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4 December 2023

COURT OF APPEAL REFUSES LEAVE TO APPEAL MURDER CONVICTION IN THE CASE OF JOHN MILLER

Summary of Judgment

The Lady Chief Justice, sitting today in the Court of Appeal¹, delivered the judgment of the Court rejecting John Miller's application for leave to appeal against his conviction for the murder of Charlotte Murray.

Factual Background

On 8 October 2019, John Miller was convicted by a jury of the murder of Charlotte Murray on a date between 30 October 2012 and 2 November 2012. A life sentence was imposed on that day. On 10 February 2020, a minimum tariff of 16 years was set by the trial judge, His Honour Judge Fowler.

It was the prosecution case at trial that the applicant and Ms Murray had been in a relationship and living together in Moy, near Dungannon, for some time prior to Ms Murray's disappearance in late 2012. Ms Murray has not been seen nor traced since disappearing despite an extensive police investigation seeking evidence that she is alive.

The prosecution case was that Ms Murray had been killed by the applicant overnight on 31 October 2012 and the likely motive was that the deceased had sent intimate photographs of herself with another man in the run up to this event. The photographs had been taken on 21 October 2012 when Ms Murray had stayed the night at the home of Ciaran McMahon, a friend and acquaintance of the applicant. It was asserted by the prosecution that, on seeing the photographs, the applicant would have known that they related to the night of 21 October and that they had been taken by Ciaran McMahon and as a result, the applicant had killed Ms Murray.

It was also suggested by the prosecution that, having killed Ms Murray, the applicant disposed of her body and set about laying a false trail by manufacturing text messages between her phone and his, posting a message on her Facebook account and generally indicating that she was away to live a new life. After Ms Murray disappeared, her mobile phone was used on several occasions to contact

¹ The constitution of the court was Keegan LCJ, McFarland J and Kinney J. Keegan LCJ delivered the judgment of the court.

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the applicant's mobile phone. The evidence indicated that these text messages were sent using cell sites that serviced the general area of the couple's home in the Moy.

While it was accepted that there had been a breakdown in the relationship, the applicant denied that he had killed Ms Murray. At trial, the defence emphasised that Ms Murray was a vulnerable person with a history of depression who, in the run up to her disappearance, had not had contact with her family for some considerable time. She had also in the period before disappearing been in contact with various other individuals including a former boyfriend, another unidentified woman, two foreign national males, and a person called Peter. The defence asserted that Ms Murray's personality was characterised by elements of aggression and violence, particularly when under the influence of alcohol. The defence asserted that there were alleged sightings of Ms Murray after the night when she was said to have disappeared. This was disputed by the prosecution.

Characteristics of the case

Ms Murray's body has never been found and therefore this was a circumstantial case. In addition to the evidence that Ms Murray effectively disappeared without trace, other circumstances were highlighted by the prosecution to make the case that she was murdered by the applicant, including that the police were only notified of Ms Murray's disappearance in May 2013 after her family became concerned.

The prosecution also relied upon cell site evidence and maintained that the applicant had laid a false trail by sending messages from Ms Murray's mobile telephone, purportedly written by Ms Murray, stating that she wanted to live a new life. The prosecution, relying on evidence from the family of Ms Murray, disputed the authenticity of the text messages and maintained that the style of the texts was not usual for Ms Murray.

Further the prosecution relied upon evidence of Ms Murray's blood in the bathroom. This was found when the house where Ms Murray and the applicant resided was eventually searched. However, it was common case that Ms Murray had cut herself shortly before her alleged disappearance and she had a wound which required two stitches.

The prosecution also relied on the fact that Ms Murray had left behind her beloved pet dog, Bella, and that shortly after Ms Murray disappeared, the applicant had tried to sell her engagement ring. The applicant had made enquiries about blades or axes in November 2012, some three weeks after the alleged disappearance.

The prosecution relied on inconsistencies in the account given by the applicant to police and that he relied on evidence that he failed to give to the police when questioned, contrasted with the fact that when the applicant did give evidence, he

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gave varying different explanations for his conduct and also as to why Ms Murray disappeared.

Fundamental to the defence case was the claim that there were reasonable alternative possibilities that Ms Murray, if dead, died sometime after 1 November 2012 by way of suicide or having been killed by someone else or that Ms Murray had simply disappeared to start a new life.

The first ground of appeal

The first ground of appeal was that the trial judge had been wrong to reject a defence application made during the trial for the case to be withdrawn from the jury on the basis that there was no case for the defendant to answer.

The Court of Appeal dismissed this ground, stating that, in a case where the evidence is circumstantial, the jury is entitled to weigh up all the strands of evidence to determine whether there is sufficient evidence to convict the defendant. The trial judge was correct to decide that there were various strands of evidence which should be considered by the jury, namely the timing of Ms Murray's disappearance, the cell phone activity, Ms Murray's disappearance without any trace, the accounts given and the proof of life investigations that took place. Accordingly, the Court of Appeal found that the trial judge was correct not to allow the application of no case to answer. It therefore refused the application for leave to appeal on the first ground of appeal.

The second ground of appeal

The second ground of appeal was that there were material irregularities in the conduct of the trial which had an adverse effect on the safety of the conviction.

The applicant relied upon eight points in support of this ground of appeal which the Court of Appeal summarised as follows:

- (i) evidence as to a plaster seen on Ms Murray in video material was dealt with by the prosecution in a prejudicial way which could not be corrected;
- (ii) sex video evidence was dealt with by the prosecution in such a prejudicial way when the applicant gave evidence that it could not be corrected;
- (iii) the trial judge should have made a *Lucas* direction;
- (iv) the trial judge's direction on sightings of Ms Murray was imbalanced;
- (v) the prosecution closed the case in a highly prejudicial way, specifically by referring to a matter not specifically put to the applicant during his evidence;
- (vi) written directions given by the trial judge were lopsided and prejudicial to the defence;

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- (vii) the trial judge's direction on the intent required for a murder charge was inadequate; and
- (viii) the trial judge should have left to the jury the issue of loss of control as a partial defence to murder.

The Court of Appeal dealt with each of these matters as follows.

The plaster and video issues

During the trial, the applicant was cross-examined in relation to intimate photographs of Ms Murray, including a photograph taken of Ms Murray which showed a plaster on her buttock. It was the prosecution's contention that the presence of the plaster was of assistance in dating the set of photographs. It subsequently transpired that the applicant had not been sent the relevant photograph. The applicant was also cross-examined in relation to his assertion that he had referred to a Mr McCoy during the filming of a video of the applicant and Ms Murray engaged in intimate activity in mid-October 2012. This was not apparent in the video that was presented in evidence. It subsequently transpired that there was a further video that was not before the jury which the applicant had previously deleted. When each of these issues emerged, the jury was provided with a set of agreed facts setting out the position.

Taking these two matters together, the Court of Appeal had no doubt that during the trial, the applicant was questioned on matters by the prosecution without a proper basis. While this was regrettable and amounted to irregularity within the trial process, the question for the Court of Appeal was whether these irregularities rendered the trial verdict unsafe. The Lady Chief Justice noted that there are procedures and protections in place to ensure a fair trial and that a trial judge is best placed to determine what course of action best accords with the overriding objective to ensure that the trial is fair and just.

The Court of Appeal considered it highly noteworthy that the applicant's lawyers did not consider during the trial that these two errors were irremediable. A remedy was found that included presenting agreed facts to the jury in clear terms. There was no request to remove the case from the jury and there was no requisition on the judge's directions to the jury. Whilst these were not determinative factors, they weighed significantly in the balance when considering whether a fair trial had taken place.

The Court of Appeal was satisfied that any possible lingering concern in the mind of the jury as to the credibility of the applicant on these matters was cured by the protections provided within the trial process, principally the agreed facts constructed by counsel, counsel's speeches, and the judges' charge to the jury. Any mistakes were comprehensively corrected. The Court of Appeal did not consider the

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applicant's position had been diminished, noting that he was in fact vindicated by maintaining his position. Therefore, this aspect of the application for leave to appeal was dismissed.

Whether a Lucas direction should have been given

The applicant argued that, as one of the strands of the prosecution case was the alleged 'trail of deceit' created by text messages and social media posts that were intended to create an impression that Ms Murray was still alive, the jury should have been reminded that people sometimes lie for reasons such as bolstering a just cause, out of shame or out of a wish to conceal certain behaviour. This is known as a 'Lucas' direction, the purpose of which is to warn a jury against adopting the reasoning that lies in themselves are demonstrative of guilt.

The Court of Appeal found that this was not a case that had required a *Lucas* direction. The trial judge had correctly discussed this element of his summing-up, received assistance from counsel, and concluded that the *Lucas* direction was not required, a view that was fully supported by the applicant's counsel at the time. Accordingly, the Court of Appeal did not consider that there was any irregularity in relation to the failure to give a *Lucas* direction.

The judge's charge on the identification evidence

A further suggested material irregularity was the content of the judge's charge to the jury on the identification evidence relied upon by the defence, namely a suggested failure to deal with the evidence of one witness to an adequate degree and the second being that the jury were given an inappropriate direction relating to identification evidence.

As to the evidence concerning purported sightings of Ms Murray after 1 November 2012, the jury were directed that, when dealing with a circumstantial case, they had to be sure that there were no other co-existing circumstances which pointed away from the appellant's guilt and would weaken or destroy any inference of guilt. If any one of the purported sightings were to raise a reasonable doubt that Ms Murray was in fact not dead or had died after 2 November 2012 then the prosecution case would collapse.

The Court of Appeal rejected the argument that the recounting of the evidence of Ms Logue, who purported to have seen Ms Murray while attending an out-patient clinic in Omagh in May 2013, was not complete enough or was unfair to the applicant. The Court found that the section of the summing-up dealing with the disappearance of Ms Murray was comprehensive, setting out the evidence relied on by the prosecution and the applicant respectively. Emphasis had been given to weaknesses and gaps in the prosecution evidence in support of the applicant's case. Details of

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the identification and recognition evidence was set out to the jury. The trial judge had also set out the weaknesses the prosecution said applied to the defence evidence. The Court of Appeal found there to be no valid criticism of the completeness and fairness of the content of the trial judge's summing up in relation to the identification evidence. The Lady Chief Justice stated that it is not the function of a judge to set out in full detail what every witness has said in evidence. What is required is a fair and balanced summary of the entirety of the evidence, directing the jury, if required, on how the law requires them to deal with certain types of evidence, and with appropriate commentary on the evidence to assist the jury.

Alleged failure in relation to a Turnbull-type direction

Where identification evidence is relied upon by the prosecution, there is guidance in the case of *R v Turnbull* [1977] QB 224 as to how a judge should deal with such identification evidence in managing the trial and, should the case be left to a jury, in the directions that should be given to the jury.

A *Turnbull* direction to a jury should include a warning for the special need for caution before convicting an accused in reliance on the correctness of identification evidence. Juries should be told why there is a need for such caution and that honest witnesses can still be mistaken witnesses. Finally, the jury should be directed to look at the circumstances of the identification or recognition, such as the length of time, the distance and the lighting.

A *Turnbull* direction specifically relates only to evidence relied upon by the prosecution because the burden is placed on the prosecution to prove its case to the criminal standard.

The Lady Chief Justice confirmed that it is not appropriate for such a direction to be given in relation to identification evidence relied upon by the defence, as in this case.

The Court of Appeal was satisfied that the trial judge did not give a *Turnbull* direction in this case. The judge gave a warning to the jury related to the experience of the court that people can make mistaken identifications and recognitions. The Court of Appeal found this to be a matter of common experience. It was perfectly proper for the judge to have given this assistance to the jury in this way. Accordingly, the Court of Appeal found no irregularity in the way the judge dealt with the identification evidence and this aspect of the appeal grounds was rejected.

Whether the way the prosecution closed the case was so prejudicial as to render the conviction unsafe

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The applicant argued that unfairness arose during the prosecution's closing speech to the jury due to aspersions having been cast on aspects of the genuineness of the applicant's evidence to the effect that the applicant had fraudulently manufactured evidence to assist his case. This had not been put to the applicant during his cross-examination nor raised with any other witness during the trial and therefore the applicant had not been given an opportunity to respond to these allegations specifically and nor did the jury have the benefit of observing the applicant's response.

The Court of Appeal was not convinced that prejudice was occasioned in this case by the way in which the closing speech was made. The error is not of such significance as that which has arisen in other cases. In addition, the Court considered that the prosecution case was obvious and, while it should have been spelt out in greater detail in the questioning of the applicant, when the case is viewed in its entirety, the irregularity did not call into question the safety of the conviction. Accordingly, the Court of Appeal rejected this ground of appeal.

Alleged irregularity in the written directions provided by the judge to the jury

This ground of appeal was advanced utilising material that the judge provided to the jury by way of written directions.

The Lady Chief Justice noted that, due to the failure of the defence to provide to the trial judge a timely document setting out the points it wished to be incorporated into the written directions to the jury with regard to circumstantial evidence, the defence points were not included in the written jury directions, whereas the strands of evidence that the prosecution relied upon were. The question for the Court of Appeal was whether this led to unacceptable prejudice in the minds of the jury.

The Court of Appeal found that the trial judge provided several rather uncontroversial points in the written directions to the jury. In the circumstances, the trial judge was entitled to proceed in the way he did. The points included in support of the prosecution case were general and did not stray into a lopsided summary of evidence. The context was important as these points were provided as part of the direction on how the jury should approach and use circumstantial evidence. It was therefore important that the jury were advised, in bullet point form, of the actual pieces of circumstantial evidence that the prosecution were relying on. The trial judge informed the jury that the defence did not accept this evidence. The final added protection for the defence was that the judge clearly indicated to the jury all of the defence points when charging the jury.

The Court of Appeal did not consider that there was prejudice caused by the written directions to the jury and therefore leave to appeal on this ground of appeal was refused.

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Alleged irregularity in the judge's charge as to intent to kill or cause grievous bodily harm

The applicant contended that the judge did not give a standard and legally sound direction on the need for intent to kill or cause grievous bodily harm as establishing a murder charge. The Court of Appeal considered this ground of appeal to be extremely weak and to be a pedantic point brought after the event which had no bearing on the safety of the conviction. Accordingly, leave to appeal on this ground was refused.

The alleged failure to leave a partial defence of loss of control

Section 54 of the Coroners and Justice Act 2009 provides for a partial defence to murder of loss of control. During the trial, the judge heard comprehensive submissions from the prosecution and defence regarding whether to leave the issue of whether there was a loss of control defence to the jury. It was the defence's position during the trial that the matter should not be left to the jury, however, this position was reversed in the application for leave to appeal.

The Court of Appeal found that the trial judge was correct in his finding that there was not sufficient evidence to leave the loss of control defence to the jury to determine. The application for leave to appeal on this ground was therefore refused.

Conclusion

Concluding the judgment of the Court of Appeal, the Lady Chief Justice said,

"For the reasons given, we do not find any strength in any of the arguments raised on appeal. The Galbraith ground does not convince us. In addition, some of the alleged material irregularities were not irregularities at all and where irregularities did arise, they were corrected during the trial process or were not of such a material nature as to cause us to question the safety of the conviction in any respect.

Finally, we point out that the judge charged the jury at the end of this long trial after extensive engagement with counsel. He did so with scrupulous fairness having engaged with counsel throughout. His charge was of high quality. The judge fairly dealt with all the complicated evidence in this case in a manner which left the fact-finding function to the jury, which is as it should be. Accordingly, we refuse leave on all grounds and dismiss this appeal."

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing in this summary adds to or amends the judgment. The full judgment will be available on [Judiciary NI](#).

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ENDS

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