Neutral Citation No. (2002) NICA 11

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Ref:	CARC3609
Delivered:	01/03/2002

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

v

LIAM JOHN McBRIDE

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CARSWELL LCJ

On 5 October 2001 we dismissed the applicant's application for leave to appeal against his conviction on 23 March 2000 of the murder of Sally Diver and on 3 December 2001 we declined to certify that any point of law of general public importance was involved in our decision. Counsel for the applicant has now applied to us again for a certificate and for leave to appeal to the House of Lords, contending that the law has changed since our earlier decision not to certify.

Appeal from this court to the House of Lords in criminal cases is governed by section 31 of the Criminal Appeal (Northern Ireland) Act 1980. Section 31(2) provides:

> "No appeal lies under this Part of this Act except with the leave of the Court or of the House of Lords; and such leave shall not be granted unless it is certified by the court that a point of law of general public importance is involved in the decision and it appears to the Court or to the House of Lords (as the case may be) that the point

> is one which ought to be considered by that House."

It was argued on behalf of the applicant that there is nothing in this subsection to confine the application for a certificate to a single occasion and that accordingly the court is not *functus officio* once it has entertained and granted or refused such an application. It was submitted that if the law has changed since the decision was given, it is open to the court to receive an application for extension of time under section 32(2) and consider the grant of a certificate. We see some force in this argument, though the bounds of such further applications would need careful consideration. We do not propose to rule on the point, on which we should want more extended argument before finally deciding it. For the purposes of the present application we shall assume that it would be open to us now to certify that a point of law of general public importance was involved in our decision, notwithstanding the fact that we refused a certificate on 3 December.

Mr Treacy QC for the applicant relied on the decision of the House of Lords in *Porter v Magill* [2002] 1 All ER 465, given on 13 December 2001. In that decision the House approved a "modest adjustment" of the principles laid down in *R v Gough* [1993] AC 646, which we had followed in our decision. That adjustment, made to take account of the jurisprudence of the European Court of Human Rights, was to provide that the test was to be objective, whether the court should conclude that the circumstances ascertained by it would lead a fair-minded and informed observer that there was a real possibility that the tribunal in question was biased. This test was

adopted in substitution for that formulated by Lord Goff and accepted by the other members of the House of Lords in *R v Gough,* which tended, as Lord Hope of Craighead said in *Porter v Magill* at page 506*b*, to emphasise the court's view of the facts as distinct from the public perception of them. The modest scale of this adjustment is demonstrated by the fact that Lord Goff observed in *R v Gough* at page 735*h* that it is difficult to see what difference there is between these tests.

We do not consider that the reformulation of the test means that a point of law of general public importance is involved in our decision. The law is now settled and does not require further elucidation by the House of Lords. Nor would the change make any difference to the result of the instant case, because we are quite clear that if we had applied the *Porter v Magill* test we should have reached exactly the same conclusion. The suggestion made on behalf of the applicant was that the juror might be regarded as biased because his son had been killed by stabbing in 1996, the implication being that he might have been unduly ready to convict a defendant accused of committing a murder by stabbing. We do not consider that a reasonable, fair-minded and informed observer would have said that there was a possibility that the juror would be biased.

We received an amended set of questions of law submitted on behalf of the applicant. For the reasons which we have given, we do not consider that questions 2 and 3 raise questions of law of general public importance, as the state of the law is now clear; moreover, if we had applied the test laid down in

Porter v Magill we should have come to just the same conclusion. Question 4 does not raise any new point, as the power and duty of the court to investigate the circumstances have always been clearly established: see the first of the propositions enunciated by Simon Brown LJ in *R v West London Coroner, ex parte Dallaglio* [1994] 4 All ER 139 at 151. We did not find it necessary to conduct an investigation into whether he had communicated his experiences to the other jurors, because, unlike the Irish case of *DPP v Tobin* (2001, Unreported), we do not think that such communication would have affected their judgment. We would observe also that any such inquiry would necessarily be limited so as not to infringe the prohibition contained in section 8(1) of the Contempt of Court Act 1981: cf also *R v Qureshi* [2002] 1 WLR 518. The result of our conclusions on questions 2, 3 and 4 is that Question 1 does not become material.

The application for a certificate and extension of time will therefore be refused.

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J U D G M E N T O F

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