

Facts and legal arguments in the cases law general essay

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R v Abdroikov, Green, Williamson[1] is a joint case in which the court heard three appeals together. In each of the appeals, the defendant had raised an objection to the composition of the jury claiming that the trial had not been free from 'actual or apparent bias' because of the occupation of one of the jurors. In R v Abdroikov and R v Green, the juror in question was a serving police officer, whereas in R v Williamson he was a Crown Prosecution Service (CPS) solicitor who happened to be 'an employee of an agency which was bringing the prosecution'.

Nurlon Abdroikov

Mr Abdroikov met Mr Faulkner on 14th April 2002 at the latter's home where the former tied him to the bed, smothered him with a duvet, strangled him with the belt while threatening to kill him before taking the personal property from his flat. He was charged with attempted murder, attempting to choke, making a threat to kill and theft. Later on 31st August 2002, he grabbed Mrs Pettit from behind when she was walking home, punched her and threatened to kill and rape her. He was charged with attempting to choke, indecent assault and making a threat to kill. By February 2004, he had pleaded guilty for stealing property items of Mr Faulkner and making a threat to kill him. Moreover, he also pleaded guilty for attempting to choke Mrs Pettit. He was sentenced for former and latter for 11 years' and 5 years' imprisonment respectively. He appealed on the ground that the presence of a police officer on the jury deprived him of a fair trial. The appellant told the jury that he had pleaded guilty to making threats to kill Mr Faulkner because of a deal with the prosecution that the latter will not proceed with other counts. The judge in the court of first instance had directed the concerned jury that since the

appellant had pleaded guilty to one of the charges, it should not investigate about the rest. The appellant claimed that this was unfair on part of the judge because it might affect the jury's decision on the other counts just because the appellant had pleaded guilty to one of the original counts, i. e. making threats to kill. Court of Appeal (CA) rejected this argument on the basis that the judge 'struck a fair balance' between the interests of the parties. Moreover, the appellant claimed that there was no evidence for an intention to kill. CA rejected that argument as well on the foundation that the jury had enough evidence to rely on. However, CA held that the term of 16 years was too long and it should be changed to 14 years.

Richard John Green

Mr Green was convicted for 7 weeks' imprisonment on charges of assault occasioning ABH and possessing bladed article and appealed on the same point that the presence of a police officer on the jury made trial 'actually or apparently' unfair. On 18th March 2004, he was searched, on suspicion, in a public area where he was found with a needle with which the searching sergeant got pricked. The appellant claimed that he had the needle as a part of project run by NHS trust as he was a drug addict and used the needle to inject himself with heroin when he felt ill and had forgotten about the presence of the needle in his pocket. The appellant appealed that the presence of the police officer on the jury was in the same borough as the sergeant who searched him and may be biased in his judgment. The statement by the sergeant said that he didn't know anyone with the juror's name as a police officer. The CA was satisfied that the two police officers didn't know each other and therefore there was no danger of biasness.

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Kenneth Joseph Williamson

On 3rd February 2005, Mr Williamson was charged on rape and sentenced to 10 years' detention in a young offender institution. The allegation was that the appellant entered the victim's home and raped her, which the appellant denied. However, the DNA profile concluded the opposite to which the appellant admitted that he lied because he was shocked at being arrested. Among the jurors was a CPS employee. The appellant challenged his presence in the jury claiming that it may lead to partiality because of his occupation. The judge rejected the challenge saying that if the employee in question is not allowed to sit then no employee of CPS will be allowed to sit, which the Parliament never intended. The appellant appealed that since the action is brought by CPS, presence of an employee of the same agency can lead to biasness. The CA didn't find any basis for such a claim saying that presence of such an employee does not offend the principle of fairness.

Historical Background to the case and the Relevant Statutory Provisions

The introduction of Criminal Justice Act 2003 made changes to the scope of people eligible for the jury service. Prior to this, the police officers and the employees of the CPS would have been unlawful under Juries Act 1974. Section 321 and Schedule 33 of the 2003 Act removed the ineligibility of members of judiciary, administrators of justice and persons in holy orders while holding mentally disordered persons still ineligible. The appellants relied on Schedule 1 of The Human Rights Act 1998, specifically on s6(1) and s6(3) that say: '(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.(3) In this section " public authority"

includes ... a court or tribunal'[2]The CA, in return, emphasized that these provisions should be read along with s6(2) of the said Act:'Subsection (1) does not apply to an act if (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way in which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.'[3]The appellants claimed that they had a right to a fair trial under Article 6 of the European Convention of Human Rights (ECHR) and that the trial should not only be fair but also appear to be fair. More importantly, the appellants' primary concern was not the jurors' link with the legal system as a whole but with the prosecution in particular. They relied on Lawal[4]where the Appellate Committee held that:' The practice in the EAT of part-time judges appearing as counsel before a panel of the EAT consisting of one or two lay members with whom they had previously sat should be discontinued'[5]. The Crown (' respondent'), on the other hand, relied on the amendments made by the 2003 Act to the Juries Act 1974. Relying on the case-law of ECHR, the respondent claims that unless the partiality is not proven, it is safe to assume the impartiality. In support of that, he also referred to Lord Rodger of Earlsferry's speech where he said:'... the training of professional judges and the judicial oath that they take means that they can ... set their prejudices on one side when judging a case. Similarly... jurors can... set their prejudices aside and act impartially. The recognised starting-point is, therefore, that all individual members of a jury are presumed to be impartial until there is proof to contrary'[6]

Legal Principles

The legal principles established in this case were in relation to the presence of police officers and employees of CPS. The question to be asked was whether a fair-minded and informed observer would conclude that a trial jury consisting of police officer and a CPS employee have an appearance of bias. The issues to be considered were, firstly, whether the presence of a police officer in a criminal case that was founded upon the police investigation did in any way offend the principle of fairness; and secondly, whether the presence of a CPS employee in a criminal case that was brought by the CPS offended the principle of fairness. The legal principles established were: The presence of a police officer in a criminal case did not offend the principle of fairness and was compatible with the Article 6 of ECHR because the jury was summoned randomly and that any person could be a part of it. Moreover, the presence of a police officer in a jury is as trustable as the presence of a judge in a case, since a judge can also be biased at any stage, ' by the looks of a beautiful woman, or by a handsome man', but it is the oath that places trust in the judicial bodies. The risk of prejudice is not any greater than in the case of others who are eligible to be a part of the jury. The presence of a CPS employee in a criminal case brought by CPS itself did not offend the principle of fairness and was compatible with the Article 6 of ECHR because this was not what the Parliament intended while enacting the Criminal Justice Act 2003 and that such a claim cannot be sustained on policy grounds: If a CPS employee cannot be a part of a jury, no employee of the said agency can be a part of it. This would have been clearly against the intentions of the Parliament as nothing of that nature was stipulated in the said Act expressly.

The replacement of House of Lords

The Supreme Court replaced HL in October 2009 by virtue of Constitutional Reform Act 2005. It remains now the highest court of appeal for civil cases in England & Wales. The primary concern that resulted in the replacement of the judicial functions of House of Lords was the doctrine of separation of powers. Although there were no issues or complaints raised indicating a bias on part of Law Lords, it was necessary to separate the judicial functions from the legal ones so as to ensure transparency and independence of the judiciary. Moreover, there was confusion in the public about the transparency of the judgments as the people were not fully aware of the fact that the judicial members of the House of Lords were at no time involved in the judgments of the cases. The creation of Supreme Court as the highest court of appeal cleared this confusion and strengthened further the holy doctrine of separation of powers. The doctrine of separation of powers provides that the legislature, executive and judiciary should act independently from each other. These three institutions are the soul of the system and it is of extreme importance that their functions don't overlap.' This threefold division of labour, between a legislator, an administrative official, and an independent judge, is a necessary condition for the rule of law in modern society and therefore for democratic government itself'.[7]Therefore, the 2005 Act divided the judicial and legal functions of the House of Lords and created Supreme Court where the justices do not ' receive life peerages, and any serving judge who is a member of the House of Lords is disqualified from sitting... in the House'[8]Although there may not be a formal separation of powers in a system that has an absence of a written constitution, it is indeed

worthy to separate the ' functions' of the law-making, law-executing and law-adjudicating bodies.