

England and Wales Court of Appeal (Criminal Division) Decisions

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BAILII Citation Number: [1986] EWCA Crim 2

Case No.: 712/B/85

**IN THE COURT OF APPEAL
CRIMINAL DIVISION**

Royal Courts of Justice,
10th July 1986.

B e f o r e :

**THE LORD CHIEF JUSTICE OF ENGLAND (Lord Lane)
MR. JUSTICE LEGGATT
and
MR. JUSTICE KENNEDY**

R E G I N A

v

RANSFORD DELROY NEDRICK

(Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd., Pemberton House, East Harding Street, London, EC4A 3AS. Telephone Number: 01-583 7635. Shorthand Writers to the Court.)

LORD HOOSON, Q.C. and MR. D. GUISHARD appeared on behalf of the Appellant. MR. J. COWARD, Q.C. and MR. B. LEECH appeared on behalf of the Crown.

HTML VERSION OF JUDGMENT

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THE LORD CHIEF JUSTICE: This is the judgment of the Court.

On 25th January 1985 at Stafford Crown Court this appellant, Hansford Delroy Nedrick, was convicted by a majority verdict of murder and was sentenced to life imprisonment. The jury were discharged from returning verdicts on two further counts, one of arson with intent to endanger life and the other of arson being reckless as to life being endangered.

On 20th May last, having declined to apply the proviso, we substituted for the verdict of murder a verdict of guilty of manslaughter and passed therefore a sentence of fifteen years' imprisonment under the provisions of section 3 of the Criminal Appeal Act 1968. We now give our reasons.

The case for the Crown was that the appellant had a grudge against a woman called Viola Foreshaw, as a result of which, after threats that he would "burn her out", he went to her house in the early hours of 15th July 1984, poured paraffin through the letter-box and onto the front door and set it alight. He gave no warning. The house was burnt down and one of Viola Foreshaw's children, a boy aged 12 called Lloyd, died of asphyxiation and burns.

After a number of interviews during which he denied any responsibility, the appellant eventually confessed to the police that he had started the fire in the manner described, adding, "I

didn't want anyone to die, I am not a murderer; please tell the Judge; God knows I am not a murderer." When asked why he did it, he replied, "Just to wake her up and frighten her."

The appellant's defence, rejected by the jury, was that he had neither started the fire nor made any admissions to that effect.

The sole effective ground of appeal is that the Judge misdirected the jury on the intent necessary to establish a charge of murder. This is the direction which he gave:

"It is not necessary to prove an intention to kill; the Crown's case is made out if they prove an intention to cause serious injury - that is sufficient There is, however, an alternative state of mind which you will have to consider. If when the accused performed the act of setting fire to the house, he knew that it was highly probable that the act would result in serious bodily injury to somebody inside the house, even though he did not desire it - desire to bring that result about - he is guilty of murder. If you are sure that he did the unlawful and deliberate act, and, if you are sure that that was his state of mind, then, again, the prosecution's case in the alternative of murder would be established.'

That direction was given before the publication of the speeches in the House of Lords in Moloney [\(1985\) A.C. 905](#) and Hancock (1986) 2 V.L.R. 357. In the light of those speeches it was plainly wrong. The direction was based on a passage in the 41st Edition of Archbold, which has been repeated in the 42nd Edition, paragraph 17-13. That passage was expressly disapproved in Moloney at page 917 et seq, in that it equates foresight with intention, whereas "foresight of consequences, as an element bearing on the issue of intention in murder belongs, not to the substantive law, but to the law of evidence", per Lord Bridge at page 928F. The Judge was in no way to blame of course for having directed the jury in this way.

What then does a jury have to decide far as the mental element in murder is concerned? It simply has to decide whether the defendant intended to kill or do serious bodily harm. In order to reach that decision the jury must pay regard to all the relevant circumstances, including what the defendant himself said and

did.

In the great majority of cases a direction to that effect will be enough, particularly where the defendant's actions amounted to a direct attack upon his victim, because in such cases the evidence relating to the defendant's desire or motive will be clear and his intent will have been the same as his desire or motive. But in some cases, of which this is one, the defendant does an act which is manifestly dangerous and as a result someone dies. The primary desire or motive of the defendant may not have been to harm that person, or indeed anyone. In that situation what further directions should a jury be given as to the mental state which they must find to exist in the defendant if murder is to be proved?

We have endeavoured to crystallise the effect of their Lordships' speeches in Moloney and Hancock in a way which we hope may be helpful to Judges who have to handle this type of case.

It may be advisable first of all to explain to the jury that a man may intend to achieve a certain result whilst at the same time not desiring it to come about. In Moloney at page 926E Lord Bridge gave an illustration of the distinction:

"A man who, at London Airport, boards a plane which he knows to be bound for Manchester, clearly intends to travel to Manchester, even though Manchester is the last place he wants to be and his motive for boarding the plane is simply to escape pursuit."

The man who knowingly boards the Manchester aircraft wants to go there in the sense that boarding it is a voluntary act. His desire to leave London predominates over his desire not to go to Manchester. When he decides to board the aircraft, if not before, he forms the intention to travel to Manchester.

In Hancock the House decided that the Moloney guidelines require a reference to probability. Lord Scarman said at page 364G:

"They also require an explanation that the greater the probability of a consequence the more likely it is that the consequence was foreseen and that if that consequence was foreseen the greater the probability is that that consequence was also intended."

When determining whether the defendant had the necessary intent, it may therefore be helpful for a jury to ask themselves two questions: (1) How probable was the consequence which resulted from the defendant's voluntary act? (2) Did he foresee that consequence?

If he did not appreciate that death or really serious harm was likely to result from his act, he cannot have intended to bring it about. If he did, but thought that the risk to which he was exposing the person killed was only slight, then it may be easy for the jury to conclude that he did not intend to bring about that result. On the other hand, if the jury are satisfied that at the material time the defendant recognised that death or serious harm would be virtually certain (barring some unforeseen intervention) to result from his voluntary act, then that is a fact from which they may find it easy to infer that he intended to kill or do serious bodily harm, even though he may not have had any desire to achieve that result.

As Lord Bridge said in Moloney (page 925H):

"... the probability of the consequence taken to have been foreseen must be little short of overwhelming before it will suffice to establish the necessary intent". At page 926F he uses the expression "moral certainty"; at page 929B he said, "... will lead to a certain consequence unless something unexpected supervenes to prevent it".

Where the charge is murder and in the rare cases where the simple direction is not enough, the jury should be directed that they are not entitled to infer the necessary intention, unless they feel sure that death or serious bodily harm was a virtual certainty (barring some unforeseen intervention) as a result of the defendant's actions and that the defendant appreciated that such was the case.

Where a man realises that it is for all practical purposes inevitable that his actions will result in death or serious harm, the inference may be irresistible that he intended that result, however little he may have desired or wished it to happen. The decision is one for the jury to be reached upon a consideration of all the evidence.
