

R v R & Others [2015] EWCA Crim 1941

Guidance on disclosure in exceptionally document heavy cases

Summary

This judgment comprises a series of extracts from the full judgment of the court, which may not be reported until the conclusion of the trial. The prosecution involves some 7 terabytes of data and has been proceeding for around 5 years. Primary disclosure is not yet complete, nor has an indictment been preferred. The court was asked to consider whether a stay for delay was justified.

Outcome

The court, after a review of the disclosure requirements of the Criminal Procedure and Investigations Act 1996 (together with the appropriate codes of practice) laid down a number of principles to prevent the 'debacle that has been the present case' from being repeated:

- The prosecution is and must be in the driving seat at the stage of initial disclosure
- The prosecution must then encourage dialogue and prompt engagement with the defence.
- The law is prescriptive of the result, not the method of disclosure.
- The process of disclosure should be subject to robust case management by the judge, utilising the full range of case management powers.
- Flexibility between the parties is crucial.

At all points, the court emphasised the need for all parties to comply with the Overriding Objective and to actively engage with each other in order to define the real issues in a case. The court also emphasised that for a case to be stayed for delay, the defendant must be able to show that they have suffered serious prejudice and could not receive a fair trial.

R v Harvey [2015] UKSC 73

Proceeds of Crime Act – whether VAT should be included in benefit figure

Summary

When a court is calculating the benefit obtained by a company for the purposes of a confiscation order, should any Value Added Tax accounted for, or paid to HMRC be subtracted from the turnover figure?

Outcome

The Supreme Court determined (3 to 2, Lords Hughes and Toulson dissenting) that it would be disproportionate under Article 1, Protocol 1 ECHR to make a confiscation order where VAT has been paid or accounted for to HMRC. The court left the position open where an offender is liable for VAT, but has not yet accounted for it.

R (Wang Yam) v Central Criminal Court [2015] UKSC 76

Closed material procedure – whether material heard in camera may be disclosed to the European Court

Summary

In 2009 the appellant was convicted of murder. The entire defence case was heard *in camera*, to which the appellant and his representatives objected. The appellant now wishes to appeal to the European Court of Human Rights complaining that his trial and conviction were unfair and a violation of article 6.1 ECHR on the basis that, had the trial been publicised, it would have encouraged additional witnesses to come forward and have placed the Crown's witnesses under public scrutiny.

Outcome

The appeal was denied. The court held that the English courts have a discretion as to whether they will disclose material heard during *in camera* hearings. There is no breach of any international obligation, and the English courts would not be obliged to give effect to such obligations in any event. Furthermore, the ECtHR does not generally act as a fourth-tier appeal court and so may not require the material in order to determine the appeal.

R v Darren Thompson [2015] EWCA Crim 1820

Matrimonial assets under POCA 2002

Summary

The appellant was convicted of fraud in 2013. In 2014 a confiscation order was made, which included funds derived from two matrimonial homes. In respect of the second home, purchased in 2009, the appellant alone had provided a significant deposit and made all mortgage repayments until the investigation into his fraud commenced. The wife contended that (1) in assuming liability for future mortgage repayments, (2) making mortgage repayments after the appellant became incapable, and (3) changing her financial position to her detriment in order to concentrate on a family life due to reproductive issues, she acquired valuable consideration of a half in the matrimonial home.

Outcome

The court rejected the wife's arguments, on the basis that the monetary consideration for the purchase of the property was entirely derived from an account held in the husband's name, sourced purely from criminal activity. The wife did not supplement this with any monetary contribution of her own. When a mortgage on the property was repaid, this was achieved solely through monies drawn from the husband's account, which were the proceeds of crime. Her legal and equitable interests were therefore an effective gift. The court further approved the judge's findings that the wife was entitled to a 10 per cent share in the property in respect of family life, although this was not attributable to the aspirations of the parties in relation to future parenthood.

Commissioner of Police of the Metropolis v Jamie Thorpe [2015] EWHC 339 (Admin)

Football Banning Orders

Summary

In an appeal by case stated, the question posed by the magistrates was "Did we have the power to make a Football Banning Order under section 14B(4) of the Football Spectators Act 1989 that was limited to matches played between Fulham FC and either Chelsea FC or Brentford FC?".

Outcome

The answer to the question was "no". When a football banning order is made there is, therefore, no ability to limit it to matches played between specified clubs.

The court held that the language of section 14B(4) was clear and that when an order was made it applied to any 'regulated match' (which means all league matches at Blue Square North and South level or above, together with Cup matches except for preliminary rounds).

Furthermore, the wording of the act gives the court a 'narrow and tailored jurisdiction', which effectively limits the justices to making two findings of fact. Parliament, therefore, has struck the balance required by Article 8(2) ECHR, which the court held was not engaged in any event.

R (Roberts) v Commissioner of Police of the Metropolis [2015] UKSC 79

Stop and search

Summary

Amid rising tensions between rival gangs in north London, the Superintendent of Haringey authorised so-called 'suspicionless searches' within a large part of the borough under section 60 of the Criminal Justice and Public Order Act 1994.

The appellant was stopped by a bus inspector for travelling failing to pay her fare. A constable attended and formed the view that 'she was holding her bag in her suspicious manner and might have an offensive weapon inside it.' The appellant refused to be searched and attempted to walk away. She was restrained and searched. The appellant brought judicial review proceedings

under Articles 5, 8 and 14 ECHR, requesting a declaration of incompatibility.

Outcome

The court declined to make a declaration of incompatibility. The court held that both section 60 and the particular search of the appellant was 'in accordance with law' as required by Article 8. The court also added that there are a wide range of safeguards to guard against inappropriate use of the power. The court emphasised that the power must be operated in a manner compatible with the ECHR.