



New Park Court

Criminal Briefing

Leeds

16 Park Place
Leeds
LS1 2SJ

DX: 26401 Leeds Park Square
T: +44 (0)113 243 3277
E: clerks@newparkcourt.co.uk

Newcastle

3- 7 Broadchare
Newcastle-Upon-Tyne
NE1 3DQ

T: +44 (0)191 232 1980
E: clerks@newparkcourt.co.uk



Ben Campbell has developed a significant practice with a focus on crime and regulatory work. A CPS Level 4 Prosecutor, Ben both defends and prosecutes work of all levels, and has been instructed in a number of wide-ranging Operational Cases

Criminal Briefing

by Ben Campbell

Prosecution appeal against a ruling that there is no case to answer - A Procedural Guide

Ben has recent experience (whilst being led by Sharon Beattie KC) of a successful appeal against a ruling that there was no case to answer, arising out of submissions at the close of the Prosecution case. The trial judge ruled that there was no case to answer on an allegation of murder, but proposed to leave the offence of manslaughter to the jury. The Court of Appeal, LJ Edis giving the decision, ruled that the trial Judge had erred, and that murder ought to be left to the jury.

The Law

The prosecution's rights of appeal are governed by part 9 of the Criminal Justice Act 2003. Specifically, it is s58 that provides the general right of appeal in respect of a ruling that has the effect of terminating a trial/Count on Indictment. Part 38 of the Criminal Procedure Rules applies.

The Test

By s67 CJA 2003, the Court of Appeal may not reverse a ruling unless satisfied that:

- a) the ruling was wrong in law,
- b) the ruling involved an error of law or principle, or
- c) the ruling was a ruling that it was not reasonable for the judge to have made

Timings

Immediately that the ruling has been made, the Prosecution must either inform the Court that it intends to appeal, or request an adjournment to consider whether to do so (s58(4)). Where the latter course is taken (ordinarily the case) the general rule is that the Judge must allow until the next business day for the decision to be made. The Judge's ruling has no effect once the Prosecution comply with s58(4).

The Decision to Appeal

Careful consideration is now required of the ruling - the evidence before the jury relevant to it, and the specific ratio of the Judge's decision. It is likely that a conference with CPS will have to be hastily convened. Only CCPs, DCCPs, heads of central casework divisions (or a person nominated by them) may authorise an appeal. That being so, any conference is likely to involve explaining the circumstances to a lawyer without significant previous experience of the case. For that reason, but also because it is likely (should an appeal be pursued) to form the basis of your submissions to the Court of Appeal, it is sensible to advise in writing prior to conference. In addition to considering the statutory test provided by s67 (see above), the CPS decision-maker will also consider the likelihood of the Court of Appeal reversing the ruling, and the public interest.

Next Steps

The Court must now be informed of any decision taken to appeal. The Court ought to be asked, at this point, to produce a transcript of the ruling - and if oral submissions on the submission of no case went substantially beyond any written skeleton arguments, a transcript of those submissions should ought to be sought. The Court ought to be able to produce transcripts the following business day, so a request for them at this point ought to facilitate prompt provision to the Court of Appeal, shortly after (if not with) service of the appeal notice. If the Crown Court has been using the 'Jury Capture' facility, it is sensible to request a copy of any multimedia material at this stage - this will ensure the Court of Appeal have the material in precisely the form that the Jury received it.

The prosecution must give the 'acquittal guarantee' (s58(8)), without which there can be no appeal. This amounts to a declaration that the Defendant should be acquitted if either:

- a) leave to appeal is not obtained, or
- b) the appeal is abandoned before being determined

To expedite?

At the time of being informed that the prosecution intend to appeal, the Judge must decide whether or not the appeal should be expedited. In practice the Judge will liaise with the Criminal Appeal Office on the question of whether to expedite - the complexity of the case, the number of witnesses, length of trial, vulnerability of interested persons, and whether Defendants are in custody will all be considered. Any defendant affected has the right to make representations as to whether the appeal ought to be expedited or not. The Judge may order an adjournment of the trial in either case, but the practical reality is that any order for a non-expedited appeal is likely to require that the Jury be discharged and a re-trial ordered once the appeal is determined. Even if the Judge decides the appeal should be expedited, the Court of Appeal may subsequently reverse that decision.

Appeal Notice

The appeal notice must be in the form set out in the practice direction (Form NG Pros), and must be served on the Crown Court officer, the Registrar, and any Defendant directly affected by the ruling in question. Service of the notice must be the next business day after informing the Crown Court judge of the decision to appeal where the appeal is expedited (5 business days if not expedited). The form is prescriptive - specific requirements as to its contents are set out at CPR 38.4(2)(a-h). Digital copies and/or hyperlinks of documents suffice for the purposes of service. Early engagement with those in the Criminal Appeals Office is advisable when preparing the appeal notice and ensuring all evidence is properly before the Court. Recent experience shows them to have enthusiastically provided invaluable assistance, not least in ensuring that the Court of Appeal Judges had adequate access to both the Digital Case and Egress systems.

Permission/Leave

The Prosecution can only appeal with the leave of the Crown Court Judge or the Court of Appeal. In practice the trial Judge would not normally give leave, so the reality is that the appeal notice itself will include an application for permission to appeal to the Court of Appeal.

Respondent's Notice

The Defendant may serve a response, and must if he wishes to make representations to the Court. Any respondent's notice must be served on the next business day from receipt of the appeal notice where the appeal is expedited (5 business days later if not). The affected Defendant has the right to attend any listed appeal hearing.

Court of Appeal Powers

The Court of Appeal may confirm or reverse any ruling appealed. If the ruling is confirmed then the Defendant must be ordered acquitted of the offence in question. If the ruling is reversed, the Court of Appeal will either order a resumption of the trial (assuming it had been adjourned pending the determination of the appeal), or order a fresh trial.