

R v Alec John Smith [2020] EWCA Crim 777

Ben Douglas-Jones QC and William Douglas-Jones appeared as second-opinion appellate counsel for the successful Appellant in the matter of **R v Alec John Smith [2020] EWCA Crim 777**, for which judgment was handed down by the Court of Appeal (Criminal Division) on 22nd June 2020. Neither Ben Douglas-Jones QC nor Will Douglas-Jones appeared at trial.

The case concerned an appeal against conviction following an allegation of an historic sexual offence from some 48 years before the trial in 2017. Central to the appeal was the admission into evidence of two items of multiple hearsay, purported confession evidence.

The judgment may be considered important for two reasons:

1. The Court of Appeal, in the judgment of Irwin LJ, affirmed that the Criminal Procedure Rules were “*not decorative*” [§50]. The judgment makes clear that adherence to them is vital to ensure that issues of procedure or evidence are articulated in clear written argument to assist the Court. Practitioners will be reminded, therefore, of the need to set out their applications either to adduce or exclude such evidence in carefully drafted written documents in accordance with the timetable of the Criminal Procedure Rules.
2. The judgment also addressed the approach of the Crown in **Smith** of assuming that a lack of objection to the evidence by the defence in advance of trial was tantamount to agreement. In §51 the Court made it clear that “*the notice requirement on the Crown is not implicitly waived by defence silence, or even where, as here, the defence have made suggestions for editing the ABE interview*”.

This is likely to be an important judgment, therefore, for all practitioners dealing with trials in which hearsay and the editing of ABE interviews appears. It will also be of importance for defence practitioners in both Magistrates’ and Crown Courts where blind service of evidence by the Crown is relied upon as acquiescence.

William Douglas-Jones

St Ives Chambers

30 June 2020



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