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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday, 31 January 2019

B e f o r e:

PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR BRIAN LEVESON)

MR JUSTICE NICOL

SIR BRIAN KEITH
R E G I N A

v

NOEL JONES

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Mr S Killeen & Ms Yates appeared on behalf of the **Applicant**

Mr M Heywood QC appeared on behalf of the **Crown**

J U D G M E N T

(Approved)

1. PRESIDENT OF THE QUEEN'S BENCH DIVISION: This applicant, who is now 61 years of age, pleaded guilty to manslaughter. He was sentenced to a term of 12 years' imprisonment which he served. Now, nearly 37 years on, he seeks leave, out of time, to appeal against his conviction. The Registrar has referred both the application for an extension of time and the application for leave to the Full Court.
2. The background is unusual and as follows. Janet Commins was born on 9 June 1960. On 7 January 1976, shortly after 7.00 pm, she left her home in Flint to meet friends at the local swimming baths. She left a note for her parents, as she often did, to say that she would be back at around 8.30 pm. She saw her friends at the baths and was sighted close to her home in the company of two teenage boys at about 8.10. At some time between 8.15 and 8.45 she called to see a friend who lived a few doors away from her in her own street. She was told they were not in. After 9.00 pm, when the baths were closed, Janet's parents became increasingly concerned and at 11.00 pm they reported her missing. On the following morning children playing on rough ground adjacent to Gwyneth Primary School found Janet's body concealed in bushes.
3. A police investigation was commenced. From the state of her clothing and her limbs it appeared that she had been dragged by the legs to where her body was concealed. Her upper clothing was normally fastened and in place but the waistband and zip of her jeans were unfastened. Her knickers were missing. Both her shoes were missing. They were found, each, in a separate thicket, close to the pathway from where her body had been concealed. The pathway was the usual route that she and her friends took to go to and from the swimming baths.
4. Dr Ruben Woodcock, a forensic pathologist, attended the scene and later conducted a postmortem. He identified bruising under the chin, consistent with light pressure with a hand, linear abrasions, consistent with clothing being held tightly in an act of asphyxia, a 1-inch wound to the scalp consistent with a blow from a blunt object, a recent tear half an inch long from the back of the vulvar orifice extending towards the anus consistent with forceful penile penetration and a tear in the anus, again 1 inch long consistent with forceful penile penetration. There were other minor injuries consistent with sexual assault. The conclusion reached by the pathologist was that the vaginal and anal injuries occurred when Janet's circulatory system was already shutting down and the scalp injury might have been occasioned as her body was dragged to the deposition site. Swabs were taken during the postmortem and a swab from a semen stain on the back of the jeans worn by Janet.
5. Dr Woodcock considered that death took place suddenly and unexpectedly from pressure on the neck due to vasovagal stimulation in the course of a sexual attack involving rape and buggery.
6. A large scale murder investigation was launched and all men in the area aged between 17 and 22 were asked to account for their movements between 6.00 pm on 7 January and 8.00 am on 8 January. Any that could not were brought to the police station for questioning.

7. Stephen Hough had just turned 17 and was one of those who were interviewed. He admitted that he had been masturbating in the back of a car that he kept on a bus yard in Earl Street on the far side of Flint from his home address and he had been out siphoning petrol. His account was then accepted. He was charged with theft and appeared before the magistrates where he was fined. At the time he was living barely half a mile from the home address of the victim; his grandparents lived a few doors away from that. Both houses overlooked the pathway and playing fields near where the body was found.
8. This applicant had no apparent connection with the victim. He came from a family of travellers and was illiterate. He made an admission to his girlfriend that he had killed Janet and as a result on 17 January 1976 he was arrested, although it is worthwhile noting that there is evidence that when challenged he laughed the admission off and that after he had been charged he continued to deny involvement in the killing when his girlfriend visited him.
9. The applicant was interviewed pursuant to the judge's rules, the crime and investigation long pre-dating the protections included by the Police and Criminal Evidence Act 1984. Neither solicitor nor appropriate adult was present and the interviews were not recorded.
10. The applicant made two statements under caution, dated 29 and 30 January 1976, during the course of which the applicant admitted he had raped Janet and that during the struggle she had died. In the first statement he claimed to have acted alone; in the second, prompted by an officer who challenged Jones that his account of pushing Janet's body over a fence seemed unlikely if he was alone, he claimed that a friend, whom he named, had been with him. That his friend had raped Janet after he had. He claimed to have carried one of Janet's shoes away with him, forgetting he had placed it in his pocket and he later disposed of it although both shoes were in fact recovered in the vicinity of the body. He purported to point out the place where he had first seen Janet and followed her but that route did not appear to be particularly credible and took Janet away from her own street onto an open playing field in a close-knit community where there were many opportunities to seek help.
11. At the time of that investigation forensic science provided limited additional evidence in relation to depositions of blood or semen. Blood could be grouped although mixed blood staining could not be differentiated. Janet's blood group was B. In such tests as were available group B blood would cover all blood groups present in a sample so further analysis of blood samples were possible. A sample of Jones' blood showed that he was group O. Tests on the semen stain onto the back of the jeans indicated that it had been admitted by a blood group O secreter; that is say someone whose body naturally secretes an indicator of their blood group into other bodily fluids. By modern standards it can only be described as crude.
12. So it was that the applicant stood trial for murder. At that time it was not considered good practice to include other counts on such an indictment. On the third day of his trial he changed his plea to guilty to manslaughter. On the direction of the trial judge the jury returned verdicts of guilty to manslaughter and not guilty of murder. He was

then sentenced, as we have indicated, to 12 years' imprisonment. He did not appeal, served his sentence and went about re-establishing his life.

13. Due to the passage of time it is not clear what action was taken against the applicant's named friend. It appears that he was arrested, charged and appeared before the court but that the case was discontinued against him at an early stage.
14. The possibility of a second perpetrator meant that as far as the police were concerned the case remained, to some extent, alive. Slides prepared from samples taken during the postmortem in 1976 were preserved and in due course submitted for DNA analysis. The process was such that the DNA profile obtained derives from sperm heads recovered from seminal stains and from no other sources of DNA.
15. It was originally hoped that the DNA analysis might confirm the existence and identity of the second alleged offender, whether it was the applicant's friend or someone else. However, it was found that the DNA emanated from a single source, a male person who was not the applicant. The profile was put on the national DNA database.
16. In February 2016 Stephen Hough was arrested on suspicion of the rape of a 15-year-old girl. In the course of that investigation a DNA sample was taken and in due course, when the profiles compared to those on the database, matched the profile obtained from the samples was revealed, thus the 1976 case was reopened. A forensic scientist who conducted the DNA examination concluded that the vulval samples taken from Janet Commins contained sperm cells that matched the DNA profile of Hough and from the condition of the sperm present sexual activity had taken place between Commins and Hough that was unlikely to have occurred more than 48 hours prior to her death. It is unnecessary to detail the findings of that DNA analysis. Further, Y-STR profiling was carried out to ascertain whether there was any evidence of DNA present from another male to Hough. In truth, there was no other male DNA in the vulval swab. There was the trace of DNA from a male in a second vulval swab but it was unsuitable for analysis in isolation but the small number of results available matched the DNA from Hough as it would be expected if it emanated from him or another relative. There was only one single result in 23 areas in relation to the anal swab that could have come from another male. Even if so the comparison was impossible and it was possibly a fragment introduced when the sample was taken or examined. There was nothing to indicate it related to sexual activity with the victim. In other respects the Y-STR analysis corroborates Mr Peet's findings. Hough's blood group, like that of the applicant, was group A.
17. It is not surprising that Stephen Hough was then arrested. He was tried between 26 June and 16 July 2017 before Lewis J and a jury. The evidential significance of the applicant's extant conviction was the subject of detailed submissions before the trial judge, who ruled the Crown had to overcome that conviction and make the jury trying Hough sure that Jones was not the killer and the jury were so directed.
18. Another Home Office pathologist interpreted the findings of Dr Woodcock (now deceased). He broadly agreed with what Dr Woodcock had found. He added that he did not think that the head injury resulted from severe force as there was no skull

fracture or brain injury beneath. Dr Rodgers concluded that Janet Commins had died during a sexual assault which included both vaginal and anal rape and in his evidence stated death had come on very quickly and posture asphyxia was likely to be a significant element in the rapid demise.

19. In that trial the applicant was called by the Crown as a prosecution witness of truth. He gave evidence that he was not guilty and had confessed due to the pressure he felt at the time. Mr Heywood has made it clear that it was not suggested that there was any specific criticism of police officers that was put that was the subject of elaboration and that it may have been no more than this young man, illiterate and from a travelling family, had submitted to questions in circumstances when perhaps a stronger personality would not.
20. In the course of the defence case both the senior investigating officer DS Derek Evans and the interviewing officer then DC Albert Roberts and DS Brian Davis also gave evidence. They made it clear that the applicant was interviewed appropriately under the regime then in force. The interviewing officers also gave evidence that the applicant had indicated the location where he said he had burned and buried his clothes but there was no evidence of that visible at the time.
21. Junior counsel to the applicant also gave evidence, Mr Gareth Edwards (as he then was), said that Jones had not given instructions that his confessions were false and confirmed that Jones had willingly pleaded guilty to manslaughter but did allow, as Mr Heywood explained to us, that this was the lesser of two evils.
22. The defence in the second trial did not challenge the findings that Hough's DNA was identified. His case rested on a challenge to the correct identification of the slides and their continuity and integrity since 1976. The jury unanimously acquitted Hough of murder and convicted him of manslaughter, rape and buggery. Following the conviction in respect of her Hough also later pleaded guilty to sexually assaulting the victim for which he had been arrested in 2016.
23. Thus, since the review in 2006 this case has been meticulously investigated. The Crown accept that the admissions made by the applicant during his interviews can no longer be treated as objectively reliable. It was on that basis that the decision was taken to call him and to threaten him as a witness of truth. Mr Heywood makes clear that the applicant was a credible witness, whose assertion of innocence was clearly believed by the jury who saw and heard him. Following the judge's direction the jury must have been sure he was telling the truth and, at the very least, must have been satisfied that Jones' admissions could not be relied upon. The contemporary DNA evidence supported the case that there was only one attacker and that Stephen Hough was that man.
24. It is not surprising that the applicant has left it as long as now to renew his application for leave to appeal against conviction. The subsequent conviction of Stephen Hough was obviously an essential component of this application. Following the conviction an appeal was intimated. The papers to the original trial were disclosed to those advising him and in the circumstances this appeal against conviction was launched.

25. It is of course very rare to admit an appeal against conviction where an unambiguous guilty plea has been entered or to admit fresh evidence under section 23 of the Criminal Appeal Act 1968 in those circumstances but it is beyond argument that there is a discretion to do so: R v Verney 2 Cr App R 107 and R v Foster [1985] 1 QB 115; 79 Cr App R 61. Both concerned convictions based on guilty pleas which were quashed as a result of receiving fresh evidence. This is an another such case.
26. In the circumstances we unhesitatingly extend time for appealing. We grant leave to appeal. We admit the fresh forensic evidence and the evidence of the conviction of Stephen Hough and we quash Noel Jones' conviction for manslaughter. This appeal is allowed and the appellant can leave court wholly exonerated of involvement in this terrible crime.
27. Before leaving the case we must add further observation. Our system of criminal justice is, of course, human and errors can be made however strenuous the efforts to ensure that evidence is properly and appropriately collected and placed before the court so there can be analyse fairly and a true verdict delivered. The pressures of being interviewed by the police are clearly real and the protections introduced by the Police and Criminal Evidence Act 1984 have done much to address, to such extent as it is possible, the pressures on those arrested and being interviewed.
28. In this case however, it is clear that a serious injustice was done for an innocent man felt constrained to admit a grave criminal offence, not sharing the true position with his own legal team. Many years have passed since he was released from prison but we hope that the quashing of his conviction and the contents of this judgment start to address the injustice that was done to him.

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