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COURT QUASHES HISTORIC SEX ABUSE CONVICTIONS

Summary of Judgment

The Court of Appeal today quashed convictions in an historical sex abuse case following a referral by the Criminal Cases Review Commission.

RH ("the appellant") was convicted in December 2006 of rape and the indecent assault of a female who was a child at the time the offences took place in the mid 1970's. His appeal against the convictions was dismissed by the Court of Appeal in 2008. This appeal was by way of a reference from the Criminal Cases Review Commission ("CCRC"). The grounds for the reference were in respect of the evidence of a female relative of the complainant, that the trial judge failed to properly direct the jury on the approach to be taken on this evidence, that the trial judge failed to adequately direct the jury in relation to the appellant's good character, and that these failures gave rise to a real possibility that the court would find the conviction unsafe.

Article 24 of the Criminal Justice (Evidence) (NI) Order 2004 ("the 2004 Order") provides for the admission of previous statements made by witnesses as evidence to rebut a suggestion that their oral evidence was fabricated. The case made on behalf of the appellant was that the complainant and her siblings had made up the case in order to exact revenge for the appellant's treatment of their mother. Lord Justice Deeny, delivering the judgment of the Court of Appeal, held that the prosecution was perfectly entitled to introduce the complainant's evidence in order to rebut that suggestion and, once introduced it was admissible as evidence of the matter stated. This ground was therefore not sustainable.

The appellant also relied on alleged defects in the trial judge's good character direction. The CCRC submitted that, as this was a case where a considerable length of time had passed since the date of the alleged offences and there was no suggestion that any similar allegations had been made against the appellant, the jury should have been told that he was entitled to ask them to give more than usual weight to his good character when deciding whether the prosecution had satisfied them of his guilt. In this case the trial judge referred to evidence from the appellant's partner but the appellant claimed this was "heavily qualified" and that the judge repeated the fact that good character was not an answer to the charges. Lord Justice Deeny concluded, however, that these are matters which on balance are within the band of reasonableness for the trial judge.

The real issue in the case was the trial judge's direction on the complaint evidence. Recent case law provides that in assessing the weight to be given to the evidence it is important that the jury are directed to pay particular regard to the circumstances of any disclosure and the period of time that may have elapsed between the alleged offence and the complaint. It is also important for the judge to direct the jury that they should be cautious about the weight that they should give to such evidence if it is coming from the same source as the complainant as it is not independent evidence.

This case, however, predated the emergence of these authorities. Lord Justice Deeny said the court was therefore required to examine the trial judge's charge to see whether it addressed any risk that the jury may have treated the complaint evidence as independent supporting evidence and, if so, whether that rendered the conviction unsafe. This issue was not expressly raised when the case was considered by the Court of Appeal in 2008. Lord Justice Deeny said that the Court's endorsement of the trial judge's charge to the jury in that appeal needed to be seen in the context of the issues raised in the appeal and the fact that the court was told by counsel that there was no criticism of the charge.

The complaint evidence in this case had been introduced in stages. In her direct examination, the complainant confirmed that she had told a relative in February 1997 that the appellant put his hand up her nightie but was asked not to disclose the detail of what she said. The complainant did not go to the police until 2005 when she made a complaint of rape. Lord Justice Deeny said the jury needed to consider whether the omission of the rape allegation in the complaint of February 1997 called into question the truth or reliability of that allegation. He said that difference did not seem to have been brought to the attention of the jury and the prosecution relied heavily upon the 1997 complaint as evidence that the complainant had not fabricated her evidence. Lord Justice Deeny said it was apparent, however, that the first allegation of rape occurred when she went to the police in 2005 in very emotional circumstances. He said the complaint in 1997 was not inconsistent with her having manufactured a more serious complaint in 2005. He commented that the jury had not been directed on whether it was reasonably possible that she enhanced the 1997 complaint in order to fabricate a more serious charge that would have raised concerns about the reliability of the entirety of her evidence. Lord Justice Deeny further commented that there was an absence of any direction that the complaint evidence was not independent and that this ought to have been given in light of the prosecution submission that the complaint was evidence of the truth of the charges.

Conclusion

The test to be applied by the Court of Appeal in such cases is to concentrate on the single and simple question "does it think that the verdict is unsafe". Where no fresh evidence has been introduced on the appeal the court must examine the evidence given at trial and to gauge the safety of the verdict against that background. The court should eschew speculation as to what may have influenced the jury to its

verdict. It must be persuaded that the verdict is unsafe but, if having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasoned analysis of the evidence, it should allow the appeal.

Lord Justice Deeny concluded that the Court of Appeal had a significant sense of unease about the safety of the verdicts in this case and accordingly quashed both convictions.

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 (www.judiciary-ni.gov.uk).

ENDS

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