

R. v Stewart (Jamie Aaron)

Court of Appeal (Criminal Division)

11 December 2015

Case Analysis

Where Reported

unreported;

Case Digest

Subject: Criminal procedure **Other related subjects:** Criminal evidence

Keywords: Autistic spectrum disorder; Causing children to engage in sexual activity; Hearsay evidence; Summing up

Summary: A conviction for causing or inciting a child under 13 to engage in sexual activity was unsafe where there had been a number of failings in the judge's summing up, in particular a failure to highlight the appellant's autistic spectrum disorder or to give a direction in relation to whether the appellant's actions had been sexually motivated.

Abstract: The appellant (S) appealed a conviction for causing or inciting a child under 13 to engage in sexual activity.

S had been left with the victim, a three-and-a-half-year-old boy for a short time. The prosecution case was that S had exposed his penis to the boy and invited him to touch it, with a sexual motivation. S had certain difficulties and had been diagnosed with autistic spectrum disorder. In his defence, he said that he had been concerned by the sexual content of a video that the boy had been watching. S said that his brother had been sexually abused and he had been concerned to educate the boy with respect to appropriate and inappropriate touching. He said that he had demonstrated using his fingers. The boy's father said that the boy had told him that S had exposed his penis and invited him to touch it. However, the boy did not give that evidence when interviewed or at the trial. S was charged seven months after the incident and the trial took place 15 months after the event. S's application for the exclusion of the father's hearsay evidence on S exposing his penis and inviting the boy to touch it was unsuccessful, as was his submission of no case to answer.

S submitted that (1) the judge had erred admitting the father's hearsay evidence and in refusing his submission of no case to answer;

(2) the judge's summing up had been inadequate to deal with the issues in the case and had failed to direct the jury on the weaknesses of the prosecution case.

Held: Appeal allowed.

(1) The judge had been entitled to admit the hearsay evidence but his direction on how to deal with it had been inadequate.

(2) His summing up had not adequately dealt with S's difficulties and the boy's young age. The judge had also failed to remind the jury of the inconsistencies in the boy's account. The judge's route to verdict document had not been helpful or capable of assisting the jury.

Nowhere in the summing up had the judge dealt with the S's autistic spectrum disorder or addressed the jury on the crucial issue of whether his actions on the day in question had been sexually motivated, rather than for the educational purposes that S had indicated. The cumulative effect of all of the deficiencies in the summing up rendered the conviction unsafe.

Judge: Macur LJ; Simler J; Judge Wait

Counsel: For the appellant: Sara Haque. For the Crown: Adam Watkins.

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