

R v Williams [2012] EWCA Crim 264

The victim returned to his home one night and was attacked by four men. Two held him down whilst two searched his apartment. After demands, the victim took £550 from his pocket and gave it to one of the men. The victim then took hold of a Samurai sword. As he got up from the floor he was shot in the leg by one of the intruders. The victim then struck the man who had shot him, with the sword he had picked up. He then gave chase as the four men fled. Three of the men escaped but the victim hit the fourth man several times with the Samurai sword. The police attended and the 4th attacker was taken to hospital where his wounds were consistent with the use of the sword.

Williams, it was alleged, was the person who had shot the victim. Reliance was placed on the fact that he had been found nearby with significant injuries, consistent with having been caused by the Samurai sword, and the victims account that he had used the sword to injure the person who had shot him. There was also CCTV footage of Williams holding an item like a handgun and aiming it at the victim when he caught up with him.

Williams did not dispute that his injuries had been caused by the sword. However, he claimed that he had never been in the victims apartment nor had he shot the victim. He alleged that his injuries had been caused by the victim who had falsely implicated him as the person who had shot him in the leg.

The prosecution included the evidence of a police officer who had attended the hospital on the night in question and had spoken to Williams. No caution had been given and he had not been invited to sign the officers notebook. The prosecution contended that the evidence was inconsistent with Williams's case at trial and that it showed that he had told lies. The defence applied for the officers evidence to be excluded under section 78 PACE on the grounds there had been breaches of Code C and it was also unfair to admit Williams's alleged answers having regard to his physical and mental condition at the time of the conversation.

The officer gave evidence that when she had questioned Williams, she had done so as the victim of a stabbing, not as a suspect. The position had altered only later that night when, things had been pieced together of what had happened. The judge admitted the evidence, having considered, on a subjective basis, the officers views as to her belief at the relevant time. Later, in her summing up the judge directed the jury in respect of the officers evidence. The judge directed the jury that it needed to assess the reliability of the officers evidence in the light of the breach of Code C and she reminded the jury about Williams's condition at the time of questioning.

Williams was convicted and he appealed against conviction on the basis that the judge had been wrong by applying a subjective test, whereas the question whether there were reasonable grounds to suspect a person, so as to require a caution to be given, had to be determined objectively. He submitted that the evidence should have been excluded under section 78 of the Act, in the light of the failure to caution him and his condition at the time of the conversations.

Held Appeal dismissed. The judge ought to have applied an objective test and she had been wrong to base her decision solely on how the officer had regarded the matter. Accordingly, the question was whether, on an objective test, there had been reasonable grounds to suspect Williams at the time when the officer had spoken to him in hospital.

Taking everything into account, the decision to allow the officers evidence to be included had had no effect on the safety of the conviction. The case against Williams had been a very strong one. He had changed his account and had told deliberate lies on a number of key issues. He had made assertions in interview and in his first defence statement that were plainly contradictory to the CCTV evidence and/or were inconsistent with his account at trial. There was no doubt that the verdict would have been the same, even if the evidence had not been adduced. Moreover, the judge's directions had given the jury a sufficiently clear reminder of Williams's evidence and the judge's summing up as a whole had done more than enough to ensure that the jury had understood the defence case.

The interpretation and comments made within this document are not to be considered as legal advice.

Reference should always be made to the original case.