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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2

Friday, 6th December 2002

B E F O R E:

LORD JUSTICE TUCKEY

MR JUSTICE DOUGLAS BROWN

HIS HONOUR JUDGE GORDON
(Sitting as a Judge of the CACD)

R E G I N A

-v-

DARREN JOHN CULLEN

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MR D MARTIN-SPERRY appeared on behalf of the APPLICANT

J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE DOUGLAS BROWN: On 17th May 2000 in the Crown Court at Basildon before Judge Watling QC and a jury this appellant (as he has now become), Darren John Cullen, was convicted of murder and sentenced to life imprisonment. He has renewed his application for an extension of time, a delay of 10 months, to appeal against that conviction and for a representation order, following refusal by the Single Judge. The Full Court, however, renewed his application orally by Mr Martin-Sperry who is fresh counsel in this case on 21st May and adjourned the application to a later date and made some administrative directions. We have today granted the extension of time and we now give leave to appeal against conviction for the reasons which we shall shortly give.
2. It is necessary to mention the facts although only in brief, but they are closely connected with the reasons why at this stage we now give leave.
3. In May 1999 a man called Leon Murphy was beaten to death in his ground floor flat in Basildon. It was a sustained and deliberate attack. At about 6.30 that evening, the appellant had been involved in a fight with Mr Murphy and, as common ground, had hit him with a cricket bat and a pool cue which broke. About 8 o'clock that evening a man called Wilson, who was a friend of Murphy's, reported to the police that he had found the body. Indeed Mr Murphy was seen by ambulancemen and police then in his flat.
4. The Crown's case was that the appellant and no one else had killed Mr Murphy and, in all the circumstances, pointed to the offence being murder.
5. The defence case that the appellant had left Mr Murphy's flat at about 6.30, when Mr Murphy was still alive and not badly injured. After that, between 6.30 and 8 o'clock somebody unknown must have gone to Mr Murphy's flat and inflicted very serious injuries upon him, which the pathologist described. A suggestion canvassed at the trial was that Mr Wilson might have been that person. But Mr Martin-Sperry, having reviewed the matter, tells us that on the evidence at trial that was a suggestion which could not be sustained.
6. So the issue for the jury was, from circumstantial evidence, could they be satisfied that it was the appellant who had inflicted the fatal injuries, or whether it might have been someone else who, finding Mr Murphy injured, had caused the majority of the remainder of the injuries that in fact killed him.
7. The prosecution case was a strong one. There were a number of witnesses who saw the applicant leave the area of the deceased flat carrying the bloodstained cricket bat and part of the snooker cue. There was strong forensic evidence connecting the appellant with the murder scene and there was no forensic evidence which connected any other relevant party with the deceased.
8. The pathologist for the Crown, Dr Heath, gave evidence that the cause of death was a head injury, caused by haemorrhaging over the surface of the brain in turn caused by a number of blows to the head and face which caused the head to move violently and the brain being thrown about, thus causing the haemorrhage.
9. The question that there could have been two separate attacks, with an interval of time between them, was canvassed in cross-examination, indeed, by the learned judge, with some questions that he asked of the doctor.

10. Although the doctor's view was, initially, perhaps less than clear, by the time his evidence concluded, it was clear that he completely discounted any question of a gap between the infliction of some injuries and the remainder.
11. There was no pathological evidence called on behalf of the appellant, and indeed there was no separate postmortem carried out on behalf of the defence, the deceased having being cremated.
12. The applicant, himself, put in a number of grounds, some seven in number, late. But Mr Martin-Sperry has considered the papers with the applicant's agreement; those grounds are now abandoned. Initially, Mr Martin-Sperry drafted two fresh grounds which involved attack on the clarity of the summing-up in two short passages on pages 16 and 17A which, as we are giving leave in respect of all the grounds, we mention you no further, save to say the arguments he puts forward are arguable although they are clearly not the strongest grounds.
13. Mr Martin-Sperry has today provided the Court with a third ground based on the report of another pathologist, Dr Hill, who has been assisting the appellant's case.
14. Dr Hill, in a trenchant report, is very critical of Dr Heath, his methodology and his conclusions. The ground which Mr Martin-Sperry now seeks to add, ground 3 is this: Dr Heath's evidence at trial was to the effect that his findings were inconsistent with a separate attack on Murphy conducted by a different person, with different weaponry at a later stage of the evening. If admitted the contents of Dr Hill's report would substantially undermine Dr Heath's evidence on this central point of the defence case.
15. With some reluctance, we give leave on this ground. No criticism is made of trial counsel. After careful consideration by Mr Martin-Sperry he can see no grounds to criticise either counsel or solicitors in respect of the lack of the pathologist's assistance at or before trial. Nevertheless, this is case where Mr Martin-Sperry submits that, had the jury that evidence or similar evidence from another pathologist, the verdict might not necessarily have been the same.
16. Our view is that this matter should be evaluated before the Full Court with the Crown represented. It may be the matter having been gone into that this will be seen as a perfectly safe conviction but there is sufficient, in what Mr Martin-Sperry says, for us to give leave so the matter can be considered further.
17. In those circumstances, the appellant has leave to appeal for all three grounds.
18. LORD JUSTICE TUCKEY: Can we consider what consequential directions we need to make. We are not formally ruling on the admission of Dr Hill's evidence. That is for the Full Court to determine, but we will make a witness order for his attendance here and at the hearing of the appeal, so that the Court decides his evidence, he should be here to give it. You need a representation order, now, counsel only.
19. MR MARTIN-SPERRY: I have not had the advantage of having a proper conference with Dr Hill. Clearly in the context of, this case and the Full Court, that is something that I need to do and I need do that with the assistance of solicitors, so may I ask for the representation order to be extended to solicitors Messrs Paul Martin & Co.
20. LORD JUSTICE TUCKEY: For that purpose only.
21. MR MARTIN-SPERRY: For two purposes. First of all a conference with Dr Hill, and secondly, a conference with Cullen.

22. LORD JUSTICE TUCKEY: Do you need a representation order for the attendance of solicitors for the purposes of the conference?
23. MR MARTIN-SPERRY: With the defendant I would, it has always been my practice to have a solicitor present at a conference.
24. In the context of this case, I would certainly prefer to have a solicitor with me when I saw Mr Cullen because he will need to have these issues explained to him. He is a man of certain views as it were and I would feel that a solicitor would be of assistance.
25. LORD JUSTICE TUCKEY: I think we have the message (Pause).
26. Mr Martin-Sperry we will grant a representation to Paul Martin & Co. We will not specifically limit it but the understanding is that they will be involved in the way you have explained to us. The representation order is for you, and we think you will be perfectly confident, perfectly able to present this appeal unless you have anything further.
27. MR MARTIN-SPERRY: I have no further application on that score. My Lord might the Court make any directions as to whether the case might be expedited or not.
28. LORD JUSTICE TUCKEY: Well, obviously this is in all cases relevant, and this one is of some antiquity. We make a specific order for expedition.