

Judicial Communications Office

Thursday 8 September 2011

COURT OF APPEAL DISMISSES APPEALS IN “YOUNG MAN’S DEFENCE” CASES

Summary of Judgment

The Court of Appeal today dismissed two appeals against conviction for the offence of unlawful carnal knowledge of a girl. Both cases involved consideration of the defence of reasonable belief in relation to the victim’s age.

The reasonable belief defence, known as “the young man’s defence”, is available in other parts of the United Kingdom. In 1922, the legislation in England and Wales was amended to establish that it was a defence in certain cases for a man to have reasonable cause to believe that a girl was over a certain age. The legislation in Northern Ireland was amended the following year to provide that it was not a defence to have reasonable cause to believe that a girl was 17 or over. On 2 February 2009, the NI legislation was repealed and replaced by Article 16(1) of the Sexual Offences (Northern Ireland) Order 2008 which introduced a reasonable belief defence for the offence of sexual activity with a child where the offender is over 18 and the child is aged between 13 and 16. This legislation was not, however, in effect when Hamilton and Brown were tried.

Kenneth Hamilton was convicted in 2009 by a jury on 3 counts of unlawful carnal knowledge of a girl under the age of 17 years. He was sentenced to 6 months imprisonment suspended for 3 years on each count and required to comply with the notification requirements of the Sexual Offences Act 2003 for 7 years. Hamilton claimed that he believed the girl, with whom he had a relationship and who became pregnant, was 17. He stated that when he discovered she was 14 he desisted from any further sexual intercourse with her. He appealed against his conviction on the grounds that he should have been allowed to raise a defence that he had reasonable cause to believe that the girl was 17. He claimed that the unavailability of this defence in Northern Ireland contravened his rights under the European Convention on Human Rights. Hamilton also sought leave to appeal against his sentence on the grounds that it was manifestly excessive and wrong in principle as the relationship was consensual.

Hamilton claimed he was being treated differently because he lives in NI and could not, therefore, avail of the reasonable belief defence. The Court of Appeal did not accept this argument. The Lord Chief Justice, delivering the judgment of the Court, said that the devolution arrangements within the UK are designed to provide the devolved legislatures with the responsibility to determine their response to social problems. The Lord Chief Justice stated that the method chosen by the legislature in NI has been to make criminally liable those who have sexual intercourse with underage children:

“In our view the legislature was entitled to make this social judgment. It is not invalidated by the fact that a different judgment

Judicial Communications Office

has been made elsewhere nor by the fact that a different solution has now been arrived at in this jurisdiction for acts on or after 2 February 2009. The amendment to the law made on that date [by Article 16(1) of the Sexual Offences (NI) Order 2008] does not invalidate the legislative provisions which governed the earlier period.”

Hamilton also argued that he had suffered discrimination based on gender. It was claimed that if the offence had been committed against a person of the same sex then the legislation would entitle the offender to rely on the reasonable belief defence. The Court of Appeal did not accept this argument. It concluded that, while the legislation could have extended the protection to young boys, it was aimed at young girls because they run the risk of unwanted pregnancy. The Court of Appeal considered that there was nothing discriminatory about this as the state was providing effective protection for those vulnerable to the sexual attention of others.

The Court of Appeal dismissed Hamilton’s appeal against conviction. It also dismissed his appeal against sentence on the basis that Hamilton was 23 and the victim was 14. The Lord Chief Justice said that this was not a case of two teenagers who had developed a relationship from a virtuous friendship – “the pregnancy of the victim was an aggravating factor and a custodial sentence was certainly in play”.

Richard Brown was convicted in 2004, following a plea of guilty, of unlawful carnal knowledge of a girl under 14 years of age. He was sentenced to 3 years detention in the Young Offenders Centre suspended for 2 years. He appealed against his conviction on the basis that he had entered a plea of guilty as he was unable to rely on the “reasonable belief” defence but that he did not have the intent necessary to commit the offence. The Court heard that he had been drinking with friends and met the victim who went with him and consented to sex. She was 13 at the time although Brown stated in interview that he believed that she was 15.

The Lord Chief Justice stated that there is a constitutional principle which imposes a duty on the courts in most circumstances to import a requirement of intent into a statutory offence, in order to give effect to the will of Parliament, where the statute is silent on the mental element necessary for the crime. In this case, the relevant legislation as originally enacted (section 4 of the Criminal Law Amendment Act 1885) stated that “any person who unlawfully and carnally knew any girl under the age of 13 years should be guilty of a felony and could be sentenced to penal servitude for life”. The legislation was silent on intent. In comparison, adjoining provisions of the Act did include a “reasonable cause” defence. The Lord Chief Justice said that it was apparent, therefore, that there was a deliberate decision when drafting the Act to omit any defence based upon the offender’s belief of the age of the child for an offence under section 4 of the 1885 Act. To imply such a defence into the original enactment would be to act contrary to the parliamentary intention of the statute as discerned by reading its provisions in context. The Court of Appeal dismissed the appeal against conviction.

The Court of Appeal also considered Brown’s appeal against sentence. The Lord Chief Justice concluded, in the particular circumstances of the case, that the sentence of 3 years detention was excessive and substituted a sentence of 2 years detention suspended as before for 2 years.

Judicial Communications Office

NOTES TO EDITORS

1. This summary should be read together with the judgments and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgments will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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

Alison Houston
Judicial Communications Officer
Lord Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921

Fax: 028 9023 6838

E-mail: Alison.Houston@courtsni.gov.uk