

# Judicial Communications Office

6 June 2022

## COURT DISMISSES APPEAL BY SHAUN HEGARTY

### Summary of Judgment

The Court of Appeal<sup>1</sup> today dismissed an application for leave to appeal against conviction. Shaun Hegarty (“the applicant”) was convicted in November 2020 of two counts of rape; attempting to choke with intent to commit rape; causing grievous bodily harm with intent; and developing a relationship without disclosing his previous criminal convictions. He was acquitted of one count of administering a stupefying substance to enable sexual activity. The court imposed an extended custodial sentence of 20 years’ imprisonment and five years on licence.<sup>2</sup>

#### Summary of factual background

The offending took place on 6/7 April 2019. The complainant “M” had met the applicant at a friend’s house several weeks before and agreed to meet at his flat. Her evidence was that on returning from the bathroom, she took a sip of her drink and passed out. She woke to find herself on a mattress with a rope around her neck. She left the flat and was discovered lying on a bank at the side of the road. When the police arrived M told them she had been assaulted and raped. A hospital doctor gave evidence that she had suffered a subarachnoid haemorrhage on the left side of her brain, a “blowout fracture” of the bones surrounding her left eye, swelling to her jaw and multiple abrasions around her neck. M was also seen at the Rowan Centre and the doctor there was of the opinion that she had been subject to a “very aggressive sexual and physical assault”.

M gave various accounts of how she came to be at the applicant’s flat and how she came to sustain her injuries. She claimed she had been injected with something however toxicology samples taken some time after the events showed low alcohol readings and no evidence of drugs in her system. The police attended the applicant’s flat and there was evidence that some cleaning had occurred. The applicant’s case was that all sexual activity had been consensual and that the injuries to M’s face were caused when she walked into a door during a visit to the toilet.

The applicant has a previous conviction for a rape and sexual assault which occurred in February 2010 for which he received a seven year prison sentence and was required to disclose his criminal conviction when entering into a relationship. The circumstances of that rape was that the complainant was not aware of it until she woke and was in essence raped whilst in an unconscious state.

#### Grounds of appeal

##### 1. *The prosecution opening*

The applicant maintained that the prosecution opening was “emotive” and that the photographs depicting M’s injuries were presented to the jury in a manner which was “prejudicial, rendering the trial unfair and the convictions unsafe”. The applicant also asserted that the trial judge erred by refusing to discharge the jury when asked immediately after the prosecution opening.

---

<sup>1</sup> The panel was Keegan LCJ, Treacy LJ and Maguire LJ. Keegan LCJ delivered the judgment of the court.

<sup>2</sup> The applicant has a pending appeal against sentence.

# Judicial Communications Office

The court examined the judge's ruling on the application to discharge the jury. It agreed with the judge's assessment that the prosecution was not overly emotive and said that this was a case involving serious allegations and unpleasant details, which had to be explained to the jury, and that counsel had not overstepped the mark in doing so. The court also agreed with the trial judge's assessment that there was no reason not to give the photographs to the jury. It said it was "perfectly proper" to have the photographs presented to explain a case of this nature and noted there was no defence objection at the time. The court further found no error in the trial judge's approach of advising the jury in advance of the prosecution opening that what was being said was not evidence but a guide and that they should make up their own minds on the evidence. Also, the court was satisfied that the trial judge, in his charge to the jury, made it clear that the decisions about the facts of the case were for the jury alone to decide. The court found no merit in this ground of appeal.

## 2. *The admission of bad character evidence*

The prosecution relied on Article 6(1)(d) of the Criminal Justice (Evidence) (NI) Order 2004 ("the Order") to admit evidence of the applicant's previous convictions for rape and sexual assault in 2010. Article 6(1)(d) provides that bad character evidence is admissible if it is relevant to an important matter in issue between the defendant and the prosecution. Article 8(1)(a) of the Order provides that such matters include the question of whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence.

The calculation over whether to exclude a conviction involves a range of issues including the similarity between the conviction and the offence currently charged, the gravity and age of the offence and the weight of the other evidence to ensure that evidence is not used to bolster an otherwise weak case. The trial judge decided to admit the bad character evidence on the basis of the similarities between the two cases in that both complainants were unconscious in the sense that they did not know at the time what was happening to them and in both cases their clothing was removed without their knowledge. The trial judge did not think the previous conviction was too old to be admitted and considered that the probative value of the evidence was substantial and outweighed any prejudicial effect. The court considered the trial judge's approach to be "impeccable" and said it accords with the guidance given in case-law. It added that there is no absolute bar as regards old offences and that each case will turn upon its own facts. The court accepted there were inconsistencies in the complainant's account but said these were highlighted by the prosecution and judge throughout the trial and properly left to the jury to determine. It dismissed this ground of appeal.

## 3. *Inconsistent verdict*

The applicant contended that the jury's verdict was logically inconsistent as it had acquitted him of the count of administering a stupefying substance ("count two") which he said was inextricably linked to the rapes and the attempted choking charges. He claimed that M's account that she was "drugged" and thereby rendered unconscious was fundamental to her narrative. The court, however, said that on the facts of the case, it seemed entirely logical that the jury had reached guilty verdicts in relation to the rape and attempted choking counts. It said that count two was not a necessary pre-requisite to proving the charges of rape and attempted choking and that the injuries sustained by M could have led the jury to conclude that there was a lack of consent, whether she had been rendered unconscious or not. Further, it was open to the jury to conclude that M was rendered unconscious by the applicant as a result of a physical assault such as a blow to the head, for which there was ample evidence. The court concluded that count two was not so inextricably linked to the

# Judicial Communications Office

other counts that the guilty verdicts were logically inconsistent and unsafe and dismissed this ground of appeal

## 4. *The prosecution closing*

The applicant submitted that the emotive tone of the prosecution closing speech and reference to matters for which evidence had not been established rendered the convictions unsafe. In particular, objection was taken to prosecution counsel referring to the “merciless beating” the applicant had subjected the complainant to. The court said the closing speech must be viewed in its totality. It said that given the injuries to M it did not seem unreasonable for the prosecution to put the case to the jury that the applicant had caused the injuries and to reject the claim that M had walked into a door when visiting the bathroom. Furthermore, the court said the trial judge had made it clear on several occasions that the decisions about the facts of the case were for the jury alone to decide and cautioned them to clear their minds of any sympathy or prejudice. The court concluded that the trial judge had made it patently clear that the cause of the injuries was a matter of evidence on which the jury was free to reach their own conclusion. It dismissed this ground of appeal.

## 5. *The trial judge’s charge*

The applicant contended that the trial judge failed to present a sufficiently balanced summing-up and did not deal with the complainant’s dishonest and inconsistent evidence adequately. His counsel, when asked however, was unable to point to any non-direction or misdirection by the trial judge. The court said it was not essential that a judge should make every point that can be made for the defence: “The fundamental requirements are correct directions on points of law, an accurate review of the main facts and alleged facts, and a general impression of fairness.” The court said the trial judge referred to the complainant’s inconsistencies on several occasions throughout the summing up and issued cautions on two separate occasions. It noted that over the course of his detailed charge to the jury, the judge provided directions on points of law and a comprehensive review of the main facts and evidence adduced. The court concluded that the trial judge’s charge was of high quality and that it could see no merit in the criticisms made by the applicant. It dismissed this ground of appeal

## **Conclusion**

The court found no merit in any of the grounds of appeal and concluded that the conviction was safe. It refused leave to appeal and dismissed the application.

## **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>).

**ENDS**

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

# Judicial Communications Office

Alison Houston  
Judicial Communications Officer  
Lord Chief Justice's Office  
Royal Courts of Justice  
Chichester Street  
BELFAST  
BT1 3JF

Telephone: 028 9072 5921  
E-mail: [Alison.Houston@courtsni.gov.uk](mailto:Alison.Houston@courtsni.gov.uk)