

PRESS SUMMARY

Noel Campbell (Appellant) v The Queen (Jamaica) (Respondent) [2010] UKPC 26
On appeal from the Court of Appeal of Jamaica

MEMBERS OF THE BOARD OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL: Lord Rodger, Lady Hale, Lord Brown, Lord Mance, Lord Kerr

BACKGROUND TO THE APPEAL

This appeal concerns, firstly, the jurisdiction of the Privy Council with regard to the grant of special leave to appeal ('the jurisdiction issue') and, secondly, whether the Appellant's conviction for murder is safe ('the substantive issue').

Mr Leroy Burnett was killed in a bar in Portmore, Jamaica on 12 September 1999 by multiple gunshots. Mr Clifford Anglin, who was with Mr Burnett, was also shot but survived. He was the prosecution's sole witness to the shooting and identified the Appellant as the gunman. The Appellant's defence was alibi, and that Mr Anglin was either deliberately framing the Appellant or mistaken.

The Appellant was first tried in January 2001, when the jury was unable to reach a verdict and a retrial was ordered. On the retrial, the Appellant was convicted. In August 2003, a single judge of the Court of Appeal of Jamaica refused as without merit the Appellant's application for leave to appeal to the Court of Appeal against his conviction and sentence. In October 2003, the Court of Appeal refused the Appellant's renewed application for leave to appeal.

In September 2009, the Appellant applied to the Board of the Judicial Committee of the Privy Council ('the Board') for special leave to appeal to Her Majesty. The legal framework regarding special leave is a combination of the law of Jamaica and the law of the United Kingdom. Subsections 110(1) and (2) of the Constitution of Jamaica grant certain rights of appeal from the Court of Appeal of Jamaica to Her Majesty, while subsection 110(3) provides that section 110 does not affect any right of Her Majesty to grant special leave to appeal. The right to grant special leave is regulated by section 3 of the Judicial Committee Act 1833 and section 1 of the Judicial Committee Act 1844, which are UK statutes.

The jurisdiction issue is whether it is necessary, before special leave can be sought, that there should have been a decision on the merits of the case by the Court of Appeal, rather than a refusal by the Court of Appeal to grant leave to appeal to it.

The substantive issue concerns two aspects of the summing-up of the judge on the retrial: first, whether the judge's directions to the jury regarding the identification evidence were adequate, and, secondly, the effect of the failure of the judge to give a direction as to the good character of the Appellant.

JUDGMENT

On the jurisdiction issue, the Board concludes that there is power to grant special leave in this case and grants such leave. On the substantive issue, the Board advises Her Majesty that the case should be

remitted to the Court of Appeal of Jamaica with a direction to quash the jury's verdict and to determine whether or not to order a re-trial.

REASONS FOR THE JUDGMENT

The Board considered that two questions needed to be asked to determine whether there is jurisdiction to grant special leave in this case. The first is whether under the Constitution of Jamaica special leave can only be granted where there has been such a decision of the Court of Appeal as is defined in s.110(5) of the Constitution, that is “a decision of the Court of Appeal ... on appeal from a court of Jamaica”. The Board concluded that such a decision is not a pre-requisite. The Board noted that s.110(3) is carefully framed to preserve, rather than grant, the right to seek special leave. Further, s.110 as a whole is only dealing with “appeals from [the] Court of Appeal to Her Majesty in Council”. Its language cannot be said to make clear an intention to exclude in other respects the right to seek special leave which is contained in s.3 of the 1833 Act and s.1 of the 1844 Act. [14] – [16]

The second question is whether sections 3 and 1 of these UK statutes permit the grant of special leave where the only decision of the Court of Appeal has been to refuse to hear an appeal. The Board, in answering the question in the affirmative, noted that the language of the sections is as comprehensive as possible, but also recognised that apparently general statutory language has been restricted in the parallel context of the jurisdiction of the House of Lords and now the Supreme Court, as well as some other appeal courts. In particular, in the case of *Lane v Esdaile* [1891] AC 210 Lord Halsbury observed that a provision that “an appeal shall not be given unless some particular body consents to it being given ... becomes absolutely illusory if you can appeal from that decision”. The Board, however, held that no such rule applies to s.3 of the 1833 Act and s.1 of the 1844 Act: there have been cases of special leave being granted where a domestic Court of Appeal has refused leave to appeal to it; the sections contemplate that special leave may be given in respect of a decision of a first instance court; and the sections restated the former royal prerogative, which itself cannot be restricted or qualified save by express words or necessary implication. [17] – [25]

The Board went on to consider whether special leave should be granted in this case. The Board decided that it should be, having regard to the apparent impossibility of bringing the matter a second time before the Court of Appeal, and the fact that the Court of Appeal's attention was not directed to the alleged deficiencies in the summing-up. [26] – [27]

On the substantive issue, the Board concluded that the judge's directions regarding the identification evidence were not such as to render the trial unfair or the verdict unsafe. As to the absence of a good character direction, the Board noted that such an omission is not necessarily fatal. However, on the facts the credibility and reliability of Mr Anglin's identification stood effectively alone against the credibility of the Appellant's denial of involvement. This was precisely the kind of case where a good character direction has the greatest potential significance. The Board therefore considered the absence of the direction as relevant to the safety of the verdict and advised Her Majesty that the appeal should be remitted to the Court of Appeal with a direction to quash the jury's verdict and to determine whether or not to order a retrial. [42]; [45]

NOTE

This summary is provided to assist in understanding the Committee's advice. It does not form part of the reasons for that advice. The full advice of the Committee is the only authoritative document. Advices are public documents and are available at: www.jcpc.gov.uk/decided-cases/index.html