

Judicial Communications Office

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COURT DISMISSES APPEAL BY SHAUNEEN BOYLE

Summary of Judgment

The Court of Appeal today dismissed an appeal against conviction by Shauneen Boyle who was convicted of the murder of Owen Creaney.

Shauneen Boyle (“the appellant”) was found guilty, along with her co-defendant Stephen Hughes, of the murder of Owen Creaney. She was given a life sentence with a 14 year tariff. She appealed her conviction in respect of the admission of bad character evidence, renewed her application for leave on other grounds and sought leave to introduce two further grounds of appeal.

Background

In the early hours of 3 July 2014, after the consumption of a very considerable volume of alcohol, the appellant, Stephen Hughes and Owen Creaney (“the deceased”) went to Hughes’ house. The evidence presented at the trial established that the deceased was assaulted that morning, receiving extremely serious injuries to his chest and head. The assault commenced in the living room, where all three were present and then moved to the hallway where the deceased was subjected to a savage attack. His injuries included a fracture of the breastbone, seven fractured ribs on the right side, eight fractured ribs on the left side, damage to the heart and significant brain damage. The deceased was then taken upstairs, at which stage he was still alive. Despite the fact that he was gravely injured and obviously in need of medical attention neither of the defendants summoned a doctor or ambulance. He survived upstairs for a number of days during which, given the nature of his injuries, he must have been in very considerable pain and suffering. His body was discovered by police on 5 July 2014 compacted into a green refuse bin outside the house.

Hughes blamed the appellant for the assault and the appellant blamed Hughes. Both separately made admissions to third parties of their involvement in the assault. At the trial both gave evidence, each blaming the other and denying any participation in the assault. Hughes, contrary to what he said in court, admitted to a probation officer for the purpose of the pre-sentence report that he had punched and kicked the victim a number of times. These admissions were not challenged and his Counsel contended that this was, although very belated, some evidence of remorse. The appellant, however, still maintained that she did not participate in the fatal assault.

The Admissions

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Hughes made an admission to his ex-partner that he had killed the deceased. The appellant made an admission to a friend she had assaulted the deceased by jumping on his stomach and head. In her own evidence the appellant maintained that this had been a false admission designed to secure her friend's assistance to get the deceased to hospital in the belief that if she thought Hughes had done the assaulting she would not have assisted. It was accepted at trial that the manner of the assault to which the appellant admitted was not consistent with the injuries sustained by the deceased and/or the forensic evidence obtained from her person and clothing. Whereas there was evidence of the deceased's blood on the trainers and jeans of Hughes the shoes worn by the appellant were light pumps and there was a limited amount of the deceased's blood on one of these. The appellant also admitted that she had been responsible for the assault on the deceased in phone calls to her uncle.

Bad character

The admission of bad character evidence is governed by the Criminal Justice (Evidence) (NI) Order 2004 ("the 2004 Order"). Article 3 defines "bad character" as evidence of, or a disposition towards, misconduct other than evidence which has to do with the alleged facts of the offence or misconduct in connection with the investigation or prosecution of that offence. Misconduct is defined as meaning the commission of an offence or other reprehensible behaviour. Decisions as to what is capable of constituting reprehensible behaviour are fact specific and its reach extends beyond conduct that is unlawful. Although propensity to commit offences of the kind with which the defendant is charged is a matter in issue the court must be satisfied that it is an important matter in issue before determining that it is admissible.

In this case the prosecution applied to admit six previous convictions of the appellant. These included assaults on the police and others when she had been drinking. The prosecution contended that these were relevant to the issue of whether the appellant had a propensity to commit an offence of the kind with which she was charged. It was noted, however, that the convictions were in respect of assaults where limited harm was caused and where there was no specific intent involved in the commission of the offences. The first issue in this case was whether the appellant and her co-accused participated in the assault and it was contended that the convictions were relevant to that issue. The second issue concerned the contention by the appellant that she had attempted to stop the co-accused from assaulting the deceased.

The prosecution submitted that the history of assaults was relevant to whether in these alcohol fuelled circumstances the jury should accept that account. The defence contended that there were a number of grounds on which it was unfair to the appellant to admit the convictions. The first concerned the difference between the charge of murder and the assaults in respect of which she was convicted. The second

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concerned the gravity of the harm caused as a result of this incident as compared with the harm caused in the matters for which the appellant was previously convicted. The third point was based on the proposition that five of the six convictions occurred in the course of a confrontation with police. The Court of Appeal accepted that these convictions involving police tended to suggest an absence of premeditation and planning in respect of the assaults but they also supported a tendency to resort to violence, particularly after the consumption of alcohol, and undermined the argument that the appellant was likely to be a force for restraint.

Counsel for the appellant also submitted that she had no convictions between December 2011 and July 2014. The Court accepted that it was relevant to take this into account as it may diminish the relevance of the convictions and accordingly assist with the argument that it would be unfair to admit them. It said, however, the passage of time was modest and the list of convictions demonstrated a clear tendency to resort to violence associated with the consumption of considerable quantities of alcohol.

The Court said the issue of whether the appellant participated in the assault and whether she sought to restrain Hughes were clearly important matters in issue in the context of this case:

“There was no real answer to the fact that these convictions were plainly relevant to those questions. The passage of time between the convictions and the offence was relatively short. We consider that there is no basis for concluding that it was unfair to admit the convictions having regard to the issues to which they were relevant and in any event that we should not interfere with the learned trial judge’s discretionary judgment to admit them.”

The new grounds

Before sending the jury out to deliberate the trial judge advised the jury that they should ask whether they were satisfied beyond reasonable doubt that the assault on the deceased which took place materially contributed to his death. If the answer to that question was yes the next question was whether they were satisfied beyond reasonable doubt that each defendant directly participated in the assault. If the answer to that question was yes they should then ask if they were satisfied beyond reasonable doubt that each particular defendant intended to cause at least grievous bodily harm.

During his evidence at trial Hughes denied that he had attacked the deceased but claimed that the attack had been carried out by the appellant however when interviewed for his pre-sentence report he admitted that he had kicked and punched the deceased on an unspecified number of times to the head in a moment of madness. It was accepted that the admissions made by him were entirely consistent

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with the jury's verdict and that the admissions did not involve him accepting sole responsibility for the attack nor did they exonerate the appellant. It was submitted that this admission demonstrated that Hughes had lied on multiple occasions in the course of the trial and this would have affected his reliability and credibility as a witness against the appellant. It was further submitted that the course of the trial would have been entirely different if Hughes had made his admissions in advance of the trial or pleaded guilty.

The Court noted that there had been no application in this case to sever the indictment on the basis of prejudice to the appellant. It said that where the evidence is broadly the same against each defendant and the issues include whether either of them committed the murder individually or whether they did it together the interests of justice will invariably lead to a joint trial in the interests of the witnesses and the avoidance of inconsistent outcomes. The Court said it follows from the verdict that the jury must have concluded that Hughes had lied and the members of the jury were, therefore, fully aware of the frailties of his evidence. It was for the jury to determine which part of Hughes' evidence, if any, was reliable and what weight they should give it. In light of the position taken by each accused at the time of the trial there was no suggestion that the procedure used for the trial was in any way unfair. In particular there was no proper basis for the judge to sever the indictment.

“We entirely accept that the trial would have been conducted on a different basis if the admission of the co-accused had been made before or during the trial but that does not in any sense render this conviction unsafe. The appellant would still have undergone a fair trial albeit that the approach of the prosecution and defence may well have been different. The fact that the trial would have been conducted differently does not cast any doubt on the fairness of the original trial. This was a case in which the admission by the co-accused accepted in substance the finding of the jury as to his guilt. The admission did not call into question the participation of the appellant or undermine in any way the verdict. It did not give rise to any concern about the safety of the appellant's conviction. Taking this argument to its ultimate conclusion the admission is irrelevant. Once the jury convicted both accused it must follow first, that they rejected the evidence of the co-accused. That called into question the reliability of his evidence against the appellant because the jury must in substance have concluded that the entire core of his case was a fabrication. Since his evidence was unreliable the submission was that it accordingly called into question the safety of the appellant's conviction because he had been called as a witness of fact. Of course exactly the same argument could be made in respect of the safety of the conviction of the co-accused. This submission is an

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undisguised attempt to evade the consequences of a perfectly properly joined indictment. We refuse leave to add this ground of appeal.”

The second ground which the appellant sought to introduce concerned the evidence that was given in relation to a cut on the deceased's nose. Her case was that after the assault she had had to clean up and had wiped substantial quantities of blood from the deceased's nose. The pathologist, however, gave evidence that he thought it probable that the injury to the nose occurred after rather than before death and that it did not, therefore, bleed. This was seen as an inconsistency in the appellant's account. The pathologist, however, accepted in cross-examination that he could not be certain that the injury was caused after death. The Court heard that the trial judge had read out the pathologist's evidence including the portion dealing with the possibility that the injury to the nose had occurred before the death of the deceased and accordingly would have bled profusely. It held there was therefore no basis for admitting this ground of appeal.

Applications to renew leave to appeal

The appellant at trial submitted that it was impossible to determine whether the murder had been committed by either of the defendants individually or together at the same time. The Court however stated that, in respect of each defendant, there was plain evidence of admissions in respect of the attack and those together with the circumstantial evidence which included the forensic evidence tying each defendant to the blood of the deceased, the fingerprint evidence in relation to the appellant on the outside of the barristers below where the attack took place, the conduct of the appellant after the assault, particularly in not using any of the opportunities available to her to get medical help, and the bad character material meant that the submission on a direction application could not succeed.

The Court also rejected the submission that the conduct of the prosecution in closing the case and including secondary participation as a basis on which the conviction could be established rendered the verdict unsafe. It said the jury was advised on the law by the trial judge and the route to verdict was absolutely clear that direct participation was required. A further point raised by the appellant was that the trial judge ought to have closed the case to the jury on the basis that the appellant might have engaged in some form of assault either before or after or possibly even during the attack by Hughes without a common plan. The Court said there was “absolutely no evidential basis” for such an analysis of the events to be put before the jury:

“We are satisfied that this point is without substance. The route to verdict clearly required the jury to come to the conclusion that there was both direct participation and the requisite *mens rea* before the appellant could be convicted of murder. If the jury had concluded that the appellant participated in some way

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in the attack but did not have an intention to cause grievous bodily injury the route to verdict would have led to an acquittal. The failure to refer to this contrived possibility described as a fourth way was effectively catered for in the route to verdict.”

Conclusion

The Court of Appeal was satisfied that the bad character evidence was relevant to the appellant’s participation in the attack and her account that she sought to restrain Hughes. It considered that the trial judge was correct to admit this evidence and refused the other applications to pursue ground of appeal and introduce fresh evidence. The appeal was dismissed.

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

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

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