

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

THE QUEEN

-v-

HAZEL STEWART

Before: Higgins LJ, Girvan LJ and Coghlin LJ

GIRVAN LJ (delivering the judgment of the Court)

Introduction

[1] On 2nd March, 2011 at Antrim Crown Court after a trial before Hart J and a jury the applicant, Hazel Stewart, was unanimously convicted of the murders of Trevor Buchanan, her husband, and Lesley Howell, the wife of her co-accused Colin Howell. Their deaths occurred almost twenty years previously on 19th May, 1991. The applicant was sentenced to life imprisonment and ordered to serve a minimum term of 18 years. Her co-accused Colin Howell prior to the trial of the applicant pleaded guilty to both murders and he was sentenced to life imprisonment with a minimum term in his case of 21 years. This was a renewed application to the full court for leave to appeal against her conviction for the murder of Lesley Howell. The single judge Deeny J refused leave in respect of both this conviction and her conviction for the murder of Trevor Buchanan. The applicant has since abandoned her leave application in respect of the latter conviction. At the conclusion of the hearing of the application for leave we informed the parties that we had decided to dismiss the application. We set out our reasons for doing so in this judgment.

[2] Mr Gallagher QC and Mr Reel appeared for the applicant on the hearing of the application though not at the trial. Mr Murphy QC and Mr Connor appeared for the Crown as they had before the trial court. The Court is indebted to counsel for their written and oral submissions which address the issues with clarity and succinctness.

The grounds of appeal

[3] Although the initial notice of appeal sought to rely on a number of grounds of appeal the applicant has abandoned some of those grounds and the application before this court is essentially based on three grounds, namely that:

1. The trial judge should have made a direction of no case to answer in respect of this charge;
2. The trial judge's directions to the jury failed to adequately direct the jury on the issue whether the applicant had been involved in a joint enterprise to murder Lesley Howell;
3. An alternative lesser offence or offences should have been left to the jury for its consideration.

Factual Background

[4] On 19th May 1991, the bodies of Lesley Howell and Trevor Buchanan were discovered in Lesley Howell's car found parked in the garage of a residential property at 6 Cliff Terrace, Castlerock, Co. Londonderry. This property was owned by Mrs Howell's late father, Harry Clarke, who had died a few weeks earlier. Mr Buchanan's body was slumped in the front driver's seat, while Lesley Howell's body was found lying in the boot of the car. Lesley Howell's body was found with headphones on and family photographs were positioned beside her body. Fitted to the end of the exhaust pipe of the car was one end of a vacuum cleaner hose pipe. The other end of the hose was located in the boot beside the head of Lesley Howell. There was a strong smell of car exhaust fumes in the garage and while the car engine was not running the ignition was in the 'switched on' position. Autopsy reports on both bodies determined that death had occurred by reason of carbon monoxide poisoning consistent with car exhaust fumes. A small trace of drugs found in each body was within therapeutic limits and a drugs overdose was ruled out. Mrs Howell was found to have consumed some alcohol. A purported suicide note had been left by Lesley Howell, which was supposedly found by her husband Colin Howell at their home.

[5] Inquests into the circumstances surrounding the deaths took place on 14th May 1992. The verdict in each case was death resulting from carbon monoxide poisoning.

[6] Many years after the deaths Howell confessed on 29th January 2009 to his new wife, Kyle Howell and then to certain members of Coleraine Baptist Church ("the Church") that he was responsible for the deaths of Lesley Howell and Trevor Buchanan. He told them about his sexual relationship with the applicant and of his involvement and that of the applicant in the murders of the two deceased providing details of how he had carried out the murders. He was arrested on 29th January 2009 on suspicion of the murders of Lesley Howell and Trevor Buchanan on 19th May 1991.

[7] Subsequently Howell pleaded guilty to the murder of the deceased. He was called by the Crown as a witness at the trial and he gave evidence. He claimed that after she became aware of his affair with the applicant Lesley Howell suggested that it would be better if she and Trevor Buchanan were both killed in a road traffic accident. This led him to hatch a plot to arrange their deaths and make it look like suicide. He stated that he discussed his plans with the applicant. He planned to pipe car fumes from the garage into the house, first at his house and then at Trevor Buchanan's house. The plan was that both Lesley Howell and Trevor Buchanan would fall asleep and that he would put the gas pipe from the car beside them and they would fall asleep quietly.

[8] Mr Howell executed the plan by firstly killing his wife by carbon monoxide poisoning and placing her body in the boot of the car with a blanket and his bicycle placed over it. He then claimed that he contacted the applicant as previously agreed and drove over to her house and reversed the car into her garage with access being afforded to him by the applicant to the garage and then to the house in accordance with their prior arrangement. He then connected a garden hose to the car and brought the pipe into the bedroom where Trevor Buchanan was asleep and placed the pipe beside him. Mr Buchanan was sedated. Mr Howell who made clear to the applicant the need to ensure that Trevor Buchanan was sedated claimed that he had previously given the applicant sleeping tablets and asked her to mash them up and put them into her husband's food. While Howell was in the bedroom Trevor Buchanan, although sedated, stirred and Howell had to hold the pipe to his mouth while he died. The applicant had left out some of her husband's clothes as previously she agreed she would do. Howell subsequently dressed the deceased, who was only in boxer shorts, in these clothes. Howell then put the body in the car beside his wife Lesley's body. Howell stated that the applicant's role was to clear up. The applicant cut the hose pipe into sections and burned it in the fireplace. Howell stated that while this was all his idea the applicant co-operated. Howell then drove the two bodies to his deceased father-in-law's house and reversed the car into the garage. He removed Mr Buchanan's body from the boot and placed it in the driver's seat. He put a set of Walkman earphones on Lesley Howell and switched the Walkman on to make it appear that she had died listening to music. There was a broken vacuum cleaner in the car the hose of which he connected up to look as if fumes had been piped in. He started the engine, left the garage, ran along the beach, got his bicycle which he had earlier deposited and cycled home. He thinks that he reached home at about 4.30am. He telephoned the police and said that his wife was missing. He then phoned Jim Flanagan, an elder in Coleraine Baptist Church.

[9] Mr Howell stated that while the applicant would not have understood the plan to the level that he understood it she was willing to co-operate with him in its execution. He said that she had not asked him not to execute the plan although she initially was concerned that they would be caught. The purpose of the plan was the removal of the two spouses to leave the applicant and Howell free to pursue their relationship. Afterwards Howell noted that there was a change in her and that in the early days he knew she wished that the murders had not happened.

[10] Howell described his relationship with the applicant as intense and sexual. He gave evidence of how the relationship with the applicant developed after the deaths of their spouses. Initially the relationship was secret but progressed to the point where they would take their children on outings to remote beaches. They went on hotel breaks and he went to the applicant's home regularly on Friday nights. The relationship ended after 5 years in the summer of 1996 because the applicant had met someone else.

[11] The applicant did not give evidence at the trial. Evidence was adduced by the Crown of what she told the police during a number of police interviews under caution.

[12] Those interviews proceeded over a protracted period and in the course of the interviews the applicant's version of events changed considerably. She described how she met Howell through the Church. They were both professing Christians. She took Sunday School for the small children. She and Howell's wife took their children to a swimming club. On occasions, Howell went instead. She was aware that he found her attractive and one night he phoned her and called at her house when her husband was working. They developed a relationship. She said she went to the pastor of the church and told him about the relationship and that the relationship then finished. She thinks that was why Lesley Howell took an overdose. Then Howell contacted her and the relationship began again. She became pregnant and was not sure whether the baby's father was her husband or Howell. As a result with Howell's help she had a secret abortion. She and her husband never separated during her relationship with Howell. She described how people had tried to warn her off Howell and had told her that he was a compulsive liar but she saw a charming side to him. She stated that Howell told her that he would never divorce his wife. When he broached the idea of killing his wife and her husband, she was scared. She claimed that she thought he might kill her if she did not co-operate. At the start of their relationship, she loved him but after the abortion, the relationship deteriorated. She stated that Howell loved taking risks and got a buzz from them. She stated that Howell was annoyed that he was put out of the Church after his wife's death and that she was allowed to stay. She said that Howell told the pastor that he had slept with her, so she was expelled from the Church along with her children. She described that when the relationship ended, Howell prowled around the back of her house, drove up and down, was very angry and telephoned her. She described him as controlling and that she was "easy prey". They finally separated in 1996 and she told him that she did not want to see him anymore.

[13] Initially in her interviews she claimed that Howell came to her house on a Saturday night and reversed his car into the garage. He told her that Lesley Howell was in the boot. Her husband Trevor was in bed asleep. She felt scared and did not know what to do. Howell told her to go into the bedroom and close the door. She looked out of the bedroom and saw her husband's body on the hall floor. She described how there was a pipe running from Howell's car to the bedroom. She

assumed that her husband died by fumes from the car. She stated that Howell never told her how he was going to kill her husband and his wife. She described how Howell had given her the hose pipe and told her to cut it up and burn it, which she did. She stated that she had no idea where he went when he drove off and did not want to know. She said she found out from the Church where the bodies were found.

[14] In the course of interview the applicant told the police that she had fallen asleep the night of her husband's death, but sometime later heard voices in the house, one of which she recognised as that of Lesley Howell. She subsequently accepted in interview that this was a lie. She also said that that night Howell phoned her and told her he was coming to her house. She said that she was not suspicious. She denied giving her husband any medication, drug or tablet that evening and said that he had taken something himself. She stated that after Howell had taken her husband's body from the house, she washed the covers on the bed and opened the window to get rid of the fumes.

[15] Over the course of the interviews under police questioning the applicant radically altered her initial account and conceded that Howell had arranged to come round that Saturday night to kill her husband. She stated that she knew it was going to be by carbon monoxide poisoning. She claimed not to know the precise details. She said that she knew something was going to happen that day and was not in good form. She said that her husband took the Temazepam himself because he couldn't sleep and she had suggested: 'why don't you take something?' She stated that Howell had wanted her to give her husband a tablet. She stated that when Howell arrived at the house, she went into the living room and then into another bedroom beside her own. She agreed that she had left her own car out of the garage that night on Howell's instructions. She described how on the night in question, Howell came to her house and reversed his car into the garage. He told her that Lesley Howell was in the boot. She described how he had given her the hose pipe and told her to cut it up and burn it, which she did. She stated that she had no idea where he went when he drove off and did not want to know. She said she found out from the Church where the bodies were found. She described how Howell had told her what to say about her husband's disappearance.

[16] In her fourteenth interview the police put to her that when she got the phone call from Howell in the early hours of the morning she knew that Lesley Howell had been murdered and that the plan was going ahead. It was put to her "*You fully accept that?*" She said "*Yes, I do.*" This was entirely at odds with her assertions in earlier interviews that she did not know why he was coming. The police put to her the following question: "*You were allowing somebody with your consent (and you had been in it from the start) to come and murder your husband, that he had murdered his own partner which was all part of the plan? Do you accept that?*" Her answer was "*Yes.*"

The Issues

[17] The first issue raised by the applicant concerns the doctrine of joint enterprise and whether the evidence against the applicant in respect of Lesley Howell's murder was sufficient to establish a prima facie case against her. It was the applicant's contention that the trial judge ought to have withdrawn from the jury the case against the applicant on that count. The applicant seeks to draw a distinction between her involvement in the plan to murder Trevor Buchanan (in respect of which the applicant does not challenge the jury's findings) and Howell's plan to murder Lesley Howell to which she claims not to have been a party and in respect of which she committed no actus reus. She criticises the charge given by the trial judge and asserts that the jury were not properly directed to consider whether there were two separate murders which should be given separate consideration. She asserts that no encouragement or assistance on her part in bringing about the death of Lesley Howell can be identified from the evidence. The applicant further seeks to argue that the plan to kill Trevor Buchanan and make it appear as a suicide was not in any way dependent upon Lesley Howell being murdered at or about the same time and that in directing the jury as he did the trial judge failed to distinguish between the actus reus necessary for each murder. The focus of the applicant's criticism is the trial judge's statement to the jury where he said:

"If you are satisfied beyond reasonable doubt that they were in it together when both murders were committed, then you should find Stewart guilty of both murders."

While counsel accepted that that was normally a correct direction in the case of an alleged joint enterprise Mr Gallagher contended that it was inappropriate and too brief a statement of the relevant law in the present case.

[18] The Crown maintains that it was the prosecution case throughout that the double murders committed in this case were pursuant to a joint plan entered into between the applicant and Howell to murder their respective spouses for their own ends. The prosecution case was that the applicant participated willingly in the plan; that it was fundamental to the plan that both spouses were murdered; and that the motivation for the plan was to allow each of them to rid themselves of their spouses in order that they could be together.

[19] The third issue concerns whether the trial judge should have left alternative counts to the jury. The applicant relies on the House of Lords decision in R v Coutts as the leading authority on this issue. The applicant says it was necessary to draw a sharp distinction between aiding and abetting murder; mere agreement that a murder should take place; and knowledge that a murder was being planned by another person. The applicant argues that if it was appropriate to leave the count of murder of Lesley Howell to the jury the trial judge had a duty to leave to the jury an alternative count of assisting an offender pursuant to section 4 of the Criminal Law Act (Northern Ireland) 1967 especially where the jury may have been reluctant to acquit the applicant entirely in respect of Leslie Howell's death. Mr Gallagher

argued that it was open to the jury to conclude that the applicant had committed no actus reus in relation to the killing of Leslie Howell but that the applicant helped Howell by helping him to murder Trevor Buchanan and represent the deaths as joint suicides.

[20] The Crown maintains that there was one case made against applicant and Howell and that there was no alternative case. There were no direct alternatives (such as manslaughter) available on the evidence. The applicant was involved in these murders as part of a joint enterprise or she was not; either she did agree or she did not. Either they were 'in it together' or they were not. The Crown's position is that the case did not lend itself to the consideration of lesser offences in any meaningful way.

Conclusions

[21] At the end of the Crown case there was evidence on which the jury could conclude that the applicant willingly participated in the plan hatched by Howell to bring about the deaths of Lesley Howell and Trevor Buchanan, the parties' respective spouses, with the motive of allowing Howell and the applicant to be free from their spouses to facilitate their relationship. There was evidence, clearly established by the applicant's admissions in her later interviews, that she knew about the plan that both would be murdered and that she had a role to play in facilitating the murder of Trevor Buchanan and in clearing up after his death and removal from the scene. She assisted by encouraging Trevor Buchanan to consume medication to make him sleep, by giving Howell the go-ahead to come to her house before he arrived, by arranging the garage to be ready for Howell's vehicle, by permitting Howell entry to the house, by permitting him to bring the hose into Trevor Buchanan's bedroom, by having clothes available to dress him after his murder, by disposing of the hose after his death and cleaning up the murder scene and providing false accounts to the police thereafter. The continuation of the relationship with Howell after the death provided further material from which the jury could infer that the deaths of both Lesley Howell and Trevor Buchanan were the result of a clear understanding on the part of the applicant that the murders were part and parcel of a joint plan to remove the parties' spouses from the scene to facilitate their on-going relationship.

[22] There was strong evidence upon which a jury could conclude that the applicant was a knowing and willing participant in the plan hatched by Howell to dispose of both the deceased victims. The trial judge was accordingly right to reject the defence application for a direction. The evidence was wholly consistent with the applicant being a willing participant in a joint plan to have both spouses killed in circumstances which were to be represented as a joint suicide.

[23] It is clear that a defendant can be a party to a joint enterprise to murder without actually carrying out the murderous act directly causing the death of the deceased. Active involvement establishing the actus reus arising from participation

in a joint enterprise can take many different forms from encouragement and incitement to physically assisting in the actual murderous attack. Where, as here, there was evidence from which a jury could conclude that the applicant and Howell agreed to take part in a series of steps leading to the killing of two victims which was to be dressed up as a joint suicide an actus reus on the part of the applicant could be established from her knowing participation in the overall plan to kill the two victims in circumstances giving Howell the knowledge and thus encouragement that he could safely proceed with the actual murders. Furthermore, the active steps taken by the applicant in respect of assisting in the murder of Trevor Buchanan constituted acts on her part that were part and parcel of the execution of the plan for the killing of the two victims to be represented as a joint suicide. The false story which the applicant fabricated after the bodies were discovered was designed to advance the plot. It was open to the jury to infer from that latter conduct that the applicant's actions established a prior knowledge of an agreement with the plan which involved the killing of the two victims.

[24] The trial judge in his summing up clearly informed the jury that a finding by them that the applicant was guilty of her husband's murder did not necessarily mean that she was guilty of the murder of Lesley Howell. He stressed to them that the question was what part the applicant played in the events leading to the death of the victims which Howell admitted. The trial judge gave a standard form of joint enterprise direction in accordance with the direction recommended by the current Bench Book and he properly highlighted the question as being whether the jury was satisfied that Howell and the applicant were in it together. He directed the jury that unless it was satisfied beyond reasonable doubt that the applicant agreed to the murder of Lesley Howell they were bound to acquit the applicant of her murder. The jury was properly focused on the question whether it was satisfied beyond reasonable doubt that the applicant agreed to the murder of Lesley Howell. The jury could only have convicted her if satisfied that she did so agree. If she did agree to the murder then inevitably the jury was bound to conclude that she did so as part of a plan to dispose of the two victims. If there was as the jury found an agreement between Howell and the applicant for the murder of both the actions of the applicant, as discussed above, clearly constituted the requisite actus reus necessary to be established for the proof of participation in a joint enterprise to kill both. We are satisfied that the judge's summing up which was a model of clarity correctly identified for the jury the questions which the jury were bound to address when coming to their conclusions.

[25] Mr Gallagher argued that the jury could have concluded as alternatives to convicting the applicant of murder that:

- (a) She conspired to murder Lesley Howell.
- (b) She helped Howell to conceal the murder of Lesley Howell by allowing him to murder Trevor Buchanan and to represent the deaths as a joint suicide.

Before the court can or should leave to a jury the question whether it may convict the defendant of a lesser alternative crime to the one charged there must be viable evidence upon which the jury could conclude that the defendant was guilty of the lesser crime if it concludes that he or she is not guilty of the more serious one. The Crown case was that the applicant was either involved in the murder of Lesley Howell and Trevor Buchanan as a joint enterprise or she was not. The trial judge indicated that it was for the jury to decide whether the applicant agreed to the murder of Lesley Howell as part of her agreement to kill Trevor Buchanan. If she did not agree to that no question of a conspiracy to murder would have arisen. But if she did the evidence would have led to the conclusion that she was involved in a joint enterprise to carry out a joint killing. Nor was there evidence upon which the jury could have sensibly or rationally come to the conclusion that if the applicant had no prior involvement in the plot involving the killing of Lesley Howell she could be guilty of assisting Howell to conceal the murder of Lesley Howell by allowing him to murder Trevor Buchanan so as to represent the two deaths as a joint suicide. Such a scenario could only have arisen if Howell had arrived at the applicant's house having murdered Lesley Howell without the applicant's knowledge and agreement and if the applicant at that stage agreed to participate in a newly formulated plot to co-operate with Howell in the murder Trevor Buchanan to enable him to represent the deaths as a joint suicide. There was absolutely no evidence of any such newly hatched plot occurring at that stage. It was not part of or inherent in the Crown case and the applicant made no such case. Rather the evidence clearly pointed to the applicant knowing in advance of Howell's arrival at the house, that he was coming to murder Trevor Buchanan and that he was doing so in furtherance of a prior understanding that the parties' respective spouses were to be murdered in such a way as to represent their deaths as a joint suicide.

[26] It is for these reasons that we dismissed the application for leave and are satisfied that the conviction of the applicant for the murder of Lesley Howell was entirely safe.