

Debating non-jury criminal trial

By Clive Coleman
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The first crown court non-jury criminal trial in England and Wales has begun amid concerns from leading lawyers and civil rights groups that it might damage a fundamental principle of justice.

In February 2004 an audacious robbery took place at the Menzies World Cargo warehouse at Heathrow airport.

Masked robbers rounded up staff at gunpoint and shots were fired at a supervisor. The robbery netted £1.75m, the bulk of which has never been recovered.

There have already been three jury trials arising from the robbery, the last of which collapsed in 2008 because of what the judge referred to as "a serious attempt at jury tampering".

The estimated cost of the trials to date is about £22m.

Four men - John Twomey, Peter Blake, Barry Hibberd and Glen Cameron - go on trial facing various charges which include possession of a firearm with intent to endanger life, possession of a firearm with intent to commit robbery, robbery and conspiracy to rob.

" Some principles of justice are beyond price - trial by your peers is one of them "

Paul Mendelle QC Criminal Bar Association

They will be tried by a judge alone, who will decide both matters of law and the defendants' guilt.

This will change the nature of the trial.

The judge will be forced to do what has been described as 'intellectual gymnastics'. If he rules evidence inadmissible, he will then have to banish it from his mind when deciding on guilt.

Jurors would be excluded from discussions on admissibility and so not be exposed to inadmissible evidence.

Legal history

Trial by jury is a fundamental principle that traces its roots back to the Magna Carta in 1215.

Not since 1641 and the abolition of the feared Court of Star Chamber, used by monarchs for political ends up until the civil war, have citizens been tried for really serious criminal offences on indictment in the absence of a jury.

However, the principle has now been limited by Parliament under the Criminal Justice Act 2003.

It came into force in 2007 and provides for trial without jury if there is a 'real and present' danger that jury tampering would take place, in circumstances where any measures to

protect the jurors are considered to be inadequate.

Following the collapse of the third trial arising from the robbery, the Crown applied for a 'judge only' trial under the new provisions.

In March last year Mr Justice Calvert-Smith turned the application down.

He concluded that the proposed protective measures were sufficient to allow a jury trial.

However, in June the Lord Chief Justice Lord Judge made legal history by allowing the Crown's appeal, leading to this first non-jury trial in England and Wales.

" The worry is that this is the thin end of the wedge and that it is likely to be expanded. "

Roger Smith Justice

He found that there was a very significant risk of jury tampering and that the proposed measures to protect the jury could not eliminate the risk, especially in regard to interference with jurors through their families.

He also took a pragmatic view of the costs of protection, which were estimated at £6m and would involve 82 police officers.

In an interview with the BBC in October 2009, he said: "Those who say that no price is too much are overlooking that you have to choose between hospitals and schools and armour for our troops in Afghanistan, and all the other demands on public money."

However, in spite of the Lord Chief Justice's judgement, the trial has raised a number of concerns among civil liberties groups.

Some fear that the message being sent to jurors and witnesses is that the state cannot provide protection against threats from alleged criminals.

Others are concerned that a single judge can never be as representative of society as 12 randomly selected jurors.

'Diplock' trials

Roger Smith, director of the law reform and human rights group Justice, said: "The worry is that this is the thin end of the wedge and that it is likely to be expanded.

"As one senior judge looked at this and thought it should be safely tried with a jury, it should have been."

In fact, non-jury trials have been a feature of the UK legal system more recently than the Star Chamber - in Northern Ireland.

Non-jury trials were controversially introduced there in 1972 after a review by the then Law Lord, Lord Kenneth Diplock.

They were a response to witness intimidation by paramilitary groups, but were opposed by civil liberty organisations and both nationalists and republicans.

At their peak more than 300 trials per year were being held in 'Diplock' courts.

Legal precedent concerns

Some of those operating the system were targeted by the IRA and, in 1987, Lord Justice Maurice Gibson and his wife were killed by a bomb.

The legislation underpinning the Diplock courts has been repealed but there remains provision in Northern Ireland for trials to take place without juries in exceptional cases, in

particular if a proscribed terrorist organisation is suspected of involvement.

Scotland has no legislation comparable to the 'non-jury trial' provisions of the Criminal Justice Act 2003 governing England and Wales.

Many leading lawyers remain concerned about the consequences of this legal precedent.

Paul Mendelle QC, Chairman of the Criminal Bar Association says: "Some principles of justice are beyond price. Trial by your peers is one of them."

Story from BBC NEWS:

<http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/8454102.stm>

Published: 2010/01/12 13:09:13 GMT

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