

R. v HOPKINSON

COURT OF APPEAL (CRIMINAL DIVISION)

Lord Chief Justice (Lord Judge), Mr Justice Royce and Mr Justice
Globe: 25 April 2013

[2013] EWCA Crim 795; [2014] 1 Cr. App. R. 3

☞ Causing death of children or vulnerable adults; Cut-throat defence; Discharge of jury; Intimidation of jurors; Non-accidental injury; Special verdicts

- H1 *Practice—Special verdict—Defendant and co-accused charged with causing or allowing death of child—Jury convicting defendant and returning special verdict that defendant had caused fatal injuries—Whether special verdict appropriate in circumstances—Guidance as to use of special verdicts*
- H2 The defendant and her co-accused were respectively the mother and father of an infant child. The child died from a brain injury, probably caused as a result of violent shaking by either the defendant, her co-accused or both. Each blamed the other but there was evidence that whichever one of them might have caused the fatal injuries, the other ought to have been aware that the child was at serious risk of harm from the other. They were charged with causing or allowing the death of a child, contrary s.5 of the Domestic Violence, Crime and Victims Act 2004. In light of the difficulties relating to sentencing if the jury convicted both defendants, the judge proposed, and was supported by the defendant but not by the co-accused nor the Crown, that a special verdict be returned, and the judge directed the jury accordingly. The jury found the defendant guilty and returned a special verdict that she had unlawfully caused the injuries from which the child had died. Before the jury returned a verdict in relation to her co-accused, the judge became aware of acts of jury intimidation which had occurred over several days during the trial. The judge discharged the jury from returning a verdict in relation to the co-accused and certified that the defendant's case was fit for appeal.
- H3 **Held**, allowing the appeal, that in the circumstances it was appropriate that the defendant be retried. However, in the new trial the verdicts should be sought on the basis of the indictment without any reference to any special verdicts (post [20], [24]).
- H4 **Per curiam.** (1) The mere fact that the judge himself disagreed, even if profoundly, with the verdict of the jury does not of itself provide a ground for quashing the convictions. Any such approach would undermine the essential constitutional principle that the responsibility for the verdict rests with the jury and that the jury verdict must be respected by the court (post, [21]).
- H5 (2) The taking of special verdicts has fallen into virtual desuetude. There will be occasions where, in the context of a trial for murder, where the alternative defences include, for example, diminished responsibility, loss of control, and lack

of necessary intent, the judge may think it advisable to seek a special verdict. But even in the context of a murder trial a special verdict should continue to be a rarity. In particular, it is inappropriate for a special verdict to be sought in the context of s.5 of the Domestic Violence, Crime and Victims Act 2004, which was deliberately created because of the inevitable difficulties of proving which of two defendants was responsible for the infliction of fatal injuries on a child when there are no other candidates and neither appears willing to tell the truth about the incident (post, [22]–[23]).

H6 (For s.5 of the Domestic Violence, Crime and Victims Act 2004, see *Archbold* 2013, para.19-163 and following and for special verdicts, see *ibid.* para.4-534 and following.)

Appeal against conviction

H7 On 11 February 2013 in the Crown Court at Leeds (MacDuff J.), the defendant, Jessica Marie Hopkinson, was convicted of causing or allowing the death of a child, contrary to s.5 of the Domestic Violence, Crime and Victims Act 2004. On the same date, the jury also returned a special verdict: that she had unlawfully caused the injuries from which the child died. After the jury convicted the defendant, a number of jury irregularities came to light. The judge therefore discharged the jury from returning a verdict in relation to the co-accused, Lee Michael Davison. He was due to be retried on 5 June 2013.

H8 The facts and grounds of appeal appear in the judgment of the court.

H9 *Alistair MacDonald QC* (assigned by the Registrar of Criminal Appeals) for the defendant.

Julian Goose QC (instructed by Crown Prosecutions Service, Appeals Unit) for the Crown

LORD JUDGE C.J.:

1 On 11 February 2013, following a trial in the Crown Court at Leeds which was unsatisfactory in a number of respects, the defendant (now aged 19) was convicted of causing or allowing the death of a child, contrary to s.5 of the Domestic Violence, Crime and Victims Act 2004 (the 2004 Act). On the same date the jury also returned a special verdict: that she had unlawfully caused the injuries from which the child died. Her co-accused was Lee Michael Davison.

2 After the jury convicted the defendant a number of jury irregularities came to light. The judge therefore discharged the jury from returning a verdict in relation to the co-accused. He is due to be retried on 5 June 2013.

3 The prosecution arose from the death of a baby, Kristal Davison. She was born on 25 February 2012. She was the daughter of both defendants. At 02.50, on 13 April 2012, when she was not two months old, she was pronounced dead. The cause of death was brain injury, probably the result of traumatic, violent shaking. The post-mortem examination also revealed a number of older injuries. These included multiple rib fractures, fractures above the left knee and of the left ankle, and multiple retinal injuries. Only two people could have been responsible for the death of the child: either of the defendants, each acting alone, or possibly both defendants acting together.