Before: The Bailiff, and
Jurats Le Ruez and Herbert

The Attorney General
- v -
Rickie Michael Tregaskis

Application by defence counsel in absence of Jury to disallow a statement made by the accused to Detective Constable Aubert on the 7th August, 1990, on the grounds that it: 1) was made in breach of the Judge's rules and: 2) that the police were "oppressive".

Attorney General;
Advocate D.E. Le Cornu for the appellant.

JUDGMENT

BAILIFF: On the 2nd August, 1990, a woman was killed in Le Geyt Flats. The prisoner is accused of that murder, and he was kept in police custody for a considerable period of time between

being taken to Police Headquarters and eventually being charged by the Centenier in the morning of 7th August, 1991.

During that time he had been interviewed for a total period of approximately 20 hours. Also during that time there is no question but that he was properly looked after by the police, indeed, he himself did not make any complaint against them and he was supplied as and when necessary with medical care, with refreshment and rest.

Therefore, there is nothing to suggest that the conduct of the police during the time the accused was in their custody after being taken to Police Headquarters and until he was charged by the Centenier was oppressive.

Approximately one and a half hours after being charged on the morning of 7th August and cautioned by the Centenier, the accused requested to speak to D.C. Aubert alone in the exercise yard and during the course of their being together, he made a statement to D.C. Aubert. That statement is now challenged as being in breach of the Judge's rules and therefore inadmissible.

I have already said that in the opinion of the Court the police behaviour during the time that Tregaskis was in their custody until he was charged by the Centenier, cannot have been in any way oppressive; and indeed at the conclusion of his major interview which took place on the night of the 6th August, 1990, when he was admittedly kept up until the early hours of the following morning, he expressed himself quite happy with the way he had been treated during that interview.

Therefore we have to consider whether, although we have found no evidence of oppression, the Judge's rules themselves were broken. The Judge's rule upon which Mr. Le Cornu relies is

Rule 3(a) which states: ***"Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms: "Do you wish to say anything?" "You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence".***

We heard evidence from Detective Inspector Hopper that that caution was given to the accused by the Centenier at the time he was charged, so that part of the rule appears to have been fulfilled. It is the second part of the rule upon which Mr. Le Cornu relies which is as follows: ***"It is only in exceptional cases that questions relating to the offence shall put to the accused person after he has been charged or informed that he may be prosecuted".*** And then, over the page there is a section which says: ***"Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer".***

The evidence of D.C. Aubert was that after the statement which was made to him and which could amount to a form of confession, he went to his senior officers and informed them of it. He wrote down what he said he had heard and they witnessed what he had written down.

It is to be said at once that he asked no questions of the accused during that interview in the exercise yard. Mr. Le Cornu suggested that he should have stopped Tregaskis the moment he used the words "off the record", which he did at the beginning of what he said to D.C. Aubert. D.C. Aubert said that he did not stop him because he was speaking continuously.

We do not think that there was anything in the conduct of D.C. Aubert which would entitle us to find that there had been a breach of the Judge's rules, even if we were to take the widest view, as Mr. Le Cornu invited us to do, and consider the spirit of the rules. We do not think that even taking a wide view in that way we could say that rule 3(2) had been breached.

Therefore, in strict law, it is a matter for me to rule that what the accused is said to have said to D.C. Aubert is admissible.

However, that is not the end of the matter, because the Court as a whole has to decide - even though what D.C. Aubert said he heard is strictly admissible - whether we should exercise our discretion to exclude it. There is no doubt that this Court has an unfettered discretion in cases of this nature to exclude that sort of evidence and that is abundantly clear from the case of AG -v- Clarkin (28th August, 1991) Jersey Unreported C. of A., a very recent case and an authority for the proposition I have just mentioned.

It is not necessary for me therefore to review the cases which both counsel have cited. We think that the case of Clarkin encapsulates the principle which we have to consider and particularly it does so in the penultimate paragraph on p.23 of the judgment. What it says is this:

> ..."***There was no suggestion that the police officers concerned had been guilty of trickery or oppression, that they had acted unfairly towards the Appellant, or that they had acted in a manner which could be thought morally reprehensible.***"...

We say that in this case we can find no suggestion or evidence of any of those matters mentioned by the Court of Appeal here. But the Court of Appeal goes on to say this (and of course it was dealing with evidence obtained under a warrant which was invalid):

> ..."***The fact that that warrant could subsequently be seen (upon a proper analysis of the statutory provisions) to be invalid does not justify a conclusion that the justice of the Appellant's trial was in danger of being undermined if the prosecution were allowed to give evidence of the search by Police Constable Rotheram and Mr. Goddard.***"...

We have had to ask ourselves: what does justice require in this case? Would the inclusion of the evidence undermine this case? Would it undermine the justice of the case which is before the Court? Would it in fact undermine the justice of the appellant's trial? We have come to the conclusion, in view of the circumstances which I have outlined and the evidence itself, the manner of the accused's treatment, the evidence as to how he felt at the time he made this statement - he was mentally and physically competent, although naturally he was upset because he had been formally told he was going to be charged with murder, but he was prepared for it, as he told this Court; it was not new to him and it was not a surprise that he was going to be charged. Under all these circumstances we have come to the conclusion that we cannot say that we should exclude this evidence in the exercise of our discretion because we do not think that the justice of the appellant's trial would be in danger of being undermined if we allowed it in and accordingly the evidence will be allowed in.

Authorities

Archbold (41st Ed.) paras. 14-3 to 14-5; 15-23 to 15-26.

A.G. -v- Clarkin (28th August, 1991) Jersey Unreported C. of A.

A.G. -v- McLean and Brown (1979) JJ 93.