

Life in crime

Can a judge ever direct a jury to convict the defendant?

David Rhodes reports



IN THE MARBLE HALLS OF THE OLD BAILEY,

there is a plaque to commemorate the courage of Edward Bushell. In 1670, William Penn was arrested for illegally preaching a Quaker sermon. The judge demanded a guilty verdict and kept the jury locked up for three days without food or water until they came back with the 'right result'. In defiance of this, they acquitted Penn. So incensed was the judge that the jury were imprisoned and fined. However, Bushell and 11 other jurors refused bow to judicial pressure. From their prison cell, they obtained a writ of *habeas corpus* and the case established the constitutional principle of the independence of the jury. A jury may never be told by a judge that they must convict the defendant. The jury is the sole arbiter of the facts. No matter how screamingly obvious the defendant's guilt may seem, the jury may nevertheless acquit him – whether out of a sense of justice, sympathy or sheer bloodymindedness. That is the privilege of the jury – to give a verdict according to their consciences. That is the why the jury provides such an important democratic counterweight to the power of the state. *R v Caley-Knowles; R v Jones* [2006] EWCA 1611, therefore, seems to strike at the very heart of our jury system.

Mr Caley-Knowles was convicted of Assault ABH in 1972. It seems that he had been sacked from his job on the railways and he held a man called Barton responsible for his dismissal. Some years later, Caley-Knowles encountered Barton, by chance, on a train. After an argument, he punched him twice on the mouth, causing minor injuries.

The defendant represented himself at trial. He declined to give evidence, but addressed the jury from the dock for 25 minutes about the circumstances of his dismissal. The judge intervened and asked him about the facts of the assault. The defendant admitted he had deliberately punched Barton and that it was not in self-defence.

The judge directed the jury that the defendant had no defence in law. He then told them: "I am taking the matter right out of your hands. I am taking full responsibility for this

verdict... I am directing you to return a guilty verdict... Will someone please stand as foreman and, when asked the appropriate question by the clerk of the court, say, 'guilty'. This I am afraid is a formality as far as you are concerned." A member of the jury then stood up and did as he was told. The defendant, perhaps understandably, shouted: "What a complete farce, they are supposed to adjourn to make a decision... If this is British justice, it stinks. This is a kangaroo court."

The case of *R v Jones*, tried in 1994, was not dissimilar. Mr Jones, aged 60, was convicted of criminal damage. He had climbed on to the roof of his local town hall and damaged it in protest against an incident in 1983, which had its roots in a land dispute between Jones and the local council. Jones claimed his actions were justified as part of a campaign to expose corruption in the local authority.

He represented himself at trial. He called evidence to support his reasons for protesting. The prosecution submitted that Jones did not have a "lawful excuse". The judge agreed and ruled Jones had no defence in law. The defendant was told he was not allowed to address the jury because there was no point, as the judge had decided to direct the jury to convict.

Again, the judge told a member of the jury to stand up and say the word 'guilty'. He apologised for the fact that the jury might think this was a "rather strange procedure", but said: "This is the only way it can be done. In effect, the issue of innocence or guilt has been withdrawn from you and I take it upon my responsibility."

In recent times, in the case of *R v Wang* [2005] UKHL 9, Lord Bingham, perhaps the most enlightened judge of our generation, elucidated the principle that goes back to Bushell's case. He asked: "If we really wish juries to give untrue verdicts, why do we require them to be sworn?" He explained: "The acquittals of such high profile defendants as Ponting, Randle and Pottle... have been quite as much welcomed as resented by the public, which over many centuries has adhered tenaciously to its historic choice that decisions on the guilt of defendants

charged with serious crime should rest with a jury of lay people, randomly selected, and not with professional judges."

Bingham LJ then said: "Belief that the jury would probably, and rightly, have convicted does not entitle us to consider the conviction to be other than unsafe when there are matters which could and should have been the subject of their consideration... There are no circumstances in which a judge is entitled to direct a jury to return a verdict of guilty."

In the light of such clear authority, the judgment of the Court of Appeal in *R v Caley-Knowles; R v Jones* might itself have been something of a foregone conclusion. However, Tuckey LJ, giving the judgment of the court, said that the real issue was whether the verdicts were unsafe, notwithstanding the material misdirection to convict. The court drew support from the case of *R v Kelleher* [2003] EWCA Crim 3525, in which the trial judge had crossed the line by directing the jury that "there can be only one verdict in this case and that is one of guilty", but had then allowed the jury to retire and consider the evidence before returning their verdict of guilty.

And so the Court of Appeal quashed the convictions in *R v Caley-Knowles; R v Jones*, but only on the basis that in each case the jury had had the decision taken away from them by the judge and had not had the opportunity to retire and consider the matter for themselves.

Thus, in the face of Lord Bingham's clear declaration and 350 years of history, it seems that there are indeed circumstances in which a jury can be directed to convict a defendant. Just so long as the jury are then allowed to retire (with the judge's direction "you must convict" ringing in their ears) and "consider the matter for themselves", the verdict will be safe - because the jury at least had the option of defying the judge. One can only hope that modern-day jurors are endowed with the courage of Edward Bushell and that the Old Bailey has plenty of room for more plaques.

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