Judicial Communications Office

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COURT DISMISSES APPEAL AGAINST CONVICTION

Summary of Judgment

The Court of Appeal today dismissed an appeal by Stephen Meneice against his conviction at Belfast Crown Court on 11 May 2017 on seven counts of sexual touching involving penetration of a person under 16 and two counts of sexual touching of a person under 16.

The Court heard that Stephen Meneice ("the appellant"), who was an acquaintance of the 14 year old complainant's father, met her at an 11th night bonfire in July 2012. The complainant was having difficulties at home and staying out late owing to a lack of parental control. The prosecution case was that the appellant groomed her, providing cigarettes, alcohol and other gifts as well as giving her lifts in his car and lavishing attention upon her. During the period between 11 July and 15 September 2012, the appellant was alleged to have had regular sexual intercourse with the complainant. Her parents became aware of rumours about their activity and brought the complainant to a police station on 10 January 2013. She initially claimed that there had only been one occasion of sexual activity but in a later interview in May 2014 she made the allegations which constituted the other eight charges.

The Trial Judge's Warning to the Jury

The Court of Appeal noted that it was clear that on the prosecution case the complainant had lied during her interview in January 2012 when she denied that there had been more than one occasion of sexual activity. At trial, the Crown Court judge informed the jury that the evidence of the complainant was central to the prosecution case and reminded them that she had admitted telling a lie to the police and repeating it several times during the interview. He reminded them that when asked in May 2014 about why she said this she replied "I was scared to speak before" and in cross-examination she added "I was not ready to tell them everything". The judge warned the jury that in light of her lies they should exercise considerable care in the analysis of her evidence.

The trial judge also addressed the jury about inconsistencies in the complainant's evidence particularly in relation to the location at which the offences had occurred and aspects of the appellant's appearance which were discussed in the course of the case. The approach which a judge should take in directing the jury on unsupported evidence of an alleged complainant in a sexual case is set out in R v Makanjuola. This states that it is a matter of discretion for the judge as to whether to urge caution in relation to a particular witness and the terms on which that should be done. It also summarises the guidance for judges should they consider that a warning is required. The Court of Appeal commented that there was no suggestion that the trial judge in this case failed to take into account the lies and inconsistencies on which the appellant relied in challenging the complainant's evidence. It noted that the appellant's complaint came down to an assertion that the discretionary judgement of the trial judge was outside the range of that which was available to him but, as Makanjuola makes

clear, there are very limited circumstances in which the Court of Appeal will interfere with such a judgement:

> "The trial judge is always in a much better position to form a view about what is required in the circumstances of the particular case. We find no basis upon which to interfere with the exercise of his discretion in this case."

The Prosecution's Closing Speech

There were a number of criticisms of the manner in which prosecuting junior counsel closed the case to the jury. The first related to the description of the background to the relationship between the appellant and the complainant. It was claimed that counsel was seeking to bring into the jury's deliberations experiences from outside the evidence by referring to the appellant's emotions when he was 14 years old. The Court of Appeal did not accept that criticism. It said it was the task of the jury to apply their common sense to the issue before them and in doing so they are bound to take into account their experience of life. The Court agreed that some of the language had been "extremely colourful" but did not consider the comments to be out of place.

The next criticism related to the comments by junior counsel about the appellant's decision not to give evidence. The Court said that prosecution counsel should regard themselves as ministers of justice and in closing the case to the jury should be clinical and dispassionate and the case should be presented fairly. It was, of course, open to prosecution counsel to comment on the fact that the appellant had failed to give evidence. Counsel, however, should advise the jury that the defendant has the right not to give evidence, that they may draw an adverse conclusion against the defendant only if they think it fair and proper to do so and the jury should be told that they should not find the defendant guilty only, or mainly, because he did not give evidence.

The Court noted that junior counsel did not make any reference to these protections in her closing speech and, indeed, commented: "The defendant isn't coming into the witness box to tell you that, because you think that if any of you were accused, any of the males among you or, in fact, the females, any of your male relatives were accused of something of this nature, you would probably want to get in there and tell the people you didn't do it." The Court of Appeal said that in light of this "inappropriate speech" by the prosecution, senior counsel for the appellant in his closing explained to the jury that his client had answered in detail all questions during his police interview and he had therefore advised him not to give evidence. The Court further noted that the trial judge had provided a careful direction on this to the jury and that there had been no application to discharge the jury at the end of the prosecution's closing speech. Although the Court considered the remarks of prosecution counsel were inappropriate, it did not feel that they rendered the conviction unsafe.

The third criticism of the prosecution speech concerned evidence that when the complainant's father asked to see her mobile phone she said she had deleted messages from the appellant. In dealing with this, prosecution counsel characterised the actions of the complainant as "the most natural thing in the world". Defence counsel, however, characterised the complainant's actions as the destruction of evidence. The trial judge declined to accept that description on the basis that a criminal investigation had not by that stage commenced or been contemplated and he addressed the issue in his summing up to the

jury. He also invited the jury to consider why the complainant had deliberately deleted the texts when considering her reliability as a witness. The Court of Appeal said that, in those circumstances, it did not consider this portion of the summing up affected the safety of the conviction.

The final criticism related to whether there was collusion between the complainant, members of her family and her friends. The Court of Appeal noted that the issue of collusion was not raised in the discussion with the trial judge before speeches and was only touched on tangentially in the closing speech of defence counsel. The Court did not consider that the issue of collusion added anything to the appellant's case.

Conclusion

The appeal was dismissed.

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

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Judicial Communications Officer
Lord Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
E-mail: Alison.Houston@courtsni.gov.uk