8 pages.

ROYAL COURT
(Samedi Division)

84A

3rd May, 1995.

Before: Sir Peter Crill, K.B.E, Commissioner
and Jurats Myles and Vibert

The Attorney General

- v -

Anne Marie Goodman

Application by the Accused for an Order ruling the transcript of a Question and Answer Interview, dated 28th November, 1994, inadmissible.

The accused had pleaded not guilty to:

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug (cannabis resin) contrary to Article 77B of the Customs and Excise (General Provisions) (Jersey) Law, 1972.

J.G.P. Wheeler, Esq., Crown Advocate
Advocate S.J. Willing for the Accused

JUDGMENT

THE COMMISSIONER: The accused has been charged with being knowingly concerned with the importation of cannabis resin with a very high street value. In the course of the investigations, however, a question and answer interview with the accused was conducted by two experienced customs officers, Mrs. Deveau and Mr. Miles, starting at 1 o'clock in the afternoon, following her arrival that morning in Jersey in her car with a boy friend. The customs officers had found some cannabis resin, in the possession of her boyfriend and later, when the car was searched, they found the large amount to which I have just referred.

The interview started with a proper caution at 1 o'clock and continued right through until something like 6.30.pm. Mr. Wheeler, for the Crown, has quite rightly conceded that that interview was in three sections.

The first section at the start of the interview lasted seven minutes. The second one lasted twenty five minutes, and the third one hour, nineteen minutes; there were gaps of varying

duration between the sections. At one stage in the interview, which was conducted by Mrs. Deveau, with Mr. Miles writing down the answers, the accused was able to get in touch with her then Advocate, Advocate Sharpe. This was at 13.37 hours and therefore between then and 15.25 hours when the second section of the interview started, the accused had the opportunity to speak to Mrs. Sharpe. The interview continued at 15.55 hours. There was a further break at 15.50 hours and it continued at 17.30 hours, after the two interviewing officers had spoken to the boyfriend. There was a short adjournment at 17.25 hours but the interview was resumed at 17.30 hours, Mrs. Deveau having left the room to telephone. The interview was finally concluded at 18.30 hours.

During the interview the accused was given two cups of tea, a bowl of carrot soup and some fish and chips, at different times. After the interviewing officers had spoken to the accused's boyfriend, the accused made a number of what could be held to be damaging admissions.

Mr. Willing, for the accused, has submitted that the whole of the question and answer interview, except for some preliminary early part which is of no assistance either way, should be excluded because it is not legally admissible and, even if it were, it should nevertheless be excluded because of the circumstances under which it was obtained, and because the prejudicial effect on the accused would more than outweigh the probative value of the answers she gave.

The Court has looked very carefully at the law on the subject and both Counsel have accepted it as that being stated in the Court of Appeal case of Clarkin -v- A.G. (1991) JLR 232 CofA. At page 242 are to be found a number of passages which are important from our point of view. Firstly at line 27 the Court says this:

> *"The conflicting interests of the State in securing evidence of the commission of crime and of the individual in being protected from an unauthorized invasion of his rights of privacy were addressed in a passage in the opinion of Lord Cooper (Lord Justice-General) in the Scottish case of Lawrie v. Muir (9) which is cited by Lord Hodson in King v. R. (7) and which seems to us to illuminate the problem in words which we are happy to adopt (1950 S.C.(J.) at 26-27):*
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> *"From the standpoint of principle it seems to me that the law must strive to reconcile two highly important interests which are liable to come into conflict - (a) the interest of the citizen to be protected from illegal or irregular invasions of his liberties by the authorities, and (b) the interest of the State to secure that evidence bearing upon the commission of crime and necessary to enable justice to be done shall not be withheld from Courts of law on any merely formal or technical ground. Neither of these objects can be insisted upon to the*

uttermost. The protection of the citizen is primarily protection for the innocent citizen against unwarranted, wrongful and perhaps high-handed interference, and the common sanction is an action of damages. The protection is not intended as a protection for the guilty citizen against the efforts of the public prosecutor to vindicate the law. On the other hand, the interest of the State cannot be magnified to the point of causing all the safeguards for the protection of the citizen to vanish, and of offering a positive inducement to the authorities to proceed by irregular methods."

I need not read any further passages except the Jersey Court decided to lay down what the law of Jersey was after considering the Scottish case, Lawrie-v-Muir and the Privy Council case R -v- Sang [1980] A.C.402 and said this at page 246, line 5.

"In those circumstances we must ask ourselves whether there is any compelling reason why that discretionary principle of fairness to the accused should not be recognized as part of the law of Jersey. We are satisfied that there is no such reason. We doubt whether the discretion to exclude evidence under the common law of England was ever restricted to the narrow limits encapsulated in the principles which the Royal Court extracted from R. v. Sang; but even if that were so, we do not think that there is any principle that requires us to hold that the discretion exercisable by courts in Jersey is subject to the same restriction. In our view, we are at liberty to hold that the law in Jersey is more truly reflected in the Privy Council cases of Kuruma s/o Kaniu v. R. and King v. R. and in the English cases of Jeffrey v. Black and Fox v. Chief Const. of Gwent. We are encouraged in this view by the consideration that the principles to be extracted from those cases are consistent with those applicable in Scotland and are also consistent with the present position in England following the 1984 Act."

They then criticised the Royal Court for its decision as follows:-

"It follows that the Royal Court was wrong, in our judgment, to regard its discretion to exclude the evidence of possession as being exercisable only if it were satisfied that the prejudicial effect of that evidence outweighed its probative value. The correct principle is that a discretion to exclude evidence otherwise admissible should be exercised when, having regard to all the circumstances (including the circumstances in which the

the use of that evidence would undermine the j[illegible]ice of the trial. The power to exclude evidence on that basis is a necessary incident to the overriding duty of the trial court, which is to ensure that the accused has a fair trial."

The Court has applied the dicta in that case in arriving at its decision. Mr. Willing has argued very fully that there were six reasons why the question and answer should be excluded. Certainly four of them relate to the question of oppression.

First, the accused was weary and under stress. In fact, she said in relation to the stress, that she decided to come to Jersey because her boyfriend was stressed and required a rest. Nevertheless, her submission was that she had not slept properly on Friday or Saturday night - I should add that the boat came in on a Sunday. She was arrested and strip-searched and complained of tiredness, but these expressions of tiredness went unheeded. Mr. Willing submitted that the customs officers were on notice that any early arrival of a boat meant that passengers might disembark without having had any breakfast. We cannot accept that submission; there is no evidence to suggest that Mrs. Deveau or Mr. Miles knew, or ought to have known, that the accused had not had breakfast and that she had not looked after herself properly.

Secondly, Mr. Willing points out that during the interview, proper refreshment had not been provided and that what was provided was inadequate; his client only had proper food - fish and chips - at 18.10 hours, that is to say after she had made a number of damaging statements that were contrary to her interests.

The Court finds that it was open to the accused at any stage to ask for further sustenance and there is no indication to suggest that, if she had asked for it, it would not have been provided.

Thirdly, there was direct oppression when questioning continued whilst she was in tears after speaking to Mrs. Sharpe and when she was not given time to collect herself. Mr. Miles said that she had cried on more than one occasion and she was not happy about the predicament she was in. That may well be true. An accused person very often is not; but the tears did not, from the evidence we heard, appear to continue very long and she composed herself towards the end of the interview, particularly during the time when she made statements that could be against her interests.

Fourthly, there was an inducement - a direct inducement Mr. Willing submits. There is direct conflict of evidence here. It is suggested that one of the officers said to her that if she admitted the offence she could go free and her boyfriend would be released; or she could see her boyfriend and she could be released - it really does not matter about the exact wording but there

certain was something suggested by Mr. Willing and mentioned by the accused to this effect. There was also a suggestion by the accused in her evidence, but this was not put to either Mrs. Deveau or Mr. Miles, that when they left to talk to Gareth, the boyfriend, one of them or both of them said: "There will be trouble if your stories are not consistent". That suggestion was not put to either of the officers. There is, therefore, a direct conflict of evidence on this particular point.

Was anything said and if so was it in the form suggested by the accused? The Court has no doubt that if something was said, even if not exactly in the terms suggested by the accused - and I should add it is totally denied by both officers - that could be, as the Crown has conceded, an inducement. Moreover, Mr. Miles did say that he empathized with her at one stage because he was sorry about the predicament she was in. As far as the Court is concerned, it is not satisfied that an inducement in a direct sense as suggested by the accused through her Counsel was, in fact, put to her during interview.

The fifth point suggested by Mr. Willing, is that the accused had been tricked in some way or deceived. This arises from some words used by Mrs. Deveau during the interview. When Mrs. Deveau and Mr. Miles had seen Gareth, the boyfriend, they returned to the room and continued the interview with the accused and suggested that Gareth had said certain things which disclosed discrepancies in the accused's story and asked for an explanation. It was put very generally in this way; Mrs. Deveau asked:

> *"I should like to point out to you that there are a number of inconsistencies in the story given by you and the one given by Gareth. Can you explain this?"*

The Court feels that it would have been better to put those inconsistencies in detail to the accused rather than in that general form. However, the answer to that question was "No".

The interview then continued with a question that Gareth had been honest and open with them and that the officers had no reason to believe that his version of events was untruthful and that led them to believe that her story was untrue and that she was trying to hide something. Quite reasonably, the accused replied that she could not clear up the discrepancies in the story unless she knew what had been said.

Earlier in the interview the accused had explained that at one stage Gareth had left her and gone to the pub. The car was hers; it was outside her house; it was locked up; and she was in possession of the only set of keys. It was, therefore, not unreasonable for the interviewing officer, Mrs. Deveau, to make the following statement immediately after the passage I have just read:

"Gareth has said that the controlled substance was placed in the vehicle at a time when you claim that either Gareth was with you or he was in the pub and your car was parked outside your house locked up and you were in possession of the only set of keys."

Now, that is not something that Gareth is saying; that is something she had already told the investigating officers. It relates to time and not movement. She then answers that and said that she must have been with him all the time.

The Court does not feel that she was tricked by that line of questioning nor frightened. It is perfectly true that Counsel has said that thereafter her conduct changed and she attempted to wriggle. That is to say she made inconsistent statements. That is not an uncommon practice in question and answer interviews and the Court does not attach importance to the fact that she made contradictory statements; the value of those contradictory statements is, however, quite another matter.

Lastly, Mr. Willing submitted that there should have been a caution given to the accused before each section of the interview. She was reminded that she was under caution at the beginning of the interview: she had been cautioned at 09.45. She was not reminded at any other time that she was still under caution. Mr. Willing suggested that she should have been.

Now, we have to look at the Caution Rule in the States of Jersey Police Code C, which is the code of practice for the detention, treatment and questioning of persons by police officers. For the purposes of this argument the customs officers were police officers. Rule 10.5 of the Code says this:

"Where there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution. If there is any doubt the caution should be given again in full when the interview resumes."

Mrs. Deveau said that she knew that the accused had spoken to her then Counsel, Mrs. Sharpe; she herself had spoken to her and was satisfied that the accused knew that she could remain silent if she wished. That was the important part of that caution and she therefore felt satisfied that the accused knew she was still under caution. The Court accepts that explanation.

The Court has to decide after I have first ruled on the question of admissibility, whether the record of the question and answer interview should be admitted. I have advised the Jurats that in my opinion the question and answer interview is admissible. It does not infringe the guide-lines that have been laid down.

And so the Jurats and I now look at the question of whether it should be admitted in the light of the unfairness principle set out in the Clarkin judgment.

Mr. Willing has said that the question and answer transcript shows how unreliable it is and that it would produce an unfair trial if it were admitted. His client is not a strong woman; she was left alone in an unhappy state and was prepared to sign anything to get away. We have regard to the fact, of course, that she did sign each page of the question and answer, more than that she was asked a question at the end of the interview, which is at the bottom of page 10. The question was:

"Q. Are you happy with the way that you have been treated today.
A. Yes."

She then read through the whole interview and said that she did not really read it but in fact she did sign the bottom of each page and she also then read and signed a very short passage at the very end:

"I have read the above record of interview consisting of 11 hand written pages. It is a true and accurate record."

And so, having ruled that the question and answer interview is legally admissible, the Court is unanimous in coming to the conclusion that it should, in fact, be admitted. There was not that degree of oppressiveness or deceit which would make it unfair to do so and accordingly the Court rules that it is not only legally admissible but will be admitted in evidence.

Authorities

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A.G. -v- Kelly and Ors. (1981) JJ 275.

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