

Jones (Appellant) v Birmingham City Council and another (Respondents)

[2023] UKSC 27

Date: 19 July 2023

Justices

Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Sales, Lord Stephens, Lady Rose, Lord Richards

Background to the Appeal

The background to this appeal is gang-related violence across the United Kingdom, which is often concentrated in larger cities. Gang-related violence is often connected to drug-dealing, and may also involve firearms offences, obstruction of justice and other illegal activity which threatens public safety and the rule of law. While this activity is usually directed toward other gang members, non-gang-member civilians can be caught in the crossfire.

Birmingham is one UK city which has been heavily affected by gang violence. The Guns and Money Gang ("GMG") is one of the gangs linked to violence in Birmingham which has been affecting residents there for over thirty years. In February 2016, following investigation by the West Midlands Police, proceedings were commenced by Birmingham City Council against the appellant, Mr Jerome Jones, and 17 other defendants, all of whom were said to be members of the GMG or a rival gang.

Birmingham City Council applied to Birmingham County Court for injunctions to prevent the defendants from engaging in gang-related violence and drug-dealing activity. The injunctions were requested pursuant to section 34 of the Policing and Crime Act 2009 ("the 2009 Act") and in the alternative under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"). Interim injunctions were granted against the defendants in February 2016. The appellant applied for the injunction claim in his case to be transferred to the High Court where he applied for a declaration that it was incompatible with article 6 of the European Convention on Human Rights ("ECHR").

More specifically, the application concerned the question whether article 6(1) ECHR, as given effect within the United Kingdom by the Human Rights Act 1998 ("HRA 1998"), requires the criminal standard of proof (i.e. proof beyond a reasonable doubt) to be satisfied in respect of:

1. Proof that a person has engaged in or has encouraged or assisted gang-related violence or gang-related drug dealing activity within section 34(2) of the 2009 Act; and
2. Proof that a person has engaged or threatens to engage in anti-social behaviour within section 1(1) of the 2014 Act.

In the High Court, Burton J held that the proceedings in this case were not in respect of a criminal charge and did not require the application of the criminal standard of proof. The trial of the injunction action was held in the Birmingham County Court in 2017. Judge Wall applied the civil standard of proof (i.e. on the balance of probabilities) to the question of whether Mr. Jones had been involved in gang-related drug-dealing activity and therefore satisfied the first condition in section 34(2) of the 2009 Act. Judge Wall concluded that the condition was satisfied and granted an injunction against Mr. Jones pursuant to sections 34-36 of the 2009 Act, as amended by the Crime and Security Act 2010 and the 2015 Act. The injunction which was granted against Mr Jones included provisions preventing him from entering a large area in central Birmingham, associating with or contacting ten people named in the injunction, and participating in music videos containing material which might

relate to gangs operating in Birmingham.

Mr. Jones appealed the order of Burton J to the Court of Appeal. The Court of Appeal held that:

1. Proceedings under section 34 of the 2009 Act do not involve a criminal charge within article 6 (1) of the ECHR; and
2. The standard of proof for proving the threshold conditions prescribed by section 34 of the 2009 Act for applications for injunctions in respect of gang-related drug-dealing and by section 1(2) of the 2014 Act for applications for injunctions in respect of anti-social behaviour, namely proof on the balance of probabilities, is compatible with article 6 of the ECHR.

Mr. Jones now appeals to the Supreme Court against the decision of the Court of Appeal. It is no longer argued that the proceedings against him under section 34 of the 2009 Act involve a criminal charge within article 6(1) of the ECHR. The principal issues on this appeal are as follows:

1. Whether the Court of Appeal erred in law by distinguishing and declining to follow the decision of the House of Lords in *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787 ("*McCann*") that the criminal standard of proof should be applied in proceedings in respect of an anti-social behaviour order under section 1, Crime and Disorder Act 1998 ("the 1998 Act"), and in failing to apply that standard of proof to applications for injunctions under section 34 of the 2009 Act and section 1 of the 2014 Act; and
2. If the Court of Appeal was entitled to depart from the decision of the House of Lords in *McCann*, whether it, in any event, erred in law in holding that the criminal standard of proof did not need to be applied to the first condition under section 34 of the 2009 Act and section 1 (2) of the 2014 Act in order to satisfy the requirements of fairness in article 6(1) of the ECHR when considering whether to make an injunction under either or both of those provisions.

Judgment

The Supreme Court dismisses the appeal, unanimously holding that ([66-67]):

1. Article 6(1) of the ECHR, as given effect by the HRA 1998, does not require the criminal standard of proof to be satisfied in respect of (a) proof that a person has engaged in or has encouraged or assisted gang-related violence or gang-related drug dealing activity within section 34(2) of the 2009 Act or (b) proof that a person has engaged or threatens to engage in anti-social behaviour within section 1(1) of the 2014 Act;
2. Under Part 4 of the 2009 Act and Part 1 of the 2014 Act Parliament has devised statutory schemes which conform with the requirements of a fair hearing under article 6 of the ECHR.

Lord Lloyd-Jones gives the judgment, with which all the other Justices agree.

Reasons for the Judgment

The Supreme Court finds that there is no authority from the European Court of Human Rights for the proposition that a fair hearing under article 6(1) ECHR requires the application of the criminal standard of proof in circumstances such as those in the present appeal. [38] In fact, Article 6(1) of the Convention does not lay down any rules on the burden or standard of proof, which are essentially a matter for domestic law. [36] While it would be open to the Strasbourg court to develop its jurisprudence on article 6(1) so as to require the application of the criminal standard of proof in such circumstances, there is no sign in its case law to date that such a development is likely. [38]

The *McCann* case is not authority for the proposition that anti-social behaviour within section 1(1)(a) of the 1998 Act is required to be proved to the criminal standard. The standard of proof under section 1(1)(a) of the 1998 Act was the civil standard of proof on the balance of probabilities and to the

extent that any reasoning in the McCann opinions is to the contrary effect, it is wrong. McCann does not support the proposition that the criminal standard of proof must be applied to the requirements of evidence upon which a gang injunction can be granted under the 2009 and 2014 Acts. [56]

In respect of the 2009 Act and 2014 Act, Parliament has expressly provided that the standard of proof applicable in relation to the granting of gang injunctions in both Acts shall be the civil standard. In the light of this express provision, there is no room for the courts to decide that as a matter of common law fairness the criminal standard should be applied. [58] The adoption of the civil standard was a deliberate step which Parliament considered was justified by the seriousness of the behaviour being addressed by these injunctions and the purpose of the statutory scheme, namely to prevent and protect against gang violence. [61-63] Furthermore, Parliament has incorporated into the 2009 Act and 2014 Act procedural safeguards which secure the fairness of any trial in relation to the granting of a gang injunction. [64-65]

The standard applicable to the relevant issues under the 2009 Act and the 2014 Act is therefore the civil standard. The court's task is to determine whether on the balance of probabilities the conduct identified took place. [60]

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: [Decided cases - The Supreme Court](#)