

## In the United Kingdom Supreme Court

### Regina v Kimber

Adele Kimber agreed to look after her granddaughter, Collette, who was four years of age, for one week while her mother, Abigail, went on holiday to Ibiza. Adele was the owner of a Pit Bull Terrier, Tommy, which she had owned since he was a puppy. On a number of previous visits to Adele's house, the dog had shown jealous and aggressive tendencies towards the child. Normally, when Adele was alone with the dog, she was a very attentive owner. When Abigail and Collette visited, however, Adele would put the dog in the garden, because they were both frightened that the dog might try to attack Collette. Moreover, on a number of occasions the dog had been seen staring through the window at Collette as Adele played with her. The whole family had agreed that it was imperative that the dog should not be allowed to roam free whilst Collette was in the house.

On the Saturday night of Collette's stay with Adele, Collette was watching television in the living room. Adele was in the kitchen listening to the radio, drinking and smoking cannabis, as was her custom in the evenings. The dog had been left, as usual, in the garden but, due to her intoxicated state, Adele omitted to close the back door properly. As a result, the dog was able to gain entry to the kitchen where Adele was sitting. Because of the volume of the music she was listening to, Adele did not notice the dog enter and proceed through to the living room. In the living room, the dog attacked Collette. On hearing the screams, Adele rushed to the living room, but the dog was too strong and would not let go of Collette. Adele Kimber then called an ambulance, but Collette was pronounced dead by the paramedics who attended the scene.

As a result, Adele Kimber was charged with gross negligence manslaughter.

At her trial at Lewes Crown Court, HHJ Cohen made the following comments in his summing up to the jury:

1. Following *Attorney General's Reference* (No. 2 of 1999) [2000] QB 796, the fact that the defendant did not foresee death or serious bodily harm is not an important factor when assessing whether a defendant has grossly breached their duty of care.
2. The case of *R v Adomako* [1995] 1 AC 171 laid down clear, simple, common sense guidelines for juries on the elements of gross negligence manslaughter.
3. Furthermore, following *R v Adomako*, the jury could convict Adele of gross negligence manslaughter if they felt that her negligence amounted to "an absolute howler".

After this summing up, the jury convicted Adele Kimber of gross negligence manslaughter.

She appealed against conviction to the Court of Appeal (Criminal Division), who upheld the conviction. She now appeals to the UK Supreme Court on the following grounds:

1. *R v Adomako* is a notorious case which does not create clarity for juries in cases of gross negligence manslaughter. The decision has received copious criticism from the judiciary, the legal profession and from academics because of the potential for injustice that it causes. As a result, the *Practice Direction* (1966) should be used to overrule it.
2. In any event, *R v Adomako* and *Attorney General's Reference (No. 2 of 1999)* were not properly explained to the jury and thus the conviction is unsafe.