



[Home](#) > [Humanities & Social Sciences](#) > [Law School](#) > [Blog](#) > 'Life Experience' and Juror Bias in Criminal Trials

'Life Experience' and Juror Bias in Criminal Trials

By [Rhonda Wheate](#), posted on 23 February 2021

A recent case in the English Court of Appeal (Criminal) raises the question of how we ought to handle jurors who ask questions during a trial, where those questions suggest that the juror a) might be biased, or b) may not actually accept the law. In *R v Cynane* [2020] EWCA Crim 1348 the defendant had pled not guilty to murder, on the grounds of diminished responsibility caused by his longstanding drug addiction. He was convicted of murder and also of causing grievous bodily harm with intent.

During the trial, one juror submitted three sets of written questions to the judge, mostly relating to the partial defence of diminished responsibility. After each set of questions, the defence sought to have the juror dismissed for bias, and at one point the judge called the juror into chambers for questioning (in the presence of prosecution and defence counsel). Ultimately the judge rejected all applications to have the juror dismissed.

The questions asked by the juror included "*Is diminishing [sic] responsibility morally right and conducive to protecting the general public and helping the defendant realise his crimes and giving the defendant the opportunity to come to terms with them?*" and "*Is the defendant not using addiction as an excuse in order to relinquish full responsibility for his crimes?*". Despite repeated warnings from the trial judge to deliver a verdict "according to all the evidence ignoring other considerations", the juror's questions would seem to indicate that he fundamentally did not accept that diminished responsibility should be available as a defence, or at least should not be available to addicts.

The view taken by the Court of Appeal was that "*It would have been wrong to treat any apparent expressions of a moral stance [by the juror] on the concept [of diminished responsibility] as being grounded in a full understanding of it.*" This assumes that the juror would gain an appropriate understanding of the law about diminished responsibility from the directions given by the trial judge at the end of the trial, but research shows judicial directions are often chronically ineffective ("*All those legal directions showered upon their heads...*").

More importantly, it underplays the possibility that the juror's questions showed that he was *morally* averse to the concept of diminished responsibility, whatever the law may say about the defence. When questioned by the judge in chambers, the juror revealed he had personal experience of his mother being a drug addict, and was quoted as saying, "*So through my childhood and my life I have seen the consequences of these things and how they affect not just family life but other people as well. So that is a reason why I have a personal interest in such things.*"

Is this bias or apparent bias (the legal test), or just the juror bringing his 'life experiences' to the court? The juror assured the judge that he was merely asking questions of the court to ensure that he did not ask the jury itself questions that were "misguided, wrong, inaccurate or irrelevant."

The trial judge decided that the juror was not necessarily biased, and the Court of Appeal was heartened by the fact that none of the other jurors complained about the juror in question. The latter is perhaps neither here nor there though: jurors very rarely complain about other jurors, and even then it is usually only for very obviously egregious behaviour. The fact that this juror was elected foreman – after having survived being questioned by the judge in chambers – provides evidence, if anything, of the fact that he was both confident and persuasive. It does not speak to whether he was biased and what effect that may have had on this jury and their verdicts.

Ultimately the appeal failed, with the Court of Appeal finding the trial judge's decisions in relation to this juror to be within the bounds of what was reasonable, adding "the case against the appellant was very strong. We are satisfied that the convictions are safe." This appears to justify dismissing the appeal on the basis, *inter alia*, that even if the juror was biased and the trial judge was wrong not to have dismissed him, the convictions should stand. What if the case against the appellant had been weak – Would the finding about this juror have been the same? Is it ok to allow jury bias in trials where the prosecution has a strong case? What about cases where the defence is very strong? *When* is juror bias ok?

The case is reported as R. v Cynane (Joe Derek) Court of Appeal (Criminal Division): Holroyde LJ, Knowles and Chamberlain JJ: 7 October 2020; [2020] EWCA Crim 1348. Further analysis is available in the Case Comment by Peter Hungerford-Welch in Crim. L.R. 2021, 3, 234-237.

[Home](#) > [Humanities & Social Sciences](#) > [Law School](#) > [Blog](#) > 'Life Experience' and Juror Bias in Criminal Trials

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