



2 November 2020

PRESS SUMMARY

**Stubbs (Appellant) v The Queen (Respondent); Davis (Appellant) v The Queen (Respondent);
The Queen (Appellant) v Evans (Respondent)**
[2020] UKPC 27

On appeal from the Court of Appeal of the Commonwealth of Bahamas

JUSTICES: Lord Kerr, Lord Lloyd-Jones, Lord Kitchen, Lord Hamblen, Lord Burrows

BACKGROUND TO THE APPEALS

These appeals concern an alleged murder and attempted murder which took place in Nassau, the Bahamas, on 29 March 1999. In July 2013, after a third trial, Stephen Stubbs, Andrew Davis and Clinton Evans were convicted of the murder of Jimmy Ambrose and the attempted murder of Marcian Scott. The events of 29 March 1999 are said to have unfolded as follows. Ambrose and Scott were at a nightclub in Nassau. Ambrose was a police officer and Scott had been a police officer and was either still with the police or had recently become a security officer. Both men were in plain clothes. A fight broke out in the club between two groups of men. One of those men approached Ambrose and Scott to report what had happened, all of whom went outside, with a fourth man, to discuss the incident. While the four men were outside, some men, who had been part of the other group in the fight, emerged from the front door of the club and began shooting at Ambrose, Scott and the two other men. Ambrose and Scott tried to flee, but Ambrose was set upon by three armed men, alleged to be Stubbs, Davis and Evans. He was thrown to the ground, kicked, shot and killed. Scott was able to escape. The three attackers ran off in different directions.

A preliminary inquiry was held during which evidence was taken from several witnesses, including Scott. At the first trial in 2002, Stubbs, Davis and Evans were convicted of murder and sentenced to death. Their convictions were overturned on appeal in March 2004. Mr Scott died in 2006, after the first trial. The second trial took place in 2007. On the first day of the judge's summing up, the trial was abandoned after reports of an approach to a juror. The third trial, in July 2013, resulted in convictions of all three defendants of murder and attempted murder and of Evans of firearms offences. All three defendants were sentenced to life imprisonment for murder and ten years' imprisonment for attempted murder, to run concurrently. Evans was also convicted of firearms offences, receiving three-year concurrent sentences for each.

The defendants appealed after the third trial. At the start of the hearing before the Court of Appeal, one of the judges was asked to recuse himself due to his previous involvement in the second trial. The Court of Appeal unanimously rejected the recusal application and, in July 2016, dismissed the appeals. Stubbs, Davis and Evans then appealed to the Privy Council. On 18 October 2018, the Privy Council allowed the appeals on the ground that the judge should have recused himself, remitting the case to the Court of Appeal for a rehearing before a differently constituted court (see *Stubbs, Davis and Evans v The Queen* [2018] UKPC 30). After the rehearing, the Court of Appeal delivered judgment on 24 January 2019. Evans' appeal against conviction was allowed and, by a majority, no retrial was ordered. Both Stubbs' and Davis' appeals against conviction were unanimously dismissed, but their appeals against sentence were allowed, replacing their life sentences with 35- and 34-years' imprisonment, respectively, to reflect

time already spent in custody. Stubbs and Davis now appeal to the Privy Council against conviction and sentence. The Crown appeals against the Court of Appeal's decision to quash Evan's conviction or, alternatively, not to order a retrial.

JUDGMENT

The Judicial Committee of the Privy Council will humbly advise her Majesty that: (1) the appeals against conviction by Stubbs and Davis should be dismissed; (2) the Crown's appeal in the case of Evans should be dismissed; and (3) Stubbs and Davis should be granted permission to appeal against sentence and their appeals allowed to the extent that their sentences for murder should be quashed and their cases remitted to the Court of Appeal for re-sentencing [175].

REASONS FOR THE JUDGMENT

Stubbs' appeal against conviction

Stubbs' appeal against conviction requires the Board to address four main issues: (1) the judge's admission of identification evidence, including what is said to be 'dock identification' evidence; (2) the judge's admission of Scott's deposition from the preliminary inquiry and the transcript of his evidence from the first trial; (3) the Court of Appeal's refusal to admit fresh evidence which purported to demonstrate that Scott was no longer a police officer by the date of the killing; (4) the judge's admission of a police analyst's ballistics report without the analyst being required to give oral evidence.

On the first issue, it was contended on behalf of Stubbs that the judge should not have permitted what was said to be a 'dock identification' by a witness at the third trial as there had been no satisfactory prior identification of Stubbs by that witness during an earlier identity parade [77]. The Board emphasises the importance of the distinction between cases of identification, on the one hand, and recognition, on the other [80]-[81]. Regardless of whether or not Stubbs had been picked out during the identification parade, the identification in court was not a 'dock identification' as the witness was merely confirming his previous account to the police that he recognised one of the attackers as a man already known to him [84]. As the Board concludes that this is a recognition case, the other criticisms made of the judge in this regard are inconsequential [88]-[89]. On the second issue, the Board finds that the decisions to admit the deposition and the transcript were proper exercises of the judge's discretion. The judge directed himself correctly as to the law and considered all relevant factors, including the lack of an identification parade in respect of Scott, the discrepancies in Scott's evidence and the fact that there was other identification evidence [90]-[96]. Further, the judge's directions which the judge gave to the jury in respect of Scott's evidence were appropriate [97]-[99].

On the third issue, the Board concludes that the Court of Appeal cannot be criticised for refusing to admit fresh evidence which was said to demonstrate that Scott was no longer a police officer by the date of the killing. There was no satisfactory explanation as to why the information could not have been obtained before the first trial in 2003 [102]. Further, the evidence did not necessarily support the conclusion that Scott was not a police officer at the time of the killing, nor was it something which could have affected the reliability of his testimony [103]-[104]. On the fourth issue, the Board considers that the judge was entitled to exercise his discretion under section 120(2) of the Criminal Procedure Code to admit the ballistics report into evidence without requiring the report's author to give oral evidence [128]. The analyst who had written the report had emigrated to the United States in 1999, before any of the trials had taken place. At each trial, the prosecution had sought to have the report admitted under section 120 by using another firearms examiner attached to the police to put the report into evidence and making him available for cross-examination [51]. The availability of this witness and the editing of the report to ensure that its contents could be addressed by the witness in cross-examination, even though he had not written the report, are, in the Board's view, important considerations which support the judge's decision to admit the report into evidence [124]-[130].

Davis' appeal against conviction

Davis' appeal against conviction concerned the following issues: (1) the judge's admission of Scott's deposition and transcript of evidence, and the bad character evidence which emerged from the cross-examination of Scott at the preliminary inquiry; (2) the admission of anonymous hearsay evidence; (3) the Court of Appeal's refusal to admit the fresh evidence in relation to Scott's employment-status. As to the first issue, the Board finds that the judge was entitled to admit the deposition and transcript, for the same reasons as those given in Stubbs' case [133]. The bad character evidence, which concerned threats made by Davis, had been relied upon by him to suggest that Scott was lying and, in all the circumstances, was not sufficiently prejudicial to affect the jury's verdicts [134]-[137]. On the second issue, the Board finds there to be force in the argument made on Davis' behalf. Two witnesses had, in the course of their evidence, relayed accusations by unknown third parties against Davis, identifying him as one of the men who had shot Ambrose. In the circumstances of the case, this evidence should not have been admitted [139]-[144]. However, in light of the strength of the other evidence against Davis, including a positive identification at an identification parade, the Board concludes that this irregularity has not given rise to any miscarriage of justice [145]. On the third issue, the Board rejects this argument for the same reasons as those outlined in relation to the Stubbs appeal [146].

The Crown's appeal against the Court of Appeal's decision to quash Evans' conviction

The Board concludes that Evans' convictions for murder and attempted murder were unsafe and, accordingly, the Crown's appeal should be dismissed. The Court of Appeal considered that, unlike the other defendants, the only evidence against Evans was the questionable identification evidence of one witness and the ballistics report which linked bullet casings found at the scene of the killing to the gun, which was said to have been buried by Evans. While the Board disagrees with the Court of Appeal that the judge erred in deciding to admit the ballistics report against Evans [151]-[155], the Board shares the Court of Appeal's other concerns in relation to both the judge's summing up on the evidence which linked Evans to the firearm and the identification evidence [156]-[159]. Most fundamentally, however, and contrary to the view of the Court of Appeal, the Board considers that the permitted identification of Evans in court was a true 'dock identification' as, unlike the case of Stubbs, the witness has expressly accepted that Evans was not previously known to him. For this reason, this was a material irregularity in the trial which was so prejudicial and unfair that, notwithstanding the judge's directions to the jury, the convictions were unsafe [160]-[162]. Due to these grave reservations in relation to the identification evidence, in addition to the fact that Evans has endured three trials, three appeals to the Court of Appeal and several years in prison, the Board considers that it would be oppressive to Mr Evans to order a retrial [164]-[169].

The appeals against sentence by Stubbs and Davis

The Board grants Stubbs and Davis permission to appeal against sentence and allows the appeal on both grounds. First, the Court of Appeal was wrong to order that the sentence it substituted should run from the date of the order on appeal as opposed to the date on which the original sentence was imposed following conviction [171]-[172]. Second, the Court of Appeal failed to take into account breaches of constitutional rights when passing sentence. Both Stubbs and Davis had not been tried within a reasonable time, in breach of article 20(1) of the Bahamas Constitution, and both had been wrongly sentenced to the mandatory death penalty after the first trial [173]. The Board remits the cases to the Court of Appeal for resentencing, where appropriate weight should be given to these important mitigating factors [174].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>