



10 February 2010

PRESS SUMMARY

Allison (Appellant) v Her Majesty's Advocate (Respondent) (Scotland)

[2010] UKSC 6

ON APPEAL FROM: [2008] HCJAC 63

JUSTICES: Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lord Brown, Lord Kerr

BACKGROUND TO THE APPEAL

On 9 September 2004 the appellant, Steve Allison, was convicted after trial in the High Court at Glasgow of four contraventions of section 4(3)(b) of the Misuse of Drugs Act 1971. In effect, he was found guilty of being concerned in the supplying of cocaine and three other controlled drugs. The trial judge sentenced him to 8 years imprisonment.

The appellant appealed against both his conviction and sentence. On 7 November 2008 the appeal court (Lord Osborne, Lady Paton and Lord Philip) refused his appeal against conviction, leaving his appeal against sentence to be heard on a date to be fixed.

One of his grounds of appeal, which was first advanced in an additional Note of Appeal, related to the record of a police interview of a John Stronach. Mr Stronach had died before the trial and the Crown introduced the interview into evidence in accordance with the procedure in section 259(5) of the Criminal Procedure (Scotland) Act 1995.

Neither before nor during the trial did the Crown disclose to the defence that Mr Stronach had a number of previous convictions and that there were outstanding charges against him. One of the outstanding cases was under the Misuse of Drugs Act and related to events covered by the trial and it was therefore known to the appellant's legal advisers. The Crown disclosed the previous convictions and the other outstanding charges only while the appellant's appeal was pending before the appeal court. This prompted the appellant to argue that the Crown's failure to disclose to the defence the existence of all the previous convictions and outstanding charges was incompatible with his article 6 Convention rights. As a result, the defence had been unable to prepare and conduct their defence properly and appellant did not receive a fair trial.

When dismissing the appellant's appeal, the appeal court accepted that the failure by the Crown to disclose Mr Stronach's previous convictions had been incompatible with the appellant's article 6(1) rights. Having considered the circumstances of the case, however,

the appeal court was not persuaded that the Crown's failure had resulted in an unfair trial and hence a miscarriage of justice. The appeal court drew a distinction between Mr Stronach's previous convictions and the outstanding charges against him. Because of the presumption of innocence, the appeal court did not consider that the existence of outstanding charges could be of importance in connection with the preparation of a defence or with any challenge that might be mounted to the credibility of a witness.

JUDGMENT

The Supreme Court unanimously dismisses the appeal, with Lord Rodger delivering the leading judgment of the Court.

REASONS FOR THE JUDGMENT

The Court disagrees with the appeal court's view in relation to outstanding charges. It is, of course, trite that an individual charged with crime is presumed to be innocent until proven guilty. But that is not to say that he has to be treated in all respects as if he were an innocent person against whom no charge has been brought [9]. The Privy Council's decision in *Holland v HM Advocate* 2005 1 SC (PC) 3, that the Crown should disclose outstanding charges of Crown witnesses of which they are aware, simply reflects the common sense position that – just as in everyday life – judges or jurors who have to assess the credibility of a witness may properly take into account not only the fact that the witness has been convicted of various offences, but also the fact that he has been charged with others. This approach merely reflects what appears to have been recognised as the proper practice in Scottish courts for more than 170 years [10].

In the present case, the Crown does not deny that the outstanding charges against Mr Stronach might have weakened the Crown case by casting doubt on his character or credibility. Indeed the Crown accepts that, in accordance with *Holland* and *HM Advocate v Murtagh* 2009 SLT 1060, the failure to disclose the outstanding charges to the defence was incompatible with the appellant's article 6(1) rights [14].

The only live issue in the appeal, therefore, is the actual significance, in the whole circumstances of the case, of the Crown's failure to disclose the outstanding charges. Having considered the circumstances of the case against the appellant, the Court is not persuaded that, if defence counsel had been able to deploy Mr Stronach's outstanding charges as well as his previous convictions, this would have made any material difference [22]. The Court is satisfied that there is no real possibility that the jury would have come to a different verdict on the charges against the appellant if they had been made aware, not only of Mr Stronach's previous convictions, but of the outstanding charges against him as well. There has therefore been no miscarriage of justice [23].

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:

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