



**IN APPEAL BY**

**LUKE MUIR MITCHELL**

**against**

**HER MAJESTY'S ADVOCATE**

## **SUMMARY**

**16<sup>th</sup> May 2008**

**Today at the Criminal Appeal Court in Edinburgh the appeal by Luke Muir Mitchell against his conviction for the murder of Jodi Jones was refused. The Lord Justice General, Lord Hamilton, sitting with Lord Osborne and Lord Kingarth delivered the following summary of their decision in Court.**

"On 30 June 2003 Jodi Jones, then aged 14, was murdered in woodland near Dalkeith. After trial in the High Court at Edinburgh the appellant, Luke Muir Mitchell, was convicted of that murder. At the time of his trial the appellant was 16 years of age; at the time of the murder he was just under 15.

The appellant sought leave to appeal against conviction on various grounds. He was granted leave on six of them; in the course of the hearing of his appeal he was allowed to introduce a further ground. The Opinion of the Court upon his appeal - to which each of its members has contributed substantially - is now available. It is of substantial length. It should be referred to for its terms. The summary which follows is not intended to describe the whole reasons which have led to the court's conclusions.

Under ground of appeal 1 a challenge was mounted to the decision made by the trial judge in advance of the trial to reject an application made on behalf of the appellant that his trial be heard in a court outwith the Edinburgh area. A number of circumstances (mainly media attention) were relied on in support of the proposition that, while the appellant could, notwithstanding that attention, obtain a fair trial, such a trial could not be obtained in a place so near as Edinburgh to the scene of the

critical events. It was acknowledged, however, that a decision as to whether or not to order that the trial be heard elsewhere was one primarily for the discretion of the trial judge in the particular circumstances of the case and that no miscarriage of justice could in that respect be said to have occurred unless this court was satisfied that the decision made was one which no judge acting reasonably could have reached. For the reasons given in detail in the Opinion of the Court (which include the steps taken by the judge in the course of the trial to avoid the jury being prejudiced against the appellant as a result of media attention) we are not satisfied that there was any miscarriage of justice in that regard. This ground of appeal is accordingly rejected.

The appellant next contended that there was led by the Crown before the trial court insufficient evidence in law upon which he could be convicted. Associated with that ground was the additional ground, namely that, having regard to the totality of the evidence, the verdict returned by the jury was a verdict which no reasonable jury properly directed could have returned.

The case against the appellant was wholly circumstantial. The principles to be applied in such a case are clear: individual items of evidence need not be incriminatory in themselves; they should be looked at not in isolation, but in the context of the whole evidence; if capable of more than one interpretation, it is for the jury to decide what interpretation to adopt; a jury is entitled to reject evidence inconsistent with guilt precisely because it is inconsistent with incriminatory evidence which it accepts; guilt can be established on the basis of circumstantial evidence coming from at least two independent sources; and for there to be a case to answer the whole circumstances taken together must be capable of supporting an inference of guilt. For the purpose of testing sufficiency, the evidence relied on by the Crown must be taken at its highest, that is, it is to be treated for this purpose as credible and reliable and is to be interpreted in the way most favourable to the Crown.

Applying these principles the court is satisfied that there was sufficient evidence in law upon which a verdict of guilty could be returned. An important element in the Crown case was the evidence of Mrs Andrina Bryson who testified to seeing a male and a female at the Easthouses end of the Roan's Dyke Path at about 1650-55 on 30 June 2003. Two other female witnesses identified the appellant as the young man they had seen at the Newbattle end of the Path about 50 minutes later. Taken at its highest Mrs Bryson's evidence amounted to an identification of the appellant as that male and of Jodi Jones as possibly that female. Taken along with other evidence (as we refer to later) it would have been open to the jury to conclude that it was indeed her. If that evidence was accepted, it not only destroyed the appellant's alibi (that he was in his home during that period) but also put him in the company of Jodi Jones at a point of time which on other evidence may well have been shortly before she met her death. Further, it rendered the place of her death on the general route which the appellant would have had to take to proceed from one locality where he was sighted to the other. The absence of any signs of struggle on the path side of the wall which ran along the northern side of the Roan's Dyke Path suggests that, if Jodi Jones went through the break in the wall close to where she met her death with someone, she did so with someone she knew - such as the appellant, whom she had gone expressly to meet that evening. The manner of her death was also significant, as was the unexplained disappearance of a knife which the appellant was in the habit of carrying and of the jacket which he may have been wearing on that day. The appellant's conduct later that evening was also significant - not least in the apparent ease with which he was able to identify the location of the body in relatively dense woodland on the far side of the wall. Before us the Crown also relied on a number of other circumstances which were also capable of playing a part in building up the case against the appellant. It is unnecessary to list these in this summary. When,

however, they are taken into account with the circumstances to which we have referred, there was sufficient evidence in law, in our opinion, to allow the jury, if they accepted it, to draw the inference of guilt.

As we have said, the appellant also contended that, even if the evidence against him was sufficient in law, the verdict to which the jury came was one which no reasonable jury, properly directed, could have returned. Discussion of this ground of appeal involves an evaluation of the quality of some of the evidence led. Of particular importance in this exercise is evaluation of the identification evidence given by Mrs Bryson. The quality of that evidence was criticised as to its reliability by counsel for the appellant. In particular, the method by which she came to make her identification - by picking out a photograph of the appellant from a range of photographs of young males - was attacked both as a matter of principle and as to the particular photographs used. The fact that the police had, by failing to hold an identification parade, not followed the relevant guidelines was founded on as a significant irregularity. Having considered Mr Bryson's identification evidence in detail, we have come to the view that, while its reliability was open to challenge, there were elements in it which could reasonably provide the basis for a valid identification of the appellant as the male she had seen and at least a possible identification of Jodi Jones as the female. Moreover, Mrs Bryson's evidence on this matter did not stand alone. It fitted with evidence that Jodi had left home to meet the appellant with a view to their spending time together in the Easthouses area. The place where Mrs Bryson saw the male and the female was a regular rendezvous point for the appellant and Jodi and one where they were likely to meet that evening, if it was their intention to spend time together as Jodi anticipated. The timing of Mrs Bryson's sightings also fitted with it being Jodi and the appellant whom she saw. If the jury accepted these identifications - as, having regard to the whole evidence bearing on them, they might reasonably do - there was ample evidence otherwise to allow them reasonably to conclude that Jodi's killer was the appellant. We refer, in particular, to the evidential material discussed in the context of the argument on sufficiency of evidence. The jury were moreover given by the trial judge clear and comprehensive directions about how they should approach evidence of visual identification - with particular directions being given in relation to Mrs Bryson's evidence. In all these circumstances the ground of appeal based on the alleged unreasonableness of the verdict must be rejected.

The appellant also challenged the identification evidence (of Mrs Bryson and of others) as "unfair". But that evidence having been properly admitted (as to which there was no challenge in the appeal), any question of unfairness can go only to the reliability or weight of the evidence in question. That was a matter for the jury. If, as we have already held, the verdict was one to which the jury, properly directed, could have come, this ground of appeal must also be rejected.

A ground of appeal was also advanced challenging the decision of the trial judge to allow evidence to be led about certain bottles of urine. But it was acknowledged that this ground could not on its own justify the conclusion that there had been a miscarriage of justice. Moreover, the trial judge gave clear directions to the jury that they should not judge the appellant on the basis of his personal conduct or habits or lifestyle, except to the extent that these might be relevant to the issues of fact which they had to decide. We have come to the view that, in the particular circumstances before him, the trial judge did not err in allowing the evidence in question to be led and that there is no merit in this ground of appeal.

The appellant was on 14 August 2003 interviewed under caution by police officers. In the course of the trial the Crown sought to lead before the jury evidence of some

but only a few of the questions and answers put and given in the course of that interview. Objection was taken on behalf of the appellant to that course of action but the objection was repelled by the trial judge. The challenge was renewed on appeal, it being maintained that the interview was conducted in circumstances which were wholly and manifestly unfair to the appellant. Having considered the transcript of the interview, we are driven to the conclusion that some of the questions put by the interviewing police officer can only be described as outrageous. At times the nature of the questioning was such that the questioner did not seem to be seriously interested in a response from the appellant but rather endeavouring to break him down into giving some hoped-for confession by his overbearing and hostile interrogation. Such conduct, particularly where the interviewee was a 15 year old youth, can only be deplored. However, the issue for determination in this appeal is whether the answers to the particular questions, which alone the Crown sought to introduce in evidence, were elicited in such circumstances that the trial judge was bound to hold that they were inadmissible. Having considered the response of the appellant throughout and in detail each of the passages in dispute, we are satisfied that the trial judge was entitled to take the course which he did. Moreover, having regard to the context of the questions and responses, many of which related to matters already otherwise properly in evidence, we are not persuaded that on this ground a miscarriage of justice can be said to have resulted.

The appellant also contended that certain evidence given by DC Michelle Lindsay should not have been admitted. This constable had been appointed at an early stage in the police inquiry as a family liaison officer to the appellant's family. While at the appellant's home on 2 July 2003 she had a conversation with him which resulted in him giving her certain information, including providing a sketch plan. The trial judge, in the face of an objection on behalf of the appellant and having heard evidence as to the circumstances surrounding the conversation in question, allowed DC Lindsay's evidence to proceed. Before us it was not contended that the trial judge was not entitled to take in the circumstances the course which he did. Nor was it suggested that any unfairness in this matter - looked at alone - could have been such that a miscarriage of justice had resulted. Even if the term "family liaison officer" was, having regard to the role of the officer in relation to the appellant's family, potentially misleading, there was no evidence that the appellant was in any way in fact misled by the officer's enquiries of him or in the drawing of the sketch. Nor could the information provided be regarded, given the other evidence led at the trial, as being of particular significance by itself. This ground of appeal must accordingly be rejected.

By his final numbered ground of appeal the appellant sought to challenge decisions by the trial judge to permit the Advocate depute, in the face of objection on behalf of the appellant, (a) to examine the appellant's mother Corinne Mitchell, and (b) thereafter to lead certain evidence - all in relation to events on 7 October 2003 when the appellant, accompanied by his mother, obtained a tattoo at certain premises in Edinburgh. Mrs Mitchell was led as a Crown witness. She was known to be likely to give evidence in support of the appellant's defence of alibi; and in the event did so. It was in the Crown's interest to discredit her testimony to that effect. Prior to adducing her, the Crown had not disclosed to the defence information about events at the tattoo parlour which had come to its notice in the course of the trial. Whether or not in the circumstances the Crown had an obligation to disclose the information earlier than it did (as to which we express no concluded opinion), we are not persuaded that the absence of earlier notice led to any substantial prejudice to the appellant; it could thus not be said to have led to a miscarriage of justice. The second ground of objection related to the implications which evidence in relation to the events at the tattoo parlour might have for the character of the appellant as

presented to the jury. While we are unable to agree with the trial judge that no inference of bad character could possibly be drawn from that evidence, we do not, for reasons which we explain, consider that it can be said that any miscarriage of justice resulted from the leading of the evidence in question. This ground of appeal must accordingly also be rejected.

Counsel submitted finally that, even if no particular ground of appeal on its own warranted quashing of the conviction, the matters complained of when taken together were such as should lead to that result. Anyone looking at the evidence in totality, he said, would “be left with a sense of unease”. We have already addressed and rejected the ground of appeal based on the proposition that no reasonable jury, having regard to the totality of the evidence, could have returned a guilty verdict. As to other matters of complaint, while there may be cases where the combined effect of a series of unsatisfactory features in a trial may result in a miscarriage of justice, we are not persuaded that this is such a case.

In the foregoing circumstances the appellant’s appeal against conviction, in so far as based on the existing grounds of appeal, must be refused. In the course of the hearing of the appeal Mr Findlay moved the court to allow to be argued a proposed additional ground of appeal (1A of the appeal process). The Crown having opposed such allowance, the court on 22 February 2008 continued consideration of the appellant’s motion to a date to be afterwards fixed, under directions that any further proposed evidence in support of that ground be lodged within four weeks from that date. If the appellant is to insist on his motion, a date will now require to be fixed for its consideration. The appellant also has an appeal against sentence yet to be considered.”

#### **NOTE**

***This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document.***

The full opinion will be available on the Scottish Courts website at this location:

<http://www.scotcourts.gov.uk/opinions/2008HCJAC28.html>