



JUDICIARY OF
ENGLAND AND WALES

R v Clinton, Parker and Evans
Court of Appeal (Criminal Division)
17 January 2012

SUMMARY TO ASSIST THE MEDIA

The Court of Appeal (Lord Chief Justice, Mr Justice Henriques and Mrs Justice Gloster) has today provided its first interpretation of the legislation that generated the new partial defence to murder, 'loss of control'.

The Court gave its interpretation of sections 54 and 55 of the Coroners and Justice Act (CJA) 2009 whilst considering the appeals of three men against their convictions for murder.

Section 54 (1) contains three statutory components to the 'loss of control' defence:

- (1) Where a person ("D") kills or is party to the killing of another ("V"), D is not to be convicted of murder if –
 - (a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,
 - (b) the loss of self-control had a qualifying trigger, and
 - (c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

The Court examines each of these in turn:

- (a) Loss of self- control (para 10)
- (b) Qualifying trigger (paras 11 - 29)
- (c) Would a similar person in the same circumstances have reacted the same way? (paras 34 - 32)

Section 55 of the CJA 2009 sets out the qualifying triggers for the defence and explicitly states that sexual infidelity must be disregarded.

The Court considers the full extent of the prohibition against 'sexual infidelity' as a qualifying trigger for the purposes of the loss of control defence. (paras 34 – 44)

Lord Judge, the Lord Chief Justice, giving the Court's judgment said:

"... The question is whether or not sexual infidelity is wholly excluded from consideration in the context of features of the individual case which constitute a permissible qualifying trigger or triggers within section 55(3) and (4).

"We have examined the legislative structure as a whole. The legislation was designed to prohibit the misuse of sexual infidelity as a potential trigger for loss of control in circumstances in which it was thought to have been misused in the former defence of provocation. Where there is no other potential trigger, the prohibition must, notwithstanding the difficulties identified earlier in the judgment, be applied.

".... In section 54(1)(c) and (3) the legislation further acknowledges the impact of sexual infidelity as a potential ingredient of the third component of the defence, when all the defendant's circumstances fall for consideration, and when, although express provision is made for the exclusion of some features of the defendant's situation, the fact that he/she has been sexually betrayed is not. In short, sexual infidelity is not subject to a blanket exclusion when the loss of control defence is under

consideration. Evidence of these matters may be deployed by the defendant and therefore the legislation proceeds on the basis that sexual infidelity is a permissible feature of the loss of control defence.

"The ambit of section 55(3) and (4) – the second component, the qualifying triggers – is clearly defined. Any qualifying trigger is subject to clear statutory criteria. Dealing with it broadly, to qualify as a trigger for the defendant's loss of control, the circumstances must be extremely grave and the defendant must be subject to a justifiable sense of having been seriously wronged. These are fact specific questions requiring careful assessment, not least to ensure that the loss of control defence does not have the effect of minimising the seriousness of the infliction of fatal injury. Objective evaluation is required and a judgment must be made about the gravity of the circumstances and the extent to which the defendant was seriously wronged, and whether he had a justifiable sense that he had been seriously wronged.

"Our approach has, as the judgment shows, been influenced by the simple reality that in relation to the day to day working of the criminal justice system events cannot be isolated from their context. We have provided a number of examples in the judgment. Perhaps expressed most simply, the man who admits, "I killed him accidentally", is never to be treated as if he had said "I killed him". That would be absurd. It may not be unduly burdensome to compartmentalise sexual infidelity where it is the only element relied on in support of a qualifying trigger, and, having compartmentalised it in this way, to disregard it. Whether this is so or not, the legislation imposes that exclusionary obligation on the court. However, to seek to compartmentalise sexual infidelity and exclude it when it is integral to the facts as a whole is not only much more difficult, but is unrealistic and carries with it the potential for injustice. In the examples we have given earlier in this judgment, we do not see how any sensible evaluation of the gravity of the circumstances or their impact on the defendant could be made if the jury, having, in accordance with the legislation, heard the evidence, were then to be directed to excise from their evaluation of the qualifying trigger the matters said to constitute sexual infidelity, and to put them into distinct compartments to be disregarded. In our judgment, where sexual infidelity is integral to and forms an essential part of the context in which to make a just evaluation whether a qualifying trigger properly falls within the ambit of subsections 55(3) and (4), the prohibition in section 55(6)(c) does not operate to exclude it.

"We have proceeded on the assumption that legislation is not enacted with the intent or purpose that the criminal justice system should operate so as to create injustice. We are fortified in this view by the fact that, although the material did not assist in the construction of section 55(6)(c), our conclusion is consistent not only with the views expressed in Parliament by those who were opposed in principle to the enactment of section 55(6)(c) but also with the observations of ministers who supported this limb of the legislation." (paras 34 - 40)

Jon-Jacques Clinton

The circumstances of Mr Clinton's case are set out in paragraphs 50 - 78. **The Court allowed his appeal against conviction and ordered a retrial.**

Steven Parker

The circumstances of Mr Parker's case are set out in paragraphs 79 - 106. **The Court dismissed his appeals against conviction and against sentence.**

Dewi Evans

The circumstances of Mr Evan's case are set out in paragraphs 107 - 132. **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.