

Judicial Communications Office

Friday 16 September 2011

COURT OF APPEAL ORDERS RETRIAL OF MARTIN STOKES

The Court of Appeal today ordered a retrial in the case of Martin Stokes, one of three men convicted for the murder of John Mongan. The appeals by Christopher Stokes and Edward Stokes were dismissed.

The appellants were convicted at Belfast Crown Court on 15 and 16 December 2009 of the murder of John Mongan. They appealed against their conviction on the grounds that the trial judge should have withdrawn the case from the jury because of the inconsistencies and contradictions in the evidence of Julia Mongan, the widow of John Mongan and principle prosecution witness. The appellants also contended that the convictions were unsafe because the jury were misled or misdirected by the trial judge on critical issues.

The Lord Chief Justice, delivering the judgment of the Court, dealt firstly with the issue of whether the case should have been withdrawn from the jury. The appellants contended that Julia Mongan had deliberately lied in the course of her evidence. She initially stated that the men who attacked her and her husband were wearing balaclavas but recognised two of them by their voices. She later changed her evidence to say they were unmasked. The Court heard there was supporting mobile phone and DNA evidence linking two of the appellants to the attack.

The Lord Chief Justice said the prosecution could only succeed if it established beyond reasonable doubt that the appellants were unmasked and the trial judge so directed the jury. He said that on that issue there could be no supporting evidence and the case depended, therefore, on whether the jury were satisfied to the required standard on the evidence of Julia Mongan. The trial judge rejected the submission that Julia Mongan's evidence was unreliable and the Court of Appeal agreed that he was correct to do so:

“When Julia Mongan spoke to police officers shortly after the murder there was evidence that she was deeply upset and on occasions was not making sense. Some witnesses at the scene doubted whether she accepted that her husband was dead. Her case was that she wanted to speak to her husband before saying anything to the police. It was in that context that the jury had to consider what she said. The evidence about what she said in the immediate aftermath of the killing clearly contradicted what she said later that morning but this was a credibility issue for the jury to determine.”

The Court of Appeal held that the evidence of Julia Mongan was not so transparently unreliable that the case should have been withdrawn from the jury.

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The Lord Chief Justice then turned to the second basis on which it was claimed that the case should have been withdrawn from the jury; whether the trial judge had misdirected or misled the jury. The appellants submitted that the trial judge's charge to the jury was confusing, unbalanced and rhetorical because although he had exposed the frailties of the Crown case on the first afternoon he had changed tack on the second day and suggested to the jury how they might resolve the difficulties which he had previously indicated to them were impediments to the Crown case succeeding. The appellants also argued that repeated references to the failure of any of the appellants to give evidence and his comparison with the fact that Julia Mongan had undergone detailed scrutiny altered the burden of proof by suggesting that the appellants had to prove their innocence.

The Lord Chief Justice stated that, although the trial judge undoubtedly presented the defence case in a very positive light on the first day and highlighted more aspects of the Crown case on the second day it did not seem that he strayed outside the boundary of presenting the issues fairly to the jury. He added that this was a case with two opposing views of the facts and the credibility of the main Crown witness and it was inevitable that the presentation of the case for the defence and that for the prosecution was likely to result in considerable contrast. The Court did not accept that there was any risk that the jury might have resolved the issue of whether the intruders were masked by relying on the supporting evidence. The Lord Chief Justice said the appellants could not claim that the judge had misled the jury on the burden of proof issue given the clear direction he gave at the start of his charge and the way in which he dealt with this issue in other parts of his charge.

The Court of Appeal then considered particular issues in relation to each appellant.

It was submitted on behalf of Christopher Stokes that the judge was wrong to characterise the mobile phone evidence as potentially powerful evidence in support of the recognition evidence in relation to him. The phone evidence put him in the vicinity of the murder and the place where the vehicle used in the attack was found burnt out. It was argued that the phone was in the possession of a relative at the time of his arrest and had been used by her when he was in custody. The Court said that it could see no basis for considering his conviction unsafe and dismissed his appeal.

A spot of blood on a shirt belonging to Edward Stokes had a one in a billion chance of belonging to anyone other than John Mongan. The Court said the jury was entitled to rely on this evidence as powerful evidence tending to suggest that this was the blood of John Mongan. The weight of this supporting evidence was increased by the unchallenged evidence that Edward Stokes and John Mongan had not met for over a year. The Court concluded that the conviction was not unsafe and dismissed his appeal.

The only supporting evidence in respect of Martin Stokes was his failure to give evidence. It was contended that Julia Mongan had given three different descriptions of the third person involved in the attack whom she identified as Martin Stokes. She had also referred to him as "Tom Stokes". The Court said that the trial judge did not draw this to the jury's attention. It considered that it was important for the jury to consider not only the reference to Tom but also to have in their minds the varying descriptions when analysing the weight they should give to the recognition evidence:

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“In light of the evidential matters arising in the case of Martin Stokes we consider that a direction dealing with the possibility of honest mistake was necessary in this case. Such a direction needed to reflect the fact that this case had proceeded over a number of weeks and the jury needed to be reminded of those discrepancies on which the defence relied. The differing descriptions formed part of the defence case but were not mentioned in the charge. It is not necessary for a judge to mention every aspect of the case for the defence or the prosecution but considerable care has to be taken in long trials where issues of honest mistake arise to make sure that the jury consider all of the relevant evidence.”

The Lord Chief Justice said that the Court was left with a sense of unease about the safety of the conviction of Martin Stokes and ordered a retrial.

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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