



Neutral Citation Number: [2008] EWCA Crim 531

Case No: 200702726C2, 200702810C2, 200700811C2, 200700655C2,
200706245B3, 200705902B4, 200704358D2, 200702269B3

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM

**His Honour Judge Keen QC at Sheffield Crown Court (Khan T20067477, Hanif T2006
7398 and Younas T20067477)**

His Honour Judge Thorn at Hull Crown Court (Michael Arshad Khan) T20060430

His Honour Judge Darwall-Smith at Bristol Crown Court (Lewthwaite) T20077206

His Honour Judge Roberts at Liverpool Crown Court (Hill) T20067853 and T20061512

His Honour Judge Mott at Worcester Crown Court (Cross) T20057171

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/03/2008

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
SIR IGOR JUDGE PRESIDENT OF THE QUEENS BENCH DIVISION

and

THE HONOURABLE MR JUSTICE SILBER

Between :

Bakish Alla Khan and Others

- and -

R

Appellant

Respondent

Mr P. Mitchell (in the appeal of Bakish Alla Khan, Hanif and the application of Younas), Mr S. Uttley (in the application of Michael Arshad Khan), Mr C.Smyth (in the application of Lewthwaite), Mr M. Scholes (in the application of Stanley James Hill) and Mr T. Hannam (in the application of Roy Andrew Cross) for the Respondent

Mr D.F Hughes for the appellant Bakish Alla Khan

Mr M. George for the appellant Hanif

Mr H. Spooner for the applicant Younas

Mr S. Green for the applicant Michael Arshad Khan

Mr I. Halliday for the applicant Lewthwaite

Mr W. Rickarby for the applicant Cross

Mr A. Vollenweider for the applicant Hill

Hearing dates : 29 and 30 January 2008

Approved Judgment

Lord Phillips of Worth Matravers CJ :

Introduction

1. The appeals and applications that we have heard together advance or seek to advance one common ground of appeal against conviction: that one member of the jury had, by reason of his or her occupation, an appearance of bias.

2. Article 6 of the European Convention on Human Rights provides:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

3. Independence and impartiality are not the same, albeit that lack of independence will often carry with it lack of impartiality. Lack of independence involves a connection between the tribunal and one of the parties, or between the tribunal and the executive.

4. Lack of impartiality is usually described as bias. It is important to define bias in this context. Lord Goff did so in *R v Gough* [1993] AC 646. He described bias as unfairly regarding “with favour or disfavour the case of a party to the issue under consideration”.

5. Not merely must a judicial tribunal be impartial it must be seen to be impartial. This is a requirement of both European and our domestic law.

“40...according to the constant case law of the Convention organs, the existence of impartiality must be determined according to a subjective test, namely, on the basis of a personal conviction of a particular judge in a given case – personal impartiality being assumed until there is proof to the contrary.

41. In addition, an objective test must be applied. It must be ascertained whether sufficient guarantees exist to exclude any legitimate doubt in this respect. Even appearances may be important: what is at stake is the confidence which the court must inspire in the accused in criminal proceedings and what is decisive is whether the applicant’s fear as to lack of impartiality can be regarded as objectively justifiable.” *Gregory v United Kingdom* (1997) 25 EHRR 577 at p. 587.”

6. In English law the requirement that the tribunal should be seen to be impartial results from the principle that

“...it is not merely of some importance but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done” *R v Sussex*

Justices, ex p. McCarthy [1924] 1KB 256 at p. 259 per Lord Hewart CJ.”

7. Thus, the question of whether a jury is independent and impartial falls to be determined by an objective test: “whether the fair-minded and informed observer, having considered the facts, would consider that there was a real possibility that the tribunal was biased”: *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357 at para 103.
8. The requirement of both impartiality and the appearance of impartiality applies to every juror - see the comment of the Commission in *Gregory v UK* at paragraph 42. At the stage of jury selection precautions must be taken in order to ensure that each juror is impartial. If, in the course of the trial it becomes apparent that a juror is partial to the case of the parties, that juror must be discharged and consideration given as to whether the trial can fairly proceed with the remaining jurors. If, after verdict, it is established that a juror was, or has the appearance of having been partial to the case of one of the parties, the conviction must be quashed.

“Even a guilty defendant is entitled to be tried by an impartial tribunal and the consequence is inescapable” per Lord Bingham of Cornhill in *R v Abdrokof and another; R v Williamson* [2007] UKHL 37 at paragraph 27.

“...we are unable to envisage any circumstance in which, an Article 8 breach having arisen from want of independence and impartiality in the tribunal, it would be possible to conclude that the conviction is safe” per Rose LJ, Vice-President in *R v Dundon* [2004] EWCA Crim 621.

9. It is important to distinguish between partiality towards the case of one of the parties and partiality towards a witness. Each can be described as ‘bias’ but they are different in kind and can have different consequences. Association with or partiality towards a witness will not necessarily result in the appearance of bias, as defined by Lord Goff. Just because a juror feels partial to a particular witness does not mean that the juror will be partial to the case in support of which that witness is called. It may do so if the witness is so closely associated with the prosecution that partiality to the witness is equated with partiality towards the party calling the witness. Such a case was *In re Medicaments* [2001] 1 WLR 700 where an appearance of bias resulted from the fact that a member of the tribunal had applied for a job to the experts whose evidence was the foundation of the case of one of the parties. In many cases, however, the witness will not be associated with the prosecution in this way.
10. Where an impartial juror is shown to have had reason to favour a particular witness, this will not necessarily result in the quashing of a conviction. It will only do so if this has rendered the trial unfair, or given it an appearance of unfairness. To decide this it is necessary to consider two questions:
 - i) Would the fair minded observer consider that partiality of the juror to the witness may have caused the jury to accept the evidence of that witness? If so

ii) Would the fair minded observer consider that this may have affected the outcome of the trial?"

If the answer to both questions is in the affirmative, then the trial will not have the appearance of fairness. If the answer to the first or the second question is in the negative, then the partiality of the juror to the witness will not have affected the safety of the verdict and there will be no reason to consider the trial unfair.

11. In considering the first question one must have regard to the possibility that the individual juror may have influenced his or her fellow jurors when evaluating the evidence of the witness in question. None the less the Strasbourg court has recognised the obvious fact that the existence of a body of jurors selected at random provides some safeguard against the disposition of one of them to accept the evidence of a particular witness – *Pullar v UK* (1996) 22 EHRR 391 at paragraph 40.
12. Another situation, also sometimes loosely described as bias, occurs where the jury or a juror knows or learns of some matter prejudicial to the defendant – typically that he has a criminal record when this fact has not been admitted in evidence. This does not constitute partiality to the case of one of the parties and therefore does not have the automatic effect that the jury or the juror is considered to be biased against the defendant, requiring the discharge of the jury or juror, or the quashing of a conviction if it comes to light after the trial. – *R v Box* [1964] 1 QB 430; *R v Docherty* [1999] 1 Cr App R 274. In the latter case Roch LJ, giving judgment of the court, after referring to *R v Gough*, said that the ultimate question for the court was whether or not the conviction was safe. If the verdict is unsafe it will be quashed. If it is not, then it will be left undisturbed.
13. The difference in effect between partiality to a party and partiality to a witness may perhaps explain the contrast between the following judicial statements:

“...the question of impartiality, actual or perceived, has to be judged from the very moment when the judge or tribunal becomes first seized of the case. It is a question which, at least in the case of perceived impartiality, stands apart from any question that may be raised about the character, quality of effect of any decision which he takes or acts which he performs in the proceedings.” Per Lord Hope of Craighead in *Millar v Dickson* [2002] 1 WLR 1615 at paragraph 63

“A final decision in any given case about the fairness of the trial where unfairness consisting of bias is alleged can only be made on examination of the facts of the trial as a whole after its conclusion...” per Lord Carswell in *Abdroikof* at paragraph 69.
14. It used to be the case that many who, by occupation, were concerned in one respect or another with the administration of justice were ineligible to sit on a jury. These occupations were set out in Part 1 of Schedule 1 to the Juries Act 1974. They included judges, barristers and solicitors, the Director of Public Prosecutions and his staff, officers of penal establishments and members of any police force. One reason for the ineligibility of these persons was that they might have, or be thought to have, a tendency to favour the prosecution in a criminal trial. Automatic disqualification of

such persons has been removed by section 321 and schedule 33 to the Criminal Justice Act 2003 ('the 2003 Act'). The latter restricts disqualification from service on a jury to those who are mentally disordered and those with specified criminal convictions.

15. The effect of the 2003 Act has not been to render eligible for jury service anyone who would otherwise be disqualified on the ground of apparent bias, applying the test in *Porter v Magill*. It has simply removed automatic disqualification. The amendment to the law recognises the fact that a person's occupation will not automatically result in an appearance of bias. But it does not follow from the fact that automatic disqualification has been removed in the case of those occupations set out in Part 1 of Schedule 1 to the Jury Act 1974 that individuals who belong to them may not, none the less, be disqualified on the ground of apparent bias in the light of the circumstances of the particular case. The nature of some occupations is such that there is an obvious danger that the circumstances of a prosecution will give rise to an appearance of bias in relation to those who belong to them.
16. The cases before us involve allegations of apparent bias on the part of a juror who was a serving police officer, a juror who was an employee of the Crown Prosecution Service and two jurors who were prison officers. Each of these jurors would have been automatically disqualified under Part 1 to Schedule 1 of the 1974 Act.
17. In *Abdroikof* the House of Lords had to consider three appeals in which the ground of appeal was that a member of the jury was disqualified on the ground of apparent bias by reason of his occupation. In each case the juror belonged to an occupation that would have resulted in his automatic disqualification under Part 1 to Schedule 1 of the Juries Act 1974. In two cases the juror was a serving police officer and in one an employee of the Crown Prosecution Service.
18. The House of Lords no doubt gave permission to appeal in these cases in order to explore the effect of the change in the law and some of the conclusions that we have expressed above are derived from those appeals. We now turn to consider them in greater detail.

Abdroikof

19. In *Abdroikof* the House of Lords were not unanimous as to the result in all three appeals. A majority of three allowed two of the three appeals, while the minority would have dismissed all of them. Each of the majority had something to say about the position of a juror who was a serving police officer. None thought that a police officer was automatically disqualified from serving on a jury. Lord Bingham of Cornhill considered the argument that police officers ought to be disqualified as being "professionally committed to one side only of an adversarial trial process" but decided that it would not be right automatically to disqualify police officers having regard to Parliament's decision that they should be eligible to sit. He drew a distinction between the case of the first appellant and that of the second. He said of the first:

"It was not a case which turned on a contest between the evidence of the police and that of the appellant, and it would have been hard to suggest that the case was one in which

unconscious prejudice, even if present, would have been likely to operate to the disadvantage of the appellant.”(Paragraph 23)

In these circumstances Lord Bingham concluded “not without unease” that the appeal should be dismissed.

20. So far as the second appeal was concerned, Lord Bingham took a very different view:

“Here there was a crucial dispute on the evidence between the appellant and the police sergeant, and the sergeant and the juror, although not personally known to each other, shared the same local service background. In this context the instinct (however unconscious) of a police officer on the jury to prefer the evidence of a brother officer to that of a drug-addicted defendant would be judged by the fair-minded and informed observer to be a real and possible source of unfairness, beyond the reach of standard judicial warnings and directions. The second appellant was not tried by a tribunal which was and appeared to be impartial.” (paragraph 26).

It followed that the second appeal had to be allowed.

21. Baroness Hale of Richmond drew the same distinction between the first and the second appeal. As to the first appeal, she observed:

“There was no particular link between the court and the station where the police juror served. No important issue turned upon a conflict between police and defence evidence and there was no closer link between the police witnesses and the police juror than that they had all served in the Metropolitan Police.”(Paragraph 54).

22. As to the second appeal, Baroness Hale made the following points:

“...there are two factors which make the connection between the police and prosecution too close for comfort. One is that the victim of the alleged crime was himself a police officer and the case depended to some extent on his evidence of how the accused was searched and what was said at the time. The officers were serving in the same borough at the time of the trial although not in the same police station. Another is that the juror was posted to a police station which committed its cases to the Crown Court where the case was tried. Officers in his station will have had regular dealings with the CPS conducting prosecutions in the same court.”(Paragraph 53)

In view of these considerations she agreed that the appeal should be allowed.

23. Lord Mance agreed that these were relevant factors. He observed:

“...the police sergeant who was the alleged victim and whose evidence was relevant shared the same local service

background as, and was as a result the ‘brother officer’ of, the policeman on the jury. Further the juror was posted to a station which committed its cases to the Crown Court of trial...Absent such considerations, I do not agree that it follows that a police officer is disqualified as a juror, even in a case of significant conflict between a police witness and a defendant.” (Paragraph 83).

24. We have not found it easy to deduce on the part of the majority of the Committee clear principles that apply where a juror is a police officer. One principle is clear however. All five held that the fact that a juror is a police officer will not, of itself, disqualify the juror on the ground of want of impartiality. That decision inevitably followed from the fact that Parliament has made police officers eligible to serve on juries unless it were suggested, which it was not, that this provision is not compatible with Article 6 of the Convention.
25. Of the three who found apparent bias on the facts of the first appeal, Lord Bingham did so on the basis that the police juror would appear partial to the police witness, whose evidence involved a ‘crucial dispute’ with that of the appellant. The apparent likelihood that he would prefer the evidence of a ‘brother officer’ would be seen as ‘a real and possible source of unfairness’, so that the jury was not a tribunal which was and appeared to be impartial.
26. It is not entirely clear that Lord Bingham concluded that the police juror had the appearance of being partial to the prosecution, as opposed to simply being biased in respect of the relevant conflict of evidence and, indeed, it is probably not possible to draw a clear line between the two on the facts of the case.
27. Turning to the second appeal, it is significant that Lord Bingham contemplated the possibility that there was unconscious prejudice on the part of the juror but concluded, because there was no significant contest between the evidence of the police and that of the appellant, that the Court of Appeal had been correct to hold the conviction safe.
28. Both Baroness Hale and Lord Mance appear to have concluded that the facts gave rise to the appearance that the police juror might favour the prosecution because of contact with members of the Crown Prosecution Service at the court where the trial was taking place. Baroness Hale found the fact that the case depended to some extent on the evidence of the police witness to be significant, whereas Lord Mance thought that even a serious conflict of evidence between a police witness and a defendant would not render the presence of a police officer on the jury open to objection.
29. Our conclusion is, as already expressed, that the fact that a police juror may seem likely to favour the evidence of a fellow police officer will not, automatically, lead to the appearance that he favours the prosecution. If the police evidence is not challenged or does not form an important part of the prosecution case, we do not consider that it will normally do so. None the less it will be appropriate to quash the conviction if, but only if, the effect of the juror’s partiality towards a brother officer puts in doubt the safety of the conviction and thus renders the trial unfair.
30. Turning to the third appeal where it was alleged that the juror was biased because he was an employee of the Crown Prosecution Service, the majority concluded that he

was not independent of the prosecution and thus not seen as impartial. As Lord Bingham put it at paragraph 27:

“It is in my opinion clear that justice is not seen to be done if one discharging the very important neutral role of juror is a full-time, salaried, long serving employee of the prosecutor”

31. The conclusions of Baroness Hale were as follows:

“It is inconceivable that the Director of Public Prosecutions could sit as a juror in a case prosecuted by the CPS, irrespective of whether or not he had been personally involved in the decision to prosecute. There would be no objection to his sitting in a case prosecuted by some other person or authority. The same must apply to a CPS lawyer, who is employed to decide upon whether or not to prosecute and to conduct the prosecutions decided upon. Whether the same would apply to other CPS employees, whose role in the prosecution process or whose connection with the organisation is rather more peripheral, is a separate question which does not arise here. One could imagine that it might not apply to temporary or short term employees in junior positions unless the prosecution were brought by the office in which they served. There would, of course, be no objection to CPS lawyers or other employees serving on juries in prosecutions brought by other persons or authorities. This view is consistent with Parliament’s lifting the ban upon members of the DPP’s staff serving on juries, while leaving intact the common law and Convention rules against bias.”

This passage speaks for itself.

32. We now turn to apply the principles that we have derived from the authorities to the present appeals. In each case we shall deal first with challenges to convictions before turning, in so far as necessary, to deal with challenges to sentences.

The appeals against conviction of Bakish Allah Khan and Ilyas Hanif

33. On 12 January 2007 in the Crown Court at Sheffield before His Honour Judge Keen Q.C and a jury, the appellants, Bakish Allah Khan and Ilyas Hanif, were among five men convicted of conspiracy to supply a Class A controlled drug, namely heroin. Their co-defendants, Sajid Mohammed Rasul, Asif Iqbal Younas and Niaz Khan all pleaded guilty to the conspiracy.
34. Both appellants appeal against conviction with the leave of the single judge.
35. The Crown alleged a conspiracy to supply heroin in Sheffield in August 2006 involving a central ‘gang’ of Asif Younas, Niaz Khan and the appellant Bakish Khan. These three were seeking further supplies and negotiated the purchase of six kilograms of heroin from Sajid Rasul. On 30 August 2006 Rasul travelled from Luton to Sheffield, where he met Bakish Khan, Younas and Niaz Khan. The

following day the other appellant, Hanif, a local taxi driver, was sent to Luton from Sheffield, where he met Rasul. Hanif was arrested on his way back to Sheffield, whereupon 6kg of heroin was discovered in the boot of his car.

36. The evidence relied on by the prosecution to establish the conspiracy was from three sources: police observations of the movements of the defendants and their meetings during a surveillance operation carried out by the Serious Organised Crime Agency (SOCA), records of the extensive telephone contacts between the conspirators, and evidence of searches and seizures at the time of the arrest. Not only was the heroin found in Hanif's taxi, but a large sum of cash (£18,955), which had been in contact with heroin, was found at the home of Bakish Khan.
37. Bakish Khan's defence at the trial was that he was the cousin of Niaz Khan and a friend of Younas, and was in close contact with them, but that he had not taken part in the conspiracy. His telephone contacts with them on the relevant days had been innocent. The cash found at his home derived partly from the sale of a car and partly represented the proceeds of his former heroin dealing, for which he had been convicted in 2003.
38. Hanif's defence was that he was used as a courier without his knowledge. He knew Asif Younas and Niaz Khan, but only as customers of his taxi service. On 31 August 2006, at Younas' request, he had taken a passenger named Paul to Luton. Paul had used Hanif's mobile phone in the car and the telephone calls to Rasul from that phone during most of the journey had been made by Paul. Hanif had himself used the telephone in between these calls to speak to Younas to check directions, and to Niaz Khan in relation to a dispute about an unpaid taxi fare. Paul had got out of the taxi in Luton, leaving the heroin in the boot. Hanif called a witness, Victoria Thomas, who said she had seen him in Sheffield at the start of his journey with a passenger in his car.
39. Three police officers gave evidence at the trial that Hanif did not have a passenger in the car during their observations at the Sheffield and Luton ends of his journey. One of these officers was Mark Blackburn, who had observed the car with another officer, leaving the M1 motorway at junction 11, and had followed it until it had parked behind a car belonging to Rasul in Newark Road.
40. The evidence of the guilty pleas of the co-accused was also relied on by the prosecution to establish the conspiracy, together with the bad character of Bakish Allah Khan, whose previous conviction for supplying heroin had led to a sentence of six years' imprisonment and a confiscation order of £64,202.

Bias application

41. On the second day of the trial, during the evidence of Police Officer Blackburn, a juror sent a note to the judge. The note read 'I am a serving police officer. I know Mark Blackburn but I haven't worked with him for over two years.' The judge read it to counsel and then asked the juror a series of questions. The juror confirmed he worked in the South Yorkshire Police Force as a dog handler and had known the witness for ten years. He had worked with him on three occasions connected with the same incident, but they had never worked at the same station nor did they know each

other socially. The juror did not think he knew anything about the witness which would affect his ability to judge his evidence impartially.

42. Counsel for Hanif and Bakish Allah Khan then made an application to the judge that the juror should be discharged, relying on the challenge to the police evidence that Hanif did not have a passenger in his car, and on the danger that the juror would know of Bakish Allah Khan's previous conviction for dealing in heroin.
43. The judge ruled that the juror should not be discharged. He had acted properly by forwarding the initial note and could be trusted to act in accordance with his oath. Later the juror was asked and confirmed that he did not know any other police officer in the case. He went on to be the jury foreman.
44. After the trial, the appellants' counsel discovered that the juror had been involved in recent drugs operations in the area and had given evidence at other drugs trials in which counsel for Bakish Khan had appeared.
45. The first question to be considered is whether the police juror's occupation as a police officer and his acquaintanceship with Police Officer Blackburn gave rise to the appearance that he would favour the case of the prosecution. As to this, the two appellants did not rely merely upon the fact that the juror was a police officer. First they relied upon the fact that he served as a foreman of the jury. That fact can have no bearing on the question of whether or not he had the appearance of bias. Next they relied upon the fact that he had been involved as a dog handler in drugs operations over a period that included the period shortly before he served as a juror. It was submitted that in view of this he would appear likely to be biased in favour of a prosecution resulting from a drugs operation.
46. On behalf of both appellants reliance was placed on the fact that the juror's involvement in drug operations did not come to light until after the appellants had been convicted. It was submitted that, had the judge been aware that the juror had been involved in drug operations he would have been unlikely to have permitted the juror to remain on the jury. That may be so but that is not the test of apparent bias. As the European Court of Human Rights remarked in the case of *Pullar v United Kingdom* (1996) 22 EHRR 391 at paragraph 36 it is natural that a "judge should strive to ensure that the composition of a jury is beyond any reproach whatsoever, at a time when this is still possible, before or during the course of the trial".
47. There was no question of the juror having any connection with those responsible for the prosecution in this case. The investigation was carried out by the Serious Organised Crime Agency and the prosecution was carried out by the Organised Crime Division of the Crown Prosecution Central Casework Directorate, without contact with the juror's force, the South Yorkshire Police or the local Crown Prosecution Service branch.
48. If one starts, as one must, from the premise that police officers are not, by reason simply of their occupations, considered to be biased in favour of the prosecution, we do not consider that the fact that a police officer has taken part in operations involving the type of offence with which a defendant is charged, gives rise, of itself, to an appearance of bias on the part of the police officer. Most police officers are likely to have had experience of most of the common types of criminal offence, not least drug

dealing. We do not consider that familiarity with the particular offence charged against an offender would lead the objective observer to suspect a police juror of bias.

49. A further point was advanced on behalf of Bakish Alla Khan. This was that, because of the juror's involvement in drug operations, he might have become aware of Bakish Alla Khan's previous conviction for dealing in heroin. As to this there was nothing to support this surmise. Had the juror known anything about any of the defendants we think that he would clearly have made this fact known to the judge, as he did his knowledge of Police Officer Blackburn. Furthermore, Bakish Alla Khan's previous conviction was placed before the jury.
50. No other submissions were made in support of Bakish Alla Khan's appeal against conviction. At his trial there was no challenge to the prosecution evidence. No police witnesses were called. The issue was whether the jury were satisfied that the explanations he advanced for the undisputed evidence were untrue and that this evidence demonstrated his guilt. The jury's verdict shows that they were satisfied of this.
51. In these circumstances, the allegation of jury bias made on behalf of Bakish Alla Khan is not made out and his appeal against conviction is dismissed.
52. Hanif has an additional point. His defence depended critically on the allegation that, in accordance with arrangements made with him by Younas, he had driven a passenger, Paul, from Sheffield to Luton, that this passenger had borrowed his mobile phone to speak to Rasul in conversations or attempted conversations, that were interspersed with other conversations that Hanif was having, on the same phone, with Younas and Niaz Khan, who had both pleaded guilty to conspiracy at the start of the trial. His evidence was that his conversations with them related to his taxi business, including conversations with Niaz about an unpaid taxi bill and conversations with Younis about the charge to be made for carrying Paul. His evidence was that, when Paul left his car in Luton he left behind in the back two bags containing 6 kilos of heroin.
53. Three police officers gave evidence of keeping Hanif under observation at different stages of his journey from Sheffield to Luton. One of these witnesses was Mark Blackburn. Each said that he saw no passenger in the car. Each of them said that he was alone in the car. In cross-examination it was not suggested to these witnesses that their evidence was untruthful. Such a suggestion would not have been likely to be fruitful as their accounts were no doubt supported by contemporary records made at time when they would have attached no significance to the fact that Hanif had no passenger in the car. It was put to them, however, that their evidence that Hanif had no passenger was inaccurate. Hanif called a witness who spoke to glimpsing a passenger in the back of his car as it passed her in Sheffield. She was not a witness of good character and it was the prosecution case that she was not to be believed.
54. Hanif's explanation for the records of the use of his mobile phone and for being found with the heroin in the back of his car bordered on the farcical. The mobile phone records showed that, if his explanation was true, his phone must have been being passed to and from between himself and his passenger like a yo-yo. Equally unlikely was the suggestion that the conspirators, Younas and Niaz, would have been having repeated telephone conversations with him about his taxi charges at a time when they

were busy arranging for a drug delivery. Finally it is hard to believe that, if his passenger had been carrying a valuable consignment of heroin, he would have left it in the back of the taxi.

55. Quite apart from these matters, Hanif's evidence had significant inconsistencies with earlier statements made to the police. It was the prosecution's case that his evidence had been tailored to accommodate the police evidence.
56. In the light of these facts we turn to consider the two questions set out at paragraph 10 above. The material evidence of the three police witnesses was that they had seen no passenger in Hanif's car. Insofar as there was an issue in relation to this evidence it was whether it was possible that there might have been a passenger unobserved by the police. As to that issue, the jury plainly concluded that it was not. No fair minded observer would believe, however, that this conclusion might have been brought about as a result of partiality on the part of the police juror to his fellow officers and, in particular, to Police Officer Blackburn who was known to him. Thus the question is answered in the negative and the second question does not arise.
57. For these reasons Hanif's conviction is not rendered unsafe by the fact that the foreman of the jury was a police officer who was acquainted with Police Officer Blackburn and Hanif's appeal against conviction is dismissed.

The applications of Bakish Khan and Younas for permission to appeal against sentence

58. We turn to consider the applications for permission to appeal against sentence. The judge made the following summary of the offences at the outset of the sentencing exercise:

“You, Younas, Bakish Khan and Niaz Khan, were running an operation in this city, wholesaling that drug in large quantities. You are a classic criminal gang, using a variety of what you hoped were untraceable telephones, being in possession, some of you, of very large sums of money and there being traces of the drugs about your various items of property.

The offence that actually led to your apprehension namely the transmission of the six kilos of heroin, forms only a part of the offence that you have committed and you must understand that you are being sentenced for what was happening throughout August.”

59. The judge sentenced Bakish Khan to 17 years imprisonment and Younas to 15 years imprisonment. These sentences contrasted with sentences of 10 years imprisonment imposed on Niaz Khan and 8 years imprisonment imposed on Rasul and Hanif. The contrast was the more marked in the case of Bakish Khan as the judge directed that the sentence would take effect consecutively to a period of 2 years 5 months imprisonment. This was the period outstanding under a previous conviction for supplying heroin in respect of which Bakish Khan had been released on licence.

60. To a large extent the submissions made on behalf of each applicant covered the same ground. It was submitted that the sentences were manifestly excessive having regard to the well established scale of sentences for drug offences of this nature. It was further submitted that there was a marked disparity between the sentences and the sentence of only 8 years imposed on Rasul, who was the supplier.
61. For Bakish Khan it was further submitted that the overall effect of the sentence, being 19 years and 5 months imprisonment, offended against the requirement to ensure that the totality of a sentence is not excessive.
62. For Younas it was further submitted that the judge had erred in failing to make any reduction from his sentence to reflect the fact that he had entered a plea of guilty. He should have been given full credit for that plea as it had been entered at the first reasonable opportunity.
63. We have concluded that there is force in the submission of disparity. Rasul was fortunate in receiving a light sentence, having particular regard to the fact that the judge placed him somewhat higher up the chain of criminality. This is despite the fact that, as the judge explained, he was sentencing Rasul for a single incident of supplying heroin, whereas he was sentencing the others for a conspiracy that ranged more widely. Furthermore the judge was generous in giving Rasul a full discount for his guilty plea, which was not intimated on the first opportunity. Rasul's sentence was equivalent to a sentence of 12 years after trial.
64. Niaz Khan received a sentence of 10 years. He also was fortunate to be given a full discount for a guilty plea which was entered at the start of the trial on the basis that he had had "every intention of pleading guilty as soon as possible". His sentence was equivalent to one of 15 years after trial. A 15 year sentence was, we think, at the top end of the appropriate range for the facts of this offence.
65. The judge was entitled to have regard to Bakish Khan's previous conviction for supplying heroin when fixing his sentence – indeed section 143(2) of the Criminal Justice Act 2003 required him to treat this as an aggravating factor. This, however, was balanced by the fact that he directed that Bakish Khan should serve the balance of his previous sentence of 2 years and 5 months. In these circumstances, we consider that a sentence of 15 years imprisonment, in addition to the 2 year and 5 months would have been appropriate. We allow the application for permission to appeal against sentence, quash the sentence of 17 years imprisonment and replace this with a sentence of 15 years imprisonment, leaving the rest of the sentence undisturbed.
66. Turning to Younas, the reason that the judge gave for denying him any credit for his guilty pleas was as follows:

“You put in a scandalously ludicrous basis of plea and persisted with it before me, although at least you held back from giving evidence about it. That means that you have sacrificed any credit to which you are entitled.”

Two issues arise. What credit should Younas have received but for his 'ludicrous' basis of plea and should he have lost the whole of that credit as a result of the basis of plea.

67. The position as to the timing of the plea was as follows. A plea of not guilty was entered at the plea and case management hearing. It seems plain to us that Younas was waiting to see the strength of the prosecution case against him. Once this was appreciated the likelihood of a plea guilty was indicated. This was about two weeks before the trial date and the prosecution were informed that a plea would be tendered about a week before the trial date. The suggestion that the plea was made at the first reasonable opportunity in these circumstances is unsound. Younas did not need to see the prosecution evidence in order to decide whether he was guilty. By waiting almost to the door of the court to indicate his plea he forfeited much of the credit for a guilty plea. None the less guidance given by the Sentencing Guidelines Council indicates that he should have been given a discount for his late guilty plea of about 10% of the sentence.
68. The basis upon which Younas tendered a plea of guilty was that his involvement in drug dealing was restricted to the transaction in August, that he was not involved in the organisation of that transaction nor in the ongoing supply and that he was not to receive any benefit from the transaction. The prosecution refused to accept the plea on this basis, but it was tendered none the less. Younas did not abandon the basis of his plea, but those acting for him made it plain that they would leave it to the judge to form his own view of Younas' participation. The position would have been very different if as a result of his stance it had been necessary to have a *Newton* hearing.
69. The reason for the discount for a guilty plea is essentially pragmatic. It is a reward for the saving of the time and resources that is consequent on the plea. For a defendant the plea usually carries with it the possibility of advancing by way of additional mitigation the defendant's regret for his offending. If, as in the case of Younas, the defendant advances what the judge regards as a ludicrous story, he robs himself of the possibility of the additional mitigation. He should not, however, be deprived of all credit for the benefit that the guilty plea nonetheless affords to the prosecution. On the fact of this case that was significant. Having particular regard to the judge's generous approach to the guilty pleas advanced by Younas' co-defendants, we consider that Younas should have been granted the normal discount of 10% for his late plea. Accordingly we grant him permission to appeal against sentence, quash the sentence of 15 years imprisonment and substitute a sentence of 13 years and 6 months imprisonment. Credit towards this must be given for the 91 days spent remanded in custody.

The application for permission to appeal against conviction of Martin Lewthwaite.

70. We take this case next because it also involves an allegation that a police officer on the jury had the appearance of bias.
71. On 15 October 2007 in the Crown Court at Bristol before His Honour Judge Darwall-Smith and a jury Martin Lewthwaite was convicted of causing grievous bodily harm with intent, contrary to s18 Offences against the Person Act 1861.
72. On 15 November 2007 he was sentenced to 5 years' imprisonment (less time spent on remand).

73. The complainant, Thomas Holly was assaulted on 23 February 2007 outside a kebab shop in Nailsea. He was bending down to speak to a girl on the pavement when he received two punches to the face, which broke his jaw and caused the loss of several teeth, and was kicked in his upper body. He had no recollection of the assault. An eye witness, Jemma Capern, gave a description of the assailant as a white male in his late 20s, very tall and with short bushy hair. According to her account, no-one had attempted to stop the assault before the assailant walked away.
74. The applicant was present at the scene. He was tall with short bushy hair but was 38 and had been wearing a hat. A police officer, PC Harris, visited him at his home in the early hours of the morning and observed that his right knuckle area was swollen and had a red mark. His clothing was found to have blood on it compatible with that of Mr Holly and his right shoe had a pattern of blood on it which was consistent with a forceful impact of that shoe in wet blood.
75. Jemma Capern later failed to pick out the applicant in a Viper identity parade.
76. The applicant's defence was that he witnessed the assault being committed by a man he knew of as 'Steve' or 'AJ', whose appearance was similar to the description given by Jemma Capern. He had attempted to intervene and was covered in blood as a result. He had been wearing a hat that evening. He was unaware of any swelling to his knuckles. He gave evidence that he did not tell the police about 'AJ' at his interview because he distrusted the police.
77. The prosecution made an application to admit evidence of the applicant's previous convictions for violent offences. The application was granted by the judge on the ground that this was not a weak case and the convictions were relevant to show propensity. Six convictions, including one for assaulting a police officer were thereafter put to the jury.

Bias application

78. One of the jurors (Christopher Hogg) had sent a note to the judge at the beginning of the trial stating that he was a serving Detective Chief Inspector involved in drugs work outside the Nailsea area. He did not know any of the officers or other witnesses in the case. He did not want the other jurors to know of his profession.
79. The matter was raised by the applicant's counsel, whose clerk had recognised the juror as a police officer. The Judge read the note to counsel. Defence counsel was concerned, given the length of the applicant's record and his assaults on police officers, that he would be widely known within the Avon and Somerset Police Force generally. The judge agreed to make a further enquiry as to whether the juror knew of the applicant or anything about him. The juror confirmed he did not, nor were there any other reasons he could think of that would make it undesirable for him to sit on the jury. The judge declined to ask him to stand down in the light of these circumstances.
80. Mr Ian Halliday for Lewthwaite submitted that the Detective Chief Inspector should not have been permitted to serve on the jury and that he had an appearance of bias. He included in his grounds of appeal the contention that the police juror should not have been permitted to sit on the jury because, with his experience, he would have known

the inferences to be drawn from (i) the failure of Miss Calpern to identify the applicant as the assailant at a Viper identity parade and (ii) the applicant's silence in interview. He did not in oral argument satisfy us that, to the extent that the police juror was better placed to draw appropriate inferences from these matters, this was capable of leading to unfairness.

81. Next Mr Halliday submitted that the police juror would have appeared to be prejudiced against the applicant by virtue of (i) the fact that the applicant had explained his silence by saying that it stemmed from a dislike and mistrust of the police and (ii) the fact that the applicant had a previous conviction for assaulting a police officer. Neither of these was a matter of great moment and we do not consider that an informed bystander would have formed the view that either, or both, of these matters would affect the impartiality of the police juror.
82. Finally Mr Halliday submitted that there was a significant issue between the applicant and a police witness, namely Police Constable Harris' evidence that the applicant had a swelling and a cut to the knuckle of his right hand. It was submitted that the police juror would appear to be predisposed to accept his brother officer's evidence on this and that this meant that he was not impartial and the trial was not fair.
83. We do not accept that the condition of the applicant's knuckle was a significant issue. The gravamen of the case against the applicant was that he admitted that he was at the scene of the incident, that the complainant's blood was found on his shoes and his clothing and that Jemma Calpern, who witnessed the incident, gave evidence that it only involved two men, the complainant and his assailant. In these circumstances the condition of the applicant's knuckle was of little significance. Of equally small significance was any inclination that the police juror might have been thought to have to favour the police witness's evidence on this point. We do not find that the police juror had an appearance of bias or that his presence on the jury affected the safety of the applicant's conviction.
84. Further grounds of appeal that Mr Halliday sought permission to advance were that the judge should not have admitted evidence of the applicant's bad character and that he erred in directing the jury that this was capable of being relevant to their assessment of the applicant's credibility as well as to his propensity to commit the type of offence with which he was charged.
85. As to the admission of the evidence of bad character, the principal point made by Mr Halliday was that the most recent conviction for using violence to enter premises did not demonstrate a propensity to commit violence to the person. The judge did not accept that submission, ruling that the loss of temper and use of violence were the relevant features in that offence. We agree. As to the judge's direction to the jury, it is true that this court in *Campbell* [2007] EWCA Crim 1472 suggested that such a direction was unlikely to assist the jury. That was true in this instance, but the direction was not likely to lead the jury astray either. Mr Halliday realistically accepted that this ground would not get him home on its own. It does not.
86. In the result we grant the applicant permission to appeal against conviction on the ground that the police juror had the appearance of bias, but dismiss that appeal. We refuse him permission to appeal against conviction on the other grounds.

The application for permission to appeal against conviction of Michael Ashad Khan

87. On 9 November 2007 in the Crown Court sitting at Hull before His Honour Judge Thorn and a jury the applicant, Mr Michael Arshad Khan, was convicted of three counts of failing to disclose property pursuant to s351(3)(a) Insolvency Act 1986. He was sentenced to 30 months' imprisonment on each count to run concurrently.
88. The applicant was declared bankrupt on 7 November 2003. He was prosecuted by the Department of Trade and Industry in relation to his non-disclosure in the bankruptcy of two Norwich Union endowment policies held jointly with his wife (Counts 1 and 2), and of his interest in a property in Spain (Count 3).
89. The prosecution's case was that the applicant had a clear intention to conceal his interest in these assets. The applicant's defence was that he did not know or believe that the endowment policies had any value and that he thought he had parted with his interest in the Spanish property before his bankruptcy.
90. The applicant had no previous convictions. He had worked as an adviser on management and employment issues for a company, G & J Spencer Ltd ('Spencers'), first as an employee and then as a consultant through his company Corporate Risk Consultancy Ltd ('CRC') until 2001, when his relationship with Spencers had broken down. CRC issued proceedings in respect of unpaid fees, but Spencers counterclaimed for repayment of 'secret profits' made by the applicant personally. CRC went into liquidation and abandoned its claim in August 2003. The counterclaim was successful at trial in October 2003. The applicant's liability for costs and damages from these proceedings, amounting to £95,000, together with the other unsecured loans totalling nearly £400,000 led to his petition for bankruptcy in November 2003.
91. The applicant did not refer to his interest in the endowment policies or in the Spanish property in his affidavit sworn in support of his application for bankruptcy, nor in his subsequent meetings with the insolvency examiner or Trustee in Bankruptcy. The undisclosed assets came to light as a result of enquiries made at the applicant's bank on behalf of the Trustee.

Bias application

92. Counsel for the applicant was informed before the case began that one of the jurors, Ms Leonie Brooks, was employed by the Crown Prosecution Service, responsible for liaison with the media. He made an application at the outset of the trial that she should not sit as a juror on the case. He argued that her job had interface with the public and she was required to be the media-friendly face of decisions to prosecute and pursue cases.
93. The judge ruled that Ms Brooks was a communications officer and therefore not apparently involved in the prosecution process. This was a prosecution by the DTI rather than the CPS. Having regard to *Abdroikof*, the relative remoteness of the juror to the prosecution process, and remaining loyal to s321 CJA 2003, the judge ruled that the juror should remain on the panel.

94. After the trial prosecution counsel became aware that although Ms Brooks was currently a communications officer, she had worked as a CPS caseworker for 14 years prior to taking up this post.
95. In the light of this, Mr Green, on behalf the applicant, contended that the judge wrongly failed to accede to the objection by the defence to the presence on the jury of an employee of the CPS.
96. Mr Green conceded that the sole basis upon which he could advance this submission was that a member of the Crown Prosecution Service was precluded from sitting on a jury by what he described as institutional bias. He relied particularly on the fact that came to light after the trial that, although Ms Brook's most recent service in the Crown Prosecution Service had been as a media officer, she had previously worked as a case worker for some 14 years and, in that capacity, would have been personally involved in preparing prosecutions. Mr Green sought to rely upon the fact that in the third appeal in *Abdroikov* the majority of the House of Lords held that a juror who was a member of the Crown Prosecution Service had the appearance of bias.
97. The difference between the position of the juror in that appeal and the position of Ms Brook is that in the former case it was the Crown Prosecution Service that was responsible for prosecuting the trial on which the juror was sitting. Thus the juror was in the employment of the prosecutor. Lord Bingham made it plain that it was this factor which gave rise to the appearance of bias. At the applicant's trial the prosecuting authority was not the Crown Prosecution Service but the Department of Trade and Industry. In *Abroikov* Baroness Hale said in terms that there could be no objection to a member of the Crown Prosecution Service sitting in a case prosecuted by some other authority. The other members of the Committee would, we think, have agreed with this proposition. The applicant's case on apparent bias is not made out.
98. Mr Green sought permission to advance by way of appeal two criticisms of the judge's summing up. The first related to the following direction in relation to the applicant's character:

“The next matter I want to mention members of the jury, is the defendant's character. You know that he is a man of no previous convictions and no caution, and you, as a matter of common sense, can take that in the defendant's favour. It works two ways, that a person of no previous convictions should clearly be regarded as being a less likely person to be disposed to acting in the way that is alleged here as compared with a convicted fraudster; and, secondly, a man of no previous convictions can be regarded as being someone whose word is more likely to be true than anybody with previous convictions, for instance, for offences of dishonesty. Those are important points of make in favour of the defendant. He has, in fact, gone further than that because he, in his evidence, has told you that he is, in effect, a pillar of the community, that he is a committed Christian and he relies on his faith as being a reason why he would not lie, that he has been a socially contributive member of society and, indeed, he has had caused to be read to you the statements of character from two Church of England

clergymen. So not only is the Defence case that he is a man of no previous conviction, it is positively that he is a good person who is reliable, honest and trustworthy, and Mr. Green submits that he passes any test with flying colours as to honesty, decency and integrity.

Well, members of the jury, you know in this case - - and you will have to bear this in mind for what weight, if any, it is to you - - it cannot be ignored, however, that his defendant got into trouble in the very first place by starting a civil action in which his opponents alleged that he had concealed a secret profit which, indeed, the defendant admits, and the result was that he has become a bankrupt, and a bankrupt where the litigation that went against him - - because the allegation seemed to be proved true according to the county court record, albeit only on the proof of the balance of probabilities - - led to a judgment debt against him of £95,000, and a total bankruptcy shortfall of unsecured liabilities of just short of half a million pounds. Well, the defendant has chosen to rely upon not only his lack of previous convictions but also his good moral character, if I can put it that way. All I have to do is say: but it does not end there; you may, at least, have to consider the other aspects of this case in forming whatever view it is - - and whatever view it is, is a matter exclusively for you - - to consider as against his claims of piety and social commitment.”

99. Mr Green submitted that the judge should not have qualified the good character direction that he gave by reference to the results of the applicant’s civil litigation. We do not agree. The applicant was putting himself forward not merely as a man without criminal convictions, but as of exemplary character. That picture was at odds with a man who had been bankrupted, in part as a result of liability in respect of secret profits. It was perfectly appropriate for the judge to put the record straight.
100. Allied to this complaint was the submission that this passage in the judge’s summing up amounted to a direction that it was open to the jury to use the finding that the applicant had made secret profits as evidence that the applicant had a propensity to commit offences of the kind with which he was charged. We do not accept this submission. The circumstances of the applicant’s bankruptcy were a material part of the story. The fact that they did the applicant little credit was no reason why the judge should not place them before the jury.
101. The next ground of appeal that Mr Green sought to advance contended that the judge had been wrong to allow counsel for the prosecution to ask the applicant in cross-examination whether he was going to produce evidence in support of the account of the facts that he was advancing by way of defence. We consider that this was perfectly legitimate cross-examination and that this criticism of the judge is unjustified.
102. Next Mr Green sought leave to submit that the judge’s summing up was unbalanced and unfair. He sensibly left us to read this and to form our own impression. We did so and concluded that, while the summing-up was robust, it was not unfair.

103. Finally Mr Green complained that the judge had, in open court, evidenced hostility towards him. We have read the relevant transcript extracts and do not consider that the judge overstepped the bounds of appropriate dialogue with counsel.
104. For all these reasons, we consider that there is no merit in the other proposed grounds of appeal. We shall allow the application to appeal against conviction on the ground of jury bias, but dismiss that appeal. We shall refuse permission to appeal against conviction on the other grounds.

Michael Arshad Khan's application for permission to appeal against sentence

105. When counsel begin to address the judge in relation to sentence he ran into some heavy weather. The judge declined the request for an adjournment for a pre-sentence report and cut counsel short when he sought to refer to a series of authorities that the judge had already read. He did so with the statement to the applicant:

“I have had the opportunity to watch you and hear you during the course of his five day trial. It is perfectly clear to me that you are a completely cynical and plausible fraudster.”

The judge went on to refer to the applicant's

“...deceitful and lying accounts, which varied from time to time, and shows just how persistent you were in carrying through what effectively were frauds upon your creditors.”

106. Mr Green submitted on behalf of the applicant that the judge had prevented him from putting the applicant's case forward, pre-empting the position by the statement “there is no mitigation”. He also submitted that the sentence imposed reflected an adverse view that the judge had formed of his client's conduct in relation to the civil litigation, which should not have affected his sentence. Finally, he submitted that a sentence of 30 months concurrent on each count was manifestly excessive.
107. We have no doubt that when the judge referred to the absence of mitigation he was doing so in relation to the circumstances of the offence and not to the personal mitigation inherent in the fact that the applicant had no previous convictions. None the less Mr Uttley for the prosecution accepted that the judge had behaved abruptly in the course of sentencing and that the prosecution had expected the judge to adjourn for pre-sentence reports.
108. Section 156 of the Criminal Procedure Act 2003 requires a judge to obtain a pre-sentence report before imposing a custodial sentence unless the court is of opinion that there is no need to do so. It is clear that the judge took the view that there was no such need, and we consider that, on the facts of this case he was entitled to do so.
109. Mr Uttley helpfully referred us to a number of authorities dealing with offences of dishonesty. Some involved breach of trust, which the applicant's offending did not. Having considered these we have reached the conclusion that the sentence imposed by the judge was above the range of which was appropriate for each case such as this one. Accordingly we shall quash the sentence of 30 months imposed on each count

and substitute a sentence of 18 months on each count, the sentences to be served concurrently.

The application for permission to appeal against conviction of Roy Andrew Cross

110. On 16 December 2005 in the Crown Court at Worcester, before His Honour Judge Mott and a jury, the applicant Mr Cross was convicted of wounding with intent and sentenced to imprisonment for public protection with a minimum term of 6 years (less time spent on remand).
111. The facts of his offence were these. The applicant lived with his girlfriend, Mandy Reeves, who was also involved in an occasional relationship with the complainant, Richard Edwards. There had been some previous trouble between the two men over this.
112. In the early hours of 14 June 2005 Mr Edwards was attacked with a claw hammer and suffered serious injuries. He told the police that he recognised his attacker as the applicant. The police then observed a man returning to the applicant's home with a rucksack at about 6am, and arrested the applicant shortly thereafter.
113. The applicant denied the offence and claimed to have been at home all evening and all night. His account was initially corroborated orally by Ms Reeves, but she later gave a witness statement, and evidence at the trial, that he had left the house at about 8pm with a rucksack containing a hammer, and had telephoned her around 1.30am to say he had 'done it', before returning at 6am.
114. The applicant admitted that he had made a 999 call to police a few hours before the attack to tell them that Mr Edwards had 'a lot' of people after him because he had been interfering with children.
115. The applicant had seven previous convictions for violent offences, which were put before the jury as relevant to his propensity to commit such offences. For a previous wounding with intent offence he had served a term of imprisonment at HMP Blakenhurst, where the applicant had also been remanded in custody before and during his trial.
116. After his conviction the applicant became aware that the foreman of the jury, Mr Anthony Pepper, was a senior prison officer serving at HMP Blakenhurst and the present application for leave to appeal against conviction was made, on the grounds that he might have known the applicant, who had been remanded at that prison.
117. In civil law jurisdictions a defendant's past record is treated as significant evidence and is automatically placed before the court. In these circumstances the Strasbourg court would be unlikely to conclude that knowledge of a defendant's bad character disqualified a juror on the ground of bias. In this jurisdiction the prejudicial effect that knowledge of previous convictions can have on the tribunal resulted in the past in a strict rule that the jury should not learn of these save in exceptional circumstances. The Criminal Justice Act 2003 has radically changed the situation and evidence of bad character is now routinely placed before the jury in specified situations where it has particular relevance.

118. We have been referred to no material that explains why officers of penal establishments were on the list of occupations that carried disqualification for jury service under Part 1 of Schedule 1 to the Jury Act 1974. It seems likely, however, that one reason for this was to guard against the risk that such a juror might have encountered a defendant in prison so as to be aware of his bad character.
119. The grounds of appeal against conviction in this case asserted that:
- “It is submitted that in this case there is a real danger that the applicant did not have a fair trial by reason of knowledge that Mr Pepper may have had of Cross. As a senior prison officer serving in the same prison he may have had access to all kinds of information about Mr Cross to his detriment which he could have communicated to the rest of the jury.”
120. As we explained earlier in this judgment, knowledge of a defendant’s bad character will not automatically result in the juror ceasing to qualify as ‘independent and impartial’. The mere suspicion that a juror might, by reason of having been employed as a prison officer in a prison where the defendant was held, have acquired knowledge of that defendant’s bad character could not, of itself, lead an objective observer to conclude that the juror had an appearance of bias. In this case the Criminal Cases Review Commission, at the request of the court, investigated whether Mr Pepper had any knowledge of the applicant and ascertained that he had not. In these circumstances there is no basis for contending that the fact that Mr Pepper served on the jury was in any way prejudicial to the applicant, let alone that Mr Pepper had an appearance of bias. For this reason, while we extend the time for making the application for permission to appeal against conviction, we refuse the application.

The application for permission to appeal against conviction of Stanley James Hill

121. On 16 March 2007 at the Crown Court at Liverpool (HHJ Roberts) the applicant, Mr Hill, was convicted of attempted murder and two counts of intimidating a witness. He was sentenced to life imprisonment with a minimum term of 10 years and 139 days.
122. Mr Hill had for a number of years lived with Wendy Crooks, and her daughter Janine. They had separated in about 2000, when the applicant began a relationship with Janine who was by then about 18. That relationship broke down in the summer of 2005, when Janine left the applicant and went back to live with her mother.
123. In September 2005 the applicant had been arrested and charged with a number of serious offences following an incident at Wendy Crooks’ home. He was on bail awaiting trial.
124. On 3 October 2005 neighbours handed to Wendy Crooks a number of CDs labelled ‘Janine Crooks’ which had been posted through doors or left in gardens. The CDs contained photographs of Janine Crooks in pornographic poses. The photographs had been taken by the applicant in the course of their relationship. The following day Wendy Crooks received calls from a telephone belonging to one of the applicant’s daughters, Jane Hill, asking her whether she ‘wanted this to stop’.

125. The distribution of the CDs and the telephone calls formed the subject matter of the charges of intimidating witnesses. On the subsequent arrest of the applicant labels similar to those on the CDs were found in his possession as well as CDs containing the same images.
126. On 29 December 2005 Wendy Crooks was stabbed several times in the chest when walking to the bus stop, by a man wearing a balaclava. Another daughter of the applicant, Tina Hill, gave evidence that her father had come to her home that night, with a balaclava and a knife, was covered in blood and had told her that he had killed Wendy.
127. The applicant's defence at trial was that he had been in Scotland on the day of the attack and that Tina Hill's evidence was not to be trusted.
128. Before and during the trial the applicant was on remand at HMP Liverpool. He discovered subsequently that one of the jurors was a prison officer at that prison.
129. The issues that arise on this application are the same as those in the application of Cross. Once again the Commission had investigated whether the prison officer who served on the jury, in this case Mr Nield, had acquired any knowledge of the applicant before the trial. They ascertained that he had not.
130. For the applicant Mr Vollenweider submitted that the court, in a case such as this, should proceed on the basis that the juror knew the defendant and thus had an appearance of bias. This was on the basis that an assertion to the contrary by the juror would not necessarily appear reliable – see *R v Pintori* [2007] EWCA Crim 1700. We do not accept that submission. There is no reason to doubt the fact that Mr Nield did not know the defendant. Had he known the defendant it would then have been necessary to consider whether that rendered the defendant's conviction unsafe. It would not automatically have done so. As it is, for the reasons that we have given, while we extend time for applying for permission to appeal against conviction, we dismiss the application.

Precautionary measures

131. It is undesirable that the apprehension of the jury bias should lead to appeals such as those with which this court has been concerned. It is particularly undesirable if such appeals lead to the quashing of convictions so that re-trials have to take place. In order to avoid this it is desirable that any risk of jury bias, or of unfairness as a result of partiality to witnesses should be identified before the trial begins. If such a risk may arise, the juror should be stood down.
132. We considered attempting to give guidance in this judgment as to the steps that should be taken to ensure that the risk of jury bias does not occur. However, it seems to us that these will involve instructions to be given by the police, prosecuting and prison authorities to their employees coupled with guidance to court officials. It would be ambitious to attempt to formulate all of this in a judgment without discussion with those involved. There is one matter, however, that should receive attention without any delay. It is essential that the trial judge should be aware at the stage of jury selection if any juror in waiting is or has been, a police officer or a member of the prosecuting authority, or is a serving prison officer. Those called for jury service

should be required to record on the appropriate form whether they fall into any of these categories, so that this information can be conveyed to the judge. We invite all of these authorities and Her Majesty's Court Service to consider the implications of this judgment and to issue such directions as they consider appropriate.