

Judicial Communications Office

20 June 2025

COURT DISMISSES APPEAL AGAINST CONVICTION

Summary of Judgment

The Court of Appeal¹ today dismissed an appeal against conviction by “CD” on 29 counts of sexual abuse of his stepson.

Background

The appellant (“CD”) was convicted on 29 counts of sexual abuse by a jury at Newry Crown Court on 28 October 2021. He was sentenced to 20 years’ imprisonment. The offending took place when the appellant was aged between 25 and 45 years and his stepson “AB” was aged between eight and 26 years. The prosecution case, which was accepted by the jury, was that the appellant groomed the victim. AB was isolated from his family by the appellant suggesting that his mother did not love him or care for him. As a result of this manipulation as a very young child, the sexual abuse continued after AB became an adult. Any apparent consent by AB to sexual behaviour, including buggery as an adult, was vitiated by years of predatory grooming by the appellant.

The crimes came to light in 2018 when AB was arrested and interviewed by police in relation to possession of indecent images of children. During interview, and in a prepared statement given to police, AB complained of the sexual abuse inflicted upon him by the appellant. He later recorded an ABE interview with police, outlining in some detail the nature of the abuse he suffered at the hands of the appellant. In March 2019, the appellant was interviewed by police and denied any wrongdoing. To the contrary, he claimed to have a good relationship with AB.

The appellant, now in his late sixties, denies any inappropriate sexual tendencies and continues to deny the offending of which he has been convicted. Probation assessed him as posing a high risk of reoffending, and as a moderate to high priority case for supervision and intervention. He was not considered a serious risk of harm to the public.

The issue in this case

The appellant was granted leave to appeal on one ground only, namely that the trial judge failed to properly direct the jury concerning the appellant’s right to silence. The essence of this alleged failure was that the judge failed to direct the jury that they *‘should not find the defendant guilty only, or mainly, because he did not give evidence’* as per the Northern Ireland Crown Court Bench Book and Specimen Directions (3rd edition, 2010).

Blackstone’s Criminal Law (2024) states that case law since 1988 establishes that convictions should not be based mainly on adverse inferences either. In *Murray v UK* [1996] 22 EHRR 29, there was a very strong statement that it would be incompatible with the accused’s rights to base a conviction ... mainly on the accused’s silence or on a refusal to give evidence himself. The ECtHR confirmed that the correct principle was that a conviction based solely or mainly on

¹ The panel was Treacy LJ, Colton J and Kinney J. Treacy LJ delivered the judgment of the court.

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silence ... would be incompatible with the right to silence. This legal position is reflected in the Northern Ireland Crown Court Bench Book and Specimen Directions (3rd edition, 2010) which advises that judicial directions on this point should include the following:

“...You should not find the defendant guilty only, or mainly, because he did not give evidence ... But you may take it into account as some additional support for the prosecution’s case ...”

The judge's charge

The appellant contended that the trial judge’s charge in this case missed out this paragraph. The appellant’s counsel requisitioned the judge about this omission. The next day the judge made a supplemental charge to the jury on this point. He reminded the jury as follows:

“You must consider, members of the jury, whether, in your view, the only reason that the defendant is not giving evidence is either because he has no answer or not an answer that would stand up to cross examination. You must then consider, in your view, whether you consider it proper or fair or reasonable to draw inferences against him from his failure to give evidence, which can include the inference that he’s guilty. But what you must not do - what you must not do, members of the jury, is just decide bluntly that because he didn’t give evidence that therefore he’s guilty. That would not be a proper interpretation of the law. In other words, you can’t just say to yourself, ‘he didn’t give evidence, therefore he’s guilty.’ What you must do is go through the procedure that I have described to you.”

Defence counsel was satisfied that the additional direction dealt adequately with the ‘only’ aspect of the alleged omission but questioned him again in relation to the phrase ‘or mainly’ which he considered had still not been addressed. The trial judge responded: ‘I consider I’ve adequately directed them enough’, and the charge was not revisited again.

Consideration

The court said it was clear that the trial judge did not specifically direct jurors that they could not convict ‘mainly’ on the basis of inferences derived from his failure to give evidence in his own defence. However, it said it was important to look very carefully at what he did tell the jurors, and what his direction would have required them to do if they were to follow it faithfully.

The trial judge had directed the jury in effect that, before they can consider drawing any inferences, they must evaluate the prosecution evidence with a view to deciding whether or not it ‘is such that it clearly calls for an answer.’ The court said this part of the direction required jurors to consider the prosecution evidence before they take any other step. It said this was not the same as saying in terms that they cannot convict “mainly” on an inference drawn from silence, but it did achieve substantially the same effect as such a statement as it required that each juror must be satisfied on the basis of the evidence they have heard that there is a strong enough case against the defendant to require an answer from him. Consideration of the strength of the prosecution

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case was therefore the first obligation a juror must discharge, and the outcome of that consideration then governed which options may be open to them next.

The court said that in this sense the jury's consideration of the evidence is identified as the first and governing task they must conduct when considering the potential impacts of the defendant's failure to give evidence. As such, it gives it priority over any consideration that might arise from an inference based on the defendant's decision not to give evidence. The court said this pre-condition displaced the possibility that jurors might convict 'mainly' on an adverse inference because it required them to be personally satisfied about the strength of the prosecution evidence before they can even contemplate potential inferences. It said it was a logical consequence of applying this process that any effects arising from an inference could only ever be secondary or subsidiary considerations.

The second pre-condition that the trial judge directed the jurors to apply required them to be satisfied that the only sensible explanation for the appellant's silence and failure to give evidence was that he had no answer to the charges, or none that would bear examination. The court said this limb of his direction again emphasised the need for jurors to be satisfied that the evidence against the defendant is strong - so strong that it leaves no room for a viable answer to be raised. Taken together these pre-conditions had the effect of ensuring that the jury should evaluate the prosecution case as the first and 'main' step in their decision-making process.

In his supplementary charge in response to the defence requisition, the trial judge expressly ruled out the possibility that jurors would use inferences as the 'main' reason for convicting the defendant. On this occasion he said:

"But what you must not do - what you must not do, members of the jury, is just decide bluntly that because he didn't give evidence that therefore he's guilty. That would not be a proper interpretation of the law. In other words, you can't just say to yourself, 'he didn't give evidence, therefore he's guilty.' What you must do is go through the procedure that I have described to you."

The court said the 'procedure' referred to is the one described above, which makes satisfaction with the strength of the prosecution evidence a pre-condition for any consideration of potential adverse inferences. By its nature this 'procedure' makes it impossible for an adverse inference to be the 'first' or 'primary' or 'main' reason for a decision to convict.

Conclusion

The court considered that the terms of the charge to the jury issued by the trial judge were sufficient to comply in principle with the requirements for an adequate charge. It reached this conclusion mindful of the value and the importance of Bench Books and Specimen Directions, and conscious that compliance with their helpful recommendations remains the easiest way to ensure that cogent and consistent judicial charges are issued in all jury trials:

"Best practice will always be for judges to use the terms recommended in specimen directions, especially where those terms are terms-of-art derived from applicable case law."

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The court added, however, that not every departure from good practice will render a trial unfair. The right of a criminal defendant to a fair trial is absolute, however, there will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty. The court said the departure of the trial judge from the precise wording recommended in the Crown Court Bench Book did not bring this case into the condemned category where the verdict is unsafe. It commented that the Specimen Directions should not be regarded as a magic formula to be pronounced - they are not intended to limit the freedom of the trial judge to direct the jury as he thinks fit providing he does so in accordance with the law:

“In the current case we are satisfied that the trial judge did charge the jury ‘in accordance with the law’, even though his charge did not take the recommended form. For all these reasons we consider that the convictions in the present case are safe, and we dismiss this appeal.”

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available shortly on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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