

Regina v Ian John Lawless

No. 2008/05482/C1

Court of Appeal Criminal Division

16 June 2009

[2009] EWCA Crim 1308

2009 WL 1725983

Before: Lord Justice Richards Mrs Justice Gloster DBE and Mrs Justice Dobbs DBE

Tuesday 16 June 2009

Representation

- Mr M D Barlow appeared on behalf of the Appellant.
- Mr C Geeson appeared on behalf of the Crown.

Judgment

Tuesday 16 June 2009

Lord Justice Richards:

1 On 20 February 2002, following a trial at the Crown Court at Kingston upon Hull before Grigson J and a jury, Ian Lawless was convicted by a majority of 10:2 on a count of murder. He was jointly charged with Gary Lawson, who was convicted of murder by a unanimous verdict.

2 The appellant subsequently appealed against his conviction, but the appeal was dismissed by the full court on 13 February 2003. He now brings a further appeal against conviction, this time upon a reference by the Criminal Cases Review Commission under section 9 of the Criminal Appeal Act 1995. The reference is based upon fresh evidence, in particular expert psychological evidence concerning the reliability of confessions which were at the core of the case against the appellant at his trial.

3 The victim of the murder was Alfred Wilkins, a 67 year old man, who three months previously had stood trial for, but had been acquitted of, the indecent assault of an 8 year old girl. Subsequent to his acquittal, Mr Wilkins had been subjected to harassment. The windows of his house had been smashed and graffiti had been daubed on his property.

4 On 1 February 2001 two intruders broke into his home and attacked him. Then early on 9 February 2001 accelerant was poured through the letter box of his home and ignited. As a result of the smoke from that fire both Mr Wilkins and his dog died. They were found at about six o'clock that morning.

5 Gary Fairbanks and his son Dean lived near to Mr Wilkins. Lawson often visited the Fairbanks' home. Chantelle Day was Lawson's girlfriend. The appellant was also a friend of the Fairbanks.

6 The indictment included charges against all of them. Count 1 alleged that Lawson, Day and Dean Fairbanks, prior to 2 February 2001, conspired to cause grievous bodily harm to Mr Wilkins. Lawson and Day were convicted of that offence. Dean Fairbanks was acquitted on the direction of the trial judge. Counts 2 and 3 alleged that Gary Fairbanks had incited Lawson to cause grievous bodily harm and had incited him to murder. He was acquitted of both offences. Counts 4 and 5 alleged that, prior to 9 February 2001, Day had incited Lawson to murder Mr Wilkins and to set fire to his home. Following a submission made during the trial, she was acquitted of those offences on the direction of the trial judge. Count 6 charged the appellant and Lawson with murder. Both were convicted on that count. Counts 7-9 related only to Gary Fairbanks and concerned events some time after the fire.

7 The prosecution case against the appellant, who was named only in count 6, was that after the murder he admitted participation, and in particular participation as a lookout, to a number of

people and behaved in a way that was consistent with those admissions being true. There was no forensic evidence to link him with the fire in which Mr Wilkins died. Nor did anyone purport to have seen anything relevant on the night when the fire was started.

8 The evidence concerning the admissions made by the appellant came first from Mick Bennett. He said that he and the appellant were regulars at the Pestle and Mortar public house and they had been there together on 8 February. He described the appellant as "a bit of an idiot, a fool" when he had had too much to drink. The appellant liked attention and sometimes invented stories to gain attention. At some stage on 8 February the appellant left the public house saying he had to deliver some tobacco to the estate. He had a bag with him. When he returned he no longer had that bag. Mr Bennett and the appellant had left the public house together, possibly after closing time. Mr Bennett could not recall a great deal about the evening as he had been drinking. He said that the following day the appellant told him that he was involved in Mr Wilkins' death. The appellant said that he had stood on the corner and kept watch. The appellant was tearful and upset.

9 The appellant's daughter, Laura Lawless, gave evidence that the appellant was "a bit of a drunk", and when he was drunk he talked nonsense and could be "a bit of an idiot". He would say things which were untrue in order to appear clever. She saw him on 8 February. They were together on that day from about 8.30pm to 9.30pm. He telephoned her the following day to tell her that something had happened. She met him at the Pestle and Mortar in the evening. He then told her about Mr Wilkins' death. He had been drinking, but he was "soberish". She could not recall very well what he said to her, but he told her that he had been involved in a burglary at Mr Wilkins' house and had gone along as a lookout. He had left before the burglary was complete. The next morning he learnt that Mr Wilkins was dead. He said that he did not know if he was involved in a murder or in setting fire to the property. He thought he was simply involved in a burglary. He was visibly upset. She did not take him seriously.

10 William Cummings gave evidence that he saw the appellant at the Pestle and Mortar on either 8 or 9 February. The appellant was visibly upset. He said, "I've done a terrible thing. I didn't mean to do it. I've killed this bloke, but all I wanted to do was scare him". The appellant was full of remorse and very drunk at the time.

11 Glenn Barratt, a former doorman at the Pestle and Mortar, gave evidence that he knew the appellant to be a regular customer but he had never seen him drunk. He described the appellant as a likeable character who liked to say things that were untrue in order to get attention. The appellant had commented that he had been involved in the murder, but Mr Barratt did not believe him.

12 Deborah Howard, a barmaid at the Pestle and Mortar, also gave evidence that the appellant was a likeable character. According to her, he said things that were untrue, especially when he was drunk. She had asked him if he knew who was involved in Mr Wilkins' murder. Initially he told her that he did not know. Later he said that he had been the lookout. She thought he was exaggerating.

13 Andrew Waller, a barman at the Pestle and Mortar, gave evidence describing the appellant as "a practical joker" and "the village idiot". The appellant had said to him, "It was me. I did it. I killed the paedophile". He said that the appellant liked attention and would say or do anything to attract it. If there had been a number of murders in the area, the appellant would claim that he had been there.

14 Geoffrey Hughes, a taxi driver, gave evidence that the appellant was a regular passenger and had been in his taxi on 9 or 10 February shortly after midnight. The appellant was not drunk but was not his normal self. He was depressed. He said, "It's that nonce, the one in Yarborough". Mr Hughes asked him if he was involved in setting the fire, to which the appellant replied, "No, I was just the lookout". He added that his intention had been to frighten Mr Wilkins.

15 There was also evidence from David Gough, a serving prisoner who had been on remand at the same time as the appellant at Her Majesty's Prison The Wolds. The appellant told him about the murder. He did not seem worried about the gravity of his situation. When they were in the dining hall in the company of other prisoners, the appellant told him that the police did not have much evidence against him and that there was more evidence against others. Later, when they were alone in Mr Gough's cell, the appellant talked about the case. He said that there was not

much evidence, namely a few witness statements which did not count for a great deal. He referred to a taxi driver and other people he knew from the local public house. He said that he had told these people he was involved, but because he was drunk at the time it did not count for anything.

16 The appellant spoke about the case on a further occasion in Mr Gough's cell. On that occasion he asked Mr Gough what he thought about the taxi driver's evidence. He referred to Mr Wilkins as "an old nonce". He appeared more worried about the case, though he said he would be alright as there was more evidence against others. He said that there were other people involved, not just him. All he had done was to keep watch. The other two had set fire to the house. He added that there was no forensic evidence against him.

17 Mr Gough reported this conversation to his solicitor who notified the police on his behalf in the hope of securing a reduction in Mr Gough's sentence. After he had pleaded guilty, Mr Gough was moved to a different wing but he saw the appellant again. On that occasion the appellant told him that only one person had set fire to the flat, while the occupant was in the kitchen.

18 The Crown's case against the appellant rested almost entirely on those admissions. In the circumstances it is unnecessary to refer to the remainder of the prosecution evidence at trial; it related mainly to the other defendants. We should, however, note that the appellant's admissions were not repeated in his interviews by the police, in which he consistently denied any involvement in the events leading to the death of Mr Wilkins. He also initially denied to the police that he had told others he had been involved in the offence, but he went on to suggest that he might have made false admissions when drunk and might be unable to recall making those admissions.

19 In his evidence at trial, the appellant said that he had never discussed Mr Wilkins with Gary or Dean Fairbanks, or with Gary Lawson. He had on occasion had a drink with Mr Wilkins and had visited him at his flat. He had continued to drink with him after Mr Wilkins' court case. He had never heard anyone threaten Mr Wilkins or threaten to damage his property. He described drinking at the Pestle and Mortar on the evening of 8 February 2001. He said that he left the public house to go to the Yarborough Estate to deliver some tobacco first to his girlfriend Sharon Turgoose and then to Gary Fairbanks. He did not stay at the Fairbanks' home very long. Mandy Tasker, whom he did not like, was there. He returned to the Pestle and Mortar and stayed there until after closing time. At about 2.30am he accompanied Jody Daynes home and then returned to the house of his girlfriend Sharon. It took five to fifteen minutes to walk to Jody's house and a further twenty minutes to walk to Sharon's house.

20 On the Friday morning he called in at the Fairbanks' home, where he learnt about the fire. He spent most of that day at the Pestle and Mortar drinking. He could not remember telling anyone he was involved in the fire. If he had, it would not be the first time he had been drunk and said something that was untrue about being involved in crime in Grimsby.

21 In cross-examination, however, the appellant agreed that he had spoken to his daughter but could not remember what he had said. Although he agreed that he might have been upset, he said that he had not been crying. He disputed the evidence of William Cummings; they hated each other. In respect of Glenn Barratt's evidence, the appellant agreed that he said stupid things when drunk and that he boasted about things he had not done. He thought that he had made the comments attributed to him by Andrew Waller. He probably did tell the taxi driver that he was the lookout, but he could not recall saying that the intention had been to frighten Mr Wilkins. He denied having told anyone in prison that he had been involved in the fire. He had not discussed his case with David Gough.

22 Other witnesses called by the defence included Sharon Turgoose, the appellant's girlfriend. There were inconsistencies in her evidence. The Crown's position was that she was a wholly unreliable witness who had changed her timings in order to provide the appellant with a false alibi.

23 There was no psychological evidence available to the jury at the trial. The appellant had been assessed by a psychiatrist while in custody on remand. The psychiatrist had provided an opinion that neither at the time of the offence nor presently was the appellant suffering from any mental illness or disorder which would have a bearing upon the conduct of the defence. No consideration was given at the time to instructing a psychologist. The possibility of psychological

evidence of the kind now before this court, to which we will refer in a moment, did not occur to the defence team.

24 It was clear on the evidence at trial that the appellant was prone to make up stories in order to gain attention. The issue for the jury was whether the admissions made with respect to the murder were examples of that behaviour or were true confessions to actual participation in the offence by the appellant. The jury were directed in clear and correct terms on that issue by the trial judge.

25 The first appeal to this court, which was dismissed in February 2003, was advanced on relatively narrow grounds which we do not need to address.

26 The present appeal is based on fresh psychological evidence and the impact that such evidence might have had on the jury's verdict had it been available at the time. The Criminal Cases Review Commission instructed Professor Gisli H Gudjonsson, Professor of Forensic Psychology at the Institute of Psychiatry, King's College, London, to consider the appellant's case. Professor Gudjonsson produced three reports: the first recommended detailed psychological assessment of the appellant; the second set out the Professor's conclusions following that assessment; and the third dealt with certain specific questions raised. The Professor's findings are conveniently summarised in its Statement of Reasons by the Commission as follows:

"56. Professor Gudjonsson noted in his first report that Mr Lawless was a known alcoholic who might consume a large amount of alcohol without being visibly drunk to others.

57. Professor Gudjonsson found that Mr Lawless:

i) had an IQ of 80, suggesting that he was functioning in the Low Average range of intellectual ability;

ii) scored low on all the suggestibility tests indicating that he is highly resistant to leading questions and interrogative pressure and is not likely to accept suggestions 'on trust';

iii) had a high level of compliance, indicating that he is motivated to please others and avoid conflict and confrontation; compliance is different from suggestibility in that it does not relate only to questioning; a compliant person goes along with a proposition he knows he does not agree with, while a suggestible person comes to accept the proposition as correct;

iv) was acquiescent within normal limits, but at the high end of the normal limits; acquiescence indicates a tendency to answer questions in the affirmative irrespective of the content; like suggestibility, acquiescence involves responses to questions but the questions are not leading;

v) was an emotionally unstable extrovert, who was prone to addiction and anti-social behaviour;

vi) had a number of serious and long-standing psychological problems including alcohol dependence, personality disorders (primarily schizoid, dependency and passive-aggressive) and anxiety and mood disturbance;

vii) had a very high Disclosure and Debasement scores which are best construed as a pathological need for attention;

viii) had emotional and personality problems which made him psychologically vulnerable to uttering inappropriate and unfounded comments for the purpose of seeking attention;

ix) had a long history of alcoholism and had continued to drink in the prison environment (as evidenced by Ms Jackie Craine, his personal officer in HMP Rye Hill, who told Professor Gudjonsson that she had seen Mr Lawless intoxicated in prison on numerous occasions); Mr Lawless' drinking apparently increases at times of stress, and feeds into his feelings of shame, inadequacy and dependence on others;

x) had a pathological dependency on other people's attention which, in Professor

Gudjonsson's view, was key to understanding Mr Lawless' alleged comments about being involved in Mr Wilkins' death.

58. Professor Gudjonsson also expressed the view that the fact that Mr Lawless had apparently expressed distress, and even cried, whilst claiming involvement in the murder of Mr Wilkins should not be viewed as evidence of his guilt; it was likely that the expression of distress was part of his pathological attention-seeking behaviour.

59. Professor Gudjonsson concluded that it would be unsafe to rely on Mr Lawless' alleged self-incriminating comments as evidence of his involvement in the murder of Mr Wilkins."

27 The reference to the appellant being seen intoxicated in prison relates to Her Majesty's Prison Rye Hill, where the appellant was held after his sentence, not to Her Majesty's Prison The Wolds, where he was on remand at the time of the confession he was said to have made to his fellow prisoner, Mr Gough. The Commission, however, obtained some evidence concerning the discovery of fermenting liquids at The Wolds and expressed the opinion that, in view of that evidence and the appellant's obvious fondness for alcohol, it was at least possible that the appellant had had access to alcohol in the form of a fermenting liquid around the time of the alleged confessions to Mr Gough.

28 In his third report Professor Gudjonsson explained in greater detail the concepts of suggestibility, compliance and acquiescence, and dealt with the question why the appellant might be less likely to confess to the offence when under police interrogation than to the third party witnesses relied on by the prosecution. In that context he identified the following matters as important:

"1. The alleged confessions Mr Lawless made to witnesses to the murder of Mr Wilkins were apparently made when he was intoxicated with alcohol. In contrast, there is no evidence that he was intoxicated during the police interviews. He also had the support of a solicitor during the police interviews. I am in no doubt that alcohol intoxication is an important component to his alleged confessions to people as well as his pathological need for attention, which seems to have become exacerbated when he was under the influence of alcohol.

2. I have read again the transcripts of the police interviews dated 12 and 13 February 2001. There was a solicitor, Mr Tom Horn, present during both interviews; the former interview lasted 66 minutes and the latter 75 minutes. I have not seen full transcripts of the interviews, or listened to the tapes of these interviews, but the information that is provided in the summary transcripts clearly shows that Mr Lawless was not giving in to leading questions or interrogative pressure. He was assertive, and sometimes apparently verbally aggressive, during the interviews. His very low total score on the suggestibility scale during the psychological evaluation is consistent with his not giving in readily to leading questions and interrogative pressure. There is no evidence from the transcripts that Mr Lawless was attempting to seek attention during the police interviews like he had apparently been when allegedly making self-incriminating admissions to the prosecution witnesses whilst intoxicated. We are considering two very different contexts.

3. Mr Lawless may have confessed to acting as a look-out while a fire was started at Mr Wilkins' flat because, as Mr Barratt, the pub doorman, stated, the fire was the 'talk of the town' that night and Mr Lawless had a pathological dependency on other people's attention.

4. The nature of Mr Lawless' confessions may have taken the form of a pathological need for attention rather than bravado; not because he had feelings of remorse for committing the offence, but because his drinking fed into his pre-existing feelings of inadequacy and dependency on others for attention."

29 The Commission referred the conviction to the court on the basis that there was a real possibility that this court would find that if the jury had heard the new evidence in the form of the three reports of Professor Gudjonsson, and the information from The Wolds as to the availability of alcohol, they might have reached a different verdict. The Commission also considered a

variety of other grounds, which however were not found to raise any issue that justified a reference.

30 In his submissions on behalf of the appellant, Mr Barlow relies on the matters that prompted the Commission to make the reference. He submits that the evidence of Professor Gudjonsson would have assisted the jury in assessing the significance of the confessions and put into a proper context the evidence of the prosecution witnesses. The evidence provides compelling independent support for a number of propositions. First, the appellant was not merely "a bit of an idiot", but a man with serious psychological problems, a personality disorder and a pathological need for attention. Secondly, the appellant may well have claimed involvement in this offence not because he had in fact had any such involvement, but simply because he had a pathological dependency on other people's attention and was prone to making unfounded claims for the purpose of seeking attention. Thirdly, the appellant may well have confessed to third parties but not during police interrogation because he was highly resistant to interrogative pressure; he had the support of a legal representative whilst under interrogation at the police station; and there was no evidence to suggest that he was at that time under the influence of alcohol. Fourthly, the fact that the appellant had apparently expressed distress and even cried whilst claiming involvement in murder should not be viewed as evidence of guilt; it was more than possible that his expression of distress was part of his pathological attention-seeking behaviour and/or arose out of the fact that his drinking fed into his pre-existing feelings of shame, inadequacy and dependence on others. Fifthly, it was at least possible that he had had access to alcohol in prison and that, whether visibly or not, he had been drunk when he made any confession to Mr Gough. Further, it is submitted that the confessions were inconsistent with one another, and that there was nothing that could sensibly demonstrate any special knowledge on the part of the appellant as to the circumstances of the offence; such information as he did assert was within public knowledge at the time the confessions were made. The significance of Professor Gudjonsson's evidence is said to be that it goes to the heart of the question of safety of the conviction. It deals with matters beyond the normal knowledge of the jury and it goes to the heart of the issue of reliability of the confessions. It is on that basis that the court is invited to admit the reports into evidence and in the light of them to conclude that the conviction was unsafe.

31 Although Mr Barlow has sought to rely on the fresh material from The Wolds concerning the availability of alcohol there and the possibility that the appellant may have consumed alcohol when making his alleged confessions to Mr Gough, Mr Barlow advances the point with a light touch, and in our view rightly so. That material is too thin to take matters very far. In any event, if Professor Gudjonsson's evidence would have been capable of affecting the jury's assessment of the reliability of the other admissions made by the appellant, we do not think that the alleged confessions made to Mr Gough would have provided a sustainable basis for finding the conviction safe. Accordingly, the correct focus of attention is on the main thrust of Professor Gudjonsson's reports.

32 As to that, for the purposes of this appeal the Crown instructed Mrs Mechthild Jenkins, Consultant and Chartered Clinical Psychologist, to prepare a report on the appellant, taking into account the reports of Professor Gudjonsson and the other available material. In her report Mrs Jenkins largely confirmed Professor Gudjonsson's findings. In her summary at the front of her report she says:

"The psychological assessment shows that Mr Lawless suffers with a pathological need for attention. His test-taking attitude showed a tendency of over-reporting psychopathology, which appears to be a 'cry for help' and resulted in some of the tests being rendered invalid. However, the valid assessment results show that Mr Lawless presents with severe psychopathology, including personality disorders.

Mr Lawless' psychological difficulties appear to be very likely long-standing and were probably already present at the time of his arrest and conviction. However, in the absence of a psychological assessment, conducted at that time, this cannot be concluded with certainty.

It has been shown that Mr Lawless' pathological need for attention is also evident in the information given by Mr Lawless during the psychological interviews as well as the case documentation, particularly the witness statements. Mr Lawless' coping strategies, alcoholism and general lifestyle suggest that significant psychological difficulties and his need for attention were already present before the time of his arrest.

It was concluded that Mr Lawless' alleged admissions could be false admissions as his psychological difficulties and need for attention might render him vulnerable to making false confessions. In view of this it is deemed unsafe to rely on his alleged self-incriminating admissions as sole proof for his involvement in the murder of Mr Wilkins."

33 In the light of that and the rest of the material before the court the Crown has decided, rightly in our view, that it cannot resist this appeal. The appeal has a similarity to that of *R v Flanagan* [2005] EWCA Crim 2286 . In *Flanagan* the appellant was charged with murder, largely on the basis of confessions which he had made to third parties. He was convicted of the offence, notwithstanding evidence from a number of witnesses that he had a reputation for being fanciful and telling absurd stories, that he liked to be the centre of attention and was a compulsive liar, and at least one of those to whom he confessed had not believed the confession. When interviewed by the police he had denied involvement in the murder. After the trial the defence obtained a report from a consultant psychologist which formed the basis of an application for leave to appeal. The Crown then obtained their own expert evidence from, as it happens, Professor Gudjonsson, whose distinction in this area was acknowledged by the court. Professor Gudjonsson did not agree with the appellant's expert on every point, but he expressed important opinions favourable to the appellant's case. He concluded that the appellant showed a very high level of compliance, as well as being abnormally suggestible. He expressed reservations about the reliability of what was at trial an important confession which had been tape-recorded. He concluded that at the time of the confession the appellant was a psychologically vulnerable individual who had very little insight into his vulnerabilities or behaviour. The appellant's history of boasting and making false confessions was a feature of his very poor self-esteem and negativistic personality disorders which drove him towards self-destructing behaviour. Professor Gudjonsson also indicated that two key issues were not addressed at *Flanagan's* trial: first, the existence of the appellant's personality disorders was not before the jury; secondly, there was no expert evidence before the jury to explain why anyone would make a false confession — something which the jury might not otherwise understand. Further, the appellant's personality disorders were long-standing and were certain to have existed at the time he made the confessions. In the light of the expert evidence in that case, which the court received under section 23 of the Criminal Appeal Act 1968 , the Crown adopted the same course as in the present appeal: they did not resist the appeal. The court emphasised that it was a question for the court, not the Crown, whether the conviction was or was not to be regarded as unsafe, and that the crucial question to be addressed in that regard was whether, if the jury had heard the evidence of Professor Gudjonsson, their verdict might have been different. The court was satisfied that it might have been. It therefore allowed the appeal, quashed the conviction and in the circumstances of that case declined to order a retrial.

34 Although there are factual differences between the two cases, the Commission was understandably influenced by the judgment of the court in *Flanagan* in making the present reference to this court. Counsel for the appellant and counsel for the Crown have both recognised in their written submissions the importance and the overall similarity of *Flanagan* .

35 In the present case we are satisfied that the reports of Professor Gudjonsson and Mrs Jenkins should be received under section 23 of the 1968 Act. We are also satisfied that if the jury had heard that evidence at trial it might have affected their assessment of the reliability of the various confessions made by the appellant and their verdict might have been different. We note in particular, since this was a feature of *Flanagan's* case to which Mr Geeson for the Crown has drawn attention, that both psychologists are evidently of the view that the psychological conditions described by them are conditions from which the appellant suffered (or probably suffered) at the time when the confessions in question were made. We have also borne in mind that the verdict in relation to the appellant was reached by a majority of 10:2, and only after a very long period of deliberation.

36 It follows that this appeal must be allowed and the conviction quashed. Is there any further application?

MR BARLOW: My Lord, not on behalf of the appellant, no.

LORD JUSTICE RICHARDS: And not on behalf of the Crown?

MR GEESON: My Lord, no.

LORD JUSTICE RICHARDS: In that case it follows that the appellant must be released. Thank you very much.

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