



19 October 2016

## PRESS SUMMARY

**R v Mitchell (Northern Ireland) [2016] UKSC 55**  
*On appeal from [2015] NICA 34*

**JUSTICES:** Lord Kerr, Lord Clarke, Lord Hughes, Lord Toulson and Lord Hodge

### BACKGROUND TO THE APPEAL

The respondent Ms Mitchell was convicted of the murder on 11 May 2009 of her former partner Anthony Robin. At the trial, she did not dispute that she had stabbed Mr Robin, but said she had acted in self-defence. She also claimed that she had been provoked and that she did not have the intention to kill him or cause him really serious harm.

The prosecution applied to adduce evidence of Ms Mitchell's previous bad character for the purpose of showing that she had a propensity to use knives in order to threaten and attack others. The evidence related to two incidents in 2003 and 2007 in which she was said to have threatened and stabbed others with knives. None of the previous alleged incidents had resulted in a conviction. It was agreed between the prosecution and the defence that statements which contained details of the earlier incidents would be read out during the trial. The judge directed the jury to "take [this evidence] into account or leave it out of account as you consider appropriate", but not to make any assumptions based on it as to Ms Mitchell's guilt.

On appeal, Ms Mitchell argued that the trial judge had failed to direct the jury properly on the purpose of the bad character evidence or the standard of proof to which the jury had to be satisfied before they could take it into account. The Court of Appeal allowed her appeal, quashed the conviction and ordered a re-trial. At the re-trial Ms Mitchell pleaded guilty to manslaughter and was acquitted of murder.

The prosecution appealed to the Supreme Court against the quashing of the murder conviction. The Court of Appeal certified the following question of law:

"Is it necessary for the prosecution relying on non-conviction bad character evidence on the issue of propensity to prove the allegations beyond a reasonable doubt before the jury can take them into account in determining whether the defendant is guilty or not?"

### JUDGMENT

The Supreme Court unanimously dismisses the appeal and upholds the decision of the Court of Appeal to quash Ms Mitchell's conviction for murder. In his judgment Lord Kerr (with whom Lord Clarke, Lord Hughes, Lord Toulson and Lord Hodge agree) clarifies how juries should treat evidence of similar facts or propensity.

### REASONS FOR THE JUDGMENT

The prosecution argued that evidence in relation to propensity did not call for any special examination by the jury. It should be considered along with all the other relevant evidence so as to allow the jury to

determine whether the defendant's guilt was established to the criminal standard. It was not necessary that the issue of propensity be segregated from the generality of the evidence and a pre-emptive decision made in relation to that issue, before the question of guilt or innocence of the accused was tackled [19].

The respondent argued that facts supporting the claim that the defendant had a particular propensity had to be proved beyond reasonable doubt. It was inconceivable that a jury could have a reasonable doubt as to the accuracy or veracity of the evidence said to underpin such a propensity and, nevertheless, accept that evidence as sufficient to establish its presence. [21]

The Court recognises that there is a distinction between, on the one hand, proof of a propensity and, on the other, the individual underlying facts said to establish that a propensity exists. In a case in which several incidents are relied on by the prosecution to show a propensity on the part of the defendant, it is not necessary to prove beyond reasonable doubt that each incident happened in precisely the way that it is alleged to have occurred. Nor must the facts of each individual incident be considered by the jury in isolation from each other [39]. The proper issue for the jury in a case such as this is whether they are sure, beyond reasonable doubt, that the propensity has been proved. The jury is entitled to – and should – consider the evidence about propensity in the round [43]. This is both because the improbability of a number of similar incidents being false is a consideration for the jury and secondly because obvious similarities in various incidents may constitute mutual corroboration for those incidents.

Nevertheless, the existence of propensity must be proved to the criminal standard. The Court rejects the prosecution's argument that propensity does not call for "special" treatment. The jury should be directed that if they are to take propensity into account, they should be sure that it has been proved. This does not require that each individual item of evidence said to show propensity must be proved beyond reasonable doubt. It means that all the material touching on the issue should be considered with a view to reaching a conclusion as to whether they are sure that the existence of a propensity has been established [44]. There is no need for the jury to consider each incident in hermetically sealed compartments [49].

In so far as the Court of Appeal in the present case suggested that each incident claimed by the prosecution to show a propensity on the part of the defendant required to be proved to the criminal standard, it was wrong. The proper question is whether the jury is satisfied that a propensity has been established. That assessment depends on an overall consideration of the evidence available, not upon a segregated examination of each item of evidence in order to decide whether it has been proved beyond reasonable doubt [54]. The trial judge failed to give adequate directions as to how the question of propensity should be approached by the jury, however. On that account the conviction was unsafe and had been properly quashed [56].

The Court emphasises, however, that propensity is, at most, an incidental issue. It should be made clear to the jury that the most important evidence is that which bears directly on the guilt or innocence of the accused person. Propensity cannot alone establish guilt [55].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>