Judicial Communications Office

Monday 11 September 2017

COURT DISMISSES APPEAL BY LINDSAY WHITE

Summary of Judgment

The Court of Appeal today dismissed an appeal by Lindsay White against her conviction for the murder of Marek Muszynski.

Lindsay White ("the appellant") was convicted of murder at Newry Crown Court 13 February 2012. She was in the company of Adrian Cunningham and Mark McAleavey on the evening of 6 July 2009 when they came across Marek Muszynski and his friend Mr Begnasiuk. The appellant allegedly instigated a confrontation with the two Polish men. During this confrontation Mr Begnasiuk became separated from Mr Muszynski and was subjected to an assault by McAleavey. He was, however, able to make good his escape, leaving Mr Muszynski alone with the appellant, Cunningham and McAleavey. When he returned a short time later with other friends, Mr Muszynski could not be found. Approximately two hours later Mr. Muszynski's body was discovered by a man who was out walking. He had suffered extensive head, neck and upper body injuries which had resulted in his death. The pathologist concluded that Mr. Muszynski had been subjected to numerous kicks and stamps whilst lying on the ground, and at some stage his body had been dragged along the rough path.

The appellant was arrested by the Metropolitan Police as she arrived in London two days later. A few hours later in Newry, Cunningham approached the police and indicated that he had punched the deceased. During his initial interviews he indicated that he had been present at the scene, and had used force against the deceased essentially in self-defence and in defence of the appellant but said that he had not killed him. Meanwhile the appellant was returned to Northern Ireland and when she was interviewed, she admitted to being present at the time of the assault and said that it had been perpetrated by Cunningham alone, and not in self-defence or in defence of her. When this version was put to Cunningham he confessed to his involvement in the assault, but said that the appellant had also been involved.

At the appellant's trial Cunningham gave evidence for the prosecution, having already pleaded guilty to murder. The jury heard evidence that after Begnasiuk had escaped from the assault upon him by McAleavey, the deceased remained in the company of the appellant, Cunningham and McAleavey. As they walked, the appellant suggested to Cunningham that the deceased should be attacked with the assault to be precipitated by a cough. Cunningham told McAleavey and in due course both men gave coughs and the appellant punched the deceased. Cunningham claimed that although the plan was conceived by the appellant for largely unknown motives, and commenced by her single punch, he who was the main perpetrator, and he accepted that he aimed punches and then kicks and stamps to the deceased's body and head. McAleavey wanting to have nothing to

do with the assault immediately left the scene. The appellant, however, joined in and at one stage stood on the deceased's throat bearing her full weight down on his neck. In the aftermath the appellant and Cunningham discussed a distortion of the scene, with Cunningham taking off a shoe and pulling down the jeans, which he explained as an attempt to disguise the nature of the attack. Cunningham said the appellant went through the deceased's pockets to take a sum of 70 pence, which was all that he possessed. Both then left the scene, and, after buying more drink and a take-away meal, returned to the appellant's flat.

The appellant appealed on the ground that the trial judge had failed to give adequate direction on the effect of intoxication on her intent, and sought leave to appeal on the grounds that the trial judge failed to give a sufficient warning about the caution the jury should exercise when considering the evidence of an accomplice and had given a misdirection on joint enterprise.

Intoxication

The Court of Appeal stated that murder is a crime of specific intent and the jury must be satisfied that the accused intended to kill the victim or cause him really serious injury. Whether or not a person has formed the requisite intention can be affected by the voluntary consumption of alcohol. The principal set out in the leading case is that the trial judge should firstly warn the jury that the mere fact of the defendant's mind being affected by drink so that he acted in the way in which he would not have done had he been sober did not assist him at all provided the necessary intention was there: "A drunken intent was nevertheless an intent". Secondly, the jury should be instructed to have regard to all the evidence including that relating to drink and to draw such inferences as they thought proper from the evidence. On that basis they should ask themselves whether they feel sure that at the material time the defendant had the requisite intent.

In this case there were a number of witnesses who gave evidence about the consumption of alcohol by the appellant. Cunningham indicated that he had been drinking Buckfast since early afternoon and that he, McAleavey and the appellant were intoxicated at the time of the attack. One witness described the appellant shouting "You don't know who I am or what I did". He thought that she was shouting because "she was drunk or was on some sort of alcohol or something". The deceased's friend stated that when they met Cunningham, McAleavey and the appellant it was the appellant who had been the aggressor and he thought that was because she was drunk. The prosecution, however, pointed to CCTV evidence which they considered showed no evidence of unsteadiness or other signs of significant drunkenness by the appellant.

The appellant contended that the trial judge gave no specific direction inviting the jury to take into account the consumption of alcohol as part of their consideration of her intent. The Court of Appeal said the test established by case law is that the intoxication must have been of such a degree that it prevented the appellant from foreseeing or knowing what she would have foreseen or known had she been sober: "This degree of drunkenness is reached

when the man is rendered so stupid by drink that he does not know what he is doing, as where, at a christening, a drunken nurse put the baby behind a large fire, taking it for a log of wood and where a drunken man thought his friend (lying in his bed) was a theatrical dummy placed there and stabbed him to death. In each of those cases it would not be murder. But it would be manslaughter".

The Court of Appeal stated that the issue for the jury was the actual intent of the defendant but warned that there was a relatively significant threshold which must be crossed before the court was obliged to give the intoxication direction. It considered the evidence of the appellant herself provided no support for such a direction and the evidence of Cunningham suggested that the appellant was intoxicated but his account of their conversations did not support any case that she did not have the requisite intent. The Court concluded that the facts and circumstances of this case did not require such a direction to be given and dismissed the appeal. The Court of Appeal, however, said it wished to make it clear that where the evidence does raise an issue about the effect of alcohol on the specific intention necessary for a criminal offence there is an obligation on the court, whether or not the matter is raised by counsel, to ensure that the jury is properly directed in relation to it.

Direction when considering accomplice evidence

The appellant claimed that the trial judge had not given the jury an adequate warning about the caution they should exercise when considering the evidence of Cunningham, an accomplice. He was first interviewed about his involvement in the murder on 9 July 2009 and after being charged had a further set of interviews in anticipation of his giving evidence against the appellant at trial.

The principles governing how a jury should be directed in relation to accomplice evidence were set out in R v Makanjoula [1995] 1 WLR 1348. Where a witness has been shown to be unreliable the judge may consider it necessary to urge caution. In the more extreme case of witnesses shown to have lied or made previous false complaints or borne the defendant some grudge a stronger warning may be thought appropriate and the judge may suggest that it would be wise to look for some supporting material before acting on the witness's evidence. There is, however, no formula and the court should be slow to interfere with the exercise of discretion by a trial judge who has the advantage of assessing the manner of the witness's evidence as well as its content.

In this case, there was a discussion between the judge and counsel about the nature of the warning that should be given to the jury. Both the prosecution and defence agreed that a Makanjoula warning was required and the defence submitted that the jury should be told that it would be wise to look for some supporting material before acting of Cunningham's evidence. The Court of Appeal said the trial judge had identified the possible motives that might have caused Cunningham to give false evidence implicating the appellant and drew the attention of the jury to the detail of the way in which his interviews had developed and the inconsistencies arising from that. The trial judge did not suggest that it would be wise to look for some supporting material before acting on Cunningham's evidence. The Court,

however, considered that the warnings given by the trial judge in respect of Cunningham's evidence encouraged the jury to treat it with particular care and explained the reasons for that. It held that it could not be said to be outside the range of discretionary judgment available to the trial judge and did not grant leave on this issue.

Joint Enterprise

The appellant claimed the trial judge misdirected the jury on the issue of joint enterprise. The Court of Appeal held that the guidance given by the judge corresponded with the applicable law at the time of the trial but noted that the decision of the Supreme Court in R v Jogee [2016] UKSC 8 established that there is an error in equating foresight with intent to assist rather than treating the first as evidence of the second. The Supreme Court indicated that where a conviction had been arrived at by faithfully applying the law as it stood at the time it could be set aside only by seeking exceptional leave to appeal out of time. Such leave would only be granted if substantial injustice could be demonstrated. The Court of Appeal held there was nothing about this case which would satisfy the test of substantial injustice and said that questions set out by the trial judge required active participation by the appellant in the attack before the jury could find her guilty of murder. It refused leave to appeal on this ground also.

Conclusion

The Court of Appeal dismissed the appeal and refuse leave to appeal on the other grounds.

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 Court Service website (www.courtsni.gov.uk).

ENDS

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