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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 23 July 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE PICKEN

HIS HONOUR JUDGE MICHAEL CHAMBERS QC
(Sitting as a Judge of the CACD)

R E G I N A
v
STEPHEN SEDDON

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Mr J Hamilton QC appeared on behalf of the **Applicant**

J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: On 27 March 2013, after a trial in the Crown Court at Manchester Crown Square before Hamblen J (as he then was) and a jury, this applicant was convicted of two offences of attempted murder and two of murder. He was sentenced for the offences of murder to life imprisonment with a minimum term of 40 years. Concurrent sentences of 20 years' imprisonment were imposed for each of the offences of attempted murder. No appeal was brought at the time. More than 5 years later the applicant applied for a very long extension of time to apply for leave to appeal against his convictions. Those applications were refused by the single judge. They are now renewed to the full Court.

2. The victims of the offences were the applicant's father and mother, aged 68 and 65 respectively at the time of their deaths. They had for a number of years been carers for their grandson (the applicant's nephew) who had the misfortune to suffer from severe learning difficulties. The applicant, who was said to be in financial difficulties at the material time, was the sole beneficiary under the wills of his parents.

3. On 20 March 2012 the applicant was driving a hired car in which his parents and his nephew were passengers. He said that he was taking them for a belated Mother's Day lunch. As they were travelling along the road at the side of a canal the car suddenly swerved and went into the water. The applicant, who was equipped with both a lock-knife which he used to cut his seat belt and a crook lock, which could be used as a blunt instrument to break windows, was able to get out of the car. His parents and his nephew were trapped inside. The applicant was seen standing on the roof of the car, his weight causing it to sink and to list to one side. Fortunately, the fire service were quickly on the scene and managed to rescue those trapped in the car.

4. The applicant gave differing accounts of what he said had been a terrible accident. First, he said that he had suffered chest pains and must have blacked out. Alternatively, he said that he must have hit a brick or other object lying on the road. His father told the police that shortly before the incident the applicant had been complaining of chest pains, but medical examination revealed no problem with his heart. The hire car had no mechanical defect. Those, in brief, were the circumstances of the attempted murders.

5. On 6 July 2012 the applicant's parents were shot dead in their home, the murder weapon being a shotgun. Their bodies were left in positions designed to suggest suicide but the prosecution case was that they had been murdered by the applicant. A few days before the fatal shootings the applicant's father had told his general practitioner that his son had tried to kill him in the earlier incident and had indicated that he intended to confront his son about it.

6. The prosecution relied on circumstantial evidence against the applicant. Detailed evidence was given as to his movements and activities on the day of the shootings. He had borrowed a car from his brother-in-law, and CCTV footage was said to show the applicant in that car travelling towards his parents' home at about 1.33 pm and away from it at about 1.59 pm. Evidence was also adduced to show that he had recently been in repeated phone contact with an associate who lived in the Darlington area and who had a

criminal record which included a conviction for having a firearm with intent. There was evidence that the murder weapon, the shotgun, had been stolen in a burglary in Darlington. The prosecution therefore alleged that the applicant had a financial motive to kill his parents, had access via his associate to the murder weapon and had an opportunity to carry out the murders.

7. As to timing, there was evidence that at about noon that day the applicant's father had gone to a local fish and chip shop, made a purchase and returned home 5 minutes later. At 12.09 he received a phone call from the Social Services Department responsible for matters relating to the grandson. That call lasted about 15 minutes. Both the applicant's parents had consumed the fish and chips before they were shot. Expert evidence was given at trial on the subject of when they did so. Dr Conlong, a consultant gastroenterologist, was called by the prosecution. Dr Miller, a forensic bio-archaeologist, was called by the defence. Each had prepared reports setting out their findings and their opinions. They had also prepared a joint statement pursuant to a direction given under rule 19.6 of the Criminal Procedural Rules. That rule is in the following terms:

> "(1) This rule applies where more than one party wants to introduce expert evidence.
> (2) The court may direct the experts to—
> (a) discuss the expert issues in the proceedings; and
> (b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.
> (3) Except for that statement, the content of that discussion must not be referred to without the court's permission.
> (4) A party may not introduce expert evidence without the court's permission if the expert has not complied with a direction under this rule."

8. The relevant provision in the Criminal Practice Direction Part 19 paragraph 19C.2 makes clear that:

> "The purpose of discussions between experts is to agree and narrow issues and in particular to identify:
> (a) the extent of the agreement between them;
> (b) the points of and short reasons for any disagreement;
> (c) action, if any, which may be taken to resolve any outstanding points of disagreement; and
> (d) any further material issues not raised and the extent to which these issues are agreed."

9. In the joint statement the expert witnesses had concurred in this statement:
> "After assessing the results of detailed analysis carried out Dr Miller on the stomach contents of both victims we concur that the time of death is probably AT LEAST 2 to 3 hours following ingestion of the meal although it is UNLIKELY to be much MORE than 5 to 6 hours post consumption."

10. Dr Miller's evidence at trial was broadly consistent with what she had agreed to in the joint statement. Dr Conlong however, gave evidence at trial that his analysis of the stomach contents of the deceased enabled him to say (with 95% certainty) that they had died within 2 hours after eating their meal. He was of course cross-examined as to why his evidence in that regard differed from what was said in the joint statement and indeed differed from his initial report. It was in this context that we understand that the joint statement was provided to the jury. Dr Conlong explained to the jury why he had revised his opinion after further consideration. He explained in particular that Dr Miller's individual report had relied upon fat analysis and he said that in the joint statement he had taken her findings at face value. He denied a suggestion that he had altered his evidence at the request of the prosecution.

11. The importance of this conflict of expert opinion was that the longer the possible interval of time between the consumption of the fish and chips and the killing of the deceased, the less likely it was that the applicant could have been the killer.

12. As the trial progressed, the applicant gave evidence in his own defence in which he put forward explanations for the various aspects of circumstantial evidence on which the prosecution relied against him.

13. In his summing-up, the judge gave an initial direction as to expert evidence generally, before dealing with several expert witnesses from different disciplines who had given evidence in the course of the trial. In relation to the expert evidence as to the analysis of the stomach contents, he reminded the jury, in a section of his summing-up which covers some 12 pages of the transcript (from page 205 to page 217) of what each of the expert witnesses had said both in evidence in-chief and when cross-examined. In particular, he reminded the jury that Dr Conlong had been asked how he could have signed the joint statement if he was now saying that the relevant interval of time was less than 2 hours. He concluded his review of the evidence in a passage at page 216 to 217E which we should cite in full:

> "Now just then to summarise that evidence, Dr Miller's evidence is and remains that expressed in the joint signed opinion, namely that the time of death is probably at least two to three hours following ingestion of the meal.
>
> You also have her evidence that it is highly unlikely that it was less than one and a quarter hours, although she agreed that if the fish had no batter she could not discount that entirely but did not think it likely.
>
> Dr [Conlong's] opinion has fluctuated but the opinion expressed in his evidence-in-chief was that he was 95 per cent certain that the time of death was within two hours. But he also accepted that if Dr Miller's findings of fat are correct, then he still stands by the joint opinion of at least two to three hours.
>
> The defence say that Dr Miller's evidence is to be preferred. It was consistent,

> clear, thorough, properly explained and the result of four days of analysis. They say Dr [Conlong's] evidence was unsatisfactory, his opinion was fluctuating and uncertain, no one can say anything with 95 per cent certainty in this field and his analysis took place over only four hours. In any event, the defence say there is no reason to question Dr Miller's findings as to fat and therefore to go behind the expert's joint statement.
>
> The defence say that this is, to use their word, vital evidence. If the time of death was at least two hours after the last meal then that would not fit the defendant's window of opportunity for killing his parents. That window closes by about 1400 hours if not slightly before. On any view, they cannot have eaten their meal by 12 o'clock and it is likely to have been some time later. At the very least the defence say this creates reasonable doubt as to whether the defendant could have been the killer."

14. Later, in the closing section of his summing-up, the judge summarised the respective contentions of prosecution and defence. In doing so, he again reminded the jury of the reliance which defence counsel had placed on the expert evidence about the stomach contents, and reminded them of the defence submission that that evidence showed that the applicant did not in fact have the alleged opportunity to commit the murders. The jury, having heard and considered all of the evidence, convicted the applicant of all four charges and he was subsequently sentenced, as we have indicated.

15. The applicant was entitled to receive advice on appeal from the experienced combination of leading and junior counsel who represented him at trial. By inference, he either did not request such advice or he received negative advice. He subsequently instructed fresh legal representatives. Junior counsel drafted an advice and a ground of appeal and Mr Hamilton QC has today made oral submissions on the applicant's behalf. We are grateful to Mr Hamilton for the clarity of those submissions and we are the more grateful because he has been good enough to appear in this court acting pro bono.

16. The ground of appeal is expressed in the following written terms:

> "The conviction suffered by the applicant is unsafe for the following reason. The learned judge did not properly sum up the significance of the joint expert report and without this the jury did not have adequate explanation on how they should deal with this aspect of the case. A significant explanation was required in this case as the joint expert report significantly widens the time of death and therefore makes it less likely that the applicant was able to commit the murders."

17. Mr Hamilton acknowledges that the reference in that written ground to a joint report is incorrect, the witnesses having prepared a joint statement in accordance with the rule which we have mentioned. He further accepts that when reminding the jury of the evidence the judge set out clearly and accurately what had been said by each of the witnesses. But, he submits, what was missing from the summing-up was a direction of

law as to how the jury should approach the fact that Dr Conlong had departed from that which he had agreed in the joint statement. There is, we should note at once, an issue as to whether in fact Dr Conlong's evidence to the jury was inconsistent with the limited views with which he had concurred in the joint statement. But be that as it may, Mr Hamilton submits that, in the circumstances of this case, a direction of law and not merely a reminder of the evidence and of the parties' comments on the evidence was needed.

18. Mr Hamilton accepted that just as the joint statement involves the discharge by expert witnesses of solemn duties cast upon them by the rules, so too does their individual preparation of individual reports. At each stage of the process the expert witness owes a duty to the court. Mr Hamilton submits however that in the circumstances of this case, when the joint statement went before the jury a specific legal direction was needed explaining to the jury that the joint statement had been made by order of the court and explaining the circumstances in which it had been made, namely after meeting and discussion between the witnesses. Further, he submits, the jury should have been directed that the evidence of a witness who had departed from a joint statement should be examined carefully by the jury to see whether such a departure was explained and justified.

19. We have reflected upon those submissions and we have considered the relevant section of the summing-up in detail. The judge's initial direction as to expert evidence was in conventional terms. It clearly did not occur to any of the counsel appearing at trial that the directions were deficient because they lacked the sort of direction for which Mr Hamilton today contends. That initial direction was, in our judgment, impeccable. The judge explained the nature of expert evidence. He explained the need for the jury to evaluate its strengths and weaknesses as they would with any other witness. He reminded the jury that an expert witness is concerned only with one part of the case, whereas the jury must reach their verdicts on the whole of the evidence. He said at page 187B:

> "Where there is no dispute about the findings made by an expert you would no doubt wish to give effect to them, although you are not bound to do so if you see good reason in the evidence to reject them."

20. He went on to tell the jury that where expert witnesses disagreed, it was for the jury to judge their competing opinions.

21. As we have said, the judge having given that initial direction later referred, at length, to what each of the witnesses had said. It is not disputed that the summary was accurate and fairly balanced.

22. In our judgment, there was nothing more which the judge should or could properly have said. It is to be noted that neither expert witness purported to make any dogmatic assertion as to a precise time of death. To the contrary, their evidence was based necessarily on certain assumptions. For example, an assumption was made that neither deceased had begun eating the fish and chips until after the 15 minute phone call had been concluded.

23. Their opinions at trial as to the likely period which had elapsed between consumption of the fish and chips, and death, differed and the jury were reminded in the clearest possible terms of the differences between the witnesses. The forceful point could be made against Dr Conlong that his opinion had changed over time. That point, and the importance which the defence attached to it, were very clearly put before the jury in the summing-up. It was for the jury to decide what conclusions to draw from that evidence. If they found there to be a discrepancy between that with which Dr Conlong had concurred in the joint statement, and the evidence which he gave at trial, they were entitled to accept his evidence at trial, if they were sure it was right to do so. They were entitled to take that course because they were entitled to find that there was good cause for Dr Conlong to depart from the joint statement, either because they accepted the explanation which Dr Conlong had given them, or because of the compelling force of the other circumstantial evidence pointing to the applicant being the murderer, or for both those reasons.

24. We reject the submission that it was necessary in this case for a specific legal direction to be given as to the jury's approach to suggested inconsistency between part of a joint statement and part of a witness's evidence.

25. With respect to Mr Hamilton's argument, it does seem to us that if any such direction were necessary, the necessity would equally apply to every other aspect of the expert evidence in the trial. In our view, such a proposition goes too far and even the narrow proposition for which Mr Hamilton contends goes too far. The essential need was for the judge to remind the jury that there was an issue between the parties and that they would need to consider carefully the point made against Dr Conlong that he had shifted his ground. We have no doubt that the jury had that point very clearly before them.

26. The circumstantial evidence as a whole was, in our view, compelling. We are unable to see any basis on which it could be argued that the convictions are unsafe because of the suggested inadequacy of the summing-up on this one aspect of this expert evidence.

27. We would add that no sufficient explanation has been given for the very long delay in bringing this appeal. In junior counsel's written submissions a brief and inadequate explanation was given for the passage of time since fresh legal representatives were instructed. However, no attempt was made to explain the years of delay prior to that stage being reached. Had we thought there was any merit in the ground of appeal we would have wanted much more detail about the grounds on which an extension of time was sought. As it is, no purpose would be served by further enquiry into that matter because for the reasons we have given, an appeal has no prospect of success and an extension of time is therefore inappropriate.

28. For all those reasons, grateful though we are to Mr Hamilton, this renewed application fails and is refused.

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