



JUDICIARY OF  
ENGLAND AND WALES

Dawes, Hunter and Bowyer

-v-

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Court of Appeal (Criminal Division)

26 March 2013

SUMMARY TO ASSIST THE MEDIA

**The Court of Appeal (Lord Chief Justice, Lady Justice Rafferty and Mr Justice Simon) has today provided its first interpretation of the legislation that generated the new partial defence to murder, ‘loss of control’ where fear of violence has been argued, and offered guidance as to its application.**

Today’s judgment in the appeals of three men against their convictions for murder follows one from January 2012 where the Court examined the full extent of the prohibition against ‘sexual infidelity’ as a qualifying trigger for the purposes of the loss of control defence.

The Court examines the loss of control defence in cases where fear of violence is asserted in paragraphs 46 – 62.

**Lord Judge, the Lord Chief Justice, on behalf of the Court said:**

“As noted in *Clinton*, viewed overall, the eventual legislation which found its way into ss.54 and 55 of the 2009 Act did not closely follow the overall recommendations of the Murder, Manslaughter and Infanticide (Law Commission No. 309). Nevertheless, as the Law Commission noted, in the context of the former defence of provocation, the judge was bound to leave the defence if there was evidence that the defendant was provoked to lose self-control, however improbable the defence may have appeared. In the view of the Law Commission 5.15:

“The current position does not serve the interests of justice because the need to put the defence to the jury in these circumstances increases the likelihood that an unmeritorious claim may succeed”.

At 5.16 it was proposed that the trial judge should have the task of “filtering out purely speculative and wholly unmeritorious claims”. We see a direct link between this recommendation and the legislative provisions in s.55(3),(4) and (5). Their effect is that the circumstances in which the qualifying triggers will arise is much more limited than the equivalent provisions in the former provocation defence. The result is that some of the more absurd trivia which nevertheless required the judge to leave the provocation defence to the jury will no longer fall within the ambit of the qualifying triggers defined in the new defence. This is unsurprising. **For the individual with normal capacity of self-restraint and tolerance, unless the circumstances are extremely grave, normal irritation, and even serious anger do not often cross the threshold into loss of control.**

**“The presence, or otherwise, of a qualifying trigger is not defined or decided by the defendant and any assertions he may make in evidence, or any account given in the investigative process. S.55(3) directly engages the defendant’s fear of serious violence. As we have explained, in this type of case s.55(4) will almost inevitably arise for consideration. Unless the defendant has a sense of being *seriously* wronged s.55(4) has no application. Even if it does, there are two distinctive further requirements. The circumstances must be *extremely* grave and the defendant’s sense of being seriously wronged by them must be *justifiable*. In our judgment these matters require objective assessment by the judge at the end of the evidence and, if the defence is left, by the jury considering their verdict. If it were otherwise it would mean that a qualifying trigger would be present if the defendant were to give an account to the effect that, “the circumstances were extremely grave to me and caused me to have what I believed was a justifiable sense that I had been seriously wronged”. If so, when it is clear that the availability of a defence based on the loss of control has been significantly narrowed, one would have to question the purpose of s.55(3)(4) and (5).” (paras 60- 61)**

### **Mark Dawes**

The circumstances of Mr Dawe's case are set out in paragraphs 2, 3 – 14 and the Court gives its decision in paragraphs 63 - 64. **The Court dismissed his appeal against conviction.**

### **Mark Hatter**

The circumstances of Mr Hatter's case are set out in paragraphs 2, 15 – 27 and the Court gives its decision in paragraph 65. **The Court dismissed his appeal against conviction.**

### **Barry Bowyer**

The circumstances of Mr Bowyer’s case are set out in paragraphs 2, 28 – 45 and the Court gives its decision in paragraphs 66 - 67.

**In giving judgment on behalf of the Court, Lord Judge, the Lord Chief Justice said:**

**“If we have any criticism of one of the outstanding judges of his generation on the former Wales and Chester circuit, now the Wales circuit, it is that the loss of control defence was left to the jury at all. The appellant was a self-confessed burglar. He deliberately entered the home of the deceased in order to steal property, to sell it to feed his drug habit. He deliberately targeted the house, taking every precaution to avoid detection. At the very best, he suggests that he just snapped when, following the householder’s return, he, the householder, reacted violently to the presence of the burglar in his home and used deliberately insulting remarks about the appellant’s girlfriend. To that the somewhat colloquial answer is, “So what”? If either of these men was justified in losing his self control, it was the deceased. The deceased was entitled to say and do anything reasonable, including the use of force, to eject the burglar from his home. Even taking the appellant’s evidence at face value (and we bear in mind that the jury must have rejected it) it is absurd to suggest that the entirely understandable response of the deceased to finding a burglar in his home provided the appellant with the remotest beginnings of a basis for suggesting that he had any justifiable sense of being wronged, let alone seriously wronged. On that basis alone, one essential ingredient of this defence was entirely absent. Furthermore, we can detect no evidence of loss of control. The tragic events which occurred in the home of the deceased bore all the hallmarks of appalling violence administered in cold blood.” (para 66)**

**The Court dismissed his appeal against conviction.**

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**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.**