

Judicial Communications Office

Thursday 30 June 2011

COURT OF APPEAL DIMISSES APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION AND SENTENCE

Summary of Judgment

The Court of Appeal today dismissed an application for leave to appeal against conviction and sentence by Adam Smyth who was convicted of the attempted murder of Mark Keller in a stabbing incident in Belfast city centre on 6 November 2005.

The appeal was heard by the Lord Chief Justice, Lord Justice Girvan and Lord Justice Coghlin.

The Court heard that the offences arose out of an incident in the early hours of Sunday 6 November 2005 in Belfast city centre when Adam Smyth (“the applicant”), with two co-accused Philip Irwin and Alan Stewart, mounted an unprovoked attack on Mark Keller, his brother Anthony Keller and their two friends. Mark Keller was stabbed during this attack and as a result of his injuries is now effectively blind. The applicant was convicted by a jury of attempted murder, wounding with intent to cause grievous bodily harm and assault occasioning actual bodily harm. He was sentenced to a total of 20 years detention in the Young Offenders Centre.

The applicant sought leave to appeal on the grounds that the trial judge misdirected the jury in relation to joint enterprise. He also sought leave to admit fresh evidence.

The fresh evidence was that of William Williamson, who said he met one of the applicant’s co-accused, Philip Irwin, when both were in prison. He claimed that he and Irwin discussed what they were in for and Irwin bragged to him that he had stabbed someone but that his co-accused had got the blame. Several years later Williamson attended a party at which the applicant’s parents were also present. By coincidence they got talking and it came to light that it was their son who had been convicted with Philip Irwin. It was accepted that Williamson’s evidence is hearsay evidence. While the maker of the statement, Philip Irwin, could be called to give evidence to support or deny this, the applicant declined to call him as he feared that he would rely upon his right not to incriminate himself.

The Lord Chief Justice, delivering the judgment of the Court, said that the evidence could only be admitted on the basis that it was in the interests of justice to do so. He referred to the fact that Williamson had said that Irwin was bragging about what he had done and this could result in considerable doubt about the reliability of the

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statement. He also said that Williamson's extensive criminal record calls into question the reliability of his evidence about the making of the statement. The Lord Chief Justice said that if the evidence had been presented at the trial the jury would not have been in a position to properly determine whether any statement made by Irwin was a genuine admission against interest or whether it was a piece of false bravado. The Lord Chief Justice concluded that:

"The interests of justice do not consist solely of the interests of the defendant and in light of the difficulties that the prosecution would face in dealing with this material it seems to us inevitable that this evidence would not have been admissible. In those circumstances the application to receive this evidence must fail."

The applicant also sought leave to appeal against his conviction on the ground that the trial judge misdirected the jury in respect of the roles played by him and his co-accused and specifically on how different verdicts might arise. The Lord Chief Justice did not accept that there was any substance in this submission. He said it was clear that the trial judge directed the jury in accordance with the law and that the jury carefully carried out its task in differentiating where it felt appropriate to do so between the applicant and his co-accused, Stewart. The Court of Appeal concluded that the fact that they did this was because of the careful direction given by the trial judge:

"The issue for the jury was the intent of the applicant at the time that he wielded this large knife into the chest of the victim up to the hilt. In all of the circumstances surrounding this attack it was clearly open to them to infer an intention to kill. It did not necessarily follow that Stewart who was involved in the same fight had or contemplated the same intention."

The Court of Appeal then went on to consider an application to appeal against sentence. The Lord Chief Justice said the Court has previously recognised the endemic problem of violence inflicted by young males often with the use of a weapon. He said that in this case there is absolutely no suggestion that the victims and their friends played any part whatsoever in the events leading up to the "gratuitous and barbaric infliction of horrendous violence" upon them principally by the use of this large knife. The Lord Chief Justice concluded:

"There is no possible criticism that could be made of a sentence of 20 years imprisonment for this appalling attack that had such dreadful consequences for an innocent young man."

The Court of Appeal dismissed the application.

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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 Courts and Tribunals Service website (www.courtsni.gov.uk).

ENDS

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