



18 June 2014

PRESS SUMMARY

R (Nunn) (Appellant) v Chief Constable of Suffolk Constabulary and another (Respondent) [2014] UKSC 37

On appeal from [2012] EWHC 1186 (Admin)

JUSTICES: Lord Neuberger (President), Lord Clarke, Lord Reed, Lord Carnwath, Lord Hughes

BACKGROUND TO THE APPEALS

Mr Nunn was convicted in November 2006 of killing his girlfriend following the end of their relationship. Her body was found by a river two days after that end, having been subjected to various indignities and abuses. Evidence was given at trial that he had rowed noisily with her on the night she disappeared, and had been seen carrying what appeared to be a body out of her house. Small traces of sperm were found on her inner thigh and pubic area. Mr Nunn consistently asserted his innocence before, during, and following his trial. He pointed to the sperm presence as indicating another killer, since he had had a vasectomy. Following his conviction Mr Nunn sought to appeal, which was refused.

In January 2008 Mr Nunn began to make written applications to the police for supply of all of their records of the investigation into his case. By February 2010 he had instructed fresh solicitors, who made further applications to the police on his behalf. They initially sought the investigation records and requested fresh enquiries to be made into Mr Nunn's girlfriend's finances. Some research was undertaken, and the CPS responded saying that the deceased had not been living beyond her means. A number of other requests followed, including a request for notes of the forensic scientists working on the case, and various items of evidence. The police formally replied, stating that their only obligation was to disclose material which might cast doubt on the safety of the conviction. Mr Nunn judicially reviewed that decision, arguing that the police were required to provide, after conviction, the same disclosure as is required of them pending trial and appeal. The Divisional Court rejected that application.

Mr Nunn appealed to the Supreme Court, arguing that there is an enforceable common law disclosure obligation requiring the police to provide, in his case, at least:

- (i) Access to the working papers of the forensic scientists who advised the Crown and/or gave evidence, and
- (ii) Requests for re-testing or first-testing of various items of evidence recovered in the course of the investigation.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Hughes gives the only reasoned judgment, with which the other members of the Court agree.

The common law duty of disclosure exists in addition to the statutory duty of trial disclosure created by the Criminal Procedure and Investigations Act 1996 ("CPIA 1996"). The basis of the common law duty is fairness, and what fairness requires varies depending on the stage reached by the proceedings. There is no basis for the submission that the full 'trial' duty of disclosure and investigation continues indefinitely: this would be contrary to the public interest in finality and to the need for finite police resources to be appropriately applied. The extent of the common law duty post-appeal is correctly stated in the Attorney-General's guidelines: any material coming to light that might cast doubt on the safety of the conviction

should be disclosed. However, the Criminal Cases Review Commission can, in appropriate cases, make enquiry to see whether a reasonable prospect of a conviction being quashed can be demonstrated, which includes a power to direct new scientific tests and similar. Moreover, the police and prosecutors can choose to accede to representations for further enquiry made on behalf of convicted persons, and should exercise sensible judgment in relation to such representations.

REASONS FOR THE JUDGMENT

- The Crown’s duty of disclosure and inspection was formulated by the common law in the second half of the twentieth century, mirroring parallel developments in other common law jurisdictions. A general duty was formulated to disclose any evidence reasonably thought capable of assisting a defendant [16]. Inspection would generally go with disclosure, though there were additional considerations in this sphere [17].
- The CPIA 1996 put the duty of disclosure on a statutory footing, displacing the common law duties within its sphere of operation, and applying to any material which “*might reasonably be considered capable of undermining the case for the prosecution or of assisting the case for the accused*”. That statutory duty is temporally limited: for Crown Court cases, it applies between the arrival of the case in the Crown Court to the end of the trial [18-20]. Thus it does not apply to Mr Nunn.
- The basis of the common law duty of disclosure is fairness. However, fairness does not require the same level of disclosure at every stage of the process [22]. Before committal, the duty is limited to evidence that might be relevant at that stage [23]. Similarly, pending sentence, the duty is only to disclose material relevant to sentence [24] and, pending appeal, to disclose material relevant to the appeal [25]. That conclusion is consistent with the approach reached in other common law jurisdictions: New Zealand, Canada and America [26-28].
- Therefore there is no basis for finding a temporally limitless duty of disclosure post-conviction identical to that subsisting during trial [29]. During trial, the defendant is presumed innocent: post-conviction he/she is proved guilty. There is an important public interest in exposing any flaw in the conviction, but there is also a powerful public interest in finality of proceedings [32], and in ensuring that the police’s finite resources are applied to current investigations, unless there is a good reason for review [33].
- The remaining question was what the post-conviction duty of disclosure does entail [34]. Clearly, if the police or prosecution come into possession of evidence affording arguable grounds for contending that the conviction was unsafe, it is their duty to disclose it to the convicted defendant [35]. This was the limit of the *duty* of disclosure [38]. There are however additional safety nets:
 - The CCRC has a power to review any conviction and refer a conviction it considers unsafe to the Court of Appeal. It has extensive investigative powers including powers to require production of evidence held by public bodies, to appoint investigators, and to assemble fresh evidence [20]. Its powers include making enquiries to see whether a prospect of a reasonable conviction can be shown, which includes a power to direct new scientific tests [39].
 - It is always open to police and prosecutors to accede to representations made on behalf of convicted persons. Police and prosecutors should exercise sensible judgment when such representations are made and, if there appears to be a real prospect that further enquiry will uncover something of real value, there should be co-operation in making those further enquiries [41].

References in square brackets are to paragraphs in the judgment

NOTEThis summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.uk/decided-cases/index.html