

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 9/9/05

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

ROBERT JAMES HINDES AND HUGH RICHARD HANNA

Before: Lord Justice Campbell, Lord Justice Sheil and Mr Justice Coghlin

Campbell LJ

[1] At Belfast City Commission on 22 June 1977 Hugh Richard Hanna, who was then 17 years of age, and Robert Hinds who was 15 years of age, pleaded guilty to the murder of Peter Gerard Johnson on the night of 16/17 September 1976 and to possession of firearms and ammunition with intent contrary to Section 14 of the Firearms Act (Northern Ireland) 1969. They were each sentenced to be detained at the Secretary of State's Pleasure on the count of murder and to seven years' concurrent detention on the firearms count.

[2] They did not appeal against their convictions or sentences and they were released on licence in November 1985 having spent nine years in custody.

[3] In April 1997 Hugh Richard Hanna submitted an application to the Criminal Cases Review Commission ("the Commission") and in October 1997 the Commission declined to entertain the application as he had not appealed against his conviction and there were no exceptional circumstances justifying a reference to the Court of Appeal in the absence of an appeal.

[4] As a result of correspondence initiated by Mr James Hanna, the father of Hugh Richard Hanna, in February 1981 with the Secretary of State an investigation was carried out by the Royal Ulster Constabulary into Hanna's conviction. The officer who carried out this investigation was Assistant Chief Constable Samuel Kinkaid and as a result of his findings he relayed his concerns to the Criminal Cases Review Commission. The Commission then

re-opened the case and using powers contained in Section 19 of the Criminal Appeal Act 1995 the Commission appointed ACC Kinkaid to assist it by conducting further enquiries.

[5] On 29 October 2003 the Commission referred the cases of Hanna and Hindes to this court under Section 10 of the Criminal Appeal Act 1995 which it is empowered to do, in exceptional circumstances, if it appears to the Commission that it is justified in doing so where there has been no previous appeal or application for leave to appeal (Section 13(2)). These two inter-related references are brought under Section 13(2) and Section 13(1)(b)(i) of the Act of 1995 as they include argument, or evidence, not raised in the proceedings leading to the convictions.

[6] Hugh Richard Hanna died in March 2004, having taken his own life,¹ and on the application of his next of kin the court ordered that his appeal should proceed in their names.

[7] In October 2004 the prosecution informed the court that it would not seek to uphold the convictions. When the references came on for hearing the court, having considered the papers and heard the submissions of counsel, ordered that the convictions of Hugh Richard Hanna and Robert James Hinds for murder and possession of firearms and ammunition with intent be quashed. The court stated that the reasons for quashing the convictions would be given at a later date and we now give these reasons.

The murder of Peter Gerard Johnson

[8] Peter Gerard Johnson, who was a Roman Catholic, lived alone at 45 Cooldarragh Park, Belfast. On the evening of 16 September 1976 he had a drink with a friend called Bernard Cole in a bar in Gresham Street in Belfast. Around midnight they left the bar and Mr Cole gave Mr Johnson a lift in his car to the Cavehill Road which is close to where he lived. On the following day about 7.15 pm Miss Mary O'Sullivan, a girlfriend of Mr Johnson went to Mr Johnson's house in Cooldarragh Park and on finding the front door open she went upstairs and there she found Mr Johnson lying dead in a bedroom.

[9] He had suffered bullet wounds to his head and trunk and the pathologist considered that the wound to his head suggested that the muzzle of the weapon at the time of discharge had been close to his right lower eyelid. There was some evidence, in the form of lacerations, to suggest that he had been beaten in the face with a blunt instrument. These injuries did not cause his death which was due to the gunshot wounds. The doctor who examined Mr Johnson's body at the scene at 8.00 pm on 17 September 1976 estimated that he had been dead for at least twelve hours.

¹ In February 2005, approximately one month after the appeal hearing, Her Majesty's Coroner for Northamptonshire found that Mr Hanna's death was accidental.

[10] The senior police officer in charge of the investigation into the death of Mr Johnson noted that he was a Roman Catholic living in what he described as a "fringe area" and that the *modus operandi* bore similar characteristics to other murders especially that of Gerard Masterson and he mentioned the names of two suspects to whom we shall refer to as "M" and "C".

[11] A member of Mr Johnson's family gave the police information that his house had been broken into in March 1976 when cash to the value of approximately £500 and jewellery had been taken. The house was again broken into in August 1976 when cigars were taken and floor-boards were ripped up. It was confirmed that police officers had visited Mr Johnson's house on 27 April 1976 to investigate a complaint that money had been stolen from the house in late March 1976.

Interviews of Robert James Hinds

[12] On 25 October 1976 the police received information to suggest that Robert James Hinds had been bragging in school about being the person who had shot someone in Cooldarragh Park. On 28 October 1976 Robert Hinds, who was then 14 years 11 months, was asked to accompany police officers to Fortwilliam Police Station. A search of his home had revealed items stolen a week earlier from the home of the person who gave the information that led to him being asked to come to the police station. During an interview by Detective Constable Lorraine Scott he admitted this burglary and that he had burgled Mr Johnson's house at the end of March or early April 1976.

[13] Further interviews of Robert Hinds began at 10.20 am on 28 October 1976 with Detective Sergeant R. Caskey and Detective Constable Law. This interview (which Hinds was informed was about a burglary at Ballysillan Road) lasted forty five minutes and during it he disclosed that he had an airgun hidden under his bed at his home. The following interview was with Detective Constable Lorraine Scott and she asked him about the burglary at Ballysillan Road on 22 or 23 October 1976 which he admitted. This interview ended at 2.35 pm.

[14] At 2.35 pm Detective Constable Caskey (with Detective Constable Rooke) arrested Hinds under Section 10 of the Northern Ireland (Emergency Provisions) Act 1973 and told him that they were investigating the murder of Peter Gerard Johnson on 17 September 1976. After he had been cautioned Hinds said that he knew nothing about it and that he did not know Cooldarragh Park. The officers told him that they believed he was in 45 Cooldarragh Park when Johnson was murdered and that he was in the house previously when a sum of money was stolen. He responded that he had only acted as a look-out when the money was stolen. When he was asked who

was with him he said that he was not sure but one was called "Pee Wee" Hanna. He described another person as being 19 years of age and 6ft tall. Questioned about the shooting of Mr Johnson on 17 September 1976 he said that he had gone to the house with Pee Wee Hanna who was carrying a small revolver. When they were searching an upstairs room someone kicked the door open and Hanna fired two shots at a man and Hides then ran out through the front door. Hides described the weapon used as a small revolver and the officers showed him a weapon and told him that Johnson was not shot with a revolver and they urged him to tell the truth.

[15] He said that he went to the house with Hanna and a person "C" and that Hanna had given him a .45 pistol the night before which he kept in his bedroom overnight. The following day when they opened the door of Mr Johnson's house Hanna was carrying a pistol and he had the .45 pistol. The house was in darkness and accompanied by Hanna he went upstairs and when Hanna opened the door he saw something on the bed whereupon Hanna fired two shots and he fired one shot towards the bed. They were joined by "C" who said "let's go," and they ran from the house. When they reached Joanmount he gave the gun he was carrying to Hanna and went home. This interview ended at 5.15 pm and had lasted for two hours and forty minutes.

[16] Following this Hides was interviewed by Detective Constable Moore for forty-five minutes and he talked to him about his family and general interests and asked him about the air gun which he had mentioned at his first interview and which had been found in a search carried out after that interview.

[17] At 7.30 pm Hides was again interviewed for just over an hour and this time it was in the presence of his father Robert James Hides. He was asked to make a written statement which Detective Sergeant Caskey wrote down and it was signed by Hides and by his father. In this statement he said that he gone to the house to steal and did not intend to kill anyone. On the following day, 29 October 1976, Detective Constable Scott interviewed Hides between 10.20 pm and 11.30 pm at North Queen Street Station about the break-in at Ballysillan Road and he said he had told her everything. She asked him about the break-in at Cooldarragh Park, where the man was shot, and he replied that he had broken into the house and the householder was not at home. He told her that Pee Wee Hanna and C were with him and that his role was to keep watch.

[18] On 31 October 1976 at 13.02 Hides was charged with the murder of Mr Johnson and he replied "No". At this time he had been in custody for over seventy five hours.

Interviews with Hugh Richard Hanna

[19] On 29 October 1976 Hugh Richard Hanna, who was then 16 years and 6 months and C then aged 20, were brought to North Queen Street Station. The first interview with Hanna began at 12 noon and lasted just over an hour. After a caution he denied that he was involved in the murder of Mr Johnson. He said that he met Robert Hinds and two friends on Thursday morning and Hinds talked about doing some break-ins and asked him if he would like to go with him to do one that night. They met again about 7.00 pm and arranged to meet later at Joanmount with C. From Joanmount they went to an area known as the Glen and Hinds and C went into the Glen. When they emerged Hinds had two guns in his pocket and from there they went to a large semi-detached house in Cooldarragh Park which was in darkness. Hinds produced a crowbar and forced the front door open and Hanna and C followed him into the house and went upstairs. At the end of the landing they went into a bedroom and Hinds took the two guns from his pocket and gave him one. They went into another bedroom where a man was lying on the bed and Hinds fired a shot and C then took the gun from Hanna, who said he could not do it, and fired a second shot. They then ran from the house.

[20] Later that day at 2.35 pm Hanna was interviewed again and he repeated what he had said earlier. He gave a description of C who had been in the class above him at school. This interview lasted for forty minutes. In the evening at 8.50 pm a further interview took place and lasted one hour and twenty five minutes and during it he was asked what had happened to the guns after the shooting. Hanna said that C took them and placed them in a white plastic bag which he threw into nettles at Kilcoole Park before the three of them split up. The following day, 30 October 1976, Hanna accompanied the interviewing officers to Kilcoole Park where they searched an area of nettles and shrubs but found nothing. They then went through to the Glen area from where Hanna had told them Hinds and C had emerged with the guns. Nothing was found there when it was searched. Hanna was then taken to Cooldarragh Park and asked to point out the house where Johnson was shot and he pointed to number 45 and said he was nearly sure that this was the house.

[21] On returning to North Queen Street Police Station the two officers interviewed Hanna and Hinds together. They agreed that they knew each other. They were asked if they were members of the UDA (Ulster Defence Association) and if they were acting under orders on the night that Mr Johnson was shot. Hinds looked towards Hanna and said "Look, Pee Wee we might as well tell them". Hinds went on to say that they were in the UDA and it was a UDA job. Asked if this was correct Hanna said that it was and when he was asked where the guns had come from he said they were brought down from the 41 Club by C who took them away afterwards.

Hindes said that he fired one shot and that Hanna fired the other. Hanna confirmed that this was so but that he was hoping to miss.

[22] At 11.35 pm on 31 October 1976 Hanna made a written statement in the presence of his father and following this he was charged with the murder of Mr Johnson.

Interviews with C

[23] C who was 20 years of age was arrested on 2 November 1976 and interviewed over a period of three days at North Queen Street Station. Initially he denied all knowledge of the murder and said that he may have been at home that night watching television or in the Tyndale area. He agreed that he knew Robert Hindes and Richard Hanna at the Model School. At his eighth interview, on the second day between 3.00 pm and 5.20 pm, he said that he was approached by two men in Royal Avenue and told to do a job because of the trouble he and his family had caused the UDA. He was told that he would find two guns in a plastic bag under a hedge in the Glen and to take them to the 41 Club where he would be given instructions. Later he met the two boys in the Ballysillan Road and they walked to a house in Cooldarragh Park. They forced open the front door and on going upstairs they found Mr Johnson in bed where they shot him. When he was unable to give a description that matched the house at Cooldarragh Park he was asked by the interviewing officers if he was telling the truth and he said that he was not and that he had said this to get out of the station. He continued to maintain his innocence at all further interviews and he was released without charge.

The test to be applied

[24] Section 10(2) of the Criminal Appeal Act 1995 provides that where the Commission refers a conviction to the Court of Appeal the reference is to be treated for all purposes as an appeal against conviction under section 1 of the Criminal Appeal Act 1980. The test to be applied is whether this court considers a conviction is unsafe. The safety of a conviction is to be judged according to contemporary standards which would be applied in any other appeal under section 1 of the 1980 Act (*R v Gordon* [2001] NIJB 50).

[25] The only evidence against Hindes and Hanna were their admissions. In *R v King* [2000] CrimLR 835 Lord Bingham CJ said:

“If, in a case where the only evidence against a defendant was his oral confession which he had later retracted, it appeared that such confession was obtained in breach of the rules prevailing at the time and in circumstances which denied the defendant

important safeguards later thought necessary to avoid the risk of a miscarriage of justice, there would be at least prima facie grounds for doubting the safety of the conviction – a very different thing from concluding that a defendant was necessarily innocent.”

The safety of the convictions

[26] It is with this in mind that we consider the safety of these convictions. A number of matters are not in dispute:

- (i) Despite their youth no lawyer or adult was present during the interviews with either Hindes or Hanna and this was in contravention of the Judges’ Rules and of the standards then prevailing. It is however correct to say that an adult was present when their written statements were recorded.
- (ii) There was no medical examination of either of them while in custody as was required under a Force Order.
- (iii) Hanna was denied medication prescribed as a result of serious injuries he had received some weeks earlier.

[27] In addition to the complaint that during his detention Hanna was not allowed access to a lawyer or an adult and that he was denied medication he claimed that he was refused access to a doctor when he fainted. He also alleged that he was abused both physically and psychologically during his questioning. In addition he believed that he was wrongly identified to the police and that this resulted in his arrest. Finally he complained that his legal representation was inadequate and that he was pressurised into pleading guilty.

[28] Although the review of the case was initiated by Mr Hanna’s father on behalf of his son, Hindes was also interviewed in September 2001. While strongly expressing his innocence he said that at that time he did not wish to take any steps. Subsequently he did so after he had taken legal advice. He says that no adult was present when he was being questioned and that his confession was extracted from him after he was physically and psychologically ill-treated. He said that he was slapped and that the officers “said the words” in his statement and that he was lying when he implicated Hanna.

[29] Mr Hanna senior, followed his son to the police station when he was taken into custody on 29 October 1976 and he attended there for two days

and during this time, despite his requests, he was not given any information about his son. He did not see him until he was called in to be present while the written statement of admission was made.

The report of ACC Kinkaid

[30] This court has been greatly assisted by the comprehensive and detailed report compiled by ACC Kinkaid with the assistance of Detective Sergeant Longsdale. In this report they outline areas for concern about the convictions and these include the excessive length of interviews and the period of detention. They note in this context that C was prepared to make a confession that was false after he had been subjected to aggressive questioning and given an inadequate opportunity to sleep.

[31] In their report they draw attention to contradictions in the versions of events given by Hindes and Hanna in their written statements and how these also contradict the versions they are alleged to have given during their interviews. The statements are also inconsistent with forensic evidence obtained at the scene.

[32] Their enquiries have revealed that Hanna was friendly with Roman Catholics of his own age and that he was the only Protestant member of a local youth club. A few days before the murder of Mr Johnson he was taunted by a group of Protestants about his friendship with Roman Catholics and as a result of this his father did not allow him out at night between 15 and 20 September 1976. On 20 September, three days after the murder, he was allowed to go to the youth club and on the way home he was attacked. He then spent three weeks in hospital with injuries that included a broken nose, a detached retina and hearing loss and a head injury. The damage that he sustained to his eye and to his hearing was permanent. It was as a result of these injuries that he required medication when he was detained at North Queen Street just over a month later. The information that he had not left home at night between 15 and 20 September 1976 must have been passed to his solicitors as they served a notice of alibi on the prosecution.

[33] It was Hindes who implicated Hanna and he admits now that he was not involved. For his part Hanna believed that Hindes was referring to another person, with whom he associated, also called Robert Hanna. Enquiries by the police have revealed that there is such a person living close to Hanna who it is thought may have kept company with Hindes.

[34] It is believed by the police that the murder of Mr Johnson was carried out on behalf of the UDA. Hindes and Hanna later denied that they were associated with this organisation and enquiries have confirmed that they were not connected with it. Yet it is said that during their interviews they admitted to membership. After Hindes and Hanna were charged information

was passed to the police to suggest that they were not involved with the UDA which was not disclosed to the defence.

[35] At 7.43 am on 17 September 1976 milk was delivered to the door of 45 Cooldarragh Park. The milkman did not notice the door lying open but he did notice that the delivery from the previous day was there which he did not find unusual. If the door was forced open after midnight on the 17th as Hindes said or shortly after 11.00 pm as Hanna told the police, then the milkman might be expected to have seen the door open when he called with his delivery, just as Miss O'Sullivan did some twelve hours later.

[36] Soldiers stationed in a sanger at Dunmore Park reported that they heard the sound of two gunshots at 3.02 am on 17 September coming from the direction of an area known as "the Little Americas". This area lies between Dunmore Park and Cooldarragh Park, which is about one half mile further distant. This does not fit in with the information given either by Hindes or Hanna as to the time when they say that the murder took place and it is information that was not disclosed to the defence.

[37] As noted earlier the post-mortem examination showed that Mr Johnson had been beaten about the face with a blunt instrument. There is a suggestion that he must have been breathing for about thirty minutes before he was shot as his lungs were soaked with blood. The pathologist concluded that the weapon was close to Mr Johnson's right eyelid when it was discharged. Hindes and Hanna did not suggest that any assault took place before the shooting that they described nor could they have been in the house for half an hour. It is noted by ACC Kinkaid that the pathologist's report was not available to the interviewing officers when they saw Hindes and Hanna.

[38] Fingerprints found at the scene were compared with those of Hindes and Hanna and proved negative.

[39] Both Hindes and Hanna were represented by senior and junior counsel at their trial. On behalf of Hanna there is criticism of the advice that he was given which resulted in him pleading guilty. So far as Hindes is concerned he claims that counsel for Hanna pointed out that there was little point in one defendant pleading guilty and not the other.

[40] In 1976 the fact that an interview with a young person had taken place in contravention of the Judges' Rules or of a Police Force Order by not having an adult present would not necessarily have rendered the evidence inadmissible, see for example *R v McCaul* [1980] 9NIJB. In the present cases a parent was present when each of the written statements of admission, relied upon by the prosecution at the trial, was made.

[41] Against this background and without the benefit of the undisclosed material it is far from certain that on the information available to the defence there was any realistic possibility of the statements not being admitted in evidence. No doubt it was for this reason that counsel advised as they did. We would only add that criticism about the lack of pleas in mitigation is not well founded as the penalty for murder was fixed by statute and the judge had no discretion in the matter.

Further evidence

[42] We have been provided with a report from Mr Colin McClelland, an Educational Psychologist, who examined Mr Hindes in his home on 5 January 2005. He placed Mr Hindes intellectually in the 'low average' category with a verbal IQ of 83 placing him at the top of the bottom 13% of the population. Mr McClelland expressed concern at Hindes's ability, at the age of 14, without adult help to deal with a complex situation with skilful questioning taking place.

[43] In a report made after an examination of Mr Hanna on 25 May 2002, Ms Olive Tunstall, who is a Consultant Psychologist, concluded that he was abnormally suggestible and abnormally likely to change his answers when placed under pressure to do so. This coupled with his youth and his recent discharge from hospital and low self esteem would at the time of his interviewing have made him, in her opinion, potentially vulnerable.

[44] The court has also been provided with two reports from Dr Derek J L Carson, a Consultant Forensic Pathologist. In the absence of any scorching, blackening or powder peppering of the wound to Mr Johnson's right eye he does not feel that the description really justifies the conclusion that there was discharge within a close distance of a foot or less. While he does not feel that the description really justifies this conclusion he does not exclude it altogether. He does draw attention to the quite severe and extensive blunt force injuries and to the two lacerations on the right forehead with fractures causing flattening of the underlying skull which, as he confirms, represents considerable force. The injury to the right side of the lower lip extending through the thickness of the lip dislodged one of the front right lower teeth again showing that there was considerable force. He concludes that the blunt force injury was caused before the gunshot wounds and since the bullet wounds would have caused death quickly then there could have been an interval between the blunt force trauma and the gunshot wounds. The analysis of the blood and urine would, in his opinion, suggest that the deceased lived for some time, perhaps hours, after he stopped drinking and this would therefore accord with the soldiers' observation of two shots being heard at 3.02 am on 17 September and with the rough estimate of the medical officer who attended the scene that death had occurred at least twelve hours earlier.

Conclusion

[45] Having considered all the evidence available to the court including the report of ACC Kinkaid we could not regard the convictions of Hindes and Hanna as being safe. In particular we were compelled to this view by the failure to comply with the standards required for the detention and interviewing of young persons, the failure to disclose material evidence which may have assisted the defence and by the new evidence which has been produced. Accordingly the court quashed the convictions. We wish to commend ACC Kinkead and those who assisted him for the objective and careful inquiry that was conducted by them into these cases and without which these convictions are likely to have remained uncorrected.