

Judicial Communications Office

25 October 2023

COURT DISMISSES APPEAL AGAINST CONVICTION

Summary of Judgment

The Court of Appeal¹ today dismissed an appeal by Joseph Joyce against his conviction for the murder of John Paul McDonagh in Enniskillen on 11 April 2020.

John Paul McDonagh (“the deceased”) died after a street altercation between three members of his family and Joseph Joyce (“the appellant”). They were all members of the travelling community. A party had been taking place at the home of the McDonagh family whose garden bordered on the back of the appellant’s home and there was a verbal confrontation over the garden fence. CCTV footage then showed the appellant standing on the road outside his house with a bill hook in his hand. The deceased, Gerry McDonagh and Jimmy McDonagh are seen running towards the appellant; the deceased is holding a garden hoe; Jimmy McDonagh had a long knife and Gerry McDonagh had concealed a large cider bottle under this coat. The appellant squirted what was subsequently discovered to be an ammonia solution from a bottle he was holding. The deceased can be seen swiping at the appellant with the hoe. The appellant swings his bill hook at the deceased, catching him behind the knee of his left leg. This resulted in a slashed artery which proved to be the fatal injury. The appellant was convicted by a jury and sentenced on 20 June 2022 to life imprisonment with a tariff period of 10 years before he eligible to apply for release by the Parole Commissioners. He did not appeal against his sentence.

There were three grounds of appeal against conviction:

- The trial judge erred in not leaving the alternative verdict of manslaughter to the jury;
- The trial judge was materially misled when he made his ruling to treat a witness “JT” as hostile and hence erred in that determination;
- The trial judge erred in allowing bad character evidence that the appellant was “the King of the Travellers” to go before the jury.

Ground 1 - manslaughter as an alternative verdict

Section 6(2) of the Criminal Law Act (Northern Ireland) 1967 provides that on indictment for murder a person found not guilty of murder may be found guilty of manslaughter. Counsel for the appellant contended that there was enough evidence to allow the trial judge to leave manslaughter as an alternative verdict to the jury together with the partial defence of loss of control².

The court outlined the authorities on alternative verdicts in paras [30] – [37]. Having analysed all the evidence, the court considered there was no obvious evidence upon which the trial judge could have left the alternative charge to the jury:

“This was a lethal weapon which from the CCTV imagery the appellant equipped himself with along with a bottle of ammonia prior to the altercation. We are entirely

¹ The panel was Keegan LCJ, McCloskey LJ and Fowler J. The LCJ delivered the judgment of the court.

² Sections 54 and 55 of the Coroners and Justice Act 2009 introduce the partial defence of loss of control.

Judicial Communications Office

convinced that there was compelling evidence of an intention to cause really serious harm. Put simply, this is a case where to our mind the jury was confronted with a stark choice. Either the appellant had attacked the deceased with the requisite intent when armed with a bill hook and a bottle of ammonia or he had been acting in reasonable self defence. From the time he was first interviewed to the end of the trial these were the only two scenarios in play. Objectively, on any fair and reasonable assessment, manslaughter was not an obvious alternative offence which there was evidence to support which warranted consideration by the jury. Our assessment also mirrors the firm stance of both prosecution and defence at the trial."

The court said the inclusion of an alternative verdict in this case would have potentially led to the risk that the jury would either convict the appellant of the more serious offence to ensure he did not escape punishment altogether or acquit him even though they were sure that he was guilty of some criminality. The court concluded that the trial judge had exercised his judgement correctly.

The loss of control defence requires there to have been a "qualifying trigger" for the loss of control. The court said the appellant had manifestly failed to satisfy it that the necessary statutory requirements were met and that without such an evidential basis this partial defence simply did not arise.

The court found no merit in the first ground of appeal and had no reservations about the safety of the appellant's conviction arising out of the decision by the trial judge not to leave manslaughter to the jury as an alternative verdict.

Ground 2 - the hostile witness ruling

In the absence of the jury, prosecuting counsel submitted that one prosecution witness JT should be considered a hostile witness. The judge acceded to the prosecution application for a number of reasons including JT's conflicting descriptions of the instrument held by the appellant, which the judge considered to amount to "two completely different things"; his conflicting descriptions of the contents of the bottle held by the appellant; and his rejection of the invitation to read the contents of his witness statement.

JT was then recalled and his written statement was placed before him. During this phase of his sworn evidence JT evinced a clear inclination to distance himself from certain aspects of his statement. He asserted it was made "under duress" from the police officers and with an associated anxiety to leave the police station as quickly as possible. During the next set of questions and answers JT testified that he had initially believed/assumed that the bottle carried by the appellant contained petrol and had said this during his police interview. JT accepted that aspects of his sworn evidence differed from his witness statement.

The court considered there were serious lapses on the part of the prosecution in the matter of the hostile witness application. It said that relevant parts of JT's ABE interview were overlooked in making and maintaining the application and this material was not drawn to the attention of the trial judge. Exchanges confirmed that senior defence counsel was fully alert to the issue. The trial judge also directed the jury on this issue.

In dealing with this ground of appeal the Court of Appeal stated that the exercise of the trial judge's discretion in determining whether to declare a witness hostile will only be disturbed by

Judicial Communications Office

the Court of Appeal if it is clearly shown that either there was no real exercise of discretion or that it was improperly exercised. The discretion of the judge, however hostile the witness, is absolute and the decision will rarely be open to a successful challenge on appeal.

The court considered that the designation of JT as hostile was positively beneficial to the appellant. The court also found the declaration of hostility had the further consequence that a serious irregularity in the police investigation (the manner in which JT's witness statement had been generated) was fully exposed before the jury which could only have been favourable to the appellant and simultaneously unfavourable to the prosecution case. Further, JT's evidence that was favourable to the appellant's case was highlighted by the trial judge in his charge to the jury. The judge specifically drew the attention to the issue relating to the emergence of JT's ABE interview transcript after he had made his hostility ruling. His direction on this issue was, in substance, that the asserted inconsistency between JT's initial oral evidence and his witness statement had no foundation. The judge directed that the jury "... may or may not take them into account ... [and] may take the view that the inconsistencies are of no relevance or of a limited weight." The possibilities of accepting JT's evidence in its entirety, rejecting it in its entirety and accepting part of it were laid before the jury.

The court also said there was no complaint that in consequence of the designation of JT as a hostile witness any irrelevant or inadmissible evidence was adduced. Furthermore, all of the evidence favourable to the appellant's case which JT was on paper capable of giving was in fact laid before the jury, while elements of the additional police evidence were more favourable to the appellant than the prosecution. The court considered that the trial judge's direction to the jury on the hostile witness designation was conspicuously fair and balanced.

For these reasons, the court said it had no reservations about the safety of the appellant's conviction arising out of the designation of JT as a hostile witness and the consequences which flowed therefrom.

Ground 3 - The bad character evidence that the appellant was "The King of the Travellers"

Near the conclusion of the trial the prosecution presented a notice of intention to adduce evidence of the appellant's bad character. The three elements sought to be adduced were: the appellant's criminal convictions in the Republic of Ireland; YouTube videos and stills showing the appellant engaging in bare knuckle fighting; and the full content of a police occurrence enquiry log ("OEL") entry which had been partially opened to the jury in defence cross-examination of a police officer in the trial. This was particularly directed towards the omitted entry which described the appellant as the 'King of the Travellers' and a 'bare knuckle fighter.'

It was argued on behalf of the appellant that reference to him being described as 'King of the Travellers' was manifestly bad character and was tantamount to the introduction of bad character by the backdoor. It was contended that, given the monicker "King of the Travellers" is closely linked, if not synonymous, with being skilled at bare knuckle fighting, it had negative and potentially reprehensible connotations and that in the context of the self-defence case was prejudicial and should not have been adduced in evidence before the jury. The court commented that the timing of the prosecution application was significant as it had not been made in advance of the hearing despite the prosecution being aware of the OEL entry and of the likely evidence of family members of the deceased from their statements in which they referred to the appellant describing himself as 'a boss' and 'the King.' The court noted that it was not until after the main

Judicial Communications Office

witnesses in the case had given their evidence, been cross examined and the prosecution case about to close that a bad character application was made.

The court said it was inexplicable that the application to introduce bad character was left so late in the trial. It considered the ruling on bad character should have taken place at the start of the trial to have allowed the appellant to know precisely what he faced at an early stage, prepare and manage his defence, and adapt his cross-examination accordingly. The court accepted, as did the trial judge, that that the cross examination of defence counsel concerning the OEL was simply to elicit information concerning the communication of a potential death threat to the appellant and what steps the police took in relation to that. It said that in a case where the killing was caught on CCTV it seemed the relevance of this evidence was minimal and more likely designed to engender sympathy for the appellant rather than examine the adequacy or thoroughness of the police investigation.

The defence contended that the trial judge was led into error by the prosecution application to introduce the portion of the OEL entry describing the appellant as the 'King of the Travellers'. The court said this was not without merit and found it difficult to see the relevance of the prosecution wishing to lead this evidence as it added nothing to the case. It added that it was a challenge to fathom how it assisted the jury in coming to a determination of the counts faced by the appellant. This was in a context where it was clear to the jury, by virtue of names and accents and the evidence of JT, that all the protagonists were members of the travelling community.

The court agreed that the trial judge, who was endeavouring to be fair to all parties, was led into error in admitting in evidence the description 'King of the Travellers' which had connotations and links with bare knuckle fighting, but said that in circumstances where the trial judge had been led into error and where there was no criticism of the fairness of the trial judge's charge to the jury, and indeed his conduct of the trial, it was not inevitable that such an error will automatically lead to the conviction being quashed.

The court considered the case as a whole and was satisfied that allowing the description 'King of the Travellers' did not unfairly prejudice the appellant or render his conviction unsafe:

"There was high quality CCTV footage which shows the confrontation in which the deceased was wounded. This undoubtable was the central focus of the jury and against which they tested the oral and circumstantial evidence in the case. The evidence of Caroline McDonagh explaining how the appellant had described himself as 'the king' and acted triumphantly after having been involved in a street fight with other travellers, was already before the jury, even before the description of 'King of the Travellers' was adduced and without objection by the defence."

Neither counsel appeared to have felt that this issue merited revisiting and no submissions were made in this regard and subsequently, the judge made no mention of 'King of the Travellers' in his charge to the jury and no requisition was raised on this omission. The court said that while this might normally have been a failing, in the circumstances of this case it could discern no prejudice. Rather, as a matter of common sense, the approach adopted worked to the advantage of the appellant in that the issue did not gain an exaggerated level of prominence in the judge's charge and remained something of a very peripheral issue in the case as a whole. The appellant contended that his defence could have been conducted differently had he been aware that this bad character

Judicial Communications Office

evidence was to be admitted and there could have been a full-frontal attack on the credibility of the McDonagh witnesses.

Notwithstanding the misdirection on the bad character application, the court said it was not satisfied that the appellant had suffered any tangible unfairness or prejudice giving rise to the assessment that this conviction is unsafe. It therefore followed that it had no reservations about the safety of the appellant's conviction arising out of the introduction in evidence of the description of him as a 'King of the Travellers.'

Overall Conclusion

The court concluded that it had no reservations as to the safety of this conviction and therefore dismissed the 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 on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Debbie Maclam
Judicial Communications Officer
Lady Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
E-mail: Debbie.Maclam@courtsni.gov.uk