

Judicial Communications Office

3 October 2024

COURT DELIVERS JUDGMENT IN HISTORIC CONVICTION APPEAL

Summary of Judgment

The Court of Appeal¹ today extended the time to bring an appeal and quashed the conviction of Pauline Gallagher (nee McLaughlin) (“the appellant”) dating back to 1978 for her secondary role in terrorism offences including murder and attempted murder based on her low IQ and literacy.

Three men had also been convicted and sentenced to prison sentences for some of the offences with which the appellant was charged prior to her being tried. William Joseph Doherty and James Anthony Campbell were prosecuted for the murder of Lieutenant Michael Simpson and the attempted murder of Private Stankiewicz. Both accused were convicted and sentenced to life imprisonment on the murder. Doherty was sentenced to 16 years for the attempted murder and Campbell eight years for that offence. Gerard Majella Kavanagh was charged on the same indictment with unrelated offences and was sentenced to two years’ imprisonment suspended for three years.

The appellant was aged between 17 and 19 years of age at the time of the offences and 21 when convicted. She made admissions to her involvement in the offences during police interview and on this basis, she was convicted following a trial. She was sentenced to detention at the Secretary of State’s pleasure but was released in 1981 on medical grounds.

The core ground of appeal was that the appellant’s convictions are unsafe in that her legal representatives at her trial failed to conduct her defence in accordance with her instructions and failed, in particular, to deploy available evidence of her low IQ, illiteracy and ill-treatment of police relevant to the admissibility and/or reliability of purported statements of admission on which the prosecution was decisively based and/or the formation of the specific intent required for the offences of which she was convicted. On appeal, her legal representatives argued that the court convicted her without knowledge which was plainly material to the admissibility or reliability of the purported statements of admission she made to the police and to its assessment of the *mens rea* required for specific intent.

Some highly relevant material became available in the course of a Criminal Cases Review Commission (“CCRC”) review of the case which the court was asked to consider as fresh evidence. This included prosecution instructions to a psychiatrist Dr Moffett and his report from January 1978; a prosecution file note dated 10 February 1978; and a note by junior prosecuting counsel at the time detailing his recollection of the case dated 11 March 2016.

The issue on appeal was whether or not the medical evidence which was available to the defence at the time of the conviction should have been used to make a case for the exclusion of the appellant’s confessions. In order to determine this the court said it must look at what the evidence of the

¹ The panel was Keegan LCJ, Treacy LJ and Rooney J. Keegan LCJ delivered the judgment of the court.

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experts was; how the interviews were actually conducted and what the evidence was in relation to them; the content of the confessions made; and the legal representation given to the case².

On 11 May 1977 (nine months before the trial), Mr JW Patten, Principal Clinical Psychologist, provided a report at the request of the appellant's solicitor to assess her intellectual and educational abilities, her suggestibility during the interview process and the reliability of her statements of admission. Mr Patten concluded that the appellant's IQ was 64, suggesting "that she is functioning in what is usually regarded as the high grade mentally subnormal category". He said she should have been classified as "educationally sub-normal" and her educational attainments "would be approximately equivalent to that of an average child in the first year of primary school education." The appellant had claimed that during interview, she was shown and made to kiss a photograph of a youth who had been shot, photographs of a woman who had been shot and was told this woman would haunt her at night, and she was threatened with assassination. Mr Patten said these experiences, if true, would have been sufficient to produce an "acute emotional disturbance in an immature girl of such limited intelligence, to such an extent that she might well have agreed to sign a statement which she might not have made or which she might not have understood." He concluded that "the reliability of such a statement, from such a person, in such a condition must therefore be suspect."

On 5 January 1978, the prosecution requested a report from Dr Moffett, a Consultant Psychiatrist, on the effect of the duration and frequency of questioning a person such as the appellant and the lucidity of her statements. In his report dated 30 January 1978 (two weeks before the trial), Dr Moffett stated that the appellant "showed evidence of mental retardation on examination" and was "almost illiterate." Dr Moffett further stated that "the degree of her abnormality would make her Borderline Special Care". Dr Moffett did not carry out any formal psychological testing of the appellant but indicated that she had "an estimated mental age of 11-12 years". Despite these observations, Dr Moffett stated that he did not "feel that the duration or the frequency of the periods of questioning were excessively long. ... In my experience she could withstand such questioning eg she would not easily be forced to give a reply if she did not wish to."

The court commented that the medical experts plainly agreed that the appellant fell within the high-grade mentally subnormal category, and both were of the opinion that the appellant would have been classified as educationally subnormal and illiterate. The disagreement between them related to the impact of police interrogation on the appellant. The court noted that a *voir dire* did not take place in this case and therefore, the validity and cogency of the opinions expressed by both experts were not tested under cross-examination: "However, there is no doubt that all involved knew this was a vulnerable young woman who could be subject to psychological pressure during interviewing."

The court said it was highly significant that the appellant, when interviewed (contemporaneously) by Mr Patten on 9 May 1977, spoke of being shown the photographs by the interviewing police officers. In a note prepared by DMR Barlow, a senior prosecutor in the Office of the DPP dated 8 February 1978 (and disclosed as a result of the CCRC investigation), it was stated that the police conceded that at least one such photograph was shown to the appellant. There was, therefore, evidence to corroborate the appellant's own account of this. The court said the significance and the weight to be attached to this new evidence and the impropriety of the police must also be considered in light of the medical evidence:

² A chronology of the interviews and evidence in this case is set out in para [57] of the judgment.

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- Firstly, it was now clear that the appellant's account to Mr Patten that she was shown at least one photograph of a corpse was accurate and truthful.
- Secondly, as a principal clinical psychologist, Mr Patten possessed the training and experience to carry out the relevant psychological tests to ascertain (i) the level of the appellant's intelligence and educational functioning and (ii) to assess the impact of the police questioning of such a vulnerable individual. According to Mr Patten, the results of the tests were not fabricated. Based on these tests, Mr Patten assessed the appellant as having very limited intelligence and almost negligible educational attainments. Furthermore, he provided a striking opinion as to the potential effect of psychological pressure.

The court commented that, unlike Mr Patten, the prosecution expert, Dr Moffett was not a consultant clinical psychologist and did not carry out any psychological testing on the appellant (indeed, he was not qualified to carry out such tests and to assess the results of the tests on the appellant). Despite these limitations Dr Moffett proffered an opinion that the appellant was capable of withstanding police interrogation over such lengthy periods. The court said that in light of the new evidence, the question necessarily arises as to whether Dr Moffett's opinion would have changed if he had been told that during the interrogation process, this vulnerable individual, with a learning disability, had given a truthful account that she had been shown at least one photograph of a corpse in the context of her longstanding fear of death and corpses:

"We are troubled by the impact of police interrogation on such an obviously vulnerable individual. The interviewing officers, in our judgment, would clearly have been alerted to the appellant's intellectual limitations and learning disability. They were plainly aware that she could not read or write. The appellant's vulnerabilities and deficits were evident and should not have been ignored. For the reasons given above specific to the expert medical evidence on the vulnerability of the appellant, the impropriety of the interviewing officers, the significance of the fresh evidence and the absence of a solicitor or independent adult gives rise to real concerns about the reliability of the admissions."

The court referenced the fact that Mr Barlow's note also recorded that the main difficulty in the case appeared to be that at the time of her interviews the police had not fully appreciated the low level of her intellect and that accordingly there was a 'real danger' that the confession might be excluded. If it was excluded the prosecution would collapse. The court said that what generated this concern was the police admission in the possession of the prosecution that they had not fully appreciated the low level of her intellect:

"The significance of this admission for the entire case was immediately apparent to the experienced prosecutor hence the unqualified acknowledgment of the "real danger" that the police admission might lead to the exclusion of the evidence upon which the prosecution depended. Given the prosecution concern that the entire trial could collapse as a result of this evidence it is concerning that the prosecution failed to discharge their duty "to the courts to ensure that all relevant evidence of help to an accused is either led by them or made available to the defence." Allied to this is the fact that the appellant was not provided with any safeguards that her mental vulnerabilities and fundamental fairness required, such as an appropriate adult or solicitor. Despite their qualified understanding that the appellant was mentally

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impaired, the police proceeded with their interrogations and treated her as if they were dealing with a teenage adult of normal ability when, in fact, she was a vulnerable young woman of very low intellect.”

The court commented that the appellant’s admissions were presented in the police statements of evidence as if these admissions were unproblematic. It is also significant that her low level of intellect was absent from the statements of evidence of the interrogating police and there was not the slightest hint given by the experienced police officers that they were dealing with an immature, “almost illiterate” girl with a mental age of 11-12 on the prosecution case. Furthermore, the prosecution did not disclose to the defence the evidence that the police admitted that she was shown *at least* one photograph of a deceased person. This evidence was neither led in evidence nor disclosed to the appellant:

“This decision was made notwithstanding its obvious relevance to the issues of admissibility and reliability. This decision was also made with the knowledge that the appellant had made complaints at the time to the police and the medical experts about being subject to improper treatment. Of most relevance for present purposes is that her complaint included a very unusual and specific allegation that she had been shown photographs of dead bodies. It follows that the police material, if disclosed, would have constituted strong corroborative evidence of her account.”

Conclusion

The court said the new material which became available as a result of its disclosure to the CCRC raised an issue of non-disclosure to the defence as to how this vulnerable defendant was treated. In addition, the question of psychological pressure has now arisen based upon Mr Patten’s report of 11 May 1977. Allied to this compelling evidence was the material that was produced from the DPP which showed it was apparent that police accepted that at least one photograph of a deceased person was shown to the appellant during the interview process but disputed other conduct alleged. The court noted that the appellant made no allegations or complaints of psychological ill-treatment at any of her medical examinations but said that Mr Patten’s report raised a valid question as to psychological fragility or suggestibility.

The court said it understood the prosecution’s point that there was no complaint by the appellant about her legal team or shortly thereafter but that the point as to the appellant’s inability to form an intent for murder could still have been raised during trial. However, the court went on to say;

“Therefore, this is not in fact a case where inadequate legal representation (as discussed in the cases referred to in this judgement) is the real issue. That is because, the defence were unaware of the police admission that the appellant had been shown photographs of at least one dead body. Obviously, this revelation would have helped establish a case of psychological pressure which in turn would have called into question the reliability of the appellant’s confession. In truth, this appeal is well founded upon the medical evidence in relation to this appellant’s mental age and intellectual capacity at the time. This evidence raises a valid query as to the appellant’s reliability in terms of standards prevailing in 1977 never mind 2024. That is because it was recognised by both prosecution and defence that this was a vulnerable young woman, with an IQ of 64 in the learning disability bracket. Yet there were no safeguards provided to protect her including access to a lawyer and an appropriate adult. These circumstances are stark and to our mind make this an exceptional

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case. Such a situation would be unthinkable today where in our courts we have a much greater appreciation of the suggestibility of those with such a low IQ and recognise the needs of vulnerable witnesses and take steps to safeguard them.”

The court added that the new evidence contained in documents disclosed to the CCRC establish the improper conduct of the interviewing police officers who showed at least one photograph of a dead body to a vulnerable woman. This admission was not disclosed to the defence who, if it had been, could have mounted a case of psychological pressure. Furthermore, if the trial judge had been aware of this, we consider, there was a real possibility that he would have taken a different course in the case as he would have been slow to conclude that the confession was reliable.

The court, therefore, admitted the fresh material which was clearly capable of belief and had a bearing on the appeal especially as to the psychological pressure and the use of photographs of dead people by interviewing officers. In addition, it said that based on a better understanding of the effect of intellectual deficits on reliability, the fact that safeguards needed to protect against unfairness were not applied in this case to a young woman who was illiterate and operating at the level of a young child was significant. The court said the key point highlighted by Mr Patten on behalf of the appellant at trial was that she was suggestible and open to psychological pressure and crucially, if her version of being presented with photographs of dead people was correct, she could well have signed a false statement. It commented that, in those circumstances, the absence of a solicitor or independent adult gives rise to real concerns about the reliability of her confession.

The court concluded that it cannot be satisfied as to the safety of these convictions. It extended time for the appeal and quashed the convictions.

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 Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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