Judicial Communications Office

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COURT DISMISSED APPEAL AGAINST CONVICTION BY JOSEPH DORRIAN

Summary of Judgment

The Court of Appeal[1] today upheld the conviction of Joseph Dorrian of the manslaughter of Darren O'Neill.

Joseph Dorrian ("the appellant") accepted that he had killed Darren O'Neill ("the deceased") with a single punch but said he was acting in lawful self-defence. The incident took place at Tyrella Beach on 27 June 2019 with the deceased dying two days later. The appellant punched the deceased to the face following an argument between them. The deceased fell to the ground, got back up again but collapsed shortly afterwards. The appellant contended that he had been acting in self-defence but this was not accepted by the jury who found him guilty of manslaughter.

Counsel for the appellant made two points on appeal:

- The appellant argued that the judge made "a serious error" by directing the jury to convict in circumstances where they were satisfied that the deceased had actually invited the appellant to strike him as that would mean that the appellant could not have believed that he was under attack;
- The judge should have given a "turn-the-tables" direction given the passage of time between the initial slap by the appellant and the punch thrown by him which caused the fatal injury. This argument was described as being of lesser significance than the first ground of appeal but in conjunction with the first ground created considerable unease about the legal directions in this case on the key issue of self-defence.

The Judge's Charge

The trial judge provided legal directions in his charge to the jury in the form of a written document entitled "Self-defence." The court cited the following paragraphs:

> "(v) If, on the evidence, you are sure that Mr Dorrian, at that moment, when he punched Mr O'Neill did not believe he was under threat from him because you are satisfied the latter had actually invited the defendant to strike him, then no question of self-defence arises and your verdict will be one of guilty.
>
> (vi) If, however, you consider it was or may have been the case that the defendant was or believed he was under attack or believed he was about to be attacked you must go on to consider whether his response was reasonable."

[1] The panel was Keegan LCJ, Treacy LJ and Sir Paul Maguire. Keegan LCJ delivered the judgment of the court.

The appellant took issue with the phraseology of paragraph (v). The content of this paragraph was raised with the judge at the Crown Court trial but the Court of Appeal was satisfied that it was not specifically pursued by counsel by way of requisition or formal legal submissions.

When self-defence is raised by a defendant the prosecution must prove that it is not established. Self-defence is a common sense concept which involves two questions, namely were the facts such that use of force was necessary; and was the degree of force reasonable. The first question is subjective as it involves consideration of the facts. The second question requires an objective assessment. The court said that in cases where self-defence is raised particular directions by a judge to a jury are required which must be tailored to the factual dispute of the individual case. The question whether the plea of self-defence is available depends on whether the rationalisation is such that the accused was entitled to defend himself. This depends on whether the violence offered by the victim was so out of proportion to the accused's actions as to give rise to the reasonable apprehension that the accused was in immediate danger from which he had no other means of escape, and whether the violence which he then used was no more than was necessary to preserve his own life or protect himself from serious injury.

The court said the appellant had clearly caused the death of the deceased by a punch. The jury, therefore, had to decide whether or not the use of force was necessary. This essentially involved an evaluation of how the appellant reacted to what was happening in a fight situation. The court said that whilst there were various stages of the fight the final act was the punch which caused the death:

> "Whether this amounted to self-defence comes down to a fairly simple proposition which is this. Either the appellant used force against the deceased as a result of an invitation by the victim in which case the force would not be necessary or he hit the victim due to feeling under threat."

The court considered the trial judge had made the jury aware that they had to assess the competing scenarios on the evidence, and most pertinently the appellant's own accounts of events. In order to determine the merits of the appeal it was vital to view paragraph (v) in context, related to the actual evidence given at the trial. The court said that when viewed in the round, paragraph (v) of the judge's directions essentially addressed the case made by the appellant in his first account to the police at the scene to the effect that he was invited to hit the deceased. The appellant, however, resiled from this account during interview after he had the benefit of legal advice. The account was also supported by other independent evidence:

> "In truth, the appellant had no proper explanation for resiling from his initial account to the police at the scene. Therefore, this was, as we have said, a focused, targeted and contextualised direction. We also consider that on one view the judge could have been seriously criticised had he not addressed this key issue which was front and centre for the jury and which formed the real focus in this case. … That is because the judge was entitled to summarise the main scenario for the jury to consider. He went on to consider in para (vi) the second scenario which is if the appellant felt under threat then the jury would have to consider the reasonableness of his actions."

The court considered that para (v) was therefore nothing more than a targeted and contextualised direction addressing one of the evidential scenarios critical to the PPS case as to the two blows struck at the rear of the car. It said that in the specific context of this trial that aspect of the direction made sense. The court observed that if it were so objectionable as to potentially undermine the safety of

the conviction and if it was such a serious error, it was surprising that the defence lawyers and the PPS did not address the matter during the trial:

> "Overall, we have formed the clear view that the written direction on self-defence was a carefully constructed document tailored to the particular facts and issues in the case. The judge was … highlighting to the jury a possible factual basis upon which they might conclude that the appellant did not believe he was under threat. This is a permissible fact specific route to take, particularly as the appellant gave evidence and was cross-examined in relation to this very issue and, indeed, said during that cross-examination if his first account which was supported by other witnesses were correct he was not acting in self-defence. This was his own evidence."

The court rejected the defence argument that inclusion of this scenario took away from the jury determination of factual matters as to whether the appellant heard the words and how he reacted. It said the stand out feature of this case on which its conclusion was based was the appellant's own accounts which were clear and unambiguous at the scene, at interview and in evidence. The court noted that para (v) had to be read in full and not taken out of context. It did not consider that a "turn-the-tables" direction was required as the jury was well aware of the factual context of this case from the comprehensive summing up that was given: "A turn-the-tables type direction is not a legal requirement and does not amount to a failure to direct the jury on a core issue."

Conclusion

The court said it could see nothing that would affect the safety of the conviction in this case. It did not consider that the judge erred in his direction on self-defence by way of misdirecting the jury by virtue of paragraph (v) of his written directions. Accordingly, the court decided that the conviction was safe and dismissed the appeal.

In closing, the court repeated its concern that neither experienced counsel in this case specifically raised or debated this point in court but now raised it as a point of fundamental and critical importance:

> "Criminal law practitioners should remember that they have an obligation, not just to their client but to the court. If they consider that there is a serious error in law it should be properly raised in court with legal authority for the trial judge to consider rather than resurrected at an appeal before the Court of Appeal which is obviously at a remove from the immediacy of a trial. This should be the established practice going forward."

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

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