UNAPPROVED

THE COURT OF APPEAL

Neutral Citation Number: [2020] IECA 265

[79/19]

The President

McCarthy J

Kennedy J

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

LAURA KENNA

APPELLANT

JUDGMENT of the Court delivered on the 1st day of October 2020 by Birmingham P.

1. On 5th March 2019, following a trial in the Central Criminal Court, the appellant was convicted of offences of attempted murder and what is commonly described as assault causing serious harm contrary to s. 4 of the Non-Fatal Offences Against the Person Act 1997. She was subsequently sentenced to a term of 15 years' imprisonment, with the final five years suspended, on various conditions. She has now appealed against both conviction and severity of sentence. This judgment will deal with each aspect in turn.

The Appeal Against Conviction

2. At trial, in circumstances where admissions had been made, the issue was whether the then accused met the criteria for the special verdict of not guilty by reason of insanity. On that point, two consultant psychiatrists, each from the Central Mental Hospital, gave evidence. The approach of the psychiatrists diverged, with Dr. Stephen Monks concluding

that the then accused now appellant was suffering from a mental disorder at the time of the assault in issue, to such an extent that she was legally insane. However, Professor Harry Kennedy, Executive Clinical Director of the Central Mental Hospital, was of the view that the appellant did not meet the criteria for the defence of not guilty by reason of insanity. This appeal sees the Court being asked to exercise what it is accepted is an exceptional jurisdiction and to conclude that the conviction of the appellant was unsafe.

3. The appellant seeks to overturn the conviction on the basis that the evidence given by the prosecution's expert - to the effect that the appellant was not legally insane at the time of the incident - was devoid of cogency, was contradicted by the other evidence, and was otherwise unworthy of any credit. In those circumstances, it is argued that no reasonable jury could have convicted the appellant thereby making the verdict perverse and the appellant's conviction unsafe.

Background

4. At trial, the only matter in controversy related to the aforementioned conflicting opinions of the two consultant psychiatrists. All the factual matters relating to the incident and the investigation that followed were dealt with by way of formal admissions from the defence under s. 22 of the Criminal Justice Act 1984. In summary, it was accepted that the appellant had confronted and attacked a young woman, Ms. Fionnuala Bourke, on the street in Drumcondra, Dublin, on 3rd January 2017. In the course of the attack, the appellant repeatedly stabbed the injured party and cut her throat. She then demanded the injured party's handbag and fled to a nearby train station.

5. The appellant travelled by train from Drumcondra to Maynooth where she attempted to sell the injured party's phone in various public houses. The following day, the appellant presented in a highly agitated state at Tallaght Garda Station. There, she was arrested for a breach of the Public Order Act. It was discovered that she had some of the contents from the

injured party's bag, such as her ID card, in her possession. While being taken from Tallaght Garda Station to Store Street Garda Station to be interviewed by Gardaí about the assault, the appellant made repeated claims of having killed the injured party and of having "sliced her like you would a goat".

6. In the course of interview, having initially adopted a "no comment" position, or denying knowledge of the assault while laughing to herself, she then said "if you let me out, I'll finish her off". In later interviews, she gave an account of wanting to kill someone and told the Gardaí that she had intended to eat the injured party and that she was justified in behaving in this way. She also said that she wanted money as well, but that her motivation was to kill.

The Evidence of the Consultant Psychiatrists

7. At trial, the jury heard about the fact that approximately two weeks prior to the assault giving rise to the trial in the Central Criminal Court, the appellant had been involved in another assault on a different woman at a Luas platform. The appellant believed, delusionally, that the injured party had been "getting smart with her". On that occasion, the appellant tried to stab the injured party in the eye with a pen. She was charged with assault causing harm, but was found not guilty by reason of insanity. In that case, the jury also heard evidence from Professor Harry Kennedy and Dr. Stephen Monks, but on that occasion, both psychiatrists were in agreement that the appellant met the criteria for the special verdict of not guilty by reason of insanity.

8. It is to be noted that neither Dr. Monks nor Professor Kennedy were the treating psychiatrist in the case; that role was played by Dr. Mullaney. Following the arrest and questioning of the appellant on 4th January 2017, she was charged and remanded in custody. She was assessed by psychiatrists who were of the view that she was in a psychotic state and

transferred her to the Central Mental Hospital where she remained in a persistently psychotic state for several months before responding to prescribed medication.

9. At the sentencing stage, a report was made available to the Court from treating consultant Dr. Ronan Mullaney. In his report, he said:

> "…Ms. Kenna was acutely psychotic at the time of the alleged offence. From the information available to me, she was suffering from multiple symptoms of Schizoaffective Disorder, including auditory hallucinations, delusional thinking and disorganisation in her thoughts and behaviours - including marked increased levels of irritability, hostility and impulsivity.
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> Ms. Kenna lacked any insight into the nature and degree of her illness…[She] was unable to appreciate that the symptoms she was experiencing *i.e.* command auditory hallucinations as well as psychotic delusions, were symptoms of an illness which required treatment."

10. The defence are very critical of the evidence of Professor Kennedy. They summarise his approach as being that Ms. Kenna was mad (at the time of the Luas assaults), bad (at the time of the Drumcondra assault), and mad (at the time of her admission to the Central Mental Hospital). This rapid change in her mental state is described as being in the nature of Schizoaffective Disorder.

11. Dr. Monks had spoken at some length to the appellant's mother and had traced her history of psychiatric difficulties. As a child, the appellant was essentially normal in her behaviour and in her educational abilities. It was indicated that she had been subjected to sexual abuse by a local man when aged between 7 and 12 years. As she reached her teens, her life began to spiral out of control. She began to get into trouble, to miss school, and to take drugs. As she got older, she had difficulty holding down a job and experienced homelessness

as well as engaging in heroin abuse. Over a period of years, her chaotic lifestyle impacted on her mental health and contributed to the triggering of a major mental illness. Dr. Monks was asked whether, on the basis of his consideration of all the material that was available to him, he had come to any conclusion or opinion as regards Ms. Kenna. Dr. Monks responded:

> "[y]es, I came to the same conclusion and was in agreement with her treating consultant, Dr. Mullaney, that she had a diagnosis, and has had a diagnosis over many years, of Schizoaffective Disorder. And what this means is, it's a chronic psychotic mental illness, it's related to Schizophrenia. The slight difference is that in addition to psychotic symptoms, there's prominent mood disturbance, so you can get psychosis, hallucinations and delusions, but, concurrently, at the same time, you tend to get dramatic altered mood states like mania or depression.
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> But it is the case that many people who experience drug induced psychosis are later diagnosed with a Schizophrenia-type illness. This is certainly the case for Ms. Kenna; her psychotic symptoms have persisted long-term, they've been apparent in the absence of any intoxicant use and it's my belief that a previous diagnosis of a drug-induced psychosis has now been completely superseded, it's now unequivocally a diagnosis of the serious mental illness Schizoaffective Disorder.
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> I then formed an opinion around what Ms. Kenna's mental state was at the time of the alleged offences. So, both the assault at the Luas stop in December 2016 and the more serious assault two weeks later in January 2017. And reviewing this, I found that in 2016, in the months leading up to the alleged offences, she was homeless in Belfast and the homelessness services reported ongoing concern for her mental health at the time because she was experiencing hallucinations,

grandiose delusional ideas and she was perpetrating repeated acts of physical aggression with three separate violent assaults on homelessness service users, two of which were attempted eye gouges. She then returned to Dublin in the weeks before the alleged assault…at the Luas stop. My review of the witness statements, and Ms. Kenna's own account of that incident, mean that my opinion is that, in all likelihood, she was experiencing auditory hallucinations at the time, that were making derogatory comments about her and so she erroneously believed that the victim was denigrating her at the time she attacked her; and as I have already outlined having reviewed the video recordings of her interviews with the Gardaí after this assault, it shows that she was clearly in a manic mood state, she was grandiose, had an expansive mood, was irritable, had lability and volatility of her mood, and quite a fatuous effect indicative of a manic psychosis. It was two weeks following that incident that the alleged assault on Ms. Bourke occurred. Ms. Kenna reported that for some time leading up to the knife attack on Ms. Bourke, she'd been labouring under delusional ideas about vampires and cannibalism and had been experiencing voices telling her to kill someone. In the DVD recordings…after the incident, she again presents in a manic mood state and deludes to cannibalism and a morbid interest in death and wanting to kill someone. Ms. Kenna denied any use of intoxicants at the time of either assault and there's nothing to suggest that she was intoxicated from my review of the book of evidence and the recordings of interviews with her with the Gardaí. Her mood and psychotic symptoms that were present immediately before and after these incidents, they persisted for months after she was remanded to custody and then transferred to the Central Mental Hospital, so clearly a period when she wouldn't have had access to any intoxicants, her psychosis was prominent, severe and persistent. So, in terms of her mental state

at the time of the assault of Ms. Fionnuala Bourke, my belief is that she was experiencing active mood and psychotic symptoms and this caused a severe impairment of her reasoning, her perception, her emotions and her judgment, and my opinion is that this disturbance, psychotic disturbance, was to the extent that she did not know the nature and quality of her actions and that she could not resist from acting as she did. So, in other words, that's to say because she was deluded, that she had an altered identity, that she was communicating with vampires, Gods and that she was hearing voices telling her to attack and assault other people and had formed a belief around killing someone and being instructed to do so in order to save herself that although she knew she was doing something wrong by attacking Fionnuala Bourke, her intention was to kill her and that intention to kill was driven and based on her psychosis. So in that regard, she didn't know the nature and quality of the act; she thought she was acting in response to delusional beliefs. It's my opinion, therefore, that it would follow that a special verdict of not guilty by reason of insanity would be available in this particular case for both charges."

12. Professor Kennedy's opinion was in sharp conflict. He commented:

"First, from a psychiatric point of view, I found that Ms. Kenna is an inconsistent historian. Now, this is most likely due to her own variable mental state. However, her inconsistency is also at times intentional and self-interested. Ms. Kenna meets diagnostic criteria for Schizoaffective Disorder. This is a severe and enduring mental illness in which delusions, hallucinations and thought disorder occur while at the same time, wide variations in mood occur from manic states of elation and irritability to depression. Delusions in such a disorder are often mood-congruent, in other words, in keeping with the mood, so an elated person may have grandiose

delusions and a depressed person may have very nihilistic delusions. And there's some evidence for this in Ms. Kenna's case. This illness has followed a relapsing and remitting course in Ms. Kenna's case. At times, she is subject to delusions, hallucinations and abnormal moods, while at other times, she's relatively well, particularly when on medication and prevented from obtaining intoxicants.

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Ms. Kenna has prominent disordered personality traits including general delinquency and emotionally unstable traits. I note for example that on [19th December 2015], when challenged regarding having a ticket on the Luas line she was described as miming searching for a ticket although she most likely knew that she did not have one. Similarly, she's described as attempting to enter a train station without a ticket immediately after the alleged offences of the 3rd of January. While these are seemingly trivial examples, they relate to a more general tendency towards unreliability and acting in her own interests relevant to the present matter. Ms. Kenna also has prominent callous and unemotional traits, and this was in evidence at interview with me, even when her mental illness is in remission. It is notable that she has such an impairment of social reasoning that she does not even seek to hid those callous and emotional traits.

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Concerning…the stabbing of Fionnaula Bourke on 3rd January 2017, in my opinion, Ms. Kenna did know the nature and quality of the act. By her own account, she appropriated a sharp knife with the purpose of robbing a victim. She selected an appropriate victim, letting the first potential victim go, then attacking Ms. Bourke. Her initial assault on Ms. Bourke demonstrate the instrumental use of violence, in other words, violence for a purpose, to subjugate the victim and

make the victim give up her valuables. In my opinion, Ms. Kenna did know that what she was doing was wrong. Having given the victim clear instructions to give up her bag, Ms. Kenna took the bag, then ran away and subsequently used money from the victim's bag to pay for a train ticket. I note that the following day, she presented herself to Tallaght Garda Station, again demonstrating some knowledge that what she had done was wrong. In my opinion, I can find no evidence that Ms. Kenna could not refrain from the act. It appears that she cut short the assault once she had the bag. She ran off and did not pursue the victim to finish her off, a phrase she uses herself, despite her later claims to this effect. I note that Ms. Kenna later said she was disappointed she did not kill the victim, given the extent of her injuries to the victim's neck. There are other explanations for Ms. Kenna's final attack on the victim's neck other than a delusional belief regarding vampires. These include simple displaced anger, resentment and a sense of entitlement. There is no suggestion in any of the contemporaneous witness descriptions or the interviews that this robbery and assault were related to delusions or hallucinations, though there is some evidence in the subsequent interviews for thought disorder and abnormal mood. In my opinion, from a psychiatric point of view, this alleged offence would not come within the definition of insanity in section 5 of the Criminal Law (Insanity) Act."

Discussion

13. In written and oral submissions, the evidence of Professor Kennedy has been criticised as partial, inaccurate, and involving a less than thorough assessment of the relevant evidential material. It is pointed out that when he was preparing his opinion and report, and when giving evidence at, the trial that concluded on 5th March 2019, which was a retrial, the first trial proving inconclusive, he had not watched the videos of the interviews taken the day

after the assault. It is said that his analysis and the opinion that he had formulated was largely based on the discussions that he had with the appellant, which took place some 18 months after the incident, and in the course of which she had indicated that her motivation was robbery.

14. It is to be noted that the jury heard at some length from both psychiatrists. In the case of Professor Kennedy, they heard him being cross-examined in a particularly robust fashion by lead counsel on behalf of the defence. They heard it being suggested to him that he was partisan and lacking in objectivity. In particular, they heard him challenged on the basis that his approach was inconsistent, in that he was prepared to concede that Ms. Kenna met the criteria for insanity at the time of the Luas assault, but he was contending that she did not meet the criteria at the time of the Drumcondra assault, yet within days of it, she was being treated in the Central Mental Hospital as a patient clearly in a severe psychotic state. Professor Kennedy's response was to assert that it is part of the natural history of Schizoaffective Disorder that it varies rapidly and quite widely from day to day, and sometimes more quickly than that. It is characterised by swings, he asserted.

15. The task facing the jury was an unenviable one. Two eminent consultant psychiatrists were offering conflicting opinions and it was for the jury to choose between them. There were significant areas of agreement. Both accepted that the appellant suffered from a Schizoaffective Disorder, but they disagreed as to whether the special verdict of not guilty by reason of insanity was available in respect of this particular offence. The onus of proving insanity, to the civil standard, rested on the defence. Only a jury could conclude that the appellant was insane. Even in a situation where there was unanimity on the part of the psychiatric professionals, it is only a jury that can return a verdict of not guilty by reason of insanity.

16. In a situation where eminent psychiatrists express an opinion, that opinion is closely reasoned, and they are willing and prepared to stand over that opinion when challenged on it, it is very hard to see how it could ever be concluded that a jury preferring one opinion over the other was in any way perverse. While, undoubtedly, there was material which might have resulted in the jury returning a verdict of not guilty by reason of insanity, equally, there was material supported by credible expert testimony which provided a basis for returning a verdict of guilty. The case could scarcely be more different than that of *DPP v. Alchimionek* [2019] IECA 49. There, the prosecution and defence experts were in complete agreement that the accused was legally insane and the jury had been advised by the trial judge that a verdict of not guilty by reason of insanity appeared to be the only reasonable verdict open. In this case, however, that question was left in the hands of the jury and it is not for us to second-guess the decision they reached.

17. For those reasons, we have not found anything to suggest that the conviction was unsafe or would warrant our interference. As such, we will dismiss the appeal against conviction.

The Appeal against Sentence

18. The trial judge's approach to sentencing was to identify a headline sentence of 17 years' imprisonment. However, having regard to the mitigating factors present, including the admissions of Ms. Kenna at the time of her arrest and the remorse that was indicated, the judge felt that a discount should be reflected in respect of the headline sentence, and so measured the gross term of imprisonment at 15 years. Then, to reflect what she described as the appellant's "serious and significant mental health issues", the judge suspended the last five years of that 15-year sentence. The terms of the suspension were that the appellant enter a bond to keep the peace and be of good behaviour. Upon her release, she was to reside at a notified address, notified to the Probation Service, she was required to attend all

appointments with the Probation Service and follow all directions issued by that service. She was also required to attend all appointments directed by her consultant psychiatrist and to abide by any treatment regime prescribed to her, including the medication regime prescribed by the said consultant, and she was required to remain drug-free and alcohol-free over the terms of suspension. This resulted in an effective sentence of ten years, taking into account the period of suspension.

19. On behalf of the appellant, it is said, given the acceptance of the fact of very significant mental health problems, that a far greater discount from the headline sentence of 17 years was required. It is said that account must also be taken of the fact that there is a heightened risk that the suspended element of the sentence will actually be required to be served, having regard to the appellant's history of homelessness and drug addiction.

20. In the Court's view, the judge's approach to sentencing was an entirely proper one. This was an offence of the utmost gravity, involving the attempted murder of a complete stranger. The headline or pre-mitigation sentence could not have been less than the 17 years fixed, and indeed, could well have been higher. From the initial headline figure of 17 years, there was the significant reduction, first, to 15 years, and then the suspension of one-third of that sentence. In the Court's view, the trial judge's approach to sentencing did not disclose any error in principle.

21. Accordingly, the Court will dismiss the appeal against sentence.