

24 March 2000

CARC3162 IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

JAMES ARCHIBALD GREENE

CARSWELL LCJ

In this application the appellant seeks an order that the Causeway Health and Social Services Trust (the Trust) make disclosure of and deliver up to the appellant a number of documents in its possession or power which appear to have a possible bearing on the issues in the appeal. The Trust has adopted the attitude, very properly in the circumstances of the case, that it will not oppose production of the documents, which clearly should be made available for inspection by the parties to the appeal in the interests of justice, but it wishes to have the protection of an order of the court in doing so. We for our part are persuaded of the importance of having the documents made available to the parties and the court, but reserved our decision so that we might consider the extent of the power of the court to make the order sought by the appellant.

The appellant was convicted on 28 March 1998 at Ballymena Crown Court on three counts of indecent assault on S L McC in December 1991, when she was ten years of age and living in her father's house. The sole evidence implicating the appellant in these offences came from the complainant. The appellant disputed the truthfulness and reliability of the complainant's evidence. He was sentenced to eighteen months' imprisonment, to be followed by a period of probation.

By letter dated 27 September 1999 the Director of Public Prosecutions for Northern Ireland informed the appellant's solicitors that he had received a report from the investigating officer about matters which had come to his attention since the conviction and sentence of the appellant:

"Recently S has made a number of further disclosures about her father (now deceased) which she has later withdrawn, stating she made these things up against her father.

She further disclosed that she had in fact sexually abused her brother. On investigation of these allegations S withdrew her admission stating that she made the entire thing up. An interview of S McC was conducted on Thursday 6 May S totally denied that anything had ever happened to him or anyone had touched him in any inappropriate way."

The police sought information from the Trust about any allegations made by the complainant to Social Services personnel and the withdrawal of any such allegations. The Trust declined to disclose to the police any such records in its possession or power.

By notice dated 27 October 1999 the appellant's solicitors applied to the court for an extension of time within which to apply for leave to appeal against his conviction. The time was extended by Nicholson LJ, then on 14 January 2000 McCollum LJ granted leave to appeal. The grounds of appeal have not yet been formulated, pending investigation of the allegations made and withdrawn by the complainant, but it is plain that they will centre round the submission that in these circumstances her complaints against the appellant were unreliable.

The appellant submitted that section 25(1) of the Criminal Appeal (Northern Ireland) Act 1980 (as amended) confers on the court power to make the order for production and inspection of documents which he sought:

"25. (1) For the purposes of an appeal under this Part of this Act, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice -

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to the Court necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court, whether or not he was called at the trial; and
- (c) receive any evidence which was not adduced at the trial."

The wording of section 25(1)(a) is the same as that of its predecessor section 9(a) of the Criminal Appeal (Northern Ireland) Act 1930.

It was submitted on behalf of the appellant that not only did this provision empower the court to order that documents be produced to it for proof in evidence, but it authorised it to order their production by way of third party discovery to the appellant's advisers. Counsel were unable to cite any reported decision in which such an order was made, nor have our own researches produced any result. Rule 32 of the rules made under the Criminal Appeal Act 1907, section 9 of which contained almost the same wording as section 25(1)(a) of the 1980 Act, provided that the court could order any document etc to be produced *to the registrar or before them*. It is clear that the rule-making body regarded the power as extending only to production of the documents to the court. This in our view is likely to have been the intention of Parliament in enacting the 1907 and 1930 Acts, when third party discovery had not been instituted in civil proceedings. As the 1980 Act contained the same wording, it would in our opinion be difficult to construe it in such a way as to permit an extended power of ordering third party discovery. This conclusion is confirmed by the practice of the Court of Appeal in England, which is to order third parties to produce relevant documents to the court.

We therefore propose to order that the Trust shall within 14 days deliver to the Master (Queen's Bench and Appeals) the documents specified in the notice of motion. The Master may permit the parties to examine them and take copies, and shall ensure that the original documents are available for examination by the court on the hearing of the appeal.

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JUDGMENT

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