



Cúirt Uachtarach na hÉireann Supreme Court of Ireland

Michael Murphy v. Director of Public Prosecutions

On appeal from: [2020] IECA 334

The Supreme Court today 9th November, 2021, dismissed an appeal seeking to quash the refusal of a Circuit Court Judge to recuse himself from a retrial. It held that there is no binding legal principle requiring recusal after an inconclusive trial in which a trial judge has ruled on contested evidence in a *voir dire*.

Composition of the Court

O'Donnell C.J., Dunne, Charleton, O'Malley and Woulfe JJ.

Background to the Appeal

The appellant sought the recusal of a trial judge from a retrial on the basis that in the original trial he had made rulings on contested oral evidence in a *voir dire*. It was submitted that the findings had been based on the judge's assessment of the credibility and reliability of witnesses, and that if the same findings were reached in a retrial, there would be grounds for concern that the trial judge had predetermined the matters or had been unconsciously influenced by his previous impressions and determinations. The High Court dismissed the appellant's claim, as did the Court of Appeal.

Judgment

The Supreme Court dismissed the appeal, with the sole judgment being delivered by O'Malley J.

Reasons for the Judgment

In determining whether or not the test for recusal on grounds of bias has been met, the Court should not take into account the merits of the findings and rulings made on particular evidence in the trial. [paras 48 and 49]. Since it is not possible to establish that bias was present in the past by merely pointing to errors made in the past, such errors cannot be relied upon without more for the purpose of establishing that bias in the form of pre-judgment will affect a trial to be held in the future. [paras 54 and 55]

While the assessment of witnesses may to some extent be a subjective process, it is one carried out within legally defined parameters. Decisions made by trial judges are either legally correct or incorrect, and the criminal justice system has established procedures to remedy errors. [65]

The principles relating to bias do not require any particular rule in the case of retrials, regardless of whether the original trial involved the determination of any issue by the trial judge. [69]

However, it is sometimes prudent for a trial judge to accede to a recusal application. [66]

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.

Case history

20th July 2021

[\[2021\] IESCDT 51](#)

[\[2020\] IECA 334](#)

[\[2019\] IEHC 918](#)

Oral submissions made before the Court

Supreme Court Determination granting leave

Judgment of the Court of Appeal

Judgment of the High Court