

Judicial Communications Office

8 December 2017

COURT DIRECTS FRESH COMMITTAL PROCEEDINGS IN ROBERT HAMILL CASE

Summary of Judgment

The Divisional Court, sitting today in Belfast, quashed a decision of a District Judge not to commit three people for trial on charges of perverting the course of justice and conspiring to give false information to police in connection with the investigation into the death of Robert Hamill. The Court directed that a fresh preliminary inquiry should be held.

The proceedings were brought by Jessica Hamill (“the applicant”), the mother of Robert Hamill who died on 8 May 1997 following an assault in Portadown on 27 April 1997. She was seeking to quash the decision of a District Judge (Magistrates’ Courts) (“District Judge”) on 3 September 2014, declining to commit Robert Atkinson, Eleanor Atkinson and Kenneth Hanvey for trial in the Crown Court.

The District Judge, on the basis of his assessment of the credibility of the evidence of a key prosecution witness, Andrea Jones, held that there was insufficient evidence to put the accused on trial. The applicant claims that the District Judge failed to consider all of the evidence against the defendants neglecting to take into account three matters which supported the central evidence of Andrea Jones that there was a conspiracy involving the defendants. Those matters were (a) the conviction of Andrea Jones for an offence in relation to giving false information to the police as to the telephone call; (b) the conviction of her then husband Michael McKee for the same offence; and (c) evidence in relation to a telephone call to a taxi company and the records of the taxi company which supported Andrea Jones’ evidence that she was not at the Atkinsons’ home on the night of 26 – 27 April 2017 but rather was at her own home.

Background

Reserve Constable Atkinson was on duty on 27 April 1997 and in the vicinity when Robert Hamill was attacked. At 08:37 hours that day, a phone call was made from his home to the home of a suspect Allister Hanvey (which was also the home of Kenneth Hanvey). It is alleged that Reserve Constable Atkinson advised Allister Hanvey to destroy the clothing he was wearing at the time of the incident.

Reserve Constable Atkinson was interviewed by police on 9 September 1997 and denied making the telephone call. When the telephone records were put to him in a later police interview, he claimed that Michael McKee and Andrea Jones had stayed overnight at the Atkinsons’ home and that the telephone call had been made by

Judicial Communications Office

Michael McKee, who was the uncle of Allister Hanvey's girlfriend. Reserve Constable Atkinson claimed that Michael McKee was aware that there had been trouble in the town the previous night and had been concerned about his niece. Michael McKee, his wife Andrea Jones and Eleanor Atkinson all provided statements to police which supported Reserve Constable Atkinson's version of events.

In 2000, following the breakdown of her marriage to Michael McKee, Andrea Jones approached police and provided them with statements in which she admitted that neither she nor her husband stayed at the Atkinsons' home on the night in question and that she had been asked by her husband to make the false statement to police following a request from Reserve Constable Atkinson to provide a false explanation for the telephone call. Michael McKee was interviewed and admitted to making a false statement. Both he and Andrea Jones pleaded guilty at Craigavon Crown Court to doing an act tending to pervert the course of justice and on 7 May 2002 Michael McKee was sentenced to 6 months imprisonment while Andrea Jones was sentenced to 6 months imprisonment suspended for 2 years.

In April 2003 the Director of Public Prosecutions ("DPP") initiated a prosecution against Reserve Constable Atkinson and his wife for conspiracy to do an act tending to pervert the course of justice along with Kenneth Hanvey. A preliminary investigation was listed for hearing on 22 December 2003 at which Andrea Jones was due to give evidence but she did not attend court claiming that her young child was ill. The committal was adjourned. Andrea Jones was living in Wales at this time and claimed she had received a threatening letter telling her not to give evidence and also that she needed to attend a medical examination in respect of a job which she had been offered. The PPS directed in March 2004 that the criminal proceedings be withdrawn on the basis that "in view of the threadbare state of Andrea [Jones'] credibility there is no longer a reasonable prospect of convicting any of the defendants of the offences with which they are charged".

On 16 November 2004 the Secretary of State announced a public inquiry into the circumstances surrounding the death of Robert Hamill. In its interim report dated 12 March 2010 the Inquiry recommended the DPP reconsider its decision not to prosecute Reserve Constable Atkinson for the offence of conspiracy to pervert the course of justice. Following a review of the case, including a further assessment of the credibility of Andrea Jones' evidence to the Inquiry, the PPS decided to prosecute Reserve Constable Atkinson, and Eleanor Atkinson for conspiracy to pervert the course of justice and to prosecute Kenneth Hanvey for giving false information to the police about the telephone call with intent to pervert the course of justice. Andrea Jones attended a preliminary inquiry in the Magistrates' Court and gave evidence on 11 June 2012. She was cross examined about her divorce from Michael McKee. She said she had remarried in 2007, but had not taken her husband's surname. When asked to provide her husband's surname she refused to do so claiming that identifying him may place him or their child at risk. The solicitor,

Judicial Communications Office

however, produced a marriage certificate indicating that Andrea Jones had married her current husband on 9 February 2001. The committal proceedings were adjourned to allow police to investigate the issues raised during the cross-examination and Andrea Jones was prosecuted in Wales for the offence of bigamy. On 6 November 2013 she pleaded guilty to the offence and was fined £100.

On 21 May 2013 the PPS told the court that it had decided to continue with the prosecution against the three defendants despite the issues surrounding Andrea Jones' credibility. This gave rise to an abuse of process application by the defendants to another District Judge who stayed the committal proceedings on the basis of his concerns as to the lack of credibility of Andrea Jones. The PPS brought an application for judicial review of that decision and the Divisional Court quashed the decision and directed that the preliminary inquiry commence afresh before another judge.

A fresh preliminary inquiry commenced on 11 August 2014 before the District Judge at which Andrea Jones gave evidence. She asserted that she and Michael McKee had been at their own home on the night of 26-27 April 1997 and were accompanied by Rodney Smith and Joy Kitchen. The court received statements from employees of a taxi company establishing that a phone call had been made from the McKee's home to collect someone called "Smith" at 2.15 am on 27 April 2017.

The District Judge stated that the credibility of Andrea Jones was clearly material to his determination. He said he found her to be "an entirely unreliable and utterly unconvincing witness". He concluded that he was in the "wholly exceptional position of not being able to attribute any degree of credibility to any portion of her deposition" and declined to return the defendants to the Crown Court. The PPS indicated that it was not intending to challenge the District Judge's decision or to proceed by way of voluntary bill. The applicant commenced these judicial review proceedings on 2 December 2014. The hearing was delayed as a new witness was identified to the PSNI by the Hamill family but in June 2017 the PPS informed the family that it did not intend to prosecute anyone as a result of this new information.

Legal principles

The committal stage is a pre-trial screening procedure the purpose of which is to ensure that there is sufficient evidence to commit the accused to trial. The Divisional Court referred to a leading judgment which stated that: "Questions of credibility, except in the *clearest of cases*, do not normally result in a finding that there is no prima facie case. They are *usually* left to be determined at the trial." Therefore, whilst credibility can be taken into account at committal ordinarily it will not result in a finding that there is insufficient evidence.

The test for sufficiency of evidence at committal means that cases can be left to the jury with suitable directions even if "the witness is shown to have lied, to have made previous false complaints or to bear the defendant some grudge". In relation to the

Judicial Communications Office

assessment of circumstantial evidence the approach involves a requirement that all the evidence is taken into account ie a globalised approach is required not only to test the overall strength of the case but also to obtain an appropriate insight into the interdependence of the various elements of the prosecution case. In relation to the assessment of a witness's credibility and reliability there is no requirement for an overall globalised approach and if the prosecution consider core features of a defendant's evidence against his co-defendants to be capable of belief, it is entitled to put him forward as a witness even if he was not considered to be telling the whole truth about his own involvement.

Lord Justice Stephens, delivering the decision of the Divisional Court, said it considered that whilst credibility and reliability have to be considered in relation to different allegations there remains the requirement of a globalised approach in relation to the evaluation of the individual allegations, so that all the evidence is taken into account in relation to each allegation, including as to whether there is a measure of independent support. Applying that approach there is a requirement for the court to consider all the factors in coming to an overall conclusion as to credibility and reliability in relation to each issue. The conclusion that a defendant should not be returned for trial should only be reached "where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict". A defendant should not be returned for trial only *where there is no possible view of the facts* upon which a jury could properly come to the conclusion that the defendant is guilty or where there is no evidence upon which a jury properly directed could properly convict.

Discussion

The decision not to return the defendants for trial was based on an assessment by the District Judge of the credibility and reliability of Andrea Jones. The District Judge said he had been "treated to a series of lies and half-truths from a witness who was unwilling or unable to provide the court with a truthful account in respect of any aspect of her life since 1997." There was no challenge to that general assessment in the Divisional Court nor was there any challenge to the various egregious examples given by the District Judge in his judgment.

The issue for the Divisional Court was whether in arriving at the decision not to return the defendants for trial the District Judge took into account the evidence supporting the central or core allegation of Andrea Jones. The Court acknowledged that just because a judge does not refer expressly to an item of evidence, or does not analyse the impact of that evidence, it does not mean that he left it out of account but does raise the question as to whether the supporting evidence was taken into account. This was particularly relevant in this case where it was not manifestly obvious that the evidence was insufficient.

Lord Justice Stephens said the supporting evidence in this case included the convictions of Andrea Jones and Michael McKee which had the effect of being supportive evidence of false information having been given by them to the police.

Judicial Communications Office

The only express reference to their convictions are found in the “Background” section of the District Judge’s judgment and there is no consideration of the impact of those convictions on the assessment of the reliability and credibility of the evidence of Andrea Jones in relation to the core allegation. In relation to the conviction of Andrea Jones the judge said there might be an inference or an explanation for that conviction given the background of the break-up of her marriage but without an express acceptance of that explanation by her it would be inappropriate and an error of law at the committal stage to rely on such an inference to undermine or to explain away the support of her conviction to her core allegation. Lord Justice Stephens further stated that in relation to the independent supporting evidence of the conviction of Michael McKee the Court cannot discern any inference in favour of the prosecution which explains why he pleaded guilty so as to undermine or explain away the support of his conviction to the core evidence of Andrea Jones.

The independent supporting evidence in relation to the telephone call to the taxi company and the record of the taxi company were only referred to in the District Judge’s judgment by reference to the committal papers being augmented by two statements. There is no consideration of the impact of that evidence on the assessment of the reliability and credibility of the evidence of Andrea Jones in relation to the core allegation.

The Divisional Court considered that it was the conclusion of the District Judge that the evidence of Andrea Jones was so unreliable that it *alone* could not provide the basis for a finding of sufficient evidence. However her evidence in relation to the core allegation had to be considered in conjunction with other supporting evidence to determine whether there was sufficient evidence to return the defendants for trial bearing in mind that insufficient evidence is that there is no possible view of the facts upon which a jury could properly come to the conclusion that a defendant is guilty. The Court formed the view that the decision in relation to the credibility and reliability of Andrea Jones, given the supporting evidence, did not manifestly or obviously lead to the conclusion that there is insufficient evidence and that given the fleeting references to that supporting evidence and the lack of any express analysis of it was of the view that there was an error of law in that it was not taken into account when considering the sufficiency of the evidence of Andrea Jones in relation to the core or central allegation.

Conclusion

The Divisional Court quashed the District Judge’s decision of 3 September 2014 and remitted the case with a direction that the preliminary inquiry commence afresh before another judge who should feel free to make decisions on the basis of the evidence without regard to any conclusions previously reached.

NOTES TO EDITORS

Judicial Communications Office

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 (www.judiciary-ni.gov.uk).

ENDS

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