Neutral Citation Number: [2008] EWCA Crim 1792

Case No: 200604144C1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Date: Wednesday, 16 July 2008

B e f o r e:

LORD JUSTICE TOULSON

MRS JUSTICE RAFFERTY

RECORDER OF HULL
(Sitting as a Judge of the Court of Appeal, Criminal Division)

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R E G I N A

v

AISLING MURRAY

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Mr T Owen QC and Mr M Oliver appeared on behalf of the **Appellant**
Mr P Reid QC and Mr R Priestly appeared on behalf of the **Crown**

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J U D G M E N T

1. LORD JUSTICE TOULSON: This is a tragic case. On 27 June 2003, the appellant killed her five year-old daughter, Chloe, by stabbing her with a kitchen knife more than 50 times.

2. The appellant had a long history of mental health problems, with admissions to hospital because of them. She suffers from paranoid schizophrenia, which has had a relapsing and remitting course. In bad times she suffers from psychotic episodes when she suffers from delusions and her mood becomes severely disordered. In the days leading up to the tragedy, a number of people who knew the appellant had expressed concerns about her state of mind. After the event, she was examined by a number of psychiatrists on behalf of the prosecution and the defence.

3. The trial judge, Moses J, summarised the effect of the medical evidence when he said that a plea of guilty to manslaughter by reason of diminished responsibility-

> "would have been a plea entirely consistent with all the medical evidence adduced by both sides and would therefore have been acceptable to the Crown, and I can indicate would have been accepted by me."

He made those observations on 16 January 2004, the day on which the appellant was arraigned. She had been expected to plead guilty to manslaughter, but she pleaded guilty to murder. Some time earlier, she had been indicating that this was her intention, and the question of her fitness to plead had been considered by the various psychiatrists who had been instructed in the case.

4. In a report dated 8 January 2004, Dr Snowden, a psychiatrist instructed by the prosecution, articulated the problem very well. He said:

> "Aisling Murray is able to comprehend the details of the evidence against her, and follow the court proceedings, is able to instruct her solicitors and on questioning understood that she can challenge a juror."

But he continued:

> "... I do not think she is able to plead with understanding to the indictment. By this I mean that she does not appear to be able to weigh up appropriately the contribution of her mental illness to her behaviour. Either this is because she lacks insight or (and I think this is more likely) she does have some memory still of her thoughts and emotions during the period leading up to the killing of her daughter, but does not wish to discuss this with anyone as she wishes to be punished for her crime. She would see a conviction of murder as entirely appropriate.
>
> It is I think quite clear to all of the doctors that she had a significant abnormality of mind at the material time and that if she was able to plead with understanding to the indictment she would plead guilty to manslaughter on the basis of diminished responsibility..."

5. The consensus opinion among the psychiatrists was that she was not unfit to plead in the legal sense of the term as they understood it. But, as Dr Snowden has tellingly observed in a recent report-

> "Psychiatric understanding and the law in relation to mentally ill defendants do not always sit together comfortably."

They did not sit together comfortably in this instance.

6. The Law Commission is likely to be examining in the near future the vexed subject of fitness to plead, and this case, although unusual, may be an appropriate case for it to study, for it illustrates in acute form the problems of the potential mismatch between the legal test and psychiatric understanding in these matters. When the appellant pleaded

guilty to murder, her legal team did not feel able to suggest to the judge that she lacked fitness to plead. She was therefore sentenced to life imprisonment.

7. In passing sentence, the judge said:

> "I have to deal with this as a case of murder, but I have to deal it in the context of overwhelming medical evidence and overwhelming past facts indicating that, for a very substantial period of time, she has been suffering from a very severe mental illness which has had an almost overwhelming impact upon her actions, not only at the time of the events when she killed her child, but also for substantial periods before."

8. The appellant now appeals against her conviction for murder with leave of the single judge. She seeks an order that the conviction be quashed and replaced with a conviction for manslaughter on grounds of diminished responsibility. If that were to be done, it is common ground between the parties that the appropriate disposal would be a Hospital Order with a Restriction Order unlimited in time.

9. This court has heard oral evidence from Dr Josanne Holloway, the consultant psychiatrist in whose care the appellant has been since 2003. The appellant is currently detained at the Edenfield Centre, a medium secure unit in Greater Manchester, under sections 47 and 49 of the Mental Health Act 1983, but is being treated in the same way as if she were the subject of a Hospital Order with a Restriction under sections 37 and 41 of the Act.

10. Dr Holloway supports the proposal of a Hospital Order with an unlimited Restriction Order. She has explained that the appellant suffers from paranoid schizophrenia which is currently relatively well controlled, but she is still subject to psychotic episodes at times of stress, very similar to that which affected her at the time of the killing. This condition is requiring further treatment. On top of that, there are features of her personality which need attention and are susceptible to treatment which she is receiving in hospital. For those reasons, she requires, and is susceptible to, medical treatment.

11. It is also appropriate that there should be a Restriction Order because if she were free to leave at her own wish and before those responsible for her medical care believe that it would be safe for her to be released into the community, she could represent a danger to others and herself by reason of her susceptibility to relapse.

12. It is impossible at this stage to make a medical judgment when it would be appropriate for her to be released into the community, and therefore any Hospital Order should be without limit of time.

13. There remains the question whether this appeal should be allowed in a case in which the appellant pleaded guilty. It is clear from the latest medical evidence that her decision to plead guilty to murder was affected by her medical condition, which also substantially diminished her responsibility for the killing. In those circumstances, the parties are agreed, and indeed it was the prosecution who suggested this route, that the court is entitled to regard her conviction as unsafe and to substitute a conviction for manslaughter on grounds of diminished responsibility. The court accepts that

argument, and the result meets the justice of the case.

14. Accordingly, this appeal will be allowed. The appellant's conviction for murder will be quashed, and a conviction for manslaughter on grounds of diminished responsibility will be substituted. We will make a Hospital Order that she be detained in the Edenfield Centre with a Restriction Order unlimited in time.

15. We are grateful to all counsel and to the doctors in this case for their help in what has been not only a tragic but exceedingly difficult case over a number of years.