

Judicial Communications Office

Friday 10 June 2011

COURT OF APPEAL DISMISSES APPEAL BY ROY KERR FOR ATTEMPTED MURDER OF DOCTOR AND HIS FAMILY

Summary of Judgment

The Court of Appeal today gave its reasons for dismissing an application for leave to appeal against Roy Kerr who was sentenced on 21 December 2009 for the attempted murder of Dr Raymond White and his family.

Roy Kerr was convicted by a jury on 8 October 2009 of attempting to murder Dr Raymond White, his wife Aileen White and their son David White. He was also convicted of arson, attempted arson of three cars belonging to the White family and handling stolen goods. He was sentenced to life imprisonment and the judge fixed a minimum tariff of 10 years.

On 1 June 2011 Roy Kerr sought leave to appeal against his conviction on the counts of attempted murder, arson with intent and attempted arson. The appeal was heard by Lord Justice Higgins, Lord Justice Girvan and Lord Justice Coghlin. The Court of Appeal dismissed his application for leave to appeal and said it would give its reasons at a later date. Lord Justice Girvan delivered the judgment of the Court this morning.

The court heard that Dr White was awakened in the early hours of Thursday 8th May 2008 by the sound of a man shouting outside. He looked out his bedroom window and saw flames near the conservatory at the back of the house. Dr White roused his wife and son and the family made their way downstairs exiting the house by the front door. A blue wheelie bin had been pushed to the outside of this door. Dr White later discovered that this bin had been partially filled with newspaper.

A second smaller bin filled with paper and a branch of a tree had been placed directly outside the side door of the house and a grey wheelie bin also stuffed with paper was lying on its side and against the conservatory doors, the last remaining exit. This grey bin was alight and flames were licking the side of the PVC doors. A small green plastic petrol can was found on the patio beside the conservatory. The court also heard that the tyres on each of the family cars

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parked at the front and side of the house had also been deflated and newspapers stuffed under wheel arches.

On being wakened by his father, and before making his escape, David White observed from his front bedroom window two persons, a male and a female, running down the drive and away from the property.

At the forefront of this case was the issue of the past history between Kerr and the White family. The family home was burgled twice by Roy Kerr in May 2004 and again in May 2006. Both Dr and Mrs White were witnesses in the case against Kerr when he was convicted at Belfast Crown Court in June 2005 for offences relating to the first burglary when he received a total sentence of 3 years' imprisonment. Kerr was released from custody on 6th March 2006. The second burglary occurred at the White home, ten weeks later on 25th May 2006. On this occasion, a substantial number of items were stolen together with a Renault Megane car belonging to Mrs White. Kerr was found in possession of this car and was charged with the offence of handling stolen goods and returned for trial before Belfast Crown Court. The trial was due to be heard on the morning of Thursday 8th May 2008, just hours after the arson attack on the White family home. Once again both Dr and Mrs White were to be witnesses in the case.

Kerr sought leave to appeal against his conviction on three grounds.

The first was that there was insufficient evidence for a reasonable jury to conclude that he had the requisite intention to kill the members of the White family. It was contended that the placing of the paper in the wheelie bins, the locating of the bins at the rear of the house, the placing of paper in the wheel arches of the cars, the deflating of the tyres and the bringing of a petrol container to the house amounted to merely preparatory acts. The court was told that Kerr had not moved from the realm of preparation into the realm of execution. The Court of Appeal concluded that Kerr had moved into the realm of execution. Lord Justice Girvan said:

“He had started the acts necessary to bring about his plan to murder the members of the White family and burn their cars. Moreover, it is artificial to view the arson counts as distinct from the commencement of the implementation of his murder plan. The acts were all inter-related and the applicant had started the execution of the plan.”

Lord Justice Girvan also dismissed a claim by Kerr that the trial judge had misled the jury. He said the trial judge's directions to the jury were exemplary in their clarity. He added that the trial judge said nothing

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untoward in his summing up and that the jury were left in no doubt as to the issues which they had to decide.

The second ground was that the jury gave inconsistent verdicts between Kerr and his co-accused Tanya Holmes. Holmes was cleared by the jury of the offences of attempted murder but found guilty of arson, attempted arson and handling stolen goods. Lord Justice Girvan said it was entirely open to the jury to draw lesser inference against the co-accused from the evidence and conclude as they did that she did not have the same murderous intent as the applicant. The verdicts are not legally or logically inconsistent. He found there was nothing in the jury's verdict in respect of Tanya Holmes to call into question the safety of the verdict against the applicant which was amply justified by the evidence.

The third ground was that there was insufficient evidence for the jury to conclude, in relation to the attempted arson of the cars, that Kerr's actions were anything more than merely preparatory. It was claimed that he made no attempt to ignite the papers. Again, the Court of Appeal dismissed this claim as it had found that Kerr had started the execution of his plan.

The Court of Appeal dismissed the application for leave to appeal. It refused an application for legal aid on the basis that Kerr had not showed that he had an arguable point in the interests of justice.

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 Court Service website (www.courtsni.gov.uk).

ENDS

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