



JUDICIARY OF
ENGLAND AND WALES

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Christopher John Halliwell

Bristol Crown Court

Rulings by Mrs Justice Cox on Preliminary Issues

February and May 2012

SUMMARY TO ASSIST THE MEDIA

Mrs Justice Cox has dealt with two applications by the defence prior to the plea and case management hearing in this criminal trial. The first related to the admissibility of evidence, which was heard in February 2012. As a result of the judge's ruling some evidence was excluded which related to both murder charges. In effect this resulted in the charge for the murder of Rebecca Gooden-Edwards being withdrawn from the current indictment. The second application, heard in May 2012, related to an application to stay proceedings as an abuse of process. The judge dismissed this application.

Summary of Facts

Christopher Halliwell was originally charged on the current indictment with two separate murders, of Sian O'Callaghan and Becky Gooden-Edwards. Following Halliwell's arrest on 24 March 2011 there were serious and irretrievable breaches by the Senior Investigating Officer (SIO) of the mandatory rules governing the detention and interview of arrested suspects by the police. The SIO made a deliberate decision to breach those rules, contrary to the advice of his deputy investigating officer. An application to exclude the evidence of Halliwell's actions and statements, as a result of those breaches following his arrest, was successful for the reasons given in the first ruling. The Prosecution did not appeal against that ruling.

Following this ruling a further application was made by the defence to halt the prosecution of Halliwell completely, on the basis that further misconduct, by the same SIO, in deliberately briefing the media on matters which were sub judice amounted to an abuse of process and meant that Halliwell could no longer have a fair trial. Mrs Justice Cox rejected this application in a further ruling on 9 May 2012. A further hearing, in respect of the charge of murdering Sian O'Callaghan, is now to be held at Bristol Crown Court at 12.00 on 19 October. The second charge, of the murder of Becky Gooden-Edwards, remains under investigation at present and will not be dealt with on this indictment on 19 October.

First Ruling on Preliminary Issue: Admissibility of Evidence

Introduction

The Defendant, Christopher Halliwell, was before the Court on an indictment containing two counts of murder – the murder of Sian O'Callaghan and the murder of Rebecca Gooden-Edwards.

Counsel for the defence contested the admissibility of evidence relating to the entire series of events which followed the Defendant's arrest until his arrival at the Gable Cross Police Station in Swindon some 4 hours later.

The defence application was heard at a voire dire over four days in February 2012. (paras 1 – 6)

The facts

The facts surrounding the police tactics and arrest of Christopher Halliwell and the subsequent actions of Detective Superintendent Fulcher are set out in paragraphs 7 – 77.

The issues

Counsel for the defence submitted that there were, in this case, fundamental breaches of both Section 76 and the PACE Codes, so that Section 78 is engaged by both and the breaches taken together render inadmissible all the evidence of events during the whole of the period between this Defendant's arrest at 11:06 on 24 March 2011 and his arrival at the police station four hours later at 15:15. (para 78)

The judge considers the relevant statutory provisions in detail at paragraphs 80 – 86.

On the issue of Section 76, and whether the Prosecution had proved beyond reasonable doubt that the Defendant's confession had not been obtained by oppression, Mrs Justice Cox concluded: "I find that the Prosecution have not discharged the burden to the criminal standard and the evidence relating to his confession and the location of Ms O'Callaghan's body is therefore inadmissible pursuant to Section 76(2) of PACE." (para 96)

The judge considers whether PACE Code C.11.1 was engaged on the facts of the case in detail in paragraphs 97 – 118.

Mrs Justice Cox concluded: "For the reasons given [in my ruling] and in respect of Section 76 I do not accept the submission that what happened in this case had no impact upon this Defendant or caused him no disadvantage. These were indeed significant and substantial breaches of the Codes, in circumstances deliberately designed to persuade the Defendant to speak. Further questions were asked, all without caution, during the journey to the location of Ms O'Callaghan's body. Admissibility of this evidence would have such an adverse effect on the fairness of the proceedings that it ought not to be admitted." (para 118)

Rebecca Godden-Edwards

Mrs Justice Cox went on to consider the implications of the police conduct in relation to the charge relating to the murder of Rebecca Godden-Edwards in paragraphs 119 – 131.

In her ruling the judge said: "This whole series of events began with a deliberate decision by a senior officer to breach the Codes and it developed into circumstances where I consider there may have been oppression, for the reasons I have given. Once the Defendant had directed Det Supt Fulcher to the place where Ms O'Callaghan could be located, the relevant risk had been averted and the qualifying criteria for an urgent interview under C.11.1 no longer existed. There is no doubt on the evidence that C.11.1 was no longer engaged." (para 125)

“...As soon as he began to talk about another offence it is clear that he should have been cautioned. There should have been no further discussions about it and the Defendant should have been taken to the police station.” (para 127)

Mrs Justice Cox concluded: “For these reasons, and in the exercise of my discretion under Section 78 admission of the evidence relating to the confession concerning Ms Godden-Edwards and the location of her body, and the circumstances in which they arose, would have such an adverse effect on the fairness of these proceedings that they ought not to be admitted.

“For all these reasons the application made on behalf of the Defendant at this voire dire is granted.” (paras 130 – 131)

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The Crown Prosecution Service did not appeal the judge’s ruling.

Second Ruling on Preliminary Issue: Abuse of Process

Introduction:

Following the admissibility of evidence application, counsel for the defence applied for the entire proceedings to be stayed as an abuse of process.

In summary, the basis for this application was that, after the defendant’s arrest, the same SIO had called a series of press conferences and deliberately briefed the press in detail on matters which were sub judice, namely what the defendant had told the police and how he had led them to separate locations where two bodies could be found. There was then extensive and repeated national media coverage of the case and of these facts in particular, over a number of weeks, such that it is no longer possible to rectify the damage caused by this publicity and the defendant could not have a fair trial. (para 4)

This application was heard on 4 April 2012 and dismissed at a hearing on 9 May 2012.

At a PCMH hearing on 31 May 2012, the defence applied to dismiss Count 2 (Rebecca Godden-Edwards murder charge) from this indictment. The Crown did not resist and the charge was deleted from the indictment; the Court was informed by the Prosecution that this is a crime which is still under investigation. The defendant was then arraigned on Count 1 (Sian O’Callaghan murder charge) and pleaded not guilty. (paras 1 – 9)

Relevant Facts

The judge considers the police media strategy adopted from the start of Operation Mayan and relevant facts in detail at paragraphs 10 – 32.

This includes an undisputed bullet point list of facts provided to the press after the defendant’s arrest. (para 32)

Defence Submissions

Defence counsel submitted that what happened here constitutes an abuse of process in two respects. There was, he submitted, an assault on the integrity of the criminal justice system as a

result of the deliberate misconduct of the police in briefing the media on what the arrested man had told them. Counsel said that alone merits a stay of the proceedings. Further, the nature and extent of what was done also means that it is now impossible for this defendant to have a fair trial. (para 33)

Counsel's submissions are summarised in paragraphs 33 – 43 of the ruling.

The Law

Mrs Justice Cox considers the legal principles and case law on these issues in detail at paragraphs 44 – 61.

Conclusions

Mrs Justice Cox concluded: "I am not satisfied on the evidence that there was bad faith here on the part of the Prosecution. [Defence counsel] raised concerns as to the contents of [the Crown Prosecution Service's statement], as reported in The Mirror on 27 March. However, it is customary to use the phrase "working closely" with police officers, in relation to charging decisions and more generally, and I see nothing sinister in the use of that expression.

"On its face this statement clearly and entirely properly urged restraint, in terms of publicity, and there is no evidence before me to suggest that the Crown Prosecution Service did anything other than urge restraint." (paras 62 – 63)

She added: "Nor am I satisfied that there was bad faith on the part of Det Supt Fulcher. He frankly and unapologetically gave his reasons for acting as he did and expressed robust views in evidence, in an effort to explain and justify the course he took and the reasons for it. Further, his evidence that his handling of the media was all done under the general supervision of the Gold Group was unchallenged. It is not clear what the individual members of the Gold Group actually knew about the specific terms in which Det Supt Fulcher was briefing the media at his press conferences, but it is clear that this officer had authority to conduct these press conferences and to issue the various press releases, and that position did not change." (para 64)

The judge agreed with prosecuting counsel that whilst Det Supt Fulcher's judgment may be open to criticism, the exercise of poor judgment falls far short of a determination that he acted in bad faith. (para 65)

Mrs Justice Cox said: "The first seven bullet points in the list of facts referred to [in para 33], all relating to the evidence which has been ruled inadmissible, all seem to me to be information given by Det Supt Fulcher at the press conferences. The subsequent bullet point facts also came from the police and while there are references to "a source" or to "a police source", the terms are used interchangeably. Although he was not specifically asked about this when he gave evidence, I find on the balance of probabilities that this information also came from Det Supt Fulcher. However, none of the evidence referred to in these subsequent bullet points has been ruled inadmissible at the defendant's trial." (para 66)

She went on to say: "I take into account my findings as to the conduct of this officer in my earlier ruling. I accept that he was then annoyed and frustrated when the defendant stayed silent in interview under caution, as he was entitled to, on the advice of his solicitor.

"... I consider that this was a serious error of judgment on his part, but I am not satisfied that he was acting in bad faith, or that there was otherwise serious fault on the part of the Prosecution, such as

to render this defendant's trial an affront to the public conscience and to merit a stay of these proceedings on that ground alone." (paras 67 – 68)

The key question for the judge, applying the legal principles set out in her ruling, is whether the reporting of all this information and the publicity which ensued means that the defendant cannot now have a fair trial. (para 70)

In coming to her conclusion the judge analysed all the press reports and an 'echosonar' graph produced by the Prosecution. She considered the substantial time gap between the coverage and the expected trial date in so far as the risk of recollection by any member of the jury is concerned (almost two years). The judge decided that her decision to transfer the defendant's trial from Bristol to Preston also provided an important safeguard, along with the ability to give clear instructions to the jury that they must not carry out any research themselves. (paras 72 – 84)

Mrs Justice Cox concluded: "For all these reasons I am not persuaded to the requisite civil standard that it is impossible for this defendant to have a fair trial on the charge of murder. His application for the proceedings to be stayed for abuse of process is therefore dismissed." (para 85)

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These summaries are 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.