. In early life he suffered developmental delay, primarily with communication, and struggled in mainstream schooling. Aged eight he was diagnosed with an autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD), and was transferred to a school for children with Special Educational and Behavioural Needs. Here (and in receipt of treatment for his ADHD) he fared much better, leaving school with GCSEs and briefly attending mainstream college, which he left soon after joining as he experienced bullying. Since then he has worked briefly in two roles but has mostly remained out of employment, living at his mother's home and spending much of his time playing computer games.

67. ASD is a term referring to a lifelong neurodevelopmental disorder characterised by deficits in social communication and interactions and restricted and repetitive behaviours and interests. Mr Smith's diagnosis of ASD was made using the gold-standard diagnostic instruments, and features of the disorder were evident at interview with me. I am satisfied that he has an autism spectrum disorder.

68. He was also diagnosed with attention deficit hyperactivity disorder (ADHD) in childhood and, following a trial without medication in adulthood was found to continue to display symptoms of the disorder. ADHD is also a neurodevelopmental disorder, characterised by symptoms including issues with inattention and distractibility, hyperactivity, and impulsivity.

69. He suffers from no major psychotic or affective mental illness. I have seen nothing to suggest the presence of a personality disorder or substance use disorder.

70. Providing the adjustments outlined in section 7, I am satisfied that, on the balance of probabilities, he would be fit to plead to the current charges.

### **STATEMENT OF TRUTH**

71. I confirm that I have made clear which facts and matters referred to in this report (of 16 pages, signed by me) are within my knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions that I have expressed represent my true and complete professional opinion on the matters to which they refer.



Dr Jennifer Bracco MSc, MBBS, FRCPsych

Consultant Forensic Psychiatrist and Medical Psychotherapist

10/08/2022

## **DECLARATION**

1. I understand that my duty is to help the court to achieve the overriding objective by giving assistance by way of objective, unbiased opinion on matters within my area of expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in this report.
4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I have shown the sources of all information I have used.
6. I have set out in my report what I understand from those instructing me to be the questions in respect of which my opinion as an expert is required. All of the matters on which I have expressed an opinion lie within my field of expertise.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report. I have covered all relevant issues concerning the matters stated which I have been asked to address. Absence of any comment in this report does not indicate that I have no opinion on a matter. I may not have been asked to deal with it.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualification to my opinion.
9. Where, in my view, there is a range of reasonable opinion, I have indicated the extent of that range in the report and given reasons for my own opinion.
10. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.
11. At the time of signing the report I consider that it is complete and accurate. I will notify those instructing me immediately, and confirm in writing if for any reason I subsequently consider that the report requires any correction or qualification or if between the date of this report and the trial there is any change in circumstances which affect my declarations at 3 and 4 above.
12. I understand that:

- i. My report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath;
  - ii. The court may at any stage direct a discussion to take place between the experts;
  - iii. The court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with a summary of the reasons for disagreeing;
  - iv. I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;
  - v. I am likely to be the subject of public adverse criticism by the judge if the court concludes that I have not taken reasonable care in trying to meet the standards set out above.
13. This report is provided to those instructing me with the sole purpose of assisting the court in this particular case. It may not be used for any other purpose, nor may it be disclosed to any other party, other than the National Probation Service, without my express written authority or that of the court.
14. I have read Part 19 of the Criminal Procedure Rules and the accompanying Practice Direction, and I have complied with their requirements.
15. I confirm that I have acted in accordance with, the Royal College of Psychiatrists' College Report CR193 *Responsibilities of psychiatrists who provide expert opinion to courts and tribunals* (2015) and the General Medical Council's *Good Medical Practice*, which includes 'Giving evidence as an expert witness'.
16. I confirm that I have read guidance contained in a booklet known as Disclosure: Experts' Evidence and Unused Material which details my role and documents my responsibilities, in relation to disclosure as an expert witness. I have followed the guidance and recognise the continuing nature of my responsibilities of disclosure. In accordance with my duties of disclosure, as documented in the guidance booklet, I confirm that:
- i. I have complied with my duties to record, retain and reveal material in accordance with the Criminal Procedure and Investigations Act 1996, as amended;
  - ii. I have compiled an Index of all material. I will ensure that the Index is updated in the event I am provided with or generate additional material;
  - iii. In the event my opinion changes on any material issue, I will inform the investigating officer, as soon as reasonably practicable and give reasons.

A handwritten signature in black ink, appearing to be 'J Bracco', with a long horizontal stroke extending from the bottom right.

Dr Jennifer Bracco MSc, MBBS, FRCPsych

Consultant Forensic Psychiatrist and Medical Psychotherapist

10/08/2022

Defence addendum report

**Dr Junior Savastano BSc MBBS MRCPsych  
Specialty Registrar in Forensic Psychiatry**

**PSYCHIATRIC ADDENDUM REPORT**

**ON**

**STEPHEN SMITH**

**DOB: 22<sup>nd</sup> June 2000**

**DATE OF REPORT: 1<sup>st</sup> September 2022**

**CHARGES:**

- 1. Unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1861**
- 2. Inflicting grievous bodily harm with intent to cause grievous bodily harm, contrary to section 18 of the Offences Against the Person Act**

## **SECTION 1: INTRODUCTION**

### **The author**

1. The author of this report is Dr Junior Savastano. I am a Specialty Registrar in Forensic psychiatry in the Central London training scheme, currently working in the Oxford Circus Community Forensic Team. I am approved under section 12(2) of the MHA as having special experience in the diagnosis and treatment of mental disorder, and am fully registered with the GMC.
2. I understand that my primary duty in written reports and giving evidence is to give objective, unbiased opinion on matters within my expertise in order to help the court to achieve its overriding objective. I understand that this duty overrides any obligation to the person from whom I have received instructions or by whom I am paid. I have complied and will continue to comply with that duty.

### **Source of instructions**

3. This addendum report was commissioned Trotters' Independent Solicitors for Mr Smith's defence. It should be read in conjunction with my initial report, dated 10<sup>th</sup> July 2022.

### **Summary of the case**

4. Mr Smith is alleged to have committed grievous bodily harm against a former co-worker after punching him in the face and breaking his jaw. He has a previous diagnosis of autism.

### **Summary of conclusions**

5. Due to the combination of an autistic meltdown and the impulsivity associated with his ADHD, Mr Smith lacked capacity to form the requisite intent to cause grievous bodily harm.
6. Although he was involuntarily intoxicated by prescribed medication, the effects of which were amplified by concurrent low-level alcohol use, he was not so

intoxicated as to lack capacity to form specific intent. However, the effect of the combination of these drugs may have increased his susceptibility to develop an autistic meltdown, by reducing his capacity to self-regulate his emotions.

### **Disclosure of interest**

7. I know of no potential or actual conflict of interest with this case.

### **Confidentiality issues**

8. The normal doctor-patient confidentiality commitment is lawfully breached as my primary duty is to the court. I explained this to Mr Smith on 10<sup>th</sup> June and 27<sup>th</sup> August 2022, telling him that anything he told me could be included in a report to the court. I explained the purpose of the report in simple terms, i.e. to assess his mental health, and to provide a view on whether he was able to intend to cause the alleged victim serious harm.

### **SECTION 2: ISSUES TO BE ADDRESSED**

9. Mr Brief has asked that I address Mr Smith's capacity to form specific intent to cause grievous bodily harm.

### **SECTION 3: DOCUMENTS STUDIED**

10. In addition to those documents studied for my initial report, I have Dr Bracco's fitness to plead report, dated 10<sup>th</sup> August 2022, for this addendum.

### **SECTION 4: CONCLUSIONS FROM INITIAL REPORT**

11. Mr Smith has an autism spectrum disorder and attention deficit hyperactivity disorder (inattentive subtype).
12. The confluence of these disorders is such that he is unfit to plead or meaningfully participate in the court process. He is unable to understand the section 18 charge, follow the course of proceedings, instruct his legal representatives, or give evidence in his own defence. Reasonable adjustments would assist to some degree with his understanding of what was taking place in court, but cannot

mitigate the risk of autistic meltdowns, in which he would be entirely unable to follow the course of proceedings, instruct a lawyer, or give evidence in his own defence. An autistic meltdown appears to have occurred at the material time.

## **SECTION 5: OPINION**

13. I understand that since my initial report Mr Smith was considered by the court to be fit to plead, and has entered a guilty plea to the section 20 offence and a not guilty plea to the section 18 offence. The difference between the two offences is whether he formed specific intent to cause grievous bodily harm. Although a decision upon that matter lies with the court, I have been asked to provide a view as to whether he was able to (or had capacity to) form specific intent to cause grievous bodily harm at the material time.
  
14. As described in my initial report, I believe that Mr Smith's mental state at the material time can be described as him being in the midst of an autistic meltdown. He described feeling overwhelmed by a three main factors: the initial stressor of his friend Eric not meeting with him online (the uncertainty of which could cause someone with autism significant anxiety); meeting with Mr Sainsbury, with whom he had previously had an altercation; and then Mr Sainsbury teasing him by referring to him as "Billy No-Mates", evoking feelings of anger and frustration from similar bullying as a young child, exacerbated further by the fact that he felt let down by the one friend he did have.
  
15. The combination of these factors, I believe, led to Mr Smith becoming completely overwhelmed by his situation and temporarily losing control of his behaviour, which manifested with violence. His actions would also have been affected by his untreated ADHD, one of the symptoms of which is impulsivity. The effect of the impulsivity associated with his ADHD was to reduce the 'brake' on his behaviour, predisposing him to act without thinking.

16. His actions were carried out in the height of such an aroused state (due to the autistic meltdown), and without the ability to consider the consequences of them (due to the ADHD-associated impulsivity). Although he may have had capacity to form intent to *hit* the victim, I believe that at that time he would have been unable to form intent to cause him serious injury, as he would not have been able to foresee that as a likely (or virtually certain) consequence due to the combination of factors described above.

17. Another matter to consider is intoxication. Mr Smith had voluntarily consumed two cans of normal-strength lager, an amount which would not usually lead to him feeling intoxicated. However, his GP had prescribed him another depressant drug (diazepam), which he had used as prescribed and will have caused him to feel a far greater effect from the alcohol than he usually would, as they are both depressant drugs.

18. As he used the diazepam as prescribed by his GP, any intoxication resulting from it can be considered involuntary. Had he consumed the two cans of beer alone, I do not believe that he would have been considered to be intoxicated; it was the effect of the (involuntarily consumed, prescribed) diazepam which led to the state of intoxication. Therefore, I consider his intoxication to have been involuntary.

19. However, I do not believe that this intoxication was to such a degree that it alone led to his inability to form specific intent. It is possible that it predisposed him to develop the autistic meltdown I have described above, by causing a reduction in his ability to manage his emotions and increasing his sense of being overwhelmed.

### **STATEMENT OF TRUTH**

20. I confirm that I have made clear which facts and matters referred to in this report (of 6 pages, signed by me) are within my knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions that I have expressed

represent my true and complete professional opinion on the matters to which they refer.



Dr Junior Savastano BSc, MBBS, MRCPsych

Specialty Registrar in Forensic Psychiatry

Supervised by Dr Christopher Moltisanti

01/09/2022

### **DECLARATION**


1. I understand that my duty is to help the court to achieve the overriding objective by giving assistance by way of objective, unbiased opinion on matters within my area of expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in this report.
4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I have shown the sources of all information I have used.
6. I have set out in my report what I understand from those instructing me to be the questions in respect of which my opinion as an expert is required. All of the matters on which I have expressed an opinion lie within my field of expertise.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report. I have covered all relevant issues concerning the matters stated which I have been asked to address. Absence of any comment in this report

does not indicate that I have no opinion on a matter. I may not have been asked to deal with it.

8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualification to my opinion.
9. Where, in my view, there is a range of reasonable opinion, I have indicated the extent of that range in the report and given reasons for my own opinion.
10. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.
11. At the time of signing the report I consider that it is complete and accurate. I will notify those instructing me immediately, and confirm in writing if for any reason I subsequently consider that the report requires any correction or qualification or if between the date of this report and the trial there is any change in circumstances which affect my declarations at 3 and 4 above.
12. I understand that:
  - a. My report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath;
  - b. The court may at any stage direct a discussion to take place between the experts;
  - c. The court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with a summary of the reasons for disagreeing;
  - d. I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;
  - e. I am likely to be the subject of public adverse criticism by the judge if the court concludes that I have not taken reasonable care in trying to meet the standards set out above.
13. This report is provided to those instructing me with the sole purpose of assisting the court in this particular case. It may not be used for any other purpose, nor may it be disclosed to any this party, other than the National Probation Service, without my express written authority or that of the court.

14. I have read Part 19 of the Criminal Procedure Rules and the accompanying Practice Direction, and I have complied with their requirements.

15. I confirm that I have acted in accordance with, the Royal College of Psychiatrists' College Report CR193 Responsibilities of psychiatrists who provide expert opinion to courts and tribunals (2015) and the General Medical Council's Good Medical Practice, which includes 'Giving evidence as an expert witness'.

A handwritten signature in black ink, consisting of the letters 'JS' in a stylized, cursive font.

Dr Junior Savastano BSc, MBBS, MRCPsych  
01/09/2022

Prosecution addendum report

**Dr Jennifer Bracco MSc MBBS FRCPsych  
Consultant Forensic Psychiatrist and Medical Psychotherapist**

**ADDENDUM PSYCHIATRIC REPORT**

**ON**

**STEPHEN SMITH**

**DOB: 22<sup>nd</sup> June 2000**

**DATE OF REPORT: 10<sup>th</sup> September 2022**

**CHARGES:**

- 1. Unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1861**
- 2. Inflicting grievous bodily harm with intent to cause grievous bodily harm, contrary to section 18 of the Offences Against the Person Act**

## **SECTION 1: INTRODUCTION**

### **The author**

1. The author of this report is Dr Jennifer Bracco. I am a Consultant Forensic Psychiatrist and Medical Psychotherapist working at the Regency Clinic in central London, where I specialise in the assessment and treatment of men with neurodevelopmental disorders exhibiting violent and sexual offending behaviours.
2. I am approved under section 12(2) of the MHA as having special experience in the diagnosis and treatment of mental disorder, and am fully registered with the GMC.
3. I understand that my primary duty in written reports and giving evidence is to give objective, unbiased opinion on matters within my expertise in order to help the court to achieve its overriding objective. I understand that this duty overrides any obligation to the person from whom I have received instructions or by whom I am paid. I have complied and will continue to comply with that duty.

### **Nature of the report**

4. This is an addendum to my initial report addressing Mr Smith's fitness to plead, dated 10<sup>th</sup> August 2022, and should be read in conjunction with it.

### **Source of instructions**

5. This report was commissioned by Mr Paul Sirico, a paralegal officer, on behalf of the Crown Prosecution Service.

### **Summary of the case**

6. Mr Smith is charged with assault occasioning grievous bodily harm, both with and without intent, after allegedly assaulting someone previously known to him in a park.

### **Summary of conclusions**

7. Mr Smith's intoxication at the material time was voluntary. Even if considered to have been involuntary it was not to such a degree that he was incapable of forming specific intent, and would be best described as causing disinhibition.

8. Irrespective of his diagnosed mental disorders and the wider context, I consider him to have had capacity to form specific intent to cause grievous bodily harm at the material time.

#### **Disclosure of interest**

9. I know of no potential or actual conflict of interest with this case.

#### **Confidentiality issues**

10. The normal doctor-patient confidentiality commitment is lawfully breached as my primary duty is to the court. I initially explained this to Mr Smith on 13<sup>th</sup> July 2022, and again when reassessed for this addendum report on 26<sup>th</sup> August 2022, telling him that anything he told me could be included in a report to the court. I explained the purpose of the report in simple terms, i.e. to inform the court about whether he was able to decide to commit the offences he is charged with.

#### **SECTION 2: ISSUES TO BE ADDRESSED**

11. Mr Sirico has asked that I address Mr Smith's capacity to form the requisite intent at the material time.

#### **SECTION 3: DOCUMENTS STUDIED**

12. I have viewed no additional documentary material for the preparation of this addendum report but have relied on my conclusions from my initial report. I have described the documents used in preparing that report within it.

#### **SECTION 4: SUMMARY OF CONCLUSIONS FROM MY INITIAL REPORT**

13. Mr Smith has an autism spectrum disorder and attention deficit hyperactivity disorder. Providing the reasonable adjustments described he would be fit to plead.

## **SECTION 5: PROGRESS SINCE INITIAL REPORT**

14. Mr Smith was found to be fit to plead to the charges against him. He has entered a plea of not guilty to the section 18 offence, and a plea of guilty to the section 20 offence.

## **SECTION 6: OPINION**

15. Mr Smith is charged with two offences: one requiring only basic intent (the section 20 offence), and one requiring specific intent (the section 18 offence).

16. There are several factors of relevance in assessing Mr Smith's capacity to form intent, which will be addressed individually below.

### Intoxication

17. I understand that voluntary intoxication can be considered a defence against a specific intent offence if it can be shown that he was so intoxicated that he was incapable of forming the requisite intent to satisfy the *mens rea* element of the charge. However, it cannot be considered a defence against a crime of basic intent.

18. I will first consider whether Mr Smith's intoxication could be considered to be voluntary or involuntary. His intoxication was in part due to the effect of diazepam, a medication which he used as prescribed by his GP, and considered in law to be a 'non-dangerous' drug. Were his intoxication to be solely due to the effect of diazepam, it could be considered to be involuntary.

19. However, Mr Smith additionally consumed alcohol in the form of two cans of Etoile Polaire, having purchased six. Both alcohol and diazepam are depressant drugs, with an additive effect, and so his account that he felt more intoxicated after the second can of beer than he usually would is almost certainly due to the combination of the two. Alcohol, I understand, is considered in law to be a 'dangerous drug'. If his intoxication were solely due to the effect of the alcohol, consumed as it was, this would amount to voluntary intoxication.

20. Mr Smith intended to consume more than the two cans of lager he drank. Although the effect he experienced from it was greater than he had anticipated at that point due to the

concurrent effect of the diazepam, as he was knowingly and willingly consuming a dangerous drug, I consider the resultant intoxication to have been voluntary.

21. Following the incident he was able to appreciate the nature of his actions, fled home, and told his mother. They then proceeded to the police station where he handed himself in to police.
22. Having given consideration to the descriptions of Mr Smith's behaviour prior to and following the incident, I believe that he would have been disinhibited by the effect of these two drugs. However, I do not believe that he would have been so intoxicated as to lack capacity to form specific intent to commit grievous bodily harm.

#### The effect of mental disorder

23. As described in my initial report, Mr Smith has an autism spectrum disorder (ASD) leading to deficits in social communication and interactions, and restrictive and repetitive behaviours and interests. He also has attention deficit hyperactivity disorder (ADHD), resulting in attentional deficits, hyperactivity, and impulsivity.
24. Dr Savastano believes Mr Smith was in the midst of an autistic meltdown at the material time, due to an appointment not being kept by his friend and the taunting he experienced from Mr Sainsbury. He claims that Mr Smith, in this state of extreme arousal, and in combination with his poor interpersonal problem-solving skills (due to his ASD) and impulsivity (due to his untreated ADHD), was overwhelmed with anxiety and anger. He believes that this resulted in an autistic meltdown of such magnitude that Mr Smith was incapable of forming the specific intent required to satisfy the *mens rea* required for the section 18 offence.
25. I disagree. I consider Mr Smith to have been irritated and frustrated by his friend not keeping their appointment, disinhibited by the effect of the alcohol and diazepam, and to have acted out in anger against Mr Sainsbury. He has a history of acting out with aggression in response to bullying, and I do not consider his diagnosis of ASD to have incapacitated him such that he was incapable of forming specific intent to inflict grievous bodily harm. That he experiences impulsivity due to his comorbid ADHD is not relevant to his capacity to form intent, as an impulsive decision is simply one made

more rapidly or in a more poorly considered manner and does not prevent one from being capable of acting intentionally.

26. His diagnoses and the other factors outlined by Dr Savastano are matters that, if convicted, could be considered at sentencing, but I do not consider them to amount to an incapacity to form specific intent.

### **STATEMENT OF TRUTH**

27. I confirm that I have made clear which facts and matters referred to in this report (of 6 pages, signed by me) are within my knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions that I have expressed represent my true and complete professional opinion on the matters to which they refer.



Dr Jennifer Bracco MSc MBBS FRCPsych

Consultant Forensic Psychiatrist and Medical Psychotherapist

10/09/2022

### **DECLARATION**

1. I understand that my duty is to help the court to achieve the overriding objective by giving assistance by way of objective, unbiased opinion on matters within my area of expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in this report.

4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I have shown the sources of all information I have used.
6. I have set out in my report what I understand from those instructing me to be the questions in respect of which my opinion as an expert is required. All of the matters on which I have expressed an opinion lie within my field of expertise.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report. I have covered all relevant issues concerning the matters stated which I have been asked to address. Absence of any comment in this report does not indicate that I have no opinion on a matter. I may not have been asked to deal with it.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualification to my opinion.
9. Where, in my view, there is a range of reasonable opinion, I have indicated the extent of that range in the report and given reasons for my own opinion.
10. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.
11. At the time of signing the report I consider that it is complete and accurate. I will notify those instructing me immediately, and confirm in writing if for any reason I subsequently consider that the report requires any correction or qualification or if between the date of this report and the trial there is any change in circumstances which affect my declarations at 3 and 4 above.
12. I understand that:
  - a. My report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath;
  - b. The court may at any stage direct a discussion to take place between the experts;
  - c. The court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with a summary of the reasons for disagreeing;
  - d. I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;

- e. I am likely to be the subject of public adverse criticism by the judge if the court concludes that I have not taken reasonable care in trying to meet the standards set out above.
13. This report is provided to those instructing me with the sole purpose of assisting the court in this particular case. It may not be used for any other purpose, nor may it be disclosed to any this party, other than the National Probation Service, without my express written authority or that of the court.
14. I have read Part 19 of the Criminal Procedure Rules and the accompanying Practice Direction, and I have complied with their requirements.
15. I confirm that I have acted in accordance with, the Royal College of Psychiatrists' College Report CR193 *Responsibilities of psychiatrists who provide expert opinion to courts and tribunals* (2015) and the General Medical Council's *Good Medical Practice*, which includes 'Giving evidence as an expert witness'.
16. I confirm that I have read guidance contained in a booklet known as Disclosure: Experts' Evidence and Unused Material which details my role and documents my responsibilities, in relation to revelation as an expert witness. I have followed the guidance and recognise the continuing nature of my responsibilities of disclosure. In accordance with my duties of disclosure, as documented in the guidance booklet, I confirm that:
- a. I have complied with my duties to record, retain and reveal material in accordance with the Criminal Procedure and Investigations Act 1996, as amended;
  - b. I have compiled an Index of all material. I will ensure that the Index is updated in the event I am provided with or generate additional material;
  - c. In the event my opinion changes on any material issue, I will inform the investigating officer, as soon as reasonably practicable and give reasons.



Dr Jennifer Bracco MSc, MBBS, FRCPsych

Consultant Forensic Psychiatrist and Medical Psychotherapist

10/09/2022