

Exploring circumstances justifying adjournment (R v SA and others)

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Corporate Crime analysis: A decision of the Court of Appeal in R v SA and others throws light on a judge's power to adjourn under section 59 of the Criminal Justice Act 2003 (CJA 2003) and on the tests relating to circumstantial evidence and conspiracy to defraud. Christopher Burt, senior associate solicitor at Moon Beaver, reports on the case and its implications.

R v SA and others [\[2019\] EWCA Crim 144](#)

What are the practical implications of this case?

The decision of the Court of Appeal (criminal division) in *R v SA and others* clarifies that while 'there is a plain and undiminished need for urgency in and concerning the launching of a prosecution appeal under [CJA 2003, Part 9](#)', it is nonetheless permissible for a judge to grant an adjournment, beyond the 'next business day'. To that extent, Blackstone's Criminal Practice 2019 at D16.77 was 'erroneous'.

The decision also contains a useful review of [CJA 2003, s 67](#) and the tests relating to circumstantial evidence and conspiracy to defraud.

Finally, it is worth noting the Court of Appeal's expression of 'regret' as to the manner in which the case had originally been pleaded, there being no allegation of 'fraudulent misrepresentation or non-disclosure'.

What was the background?

The underlying case concerned a burglary of a residential property in Somerset in March 2009. The prosecution's case was that a group of builders who had been renovating the property, together with their accomplices, conspired to steal 15 paintings, items of jewellery and a car, amounting to some £2m. Hiscox paid out under the terms of a contents insurance policy but began an investigation, alongside the police. The paintings remained at large until 2015, when Hiscox was invited to pay a reward for their safe return. Negotiations ensued and an agreement was eventually entered into in August 2015 pursuant to which £175,000 reward monies were paid into the bank account of a jewellery business in Birmingham. The paintings were then returned.

The prosecution's case in the Bristol Crown Court comprised four counts:

- conspiracy to carry out the burglary
- the retention and transport of stolen property
- an agreement to defraud Hiscox
- the laundering of the proceeds of that fraud

Trial commenced on 6 June 2018. On 18 and 19 July 2018, the judge refused an application to amend the particulars on one of the counts and acceded to various submissions of no case to answer. The prosecution sought a short adjournment to consider the merits of an appeal and the judge agreed an extension by one additional business day. The prosecution's application for permission to appeal came before the Court of Appeal (criminal division) on 29 November 2018.

What did the court decide?

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The first issue considered by the Court of Appeal was whether the requirements of [CJA 2003, s 58\(4\)\(a\)\(ii\)](#) and the Criminal Procedure Rules, rule 38.2 had been met on the judge permitting an extension of time for appeal beyond the 'next business day'. This 'jurisdiction issue' was promptly answered on a proper analysis of the provisions and in light of the decision in *R v H* [2008] EWCA Crim 483. The suggestion in Blackstone's Criminal Practice 2019, that 'the provision for a longer adjournment where the interests of justice so required no longer applies' was 'erroneous', 'apt to mislead' and needed to be addressed in future editions.

That being the case, the Court of Appeal went on to consider the substance of the prosecution's appeals on counts one, three and four. As to count one, and whether the judge had applied the correct test in relation to circumstantial evidence (such as DNA evidence and mobile phone records), the Court of Appeal referred to the test in *R v Galbraith* [1981] 2 All ER 1060 as reviewed in *R v Sardar* [2016] EWCA Crim 1616 and what the reasonable jury might do. The Court of Appeal also relied on [CJA 2003, s 67](#) holding that:

'The prosecution against all three respondents on count one is unacceptably tenuous—we agree with the judge's ruling, allowing the submissions of no case to answer on this count. In any event, the prosecution case came nowhere near satisfying the requirements of [CJA 2003, s 67](#).'

Permission to appeal was refused.

On count three, that is, the conspiracy to defraud, the Court of Appeal reviewed the Hiscox negotiations, in particular the threat that one of the paintings would be sold to a 'Russian oligarch' if the reward monies were not increased or paid promptly. The judge at first instance had treated this as nothing 'more than a mere puff' within a negotiation in which Hiscox had been represented by Clyde & Co and where Avon and Somerset Police and the National Crime Agency had been consulted.

As to the broad offence of conspiracy to defraud, the Court of Appeal noted that it required 'an agreement on the part of the conspirators dishonestly to deprive the victim of some proprietary right' and that 'a conspiracy to defraud remains such even if the intended victim is not in fact defrauded and no detriment is suffered'. The Court of Appeal agreed with the judge that the evidence 'overwhelmingly favoured the respondents' with any increase in the reward sum being attributable to normal negotiations, rather than anything malign. Referring once again to [CJA 2003, s 67](#), the prosecution's case 'came nowhere near satisfying the requirements' and permission to appeal on count three was also refused (the same result followed for court four which allegation stood or fell with count three).

Leave to appeal having been refused, the Court of Appeal duly acquitted the respondents of the offences comprised within counts one, three and four.

Interviewed by Lucy Trevelyan.

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