ROYAL COURT

21st March, 1988

Before: Sir P.L. Crill, C.B.E., Bailiff
assisted by Jurat P.G. Blampied
and Jurat D.E. Le Boutillier

Her Majesty's Attorney General
- v -
Mark David Holmes

Appeal against conviction on 1 Count
of larceny

Advocate S.C. Nicolle on behalf of the Crown
Advocate J.G. White on behalf of M.D. Holmes

JUDGMENT

THE BAILIFF: The appellant in this case was employed by a photographic firm and on the morning in question, which was the 13th June, 1987, a member of that firm found that a float which was kept in a safe on the premises was short of £20. The appellant was suspected, the police were called and he was taken to Police Headquarters by Detective Constable Le Marchand. At Headquarters he was questioned by D.C. Le Marchand for a very short time. At first he denied the offence and then, according to the Police Officer, he admitted it and signed a confession. The confession itself was written by the Police Officer, but the subscription was written in the handwriting of the

accused. It is in the usual form and is as follows:-

> "I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true, I have made it of my own free will".

He was then left alone for some two hours and subsequently charged by a Centenier. When he was charged he reserved his plea. D.C. Le Marchand was present, said nothing, but according to the accused when he gave evidence, he gave him a dirty look, but he did not intervene.

The appellant through his counsel has advanced a number of reasons as to why the Magistrate was wrong to convict him. Firstly, there was no satisfactory evidence that there was £150 in the safe on the Saturday previous, which was the figure in question. Evidence was given by one of the employees that on the Monday morning, the morning of the offence, there had only been £130 in the safe. Secondly, there was no satisfactory evidence that could satisfy the Magistrate that money could not have been lost as a result of finding its way into the tills, the system of the tills being explained to the learnèd Court below and it was suggested by counsel that it was not satisfactory for the Court to assume that the money could not have found its way into one of the shop tills in the course of the day. Thirdly, there was insufficient evidence to make the admission safe for the Magistrate to rely on it.

As Miss Nicolle for the Attorney General has rightly pointed out, if the confession was voluntary and was admissible, that in itself was evidence that the £20 was taken and it did not really matter if the other evidence to which Mr White has alluded was satisfactory or not and if the confession was not voluntary and therefore inadmissible then clearly the other evidence was insufficient to support the conviction and it is therefore apparent to us, as it was to the learnèd Magistrate that the strength of the prosecution case was vested virtually solely in the confession. There was, therefore, a complete conflict between D.C. Le Marchand and the accused and clearly of course, if any threat was made (and it was suggested that the accused was threatened that if he did not make a confession he would be locked up), if any sort of threat of that nature was made, it was conceded quite properly by Miss

Nicolle that that would be oppression and render the confession or statement inadmissible.

The Magistrate was clearly aware of the problem because he took time to consider what his judgment should be and before he adjourned the Court, he adverted to the fact (which is quite true) that this Court does not have before it the witnesses and is therefore unable to assess the weight of their evidence, not only by what they say, but the manner in which they say it and the Magistrate as I say had regard to this matter because at the bottom of p.82 of the transcript he says that "the case falls or stands to a very great extent on whether the statement was admitted" (I think he must mean "should be admitted") "and of course the Court has some regard to the demeanour of witnesses. I know that a member of the Police Force is a practised giver of evidence and I know that a lay person in Court is probably ill at ease and nervous, especially if he is not well educated and may not always say exactly what he means". He obviously also considered a number of authorities which Mr White produced to him, the nub of which was really contained in the submission which he made this morning and drew our attention to, on p.80 of the transcript where he recited the words of the McGuffie case, I think;

> "As I said before you must take the evidence to account as a whole. You have heard all the evidence, you will balance one thing against the other, very often one item of evidence reflects on another and from that you could arrive at a conclusion one way or the other, but if you can't you must find in favour of the accused. You have to be satisfied beyond reasonable doubt to return a verdict of guilty on these matters".

The Magistrate when he retired took account (it is clear from his remarks that he was going to) of the authorities which Mr White very fairly put before him. Having done so and having approached the evidence in the light of his remarks he found the accused guilty. This Court therefore, before it can allow the appeal, has to be satisfied that there was no evidence upon which the Magistrate could properly direct himself and therefore find the accused guilty. We are unable to say that; the Magistrate heard the witnesses, he applied the correct criteria as to how he should

approach the case and it would want a very strong misdirection on his part, or a consideration of the evidence from a totally incorrect point of view before this Court would interfere. Therefore, for those reasons, the appeal is dismissed.

Authorities cited in Judgment:-

H.M. Solicitor General -v- McGuffie 1968 J.J. 955.