

COURT OF APPEAL

72,

18th April, 1994.

Before: R.D. Harman, Esq., Q.C., (President),
A.C. Hamilton, Esq., Q.C., and
Miss E. Gloster, Q.C.

Anthony John Bouchard

-v-

Her Majesty's Attorney General

Appeal against conviction on 16th June, 1986, by the Royal Court (Inferior Number) *"en Police Correctionnelle"* on 1 count of possession with intent to supply a controlled drug (Cannabis resin), contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978.

The Appellant was granted leave to appeal by the Bailiff, Single Judge, on 15th August, 1986.

**Advocate C.J. Dorey for the Appellant.
The Attorney General.**

JUDGMENT.

THE PRESIDENT: On 16th June, 1986, this Appellant was convicted before the Royal Court of possession of cannabis with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978. He had pleaded not guilty to this offence, and his trial before the Deputy Bailiff and two Jurats lasted four days.

On 3rd July, 1986, he was sentenced to two years' imprisonment.

On 15th August, 1986, the Bailiff granted leave to appeal against conviction. The matter rested there and no further action was taken until November, 1992, when the Appellant applied to the

Judicial Greffe for a transcript of his trial. He has since pursued this appeal, although he has, of course, long since served his sentence.

The Senior Police Officers in the case were at that time a Detective Chief Inspector Quinn, who had been suspended from duty whilst under investigation and an acting Detective Chief Inspector later Superintendent Le Brocq. Both Officers gave evidence for the prosecution. Mr. Le Brocq stated that on 11th October, 1985, he gave instructions for the arrest of the Appellant. This arrest was carried out by Detective Constable Le Marchand who said that from an early moment the Appellant was repeatedly insisting that he had been "working for Charlie Quinn and you boys". A quantity of cannabis resin was found on him at the time and a further larger quantity was later recovered, with his co-operation, from his home.

The Appellant answered questions saying words to the effect: "You can't do this to me, I'm working for you".

Mr. Bouchard, at his trial, insisted that he was not cautioned at any stage. However, it was the evidence of Mr. Le Brocq that he interviewed Mr. Bouchard briefly on the day of his arrest and on the two subsequent days, that is 12th and 13th October. On each occasion the Appellant was cautioned and Mr. Le Brocq said that he made a note in his notebook immediately afterwards. He purported to give evidence from that notebook.

On 13th October, the Appellant made two written statements under caution. They both contained confessions of drug dealing, but the second statement also dealt with the alleged activities of another man, James Reid, whom the Appellant claimed to have been shadowing on the instructions of Detective Chief Inspector Quinn.

Mr. Bouchard contended that his own confessions were made and required so that the Police could have evidence to hold over his head and which would be kept in reserve to ensure that he was a witness against Reid at a later trial. Meanwhile he did not expect to be charged because the drugs which he had in his possession on 11th October had been supplied to him by Reid with the knowledge and agreement of Police Officers, in particular Mr. Quinn. In short his defence to the charge of possession with intent to supply was lack of *mens rea*; he said he had no intention of supplying.

During the trial a *voir dire* was held to challenge the admissibility of the two statements on the basis that they were not voluntary. It was of course for the prosecution to show that they were voluntary.

Reliance was placed by the prosecution on Mr. Le Brocq's notes of events and conversations supposedly recorded

contemporaneously or immediately afterwards in each case. This *voir dire* was decided against the Appellant.

At the trial Mr. Le Brocq stated, in cross-examination, that he arranged a meeting between Mr. Bouchard and Mr. Quinn with himself present in June, 1985, in order to discuss "the local drugs scene" at a time when the Appellant had been arrested for shoplifting. On this occasion he made two statements, one about the shoplifting and the other about drugs in respect of which he made admissions. He was prosecuted for shoplifting, but not for any offence in relation to drugs. Mr. Le Brocq denied that there was any arrangement whereby Mr. Bouchard would give information in return for non-prosecution for otherwise admitted drug offences. He also denied that Bouchard had been authorised by the Police to possess drugs for that purpose, or that he had been promised immunity from prosecution in exchange for information about other drug dealers.

Mr. Le Brocq gave evidence that the Appellant was strongly warned against coming into possession of drugs and that it was made clear to him that he would have no immunity but would be treated as any normal person. That is to say, if he came into contact with drugs, he would be liable to arrest and prosecution. It was common ground that Mr. Quinn had given his telephone number to the Appellant so that Mr. Bouchard could keep in touch with him. But otherwise Quinn made the same denials. Evidence supporting the prosecution case was given by other junior Police Officers, including Detective Constable Le Marchand, who arrested the Appellant on 11th October and took the two statements under caution. The Appellant's case that he had been promised immunity from prosecution was unsuccessful and he was convicted.

During 1987 Mr. Quinn was tried for conspiracy before the Royal Court and was acquitted. However Mr. Le Brocq, who gave evidence at the trial, admitted that he had re-written parts of his police notebook from which he was giving evidence and which he was using at the time of Mr. Bouchard's arrest. This involved removing pages from that book and transposing pages from a second new notebook which he obtained for the purpose. He said that he later destroyed the original pages which he had removed and also the remainder of the new book which had provided the substituted pages. He maintained that the re-writing was undertaken for purposes unconnected with Mr. Bouchard's case and that he did not at any time re-write or alter the text of his notes in relation to Mr. Bouchard.

Mr. Le Brocq made two statements in writing on 7th and 10th July, 1987, in which he set out his account of this conduct and which we have read. It is unnecessary to comment on them in this Judgment except to say that while he denied any dishonest intentions at any time, the two statements when read together contain an admission that a total of eight pages front and back

had been replaced and re-written in the book after it was completed; that is to say pages three to six and thirty-five to thirty-eight inclusive. These included parts which related to this Appellant. The purpose of these alterations was said to be the inclusion of notes of a short interview with a suspect in a separate, unconnected case which he had omitted to record at the time.

In evidence at the Quinn trial, Mr. Le Brocq agreed that what he had done was wrong. He described it as a very serious error of judgment made when he was under stress and pressure for various reasons.

There is a notable degree of common ground between the Appellant's skeleton argument and submissions in support of his appeal against conviction and the outline contentions and submissions of the Attorney General provided in the same context. In particular it is accepted by the Attorney General that Mr. Le Brocq and Mr. Quinn were important witnesses (the Appellant would say, crucial); that the evidence of Le Brocq that the contents of his notebook were recorded contemporaneously was inaccurate and misleading; that the evidence to which it related was highly material to the conduct of the Appellant's defence; and that the fresh evidence relating to the notebook casts doubt on the reliability of the evidence which he gave at the Appellant's trial, with reliance on the notebook.

It is further accepted that the evidence of Mr. Quinn at this trial is itself now open to doubt in the light of matters not known to the Royal Court at the time. This means that the revised view of the reliability of the evidence of Le Brocq and Quinn must throw doubt on the admissibility of the Appellant's written statements and the prosecution no longer invite this Court to be sure that it has properly rebutted the defence put forward at the trial. It follows that the prosecution do not invite this Court to be satisfied that there was no miscarriage of justice.

It nevertheless remains for the Appellant to satisfy the Court that it is a proper case in which the appeal should be allowed and the conviction quashed.

We have carefully considered the whole of the evidence available to be adduced before us. This includes the evidence of Mr. Le Brocq, Mr. Quinn, Detective Constable Le Marchand and the other Officers called at the Appellant's trial. We have read the transcript of the Appellant's own evidence in which he maintained that throughout he was acting as a police informer under the instructions of Quinn in pursuit of the major dealer, James Reid.

We take into account the matters advanced by Advocate Dorey and the passages in the transcript to which we have been referred today.

The contentions of the Attorney General also include acceptance of the fact that in October, 1985, the suspension of Mr. Quinn left the Appellant "effectively stranded".

We allow this appeal because the Court thinks that there was a miscarriage of justice. We do so because it now appears that important evidence in the case given in particular by Mr. Le Brocq was, to say the least, not frankly given. It is impossible to know what the verdict would have been if all the circumstances which we have heard about had been known at the trial. We do not need to speculate.

We therefore allow the appeal, quash the conviction and direct a judgment and verdict of acquittal to be entered.

Authorities

R. -v- Mathias (24th August, 1989) "The Times".

R. -v- Croydon Justices *ex parte* Dean (1993) 3 All ER 129.

Court of Appeal (Jersey) Law, 1961: Article 25.