18 October 2018

PRESS SUMMARY

Stubbs (Appellant) v The Queen (Respondent) (Bahamas)
Davis (Appellant) v The Queen (Respondent) (Bahamas)
Evans (Appellant) v The Queen (Respondent) (Bahamas)
[2018] UKPC 30
On appeal from the Court of Appeal of the Commonwealth of the Bahamas

JUSTICES: Lady Hale, Lord Wilson, Lord Sumption, Lord Hughes, Lord Lloyd-Jones

BACKGROUND TO THE APPEAL

On 25 July 2013, following a trial before Jones J and a jury, the three appellants, Stephen Stubbs, Andrew Davis and Clinton Evans, were convicted on one count of the murder of Jimmy Ambrose and on one count of the attempted murder of Marcian Scott. Evans was convicted on two further counts alleging firearm offences. They were sentenced to life imprisonment for murder and ten years' imprisonment for attempted murder. Evans was also sentenced to three years' imprisonment on each firearms count. All sentences were to run concurrently.

This was the third trial of the matter. The first trial took place before Allen J and a jury in 2002. The appellants were convicted but their appeals against conviction were allowed and a retrial ordered. The second trial took place before Isaacs J and a jury in 2007. At the second trial, Isaacs J made the following rulings: (1) he permitted an eye-witness to make dock identifications of the appellants, (2) he ruled that section 168 of the Criminal Procedural Code was constitutional and admitted in evidence Scott's deposition at a preliminary inquiry, (3) he declined to exercise his discretion to exclude Scott's deposition on grounds of unfairness, (4) he excluded the transcript of Scott's evidence in the first trial, (5) he ruled that Stubbs' interview was admissible and declined to edit it, and (6) he rejected submissions of no case to answer made by the appellants. The trial was aborted on the first day of the judge's summing up.

Following their conviction at the third trial, the appellants appealed against conviction and sentence. When the Court of Appeal convened on 4 May 2015, the appellants objected to Isaac JA's sitting on the appeal because of his rulings in the second trial and invited him to recuse himself on the grounds of apparent bias. The Court of Appeal (Conteh, Adderley and Isaacs JJA) ruled on the application in a reserved decision dated 4 June 2015. Conteh JA considered the objection unsustainable and lacking in any merit. Isaacs JA considered that his participation in the appeal would not give rise to a reasonable apprehension of bias. The Court of Appeal (Conteh, Isaacs and Crane-Scott JJA) heard the appeal over five days in September 2015 and, on 8 July 2016, dismissed the appeals. Crane-Scott JA dissented in respect of Evans' appeal against conviction.

On 19 July 2017, the appellants were given leave to appeal against conviction and sentence to the Judicial Committee of the Privy Council on specific grounds. At the hearing on 2 July 2018, the Board heard the parties on the issue of apparent bias.

JUDGMENT

The Judicial Committee of the Privy Council will humbly advise Her Majesty that the appeals should be allowed. Lord Lloyd-Jones gives the advice of the Board.

REASONS FOR THE JUDGMENT

It is a basic principle of the common law that a judge should not sit to hear a case in circumstances where the fair-minded and reasonable observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. In England and Wales this principle is given statutory form in the context of criminal appeals in section 56(2) of the Seniors Courts Act 1981. Although there is no express statutory equivalent in the Bahamas, it is likely that effect would be given to this rule by section 9 of the Bahamas Court of Appeal Act under which, in the absence of specific local provision, the practice of the English court will be followed **[13]**.

In these appeals, the issue for consideration was presented in a novel form: whether the involvement of a judge in an earlier stage of proceedings should require him to recuse himself **[14]**. The Board recognises that the fact that a judge has previously made a decision adverse to the interests of a litigant is not, of itself, sufficient to establish the appearance of bias. However, different considerations apply when the occasions for further rulings do not arise in the same proceedings, but in a separate appeal **[23]**.

In the present case, during the second trial of the appellants, Isaacs J made rulings on issues of mixed questions of fact and law and rulings that involved the exercise of judicial discretion. These were concluded rulings on intermediate issues of major significance in the proceedings **[24]**. In the appellate court, Isaacs JA was required to address essentially the same issues on which he had previously ruled **[25-28]**. The Board concludes that the proximity of these issues and the arguments advanced by the parties would weigh heavily in the mind of the fair-minded and independent observer **[29]**.

The Board acknowledges that if a retrial had taken place following the discharge of the jury in the second trial, there could have been no objection to Isaacs J sitting as the trial judge at that re-trial. However, the Board does not accept that this scenario is analogous to the present case. The former scenario is essentially a repetition of one stage of the judicial process and, if there are good grounds, he will be able to appeal the ruling. In the present case, very different considerations apply. For the same reason, the Board does not accept that the present case is analogous to the common case of a judge who has to make successive rulings in the same proceedings **[31]**. The Board also does not accept that the passage of time diminished the concern which would legitimately be created in the mind of a fair-minded and informed observer in relation to the participation of Isaacs JA in the appeal **[32]**. Nor does the Board accept that the fact that Isaacs JA was not sitting alone to hear the case can assist the respondent. The mutual influence of each member of a court over the others means that if any of them was affected by apparent bias the whole decision would have to be set aside **[33]**.

The Board agrees that a judge should not recuse himself unless there is a sound reason for recusal, lest unmeritorious applications for recusal become the norm and result in damage to the administration of justice. The Board is also conscious that the limited size of the Court of Appeal in some jurisdictions can make it difficult to avoid accidental listings before judges who have had some prior involvement with the parties or with earlier stages of the proceedings. However, for the reasons stated above, the Board is of the clear view that the decisions Isaacs J made during the second trial would lead a fair-minded and informed observer to conclude that there was a real possibility that he had pre-judged issues which fell for consideration on the appeal to the Court of Appeal and that the appellants did not have the appearance of a fresh tribunal of three judges to consider the appeals **[34]**.

The Board therefore advises Her Majesty that the appeals should be allowed, the decision of the Court of Appeal quashed and that the case be remitted to the Court of Appeal for the appeals to be reheard **[35]**.

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