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QUEEN'S BENCH DIVISION (ENGLAND)

R v WELLS STREET STIPENDIARY MAGISTRATE; ex parte DEAKIN and OTHERS

Lord Widgery CJ, Boreham and Drake JJ

18 April 1978

[1978] 1 WLR 1008; [1978] 3 All ER 252 (DC); (pet. all.) [1978] 1 WLR 1014E; [1980] AC 477; [1979] 2 WLR 665; [1979] 2 All ER 497; 69 Cr App R 59 (HL)

COMMITTAL PROCEEDINGS – EVIDENCE – CRIMINAL LIBEL – EVIDENCE OF GENERAL BAD REPUTATION OF PROSECUTOR – WHETHER ADMISSIBLE.

A private prosecution was brought against the defendants, who were the authors and publishers of a book) charging them with criminal libel. At the committal proceedings the defendants sought to call evidence of the general bad reputation of the prosecutor. The magistrate refused to admit the evidence on the ground that there was no jurisdiction to hear such evidence in committal proceedings for criminal libel. On applications for orders of *certiorari* to set aside the committal orders—

HELD: Refusing the applications, that evidence of general bad reputation of a private prosecutor alleging criminal libel was not admissible at committal proceedings but, like the statutory defence of justification, had to await the trial.

On September 21, 1977, at the Wells Street Magistrates' Court the S.M. (Mrs Frisby) made orders committing John Willis and Michael Deakin (authors of a book) to the Criminal Court to stand trial for the alleged offence of criminal libel. They applied, for orders of *certiorari* to quash the committal orders on the ground that the committal proceedings were so defective that the committal orders were not lawful because:

> 1. The magistrate refused to give the applicants the opportunity of calling witnesses whose evidence was relevant and necessary to a fair decision namely, whether, there was evidence of the offence of libel sufficient to put the applicants upon trial by jury. The evidence which those witnesses would have given was evidence of the general bad reputation of the prosecutor for violence and homosexual offences.
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> 2. Contrary to natural justice, the applicants were denied a fair hearing at the committal proceedings because the magistrate refused to allow them to call those witnesses to give that evidence.
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> 3. Contrary to natural justice, the magistrate ruled as irrelevant and/or declined to consider the prosecutor's convictions which were introduced by the applicants in cross-examination of the prosecutor.

In the book there was an amount of material highly uncomplimentary to a Mr Gleaves, and it is Mr Gleaves who brings the present proceedings against the authors publishers of the book for criminal libel.

The committal proceedings came on before the S.M. and after the evidence for the prosecution had been given, the defendants sought to call evidence of general reputation of Mr Gleaves to indicate that his reputation was a bad one. The magistrate decided that there was no jurisdiction in her to listen to that evidence at that stage of the proceedings and that she had no jurisdiction to hear evidence relating to the general personal character of Mr Gleaves and would not hear it.

It is important to register that the nature of the evidence damaging to the character of Mr Gleaves which was sought to be called was evidence of violence and homosexuality, matters of the same kind as those alleged against him in the book.

Criminal libel is something which we do not see every day. It is a relatively uncommon proceeding. There is a definition of criminal libel in *Goldsmith v Speerings Ltd* (1977) 1 WLR 478, 485:

> 'A criminal libel is so serious that the offender should be punished for it by the state itself. Whereas a civil libel does not come up to that degree of enormity. The wrongdoer has to pay full compensation in money and pay his costs: and he can be ordered not to do it again. But he is not to be sent to prison for it or pay a fine to the state. When a man is charged with criminal libel, it is for the jury to say on which side of the line it falls.'

Those words were used by Lord Denning MR and are perhaps the most comprehensive and modern definition of criminal libel.

In deciding whether the case is serious enough to justify committal proceedings, you must look at the extent to which the publication has damaged the reputation of the injured party. The word 'serious,' it will be remembered, was in Lord Denning MR's definition of a criminal libel, and there is no doubt that one of the requirements of criminal libel is that the wrong should be so serious that it requires the intervention of the state. The argument from the applicants is that in deciding whether the offence was serious in that context you can have regard to the extent to which the individual was damaged in his reputation. It is a short step from there to say that, once that point is established, 'The obvious thing is for me to be allowed to call my evidence to show what a bad man Mr Gleaves is in the relevant sphere and thereby to play down the enormity or seriousness of the offence.'

Looked at from that point of view, and if it be the fact that proof of bad reputation on the part of the prosecutor is relevant in that way and at that stage, I would have no difficulty in accepting the general correctness of the argument. But it seems to me that it cannot be put in that way.

Section 6 of the *Libel Act* 1843 starts with these words:

> 'That on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged be published; ...'

There one has by statute the right for a defendant in criminal libel to plead justification, to plead that what he says is true and that he ought not to be punished in respect of it. Authority upon that section has shown that any raising in the proceedings of a reference to justification or truth cannot be made in committal proceedings and has to await the trial itself.

The authority for that is *Reg v Carden* (1879) 5 QBD 1.

> 'Upon an information for maliciously publishing a defamatory libel under the 5th section of 6 & 7 Vict. c 96, the magistrate has no jurisdiction to receive evidence of the truth of the libel, inasmuch as his function is merely to determine whether there is such a case against the accused as ought to be sent for trial, and a defence based upon the truth of the libel under section 6 of the Act can only be inquired into at the trial upon a special plea framed in accordance with the terms of that section.'

There is no doubt at all that that is how the law of the land stands. I think the consequences would be disastrous if the calling of evidence about general reputation of the prosecutor could be indulged in committal proceedings. For those reasons I have come to the conclusion that the magistrate was right in declining jurisdiction to hear the evidence.

DRAKE J: In my judgment an examining magistrate is entitled, by looking at the words complained of as constituting the libel, to come to the conclusion that the libel complained of is so trivial that criminal proceedings are not justified. But, in my judgment, it is a very different matter to say that the examining magistrate should be required to hear evidence of general reputation and to decide on balance, having first of necessity weighed that evidence to decide whether it is acceptable and the extent to which it is credible, whether the case in his or her opinion is sufficiently serious to merit criminal proceedings.

In my judgment the examining magistrate would then be going beyond the functions of an

examining magistrate and getting very much involved in the exercise of a judicial function beyond the powers of an examining magistrate.

To weigh what may be disputed evidence, takes the exercise into the judicial sphere. Lord Widgery CJ in *Reg v Wells Street Stipendiary Magistrate, Ex parte Seillon* (1978) 1 WLR 1002, 1006F-G.

> "The duty and province of the magistrate before whom a person is brought, with a view to his being committed for trial or held to bail, is to determine, on hearing the evidence for the prosecution and that for the defence, if there be any, whether the case is one in which the accused ought to be put upon his trial. It is no part of his province to try the case."
