

Judicial Communications Office

Tuesday 24 May 2011

COURT OF APPEAL UPHOLDS CONVICTION FOR MURDERS OF DAVID McILWAIN AND ANDREW ROBB

Summary of Judgment

The Court of Appeal today dismissed an appeal by Stephen Leslie Brown (aka Stephen Leslie Revels) that his conviction for the murders of David McIlwaine and Andrew Robb was unsafe.

The appeal was heard by the Lord Chief Justice sitting with Lord Justice Higgins and Mr Justice McCloskey. The Lord Chief Justice delivered the judgment of the Court.

The Court heard that the prosecution relied on three strands of evidence at the trial in order to prove the case against Brown. These were the evidence of Mark Burcombe who said he was present at the scene where the murder of David McIlwaine had taken place and was a short distance away from where Andrew Robb was murdered shortly beforehand; forensic material; and hearsay evidence from a former girlfriend of Brown's who claimed that he had made admissions of his involvement in the murder of David McIlwaine to her.

Brown's appeal against his conviction was based on the reliance which the trial judge placed on the evidence of Burcombe. Counsel for Brown contended that the trial judge erred by not rejecting Burcombe's evidence in light of a number of alleged inconsistencies and falsehoods. Brown had also alleged that Burcombe was a UVF sympathiser and part of a wider plan to implicate him.

The Lord Chief Justice, in his judgment, noted some of the discrepancies between the evidence given by Burcombe in his police interviews in 2005 and 2008. The Court of Appeal, however, rejected the grounds advanced by Brown. The Lord Chief Justice said:

"The meticulous and careful manner in which the learned trial judge reviewed the detail of Burcombe's evidence and assessed him as a witness demonstrated the rigorous

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scrutiny which was required [under case law]. We conclude, therefore, that we do not consider that the reliance by the learned trial judge on the evidence of Burcombe was unsafe, nor did it engender any unease in respect of the conclusions reached.”

Brown also submitted that even if Burcombe’s evidence was accepted it did not follow that he should have been convicted of the murder of Andrew Robb. Brown claimed there was no eyewitness evidence of the murder and that there was no direct evidence that he had a knife at the time of the attack. The Court of Appeal rejected this submission. The Lord Chief Justice said this was a case where there was abundant material to support the conclusion that Brown was voluntarily present at the scene of the murder:

“[Brown] had driven the car in which the deceased were taken to a remote and isolated spot. Robb was then taken off by [Brown] and Dillon to a quiet part of the country road where he was the subject of a vicious and savage attack. The injuries sustained by Robb reveal the ferocity of the attack. The direct attack was carried out by one or both of [Brown] and Dillon. Both came swaggering back towards the car after the attack at which point [Brown] launched a vicious attack upon McIlwaine. He then encouraged Dillon to cut his throat. [Brown] then himself further attacked McIlwaine with the knife as he lay on the road and thereafter disposed of the knife.”

The Lord Chief Justice said that the trial judge was perfectly entitled to reach the conclusion that this evidence alone satisfied the necessary elements to prove murder. He added that the actions of [Brown] in driving Robb to the scene and separating him from Burcombe and McIlwaine was clearly for the purpose of launching the attack and was intended to do so. He said that Brown and Dillon knew or believed that they were encouraging each other. While it was not possible to attribute specific actions to either of them, their subsequent behaviour was a clear indicator of their approval of the method of attack on Robb and their intention to kill.

The Court of Appeal found no error in the approach of the trial judge and dismissed the appeal.

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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 Court Service website (www.courtsni.gov.uk).
2. Brown was convicted of the murders on 3 March 2009. He was sentenced by the trial judge, Mr Justice Gillen, to a minimum period of 30 years imprisonment on each count.

ENDS

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