Judicial Communications Office

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COURT DISMISSES APPEAL BY FRANCIS LANIGAN

Summary of Judgment

The Court of Appeal[1] today dismissed an appeal against conviction and sentence by Francis Lanigan who was convicted in 2020 of the murder of John Stephen Knocker at the Glengannon Court Hotel, Dungannon on 31 May 1998.

Background

The background to the offences can be found in the summary of Mr Justice Horner's decision on 11 May 2020. Francis Lanigan ("the appellant") left Northern Ireland shortly after the death of John Knocker ("the deceased") and lived in the Republic of Ireland until he was arrested and returned to Northern Ireland to face trial in 2019. The Crown Court imposed a mandatory life sentence and on 3 July 2020 determined he must serve a minimum term of imprisonment of 20 years.

Belfast and Dublin DNA Evidence

An application was made during the trial to stay the proceedings as an abuse of process in respect of DNA obtained in Belfast. The court referred to a deliberate decision made by the investigating police officers in Belfast to evade the protections put in place by the Police and Criminal Evidence (NI) Order 1989 ("PACE") to prevent the arbitrary use by police of the power to take non-intimate samples. It said this abuse of power was compounded by the fact that the police officers sought to mislead the Crown Court with a view to persuading the judge to accept that the Belfast sample had been lawfully obtained. The court concluded that there was no lawful basis upon which the PSNI could have lawfully obtained the sample of the appellant's DNA. It said the trial judge's characterisation of the actions of the police officers as "ill-judged" seemed to be "very generous".

The court, however, recognised the strength of the public interest in ensuring that those accused of serious crime are prosecuted. It said the prosecution pursued the case on a wider basis as a strong circumstantial case and not just on the basis of the Belfast DNA evidence. Also, the court recognised that it is not its function to order a stay as a way of punishing or marking the court's disapproval of police conduct: "Taking all of those factors into account we agree that the learned trial judge was correct to refuse the application for a stay of the proceedings as an abuse of process in respect of the Belfast DNA".

A similar application was made in respect of the DNA sample obtained in Dublin. The court said that in this instance the PSNI acted entirely within the bounds of the informal arrangements with An Garda Siochána ("AGS") and that there was no unlawful activity in both jurisdictions. It said he could see no basis upon which the circumstances could constitute an abuse of process requiring a stay of the proceedings.

[1] The panel was the Lord Chief Justice, Mr Justice O'Hara and Mr Justice McFarland. The Lord Chief Justice delivered the judgment of the court.

The appellant also submitted that the trial judge ought to have excluded the DNA evidence in the exercise of his discretion under Article 76(1) of PACE. The court said it could see no proper basis upon which the application to exclude the Dublin DNA could have succeeded in light of the factors set out above. It did, however, consider that there were significant and substantial issues to consider in respect of the manner in which the Belfast DNA evidence was obtained. In exercising its discretion, the Crown Court was also obliged to take into account the manner in which the police officers sought to cover up what had actually happened:

> "If the trial judge had appreciated that by reason of the failure to take DNA at an early stage the PSNI were no longer in a position to take a non-intimate sample without the consent of the appellant he would have appreciated the extent to which the obtaining and introduction of the evidence affected the fairness of the proceedings. In our view that was a factor which was of such importance that in the context of this case it should have led to the exclusion of the Belfast DNA evidence."

Appeal against conviction

The appellant sought to attack the safety of his conviction on the basis of the evidence given by his girlfriend at the time of the murder (Nuala Delaney). Ms Delaney gave evidence from Dublin via a live link. The court said her evidence broadly accorded with interviews she had given to the police in 1999. The appellant contended that allowing her to give evidence without a statement was unfairly prejudicial. The court, however, said that voluminous material relating to her account of her actions on the night of the killing had been made available by way of disclosure of the interviews and that the appellant had all of those materials. The court also noted that the trial judge had considered Ms Delaney's evidence and he was satisfied that it was truthful in relation to the following matters:

- Taking the gun from the appellant and putting it on the floor at her feet;
- How she tried to climb the bank to hide the gun but was unable to because it was so steep; and
- She had already been charged and sentenced and now lives in the Republic of Ireland.

The trial judge said there was no need for her to give sworn testimony and no reason for her to volunteer her involvement with the criminal acts. He also said her evidence was consistent with other independent evidence given by witnesses. The trial judge also said Ms Delaney's evidence supported the prosecution case that the appellant was bleeding. This was consistent with the finding of blood on the handle of the front passenger door and the sun visor on the passenger side.

There were three principal attacks on the safety of the conviction advanced by the appellant:

- Ms Delaney's evidence had to be approached with considerable caution as she was a person who had been convicted of criminal offences in connection with the events that night. The court accepted that this was a case for exercising caution in respect of her evidence but said it could find no error in the trial judge's approach. It also noted that the relationship between Ms Delaney and the appellant had been over for nearly 20 years when she gave evidence against him and there was nothing to suggest that the end of that relationship would have led to her manufacturing a murder allegation against him;
- The prosecution case proceeded on the basis that the appellant had sustained facial injuries causing bleeding but none of the witnesses described him as having blood on his face. The

appellant sought to advance that the other male in the car was the gunman. The court, however said this would not explain how the appellant's blood was on the handle of the passenger door and the sun visor on the passenger's side. It said this also had to be seen in the context that the appellant decided to leave Northern Ireland and change his name very soon after this incident and chose not to give evidence on these matters at his trial;

- The trial judge's approach to the absence of any DNA or blood on the pistol which was recovered. Explanation had been advanced at trial as to why the DNA may not have been recovered but the appellant complained that, in light of the fact that he had been bleeding, there was no explanation as to why no evidence of blood on the weapon had been found. The trial judge had concluded that the absence of DNA evidence led to the clear inference that the murder weapon had been washed or wiped clean after the shooting and before it was hidden. The court said that was a reasonable inference to draw but that in any event the absence of DNA evidence could only give rise to a concern about the conviction in circumstances where that absence undermined the prosecution case:

> "In order to be satisfied beyond reasonable doubt it is not necessary to come to a conclusion about every aspect of the events on the night in question. That fact that nothing was found on the handle certainly supports the view that the gun was wiped. There is no evidence about the presence of blood on the hand of the gunman. Ms Delaney indicated that she removed the gun from the lap of the appellant but she obviously left no trace on the weapon either. In our view the absence of a finding of blood on the weapon is not material to the safety of the conviction."

For the reasons given, the court said it was satisfied that the convictions were safe. It dismissed the appeal against conviction.

Appeal against sentence

The court referred to the Practice Statement dealing with the appropriate starting point and aggravating and mitigating factors where the court is fixing the minimum term required by the Life Sentences (Northern Ireland) Order 2001. In this case, the appellant submitted that the trial judge should have adopted a starting point of 12 years and allowed some mitigation for provocation. The court, however, said that this was a case where the appellant chased after the deceased with a loaded firearm which made the crime especially serious given the particular vulnerability of the deceased and rendered the culpability of the offender especially high. It considered that for those reasons a starting point of 16 years was appropriate.

Secondly, the appellant had previous convictions for possession of firearms with intent to endanger life and false imprisonment. The conviction for these offences was on 2 May 1986 and the appellant was given a sentence of imprisonment of 10 years. The court noted that this offence was committed 12 years after that conviction and, therefore, was a relatively recent previous conviction in relation to very serious criminal offending involving a weapon of the same type. The trial judge had inferred that the appellant knew that there was a loaded gun available. The court was satisfied that he was entitled to draw that inference as the evidence indicated that one or both of the females in the case shouted "get the shooter". It also noted that this supported the view that the appellant, like the others in the car, came to the hotel knowing that there was a loaded weapon available – this was an additional aggravating factor.

The court said that the use of the weapon in the car park was likely to engender fear among the public but also that it was the appellant's intention that the public should be intimidated. It considered that eye-witness evidence of the appellant's stance as he discharged the first shots demonstrated "a level of practiced competence in the use of the firearm". The court also said that the discharge of the final shot into the side of the deceased's head as he lay on the ground could be described as an execution, showing the appellant's determination to secure the death of the deceased as well as sending an intimidatory message to witnesses: "That message was enhanced by the swagger with which he made his way to the getaway vehicle having carried out the execution. That is a further aggravating factor".

The appellant complained that the trial judge rejected an argument that provocation should have been taken into account as a mitigating factor. The court said that the response of the appellant to the earlier attack that evening was so disproportionate that no material weight could be attributed to it.

The court concluded that a tariff of 20 years was entirely within the range available to the trial judge and dismissed the appeal against sentence.

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 on the Judiciary NI website (https://judiciaryni.uk).

2. The minimum term is the term that an offender must serve before becoming eligible to have his or her case referred to the Parole Commissioners for them to consider whether, and if so when, he or she can be released on licence. Unlike determinate sentences, the minimum term does not attract remission. If the offender is released on licence they will, for the remainder of their life, be liable to be recalled to prison if at any time they do not comply with the terms of that licence. The guidance is set out in the case of R v McCandless & Others [2004] NI 269.

3. A Practice Statement, [2002] 3 All ER 417, sets out the approach to be adopted by the court when fixing the minimum term to be served before a person convicted of murder can be considered for release by the Parole Commissioners. It also sets out two starting points. The lower point is 12 years, and the higher starting point is 15/16 years imprisonment. The minimum term is the period that the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. This sentencing exercise involves the judge determining the appropriate starting point in accordance with sentencing guidance and then varying the starting point upwards or downwards to take account of aggravating or mitigating factors which relate to either the offence or the offender in the particular case.

ENDS

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