



10 February 2010

PRESS SUMMARY

McInnes (Appellant) v Her Majesty's Advocate (Respondent) (Scotland) [2010] UKSC 7

On Appeal from: 2008 HCJAC 53

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

BACKGROUND TO THE APPLICATION

In December 2001 the Appellant, Paul McInnes, was convicted at the High Court of the Justiciary in Glasgow in respect of an assault outside a hotel in Duntocher, Dunbartonshire. He was sentenced to eight years imprisonment.

The crucial issue at the trial was the identification of the persons who participated in the assault. The prosecution evidence in the case included the statement of Mr Brian Pearce, a steward at the nearby hotel who described how he witnessed the Appellant assault the victim. At the trial, Mr Pearce described how he witnessed the Appellant administer a kick to the head of the victim of the assault.

Prior to the Appellant's criminal trial, Mr Pearce failed to correctly identify the Appellant at two separate identity verification parades. On the first occasion (when the Appellant did not participate in the parade), Mr Pearce identified a person other than the Appellant as the perpetrator of the assault. On the second occasion (when the Appellant did participate), Mr Pearce identified a police stand-in as the perpetrator.

The prosecution failed to disclose either failed identification to the Appellant in advance of his trial. The Appellant's defence were of the view that if they had been in possession of the information relating to the failed identification parades it would have enabled them to more effectively attack the reliability of Mr Pearce's evidence at trial and that this may have affected the outcome of the proceedings.

Following discovery of this omission, the Appellant's case was referred to the High Court of Justiciary.

The Appellant lodged a Devolution Minute contending that the failure of the prosecution to disclose the relevant information had rendered his trial unfair contrary to Article 6 of the European Convention on Human Rights and constituted a miscarriage of Justice.

The High Court of Justiciary dismissed the Devolution Minute, holding that it could not be said that the non-disclosure gave rise to a real risk of prejudice.

The Appellant appealed to the Supreme Court on the basis that the High Court of Justiciary had erred in applying the wrong legal test. Rather than enquiring as to whether there was a real risk of prejudice it was contended that the court should simply have considered whether disclosure *could* have made a difference to the outcome of the prosecution.

JUDGMENT

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

REASONS FOR THE JUDGMENT

The law on disclosure is reasonably well settled. The prosecution must disclose any material which might materially weaken its case or strengthen the defence. Accordingly, all police statements as a class must be disclosed [para [1] per Lord Hope].

The Court's jurisdiction in this case was confined to analysing whether the High Court of Justiciary had applied the correct legal test. The application of the test to the facts of the case was exclusively within the jurisdiction of the High Court of Justiciary [para [18] per Lord Hope].

Two questions arise for determination in this type of case.

Firstly, whether the information is of a type that must be disclosed. In respect of police statements the answer to this question is clearly affirmative [para [19] per Lord Hope].

Secondly, whether, taking all the circumstances of the trial into account, there was a real possibility that the jury would have arrived at a different verdict if the relevant information had been disclosed [para [20] per Lord Hope].

The question which the appeal court must ask itself is whether after taking account of all the circumstances of the trial, including the non-disclosure in breach of the appellant's Convention right, the jury's verdict should be allowed to stand. The question will be answered in the negative if there was a real possibility at a different outcome – if the jury might reasonably have come to a different view on the issue to which it is directed its verdict if the withheld material had been disclosed to the defence [para [24] per Lord Hope; see also paras [30]-[31] per Lord Rodger and paras [35] and [38] per Lord Brown].

The test to determine whether there has been a fair trial in terms of Article 6 is the same that is to be applied to determine whether there has been a miscarriage of justice [para [23] per Lord Hope].

It is clear from the judgment of the High Court of Justiciary that it applied the correct legal test [para [25] per Lord Hope].

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: www.supremecourt.gov.uk/decided-cases/index.html