Case No: ATC17/0149

Neutral Citation Number: [2017] EWHC 1361 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

The Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 4 May 2017

BEFORE:

SIR BRIAN LEVESON
(President of the Queen's Bench Division)
and
MR JUSTICE LEWIS

BETWEEN:

HER MAJESTY'S SOLICITOR GENERAL

- and -

STODDART

Louis Mably Q.C. on behalf of the Solicitor General
Joshua Normanton on behalf of the Respondent

JUDGMENT
(As Approved)

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No of Words: 3498
No of Folios: 49

SIR BRIAN LEVESON P :

1. The integrity of the criminal justice system requires all who participate within it to observe the highest standards of behaviour and so to ensure open, transparent and obvious compliance with all that due process requires. Should circumstances arise in which the public could no longer have confidence that the performance of any part of the system, our mechanisms for resolving the determination of guilt of those accused of crime will collapse. In relation to external investigations by jurors, whether on the internet or otherwise, the position was underlined by Lord Judge CJ in *Fraill v Sewart* [2011] 2 Crim App Rep 21; [2011] EWHC 1629 in these terms, at [28]:

> "In every case the defendant and for that matter we add, the prosecution, is entitled as a matter of elementary justice not to be subject to a verdict reached on the basis of material or information known to the jury but which was not in evidence at the trial.
>
> 29. Judges, no less than anyone else, are well aware of and use modern technology in the course of their work. The internet is a modern means of communication. Modern technology, and means of communication, are advancing at an ever increasing speed. We are aware that reference to the internet is inculcated as a matter of habit into many members of the community, and no doubt that habit will grow. We must however be entirely unequivocal. We emphasise, even if we do so by way of repetition, that if jurors make their own inquiries into aspects of the trials with which they are concerned, the jury system as we know it, so precious to the administration of criminal justice in this country, will be seriously undermined, and what is more, the public confidence on which it depends will be shaken. The jury's deliberations, and ultimately their verdict, must be based – and exclusively based – on the evidence given in court, a principle which applies as much to communication with the internet as it does to discussions by members of the jury with individuals in and around, and sometimes outside the precincts of the court. The revolution in methods of communication cannot change these essential principles. The problem therefore is not the internet: the potential problems arise from the activities of jurors who disregard the long established principles which underpin the right of every citizen to a fair trial"

2. Breach of these requirements, therefore, is and must be taken very seriously. Thus, on 21 November 2016 Her Majesty's Solicitor General applied to the court for committal of a juror, Carl Stoddart, for contempt of court specifically for acting in breach of the requirement not to undertake personal research, thereby undermining the safety of a conviction in the case that he was called upon to try.

3. Mr Stoddart does not challenge the facts which form the basis of the application and concedes that his conduct amounts to contempt of court. Having regard to the importance of the case, however, it is appropriate to set out the facts in some detail.

4. Between 30 June and 10 July 2014, Mr Stoddart attended as a juror in the Crown Court at Newcastle-on-Tyne. At the commencement of his service, he watched a DVD which contained a specific warning to jurors against conducting internet research into the cases they were trying. It was in these terms, "You will also commit a criminal offence if you use the internet to research details about any cases you hear along with any other cases listed for trial."

5. In the jury assembly room, there were also displayed notices containing similar warnings and press reports relating to juror contempt cases. The notice reads in terms almost identical to that expressed on the DVD, "It is also a criminal offence to use the internet to research details about any cases you hear or any other cases listed for trial at the court during your jury service." The bold headline of the press report makes the position very clear, "Juror who did an internet search jailed for six months".

6. On 8 July Mr Stoddart was sworn as a juror in the case of Paul Quinn who was charged on an indictment with the offence of burglary. Prior to the commencement of the trial, the judge, Her Honour Judge Moreland, addressed the jury in these terms:

> "You have sworn to try the case on the evidence. The evidence is what the parties, the prosecution and the defence, put before you in the courtroom, so please do not carry out research of any sort outside of court. These days, what that really means is do not carry out internet research about anything you hear about during the course of the trial. Of course it's tempting, as we all use the internet to find out information when they are new or unfamiliar situations, but you must not do that. First of all, because the information that you find out may not be accurate, but secondly, because the parties, the prosecution and the defence, won't know you've got that information and if they disagree with it and want to challenge it they cannot, and that would lead to unfairness, so no researches please about anything to do with this trial."

7. The trial was then conducted and the jury retired to to consider its verdict on the afternoon of 9 July. At 4.30 pm, the jury was sent home and resumed deliberations the following day when at 11.41 it returned a unanimous verdict of guilty. On 5 September 2014, a sentence of 3 years' imprisonment was imposed on the defendant. It is important to note that evidence relating to the bad character of the defendant had not been adduced at the trial.

8. On 26 August, following the conviction but before sentence, it transpired that one of the jurors in the Quinn trial was undertaking work experience with a member of the Newcastle Bar and that juror explained to the barrister that, during his jury service, after the overnight adjournment, two jurors said that internet research had been conducted into that defendant's past and it was discovered that he had a criminal record. That fact was mentioned both to the barrister with whom he was working and another barrister.

9. With commendable propriety, the barrister ascertained who had prosecuted that case and reported what he had been told. The prosecuting counsel told the judge and defence counsel, as a result of which an application was made to appeal conviction to

the Court of Appeal, Criminal Division. On reference to the full court, on 27 February 2015, an investigation by the Criminal Cases Review Commission was directed. It was not of course known which juror had undertaken the research.

10. The CCRC conducted detailed enquiries and prepared a report which it dated 21 July 2015. It approached all 12 jurors and is summarised in this way:

> "Juror A, who had reported the matter to the member of the Bar, stated that when the jury reconvened on 10 July, the respondent, Mr Stoddart, who was then known as juror B, made it known he had sought information about the defendant via an internet research he conducted overnight. He did not give specific information about the search. Juror A also stated that he believed another member of the jury, juror C, may have had prior knowledge of the search juror B had carried out, or may even have been a party to it. Juror A said he believed the respondent juror C knew each other prior to their jury service. Juror A went on to state that, whilst the jury were getting ready to leave the court building after delivering their verdicts, juror B, the respondent, told him that his internet research had revealed that the defendant had previous convictions for burglary and stealing from a hospital or care home. Juror A said that juror B had not divulged this information during the deliberations. The respondent [as we have identified known as juror B] stated that he had conducted an internet search during the overnight adjournment on 9/10 July. He said he did so with the intention of seeking information about the defendant's past using his old mobile telephone and typing the defendant's name into Google. The search returned results that identified the defendant had previously been convicted of similar offences. Mr Stoddart went on to state that the search had no bearing on his decision in the case but that no-one else was party to the search and he then said he did not disclose what he had found out to any other members of the jury except perhaps juror C. Juror C denied conducting any internet research and stated that he was not aware of anyone else having done so. Five other jurors said there were similarly unaware of any research. Four jurors, however, told the CCRC that prior to delivering their verdict, they were aware that one or more jurors had conducted internet research into the defendant."

11. Against that background on 9 December 2015, the matter came before the Court of Appeal Criminal Division, (Hallett LJ, McGowan and May JJ), when, on the basis of the report from the CCRC, the appeal was allowed and the conviction quashed: see [2015] EWCA Crim 2502. Although the defendant had then served the custodial part of his sentence, a retrial was ordered. In the event, for reasons not relevant to this application, the retrial did not proceed. Meanwhile, the court referred the report of the CCRC to the Attorney General for consideration of prosecution of the juror.

12. On 25 February 2016, the Attorney General's office wrote to Mr Stoddart informing him that consideration was being given to proceedings for contempt and inviting representations. Solicitors on his behalf replied on 9 May to the effect that Mr Stoddart confirmed the accuracy of what he had said interview, namely that he had conducted an

internet search but that it had not influenced his decision in relation to the case. It referred to the pressures under which he was then labouring.

13. These proceedings were issued on 15 November 2016 and served on 21 December. An acknowledgement of service was filed, it being indicated that the proceedings would not be contested. On 6 February, Dove J provided a timetable for the service of evidence and ordered that the question of permission and, if granted, with the hearing to follow, should be listed before a divisional court. In fact, prior to the order of the judge on 24 January 2017, a statement by Mr Stoddart was submitted to the court in which he developed what had been put in the acknowledgement of service and admitted the allegation of contempt. He said:

> "I accept that I was aware I should not conduct research into the defendant's past. Despite this awareness I accept I sought to satisfy my curiosity by looking on line. I do not have a sophisticated understanding of the law or justice. Indeed, my understanding is very basic. If I had understood all the consequences of researching the defendant's past, including the effect of public confidence in justice, associated costs and the consequences of the safety of the defendant's conviction, I would not have done so."

14. As Lewis J made clear during argument, satisfaction of curiosity is a rather odd explanation given the number and extent of the warnings to which I have previously referred.

15. In the circumstances, we grant permission to bring these proceedings, it having been clear from the outset that the contempt alleged by the Solicitor General was proved beyond reasonable doubt, this hearing has been concerned with sentence. Suffice to say, we find the contempt proved.

16. In relation to sentence, Louis Mably QC on behalf of the Solicitor General, points to the damage to the integrity of the criminal justice system and the costs incurred amounting to some £2,500 in respect of the appeal and between £10,000 and £15,000 in relation to the investigation by the CCRC. He could also have pointed to the undeniable distress that must have been caused to the other 11 jurors, each of whom had been the subject of investigation.

17. Turning to the personal circumstances of Mr Stoddart, he is 29 years of age and has never been in trouble with the authorities. He is a part-time chef responsible in large part for the care of his 2-year-old daughter, thereby allowing his partner to pursue a career which he makes clear would be jeopardised if he were sent to prison on the basis that she would face increased childcare costs sand potentially the loss of her job. In addition, we are now told that his partner is again pregnant, expecting a further child in October.

18. As for these proceedings, Mr Stoddart says that he felt bewildered by the CCRC interview process and both bewildered and scared by the proceedings. He considers that he has ruined his life by acting as he did and feels that he has let his partner, his

daughter and his family down such that it brings him to tears. His sleep has been affected and he is ashamed of his stupidity. He fears for his future with his partner and has suffered financial loss because of the substantial contributions which he has had to make towards legal aid. Statements from his partner and her father speak of how the proceedings have been hanging over him in a way that is described as a living nightmare. He is referred to as a hard-working, honest respectful and caring young man. Putting his conduct on this occasion to one side, nothing we have seen undermines that description.

19. The approach to sentence is identified in *Attorney-General v Dallas* [2012] 1 WLR 991; [2012] EWHC 156 (Admin), which concerned a Greek woman of about 34 years of age who, at the time she undertook jury service in July 2011 had either recently obtained a doctorate in health and psychology, or was about to obtain that degree. On 6 July after the jury had retired, she obtained details regarding the circumstances of a previous conviction of a defendant in whose trial she was a jury, after the fact of the conviction had been disclosed. She mounted a defence to the charge of contempt which was rejected. Lord Judge repeated the remarks that he made in *Fraill* and went on (at [41]):

> "Jurors who perform their duties on the basis that they can pick and choose which principles governing trial by jury, and which orders made by the judge to ensure the proper process of jury trial they will obey, or who for whatever reason think that the principles do not apply to them, are in effect setting themselves up above the jury system and treating the principles that govern it with contempt. In the long run any system which allows itself to be treated with contempt faces extinction. That is a possibility we cannot countenance."

20. As to sentence, he observed at [43] that misuse of the internet by a juror is always a most serious irregularity, and an effective custodial sentence is "virtually inevitable".

21. In that case, counsel acknowledged what he described as the normal approach, but advanced the mitigation that there was no personal gain or agenda and further that she had apologised for the disruption she had caused. Lord Judge recognised the impact on her academic career, the stress of the prolonged proceedings determined by this court on 23 January 2012 and the understandable concerns about her health but noted that there was no mitigation in the form of an admission of guilt. The court imposed an immediately effective sentence of 6 months' imprisonment.

22. In *Solicitor General v Smith, Solicitor General v Dean*, 9 June 2016, the court was concerned with contempt in two unconnected trials. In the first, on 12 December 2014, some days after a lengthy trial had commenced, a juror discovered a previous conviction of one of the defendants on the internet. The judge investigated, identified the juror who initialled lie when answering a questionnaire and discharged him and the entire jury. That juror apologised for what he had done and, when he received a warning letter from the Solicitor General, repeated fulsome apology. This was in July 2015, although it took a further ten months before the matter came before the court, in which period, Lord Thomas CJ, records that as a result of what had happened, his life

had fallen apart. Although a custodial sentence would normally be imposed, because of the delay, 9 months' imprisonment was suspended for 12 months and an order was made for contribution to costs.

23. In the second case, in February 2015, some four months after a lengthy trial and contrary to the obligations of confidence about which she had been warned, the juror wrote to a convicted defendant disclosing events in the jury room. The court rejected her contention that she did not appreciate that what she was doing was wrong. In mitigation, the delay had caused very considerable stress, exacerbated by a serious medical condition. In the circumstances, for this different type of contempt, a sentence of 3 months' imprisonment was suspended for 12 months. As to that delay, Lord Thomas CJ, observed that it was a matter of the greatest concern and went on:

> "It is in our view very important that those who transgress in this way are dealt with swiftly."

24. The delay in this case is far more serious than identified in these three cases. To a large extent, that is explained by the fact that investigation had to be undertaken to discover which juror had undertaken the research, but two years has elapsed since he was identified by the CCRC, which itself is far longer than the delay in any of the other cases, amounting to 6 months, 18 months and 15 months respectively.

25. Having regard to all the circumstances, although we endorse the view expressed by Lord Judge that an effective custodial sentence is virtually inevitable, the period which has elapsed in this case causes us to conclude that it would be unfair to take that course here. In the circumstances, the sentence of the court is one of 4 months' imprisonment, the period of which shall be suspended for 12 months. That sentence also makes allowance for the guilty plea offered. In addition, having investigated Mr Stoddart's finances and the extent to which he has already made contribution towards legal costs, we make an order that he pay to the Attorney General the sum of £1,000 by way of contribution towards costs incurred in these proceedings. In the light of what we are told, we allow 3 months to pay that sum.

26. We cannot leave the case without recognising the care that has gone into its investigation by the Court of Appeal, the Criminal Cases Review Commission and the Attorney General's office. It is important, however, that steps are taken to ensure that allegations of this nature are investigated with all appropriate speed and we would encourage some liaison between those responsible for the administration of each of the bodies to which we were referred to seek to agree a protocol for the swiftest investigation and resolution of cases involving jurors so that the jury system of which this country is so rightly proud is not imperilled by a failure of public confidence consequent upon misbehaviour of this type.

Mr Justice Lewis :

27. I agree.

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION: Mr Stoddart, the sentence of the court is that you go to prison for a term of 4 months. That term is suspended for 12 months. What that means is this. If you commit no further offence in the 12 months next to come, you will hear no more about this sentence. If, however, you commit an offence during that period of suspension, you will be liable to serve the term of four months which today we have imposed, alongside any other sentence for whatever else you might have done. Do you understand?

THE DEFENDANT: Yes.