

DAVID PHILLIPS

Significant Cases

R v Nagi (1998) NSW District Court. Appeared pro bono at short notice (NSW Bar duty scheme). Allegation of repeated buggery of a son by father. Accused Hungarian migrant. Had jury discharged at half time, forensic medical expert failed to disclose prejudicial material to Crown before trial. On retrial had former pupil master Paul Brereton SC lead me. MrNagi acquitted

Barwick v NSW Law Society [1998], High Court of Australia. Appeal against finding of NSW Law Society in respect of professional misconduct allegation against a solicitor. Led by Mr. Paul Brereton QC.

Graham Taylor v Phillip Ruddick (Minister for Immigration) [1999/2000] nisi application judicial review in High Court of Australia. This was an application in respect of a decision deport a resident UK Citizen who had lived in outback Australia since age of 7 now aged 40. Federal Court jurisdiction restricted by statute. Obtained stay of proceedings in Federal Court in respect of deportation pending application to High Court. Nisi order obtained single Justice High Court for writs of prohibition, certiorari, mandamus and habeas corpus.

Royal Irish Fraud cases (2002-3). Series of linked fraud cases arising out of resettlement claims in Northern Ireland. Convictions.

R v SSgt R (2004). SAS pilot piloted helicopter while in drink crashing on border of Northern Ireland. Charge loss of Her Majesty's aircraft. Issue intentional and negligent conduct. Convicted.

R v Twaite [2010] CMAC. Responded to appeal challenging constitution of Court Martial with a bare majority verdict. Majority verdict upheld. Appellant and MOD intervener represented by QC.

R v Mulengo Moyo (2010). Alleged rape and domestic violence case against partner. Accused African recruited soldiers serving in Germany. Conviction.

R v Elder (2012). RAF Court martial with allegation of s.2 SOA fisting of servicewoman's vagina. Case required substantial s.41 argument as to complainant's sexual behavior. Conviction.

R v Jones (2014). Court Martial at Bulford. Case involved allegation of oral and digital penetration of a lesbian soldier by her Sergeant Major while she was drunk and asleep in bed. This case resolved around expert DNA evidence and its interpretation. Conviction.

R v Neil [2011] CMAC. Appeal against conviction for GBH in Germany. Court of Appeal judgement given by Hughes LJ. Appeal dealt with two issues, firstly identification evidence and secondly admissibility of German Civilian police evidence. Appeal rejected.

R v Sgt Rai [2012}. Ghurka Sgt accused of bugging and sexually assaulting Nepalese/ UK children. Appeared as junior to Christopher Parker Q (now HHJ). Trial conducted in UK and Brunei. Conviction

R v Shezi[2012]. RAF court Martial. Accused recruited from Africa, raped a female airwoman while visiting another RAF station. Convicted

R v Beddoes [2013 [2013] CMAC Fitness to plead application by defence. Accused charged with perverting course of justice on false rape allegation. Accused held fit to plead. Defence unsuccessfully appealed to Court of Appeal. Convicted.

R v Sgt Blackman. (2013) [2014] CMAC. Junior in murder trial to David Perry QC Sgt convicted of murdering captive wounded Taliban. Appeared unled in Court of Appeal. Appellant and MOD intervener represented by QC. Appeal against conviction rejected.

R v Shaw (2014). This was an attempt murder case. Soldier delivered severe kicking to head of another soldier in Cyprus when both in drink. Victim suffered severe brain damage. Only witness was accused's wife. Accused and wife made admissions to Cypriot police. Investigated by Cypriot police under Judges Rules. Argument about causation and intent relied on forensic medical evidence. Significant pre trial argument about admissibility of Cypriot evidence, s78 applications to exclude. Argument about admissibility of expert evidence. Conviction.

R v Graham (2014). RAF Scout leader in West Berlin in 1983-87, sexually assaulting cubs and scouts. Pleaded to some but not others. 7 complainants at trial with another 4 complainants pleaded to. Case relied on successful bad character applications based on similar fact evidence. This was a Court Martial with a civilian jury. After two week trial accused convicted.

R v Jenks (2014). This case involved the rape of a lesbian soldier by a male soldier in barracks, where both were in drink. The case was complicated by the fragility of the complainant's mental state. Having obtained a psychiatric report a successful application was made for a Ground rules Hearing under CPD 13. There was substantial pre trial argument in respect of bad character and s.41. This trial resulted in an acquittal.

R v Rowe (2015). Royal Marine Warrant Officer accused of stealing from USMC PX store in California, while on exercise. Defence application based on psych and medical evidence was that he was suffering from a state of non insane automatism, and dissociative states as a result of dehydrations and immediate stress leading to extreme panic attack. Defence called a physiologist Phd to give opinion that accused was suffering from dehydration leading to non insane automatism. This opinion evidence struck out in re trial argument on basis that physiologist not qualified to make such a diagnosis. At trial Defence psychiatrist accepted that not a case of non insane automatism. Remaining issue was whether accused

was in a dissociative state or rather was this a case of psychiatric malingering. Defence also argued pre trial that evidence collected by US police failed to comply with PACE. It was sufficient that US police complied with Miranda v State of Arizona [1966]. Conviction.

R v Shuttlewood (2015). Multiple rape allegation by older boy on young underage females in Germany. This was a case of grooming and the argument was that victims did not have the freedom to consent. This case had a civilian jury. Convicted of raping both girls.

R v Boal (2015). This case involved an allegation of rape in marriage and domestic violence 15 years ago. The offending occurred in Germany. The case raised issues of consent within a marriage. In respect of the rape, the wife was asleep at the time it commenced. Conviction.

R v William Clark. (2015). Allegations of indecent assaults on two boys aged 9 and 13 in Germany in 1984 and 1987. Clark was aged 14 and 17 at the time. Accused had been convicted of assaulting two boys while babysitting in West Berlin in 1984. A large part of the case revolved around the successful application to adduce similar fact evidence in this trial. Clark was convicted of both sets of allegation. This case had a civilian jury.

R v McManus (2015). Allegation of historic sexual assault , digital penetration, on a 8 yr old girl visiting friends in Germany in 1983. Assaulted by neighbour in same block of flats. Unable to identify through id procedures. Identification rested on circumstantial evidence and application of Turnbull principles. Accused convicted.

R v Heslop. (2016). Bisexual female soldier convicted of s.2 assault by penetration 'fisting' on another female soldier after a nights drinking. Complainant had no recollection of what happened before she woke up. Defence was that it was consensual on both parties part. Defence adduced another female soldier's evidence to suggest that complainant was reciprocating the defendant's attention prior to returning to barracks. The case relied on showing that the complainant lacked the capacity to consent.

R v Nash (2016). Prosecuted former Warrant Officer who raped and sexually assaulted daughters in Germany in late 1990s. Denied offences. Convicted of principal offences after trial.

R v Dawson (2016) . Prosecuted a former dependent (minor aged 13 at time) for the indecent assault of 6 year old girl in Germany in 1980s. Judge stopped at half time on basis that doli incapax evidence insufficient. Appealed decision and overturned terminating ruling at Court of Appeal presided over by the LCJ. Case also raised argument about Hale's presumptions in respect of a boy under 14 being able to commit rape. NSW Supreme Court authorities cited in support.

R v Philpotts (2019/17). Prosecuted former RAF scout leader for indecently assaulting boy scouts in Germany in 1980s. Case raised

interesting matters in respect of other bad character evidence in respect of scouts in the 1980s and more recent offending being considered by the CPS, but no convictions. Defence relied on his good character to date. Defendant convicted.

R v Townshend (2017). Junior to Nigel Lickley QC in prosecution of RAF pilot responsible for Voyager Airbus 330 going into uncontrolled dive over the Black Sea. 4 weeks trial involving allegations of perjury and negligent flying. Case involved detailed expert evidence.

R v Smith (2017). Prosecuted soldier for s.18 GBH on off duty SAS Warrant officer at pub. This was a prosecution in the Crown Court, but raised PII and anonymity issues. MOD evidence called to support successful PII application.