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Crim 1543

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A Fanciful Story of Jury Irregularity

R v Cashman [2024] EWCA Crim 1543

Keywords

Jurors, jury irregularity, prejudicial material, power to order investigations, fanciful allegations

This case involved a high-profile trial at which the applicant had been convicted of murder, attempted murder, wounding with intent, and two counts of possession of a firearm with intent to endanger life. The applicant sought leave to appeal against his convictions. He also sought an investigation into jury irregularity by the Criminal Cases Review Commission, pursuant to s.23A of the Criminal Appeal Act 1968.

The facts of this case were highly publicised in the national media. The prosecution's case was that the applicant had pursued Joseph Nee through the streets of Liverpool in an attempt to murder him. During his pursuit, the applicant, who has been carrying two firearms, fired a shot through the front door of a house, killing Olivia Pratt Korbell, a 9 year old girl, and injuring her mother, Cheryl Korbell. He also injured Joseph Nee.

The events took place in Liverpool, but the trial was transferred to Manchester in order to avoid any risk of local connections affecting the trial or the jury. Precautions were taken to protect the integrity of the trial process and to keep the jury free from interruption. Jurors were sequestered from contact by prosecution and defence witnesses. Inside the court building jurors were managed to ensure that they only had contact with each other and an identified range of court officials, and jurors spent time in separate designated rooms, in the courtroom, or in the jury retiring room. The retiring room was situated away from any public access. Court officials always knew where the jurors were in the court building. Once the jurors retired to consider their verdict, jury bailiffs were sworn to keep the jury in 'some private and convenient place'. These are commonplace arrangements in the Crown Court.

When jurors are selected for jury service, they are each given a leaflet entitled, 'Your Legal Responsibilities as a Juror'. Amongst other things, this informs jurors that they must try the case only on the evidence, that it is illegal to look for information about the case on the internet or anywhere else, and that they cannot discuss the case with anyone else during the trial. It informs jurors of the principle of collective responsibility and explains that jurors should tell the court if they think that the rules have not been followed and how they should do this. The obligation to reach their decision based only upon the evidence is repeated to the jury during the trial and in the judge's summing up, and in high-profile cases, 'juries are warned more than usually strongly about this obligation' (at [10]).

The application for leave to appeal was based upon an allegation that jury irregularities had occurred during the trial process and that these may have affected the outcome of the trial. The applicant's solicitor, Mr Keaney, received a phone call from a man who wanted to meet him. The solicitor met with the man referred to as 'Male 4'. Male 4 informed the solicitor that he has a friend ('Male 3'), whose father ('Male 2') had met with a juror in the case before the case had concluded. The juror had told Male 2 that the police had given all of the jurors panic alarms and that they were told to press the alarm if anyone approaches them. Male 4 claimed that he had not come forward with this information before the verdict was delivered because he did not want to get into trouble or be arrested.

After the defendant had been found guilty, Male 2 asked the juror what had happened as the juror had been saying that the verdict would be a not guilty one. The juror informed Male 2 that the police had

'been in' to see the jury and had informed the jury that there are things that they should know. The police then produced a folder of evidence that the jury had not been privy to. The folder allegedly contained transcripts of conversations of what Paul Russell (a co-defendant who had pleaded guilty) had said to the police and other information about the defendant, as well as information about the defence's application to have the case transferred from Liverpool. The juror told Male 2 that after seeing this, the jury had no choice but to find the defendant guilty. Male 2 relayed this to Male 3 who then in turn told Male 4. Male 4 then told the defendant's solicitor. This information was relayed to counsel and the trial judge on the day that the defendant was being sentenced, but as the trial had finished and the verdicts had been returned the week before, the judge was unable to take any action.

The defendant sought leave to appeal on the basis that there were two irregularities which should be investigated, namely that the jurors were issued with panic alarms which might have affected them or been prejudicial against the defendant, and the introduction of a body of material by the police which was prejudicial to the defendant. The applicant argued that as there was not yet sufficient evidence to grant leave to appeal, the Court of Appeal should order an investigation by the Criminal Cases Review Commission (CCRC) under s.23A of the Criminal Appeal Act 1968.

HELD (DISMISSING THE APPLICATIONS), that both the applications for leave to appeal against his convictions and for an investigation by the Criminal Cases Review Commission were dismissed. The Court of Appeal took the view that the story advanced was 'fanciful' and 'a crude attempt to subvert convictions properly reached' (at [41]).

The Court of Appeal accepted that if prejudicial material had been introduced to the jury that this would amount to a jury irregularity, and that if personal panic alarms had secretly been issued to jurors, it is arguable that this might also amount to a jury irregularity (at [31]). However, there was no admissible evidence before the court and the details of the conversation with Male 4 amounts to multiple hearsay and would not be admissible under any of the hearsay provisions in the Criminal Justice Act 2003 (at [32]). Even if the evidence were admissible, it was not credible evidence of jury irregularity (at [33]) for three reasons.

Firstly, the court held that the conditions under which the information was obtained and passed on make it 'inherently improbable from the start' (at [34]). The court stated:

By chance, a juror in a Manchester trial meets a man in a pub, who knows people from Liverpool, and then talks about the case in breach of every warning. That has to happen not once but twice over, since Male 4 – Mr Keaney's informant at the end of the chain – says he knew about the introduction of personal panic alarms before the verdicts. But then after this applicant was found guilty, there was what had to be a further conversation between Male 1 and Male 2, explaining that the convictions were obtained by the introduction of prejudicial material into the jury room (at [34]).

Secondly, the court also took into account the fact that despite efforts to clarify who these men were and how the conversations came to take place, 'none of these individuals have been identified or allowed themselves to be identified' (at [35]). This only 'adds to the inherent unreliability of the story' (at [35]). Finally, there is the 'inherent improbability of what it is claimed took place' (at [36]). The court questioned the feasibility of police officers giving the jury personal panic alarms without it coming to the notice of court staff and the judge and noted that it was not clear whether the panic alarms were attached to jurors' houses or portable to be carried by jurors (at [36]). Either way, the court took the view that it:

[S]eems inconceivable that 12 jurors would have been supplied with either kind of device, were told it was a secret, and thus that they were not to reveal what had happened; and then all twelve complied, suppressing any mention of the supply or fitting of the alarms. Yet, if it is not suggested the jurors were instructed to keep quiet and complied, then it is also very hard to see how they would not have spoken casually about the matter in front of the ushers or other court staff, with whom they were in daily contact. If we are considering alarms fixed to

houses, that would require specialist fitting, with engineers going to jurors' homes. There would have been questions about when the alarms would be removed, about making good the buildings, about avoiding cost and so forth. There would have been an obvious question about whether a juror who activated an alarm on the house should inform the court: it is inconceivable that some conversation would not have taken place with court staff. There is no suggestion that it did.

If we are considering portable panic alarms, then jurors would be carrying them with them to and from court. Once again, it seems inconceivable they would not have come to the attention of court staff (at [37] to [38]).

The court stated that the proposition that police officers had surreptitiously gained access to the jury room, provided jurors with a secret file of prejudicial material, and removed the material again, all undetected by court staff was 'incredible' and 'impossible to conceive' (at [39]). This proposition also suggested that all 12 jurors breached their obligations to the court by failing to bring this to the attention of court staff or the judge, by taking into account evidence that was not given in court, changing their verdicts as a result. The court was therefore 'unable to accept' this suggestion (at [39]).

It was also unclear how any possible investigation by the CCRC could take place since the individuals who provided the information were not identified. Any enquiries made would have to be directed to court staff, police officers, security personnel at the court, and jurors. The court noted that in previous cases in which jurors have been asked questions of this nature, the jurors found the process 'intrusive and difficult' and it is a 'considerable imposition on jurors who have by definition already had their lives disrupted by serving on a jury' (at [44]). It is also costly in both time and resources. No investigation should be carried out unless it is likely to resolve the matter. In this case the suggestions made are incredible. The court commented that, 'investigations must not be initiated where the existing material lacks all credibility, as here, on the simple assertion that an investigation might produce a rabbit out of a hat' (at [45]).

Commentary

This case serves as an example of the danger of attempts to subvert convictions through allegations of jury irregularity.

While there is a risk of jury interference in some high-profile cases, the Court of Appeal stated that the trial judge in this case had taken all the steps which might be expected in respect of the jury in this case. The court acknowledged the great efforts that the trial judge had gone to earlier in the proceedings to strike a balance between protecting the verdict of the jury and ensuring that jurors were not made too anxious or distracted about their own safety and security. The trial judge had said to the jurors, 'you might be aware of heightened security around the court, and should not be concerned or influenced by that... this is a high-profile case where the defendant faces very serious allegations and the arrangements reflect that' (at [15]). She directed the jury to consider the evidence 'calmly and dispassionately and not by instinct, prejudice or assumption' (at [15]).

The allegations of jury irregularity argued on appeal in this case did appear to be fanciful. The Court of Appeal made very valid points about the fact that the clandestine issue of panic alarms to jurors would have needed some logistical effort. As the Court of Appeal pointed out, it does seem inconceivable that all 12 jurors would have then kept this a secret from the court staff or that none of them would happen to causally mention it to each other in front of the court staff. Furthermore, the Jury Notice that is handed to each juror encourages jurors to report issues to the court staff or to the judge via a note handed to court staff. It seems strange that jurors would then keep their supposed panic alarms secret from the court staff and that none of the panic alarms would have been discovered by security when jurors entered the court building and presented themselves for security screening.

There have been several cases recently in which jurors have come forward to report incidents of jury interference or other irregularities. There were two reported cases involving jury tampering in 2024 (see *Mohammad (Shahid) and others v Islaam and R* [2024] EWCA Crim 34 and *Sartin v R* [2024] EWCA Crim 764), and other cases in which jurors have expressed their concern about potential reprisals (see *R v*

Jake McMahon [2025] EWCA Crim 269). In these cases, jurors have followed the guidance given to them in court and in the Jury Notice to raise their concerns with court staff or the judge. In the recent case of *R v Jake McMahon* [2025] EWCA Crim 269, the jury sent a note explaining that one juror lived around the area in which the incident took place, and that she was worried about repercussions and feared for her safety. She claimed that as a result of these concerns, she had not been able to concentrate. Another jury note in the same case stated that jurors felt intimidated by the defendant staring at them from the dock. In a recent Jamaican case which reached the Privy Council, a juror had sent the judge a note to express her concern about potential reprisals and stated that she feared for the safety of her son who was being held at the same prison (and in the same block) as one of the defendants (see *R v Campbell (Shawn)* [2024] UKPC 6). Other recent cases demonstrate how jurors have informed the court when they have been approached by someone outside of the courtroom in a bid to intimidate the juror or with a view to influencing the jury's verdict in the case (see *Mohammad (Shahid) and others v Islaam and R* [2024] EWCA Crim 34 and *Sartin v R* [2024] EWCA Crim 764). It does seem implausible to suggest that in the present case that all 12 jurors were willingly complicit in the distribution of panic alarms and the introduction of a secret file containing prejudicial material, without questioning it or raising any concerns or fears.

While there have been other cases in which the power to order investigations by the CCRC has been used (such as in *R v Baybasin* [2013] EWCA Crim 2357, *R v Farah* [2023] EWCA Crim 731 and *R v AJF* [2025] EWCA Crim 197), there needs to be a credible evidential basis for making such an order. In this case, the absence of credible evidence to support the allegations of jury interference meant that no investigation could be ordered and any questioning of juror would have been a further imposition on jurors and one which would be unlikely to yield results. The applications made in this case lacked credibility and were rightly rejected by Court of Appeal as 'fanciful' and 'a crude attempt to subvert convictions properly reached' (at [41]). This was clearly the right decision by the Court of Appeal.

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