

COURT OF APPEAL

190

27th September, 1995.

Before: Sir David Calcutt, Q.C., President,
J.M. Collins, Esq., Q.C., and
Miss E. Gloster, Q.C.

Anne Marie Goodman

- v -

The Attorney General

Appeal of Anne Marie GOODMAN against conviction before the Royal Court, *en Police Correctionnelle*, on 4th May, 1995, following a not guilty plea before the Inferior Number on 10th March, 1995 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.

Leave to appeal was granted by the Deputy Bailiff on 31st July, 1995.

Advocate P.M. Livingstone for the Appellant.
J.G.P. Wheeler, Esq., Crown Advocate.

JUDGMENT.

COLLINS, J.A.: Anne Marie Goodman was convicted on 4th May, 1995, by the Inferior Number sitting *en Police Correctionnelle* of an offence under Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972, and was thereafter sentenced by
5 the Superior Number to a term of two years' imprisonment. From this conviction she now appeals, having been given leave by the Deputy Bailiff on 21st July, 1995.

10 The offence with which she was charged was one of being knowingly concerned in the fraudulent evasion of the prohibition

on importation of a controlled drug, namely cannabis resin, on 28th November, 1994.

5 The circumstances in which the appellant came to be arrested and charged can be shortly stated. On the morning of that day, 28th November, at about 8.30 a.m. a ferry from Weymouth docked at the Elizabeth Terminal. Among those disembarking were the appellant and her friend, Gareth Bowen, who were together in a Volkswagen motor car which was owned by the appellant, but driven
10 by her companion. They were waved into a search bay and a little later a substantial quantity of cannabis resin was found in a total of five packages which were concealed, as to two packages, in the rear panelling of the driver's door and as to the remaining three packages in a space cut out of the foam of the back seat.
15 The street value was at an estimated figure of £28,000 and the weight of the five packages was approximately 5.8 kilograms.

20 The appellant was arrested at 9.45 a.m. after a search had revealed nothing incriminating on her person and it is not disputed that at that time she was cautioned, although the appellant said in evidence that she did not remember being arrested.

25 She was later taken to an interview room and she remained there for the greater part of the second half of the day, from 1.00 p.m. onwards. She had been given tea at 11.30 a.m. and was later to be given tea and other refreshments as the day went on.

30 In all, she was interviewed on three occasions, with some slight interruptions in addition to the periods between her interviews. In each case the interview was by Miss Deveau, a Customs Officer, and was in the presence of a fellow officer, Mr. Richard Myles, who made a note of each interview.

35 The first interview lasted for 37 minutes, from 1.00 p.m. At the start of the interview the appellant was reminded of the caution which had been administered earlier and it was then repeated. This was not challenged. During that interview the appellant made no damaging admissions. She described the purchase
40 of the car on the previous Thursday and stated that she and Bowen had used the car since then; the only time they were apart being on two evenings when he visited a public house for some hours, leaving the car outside her house and leaving her in possession of the keys. This was later to be used as the basis of further
45 questioning. But neither this information nor any other of her answers at this stage amounted to any sort of an admission or confession.

50 When asked if she had any explanation as to how the controlled drug came to be in her vehicle and whether she had bought the car from a friend of Bowen's, she said that she did not want to answer any further questions, as was her right, and she

accepted the suggestion that she take legal advice. So it was that after 37 minutes this interview came to an end.

5 She then spoke with an advocate, Advocate Sharpe, and at 3.25 p.m. the second part of the interview commenced. She maintained that she had no knowledge as to how the packages came to be in the car and she was questioned as to her intentions, as to how long she would be staying in Jersey, and as to how the two of them were to support themselves. This interview came to an end at 3.50 p.m.

10 There was then an interval until 5.13 p.m. when the third interview was commenced; an interview which continued until 6.30 p.m. By then the Customs Officers had interviewed Bowen and having done so they told the appellant that he had said that the cannabis had been placed in the car at a time when either he was with her or in the public house and when she had the keys, on the basis of what she had told them earlier. To that she replied that she must have been with Gareth at that time - that is to say when the drug was placed in the car - and that she knew that it was a controlled substance. She first said that the drugs were put in the car at about 2.00 a.m. when it was outside her house and that she had not seen the packages in her house, and then later she said that she saw him place the packages in the door panel and in the rear seat when she was standing by the car and then later again that he had put the cannabis in the seats in the house and then put the other packages from the seat into the door panel on a quiet country track outside Weymouth. Thus, she made admissions in the course of this interview which were confessions but which were, to the extent which I have described, contradictory.

30 The appellant objected to the admission of these admissions and confessions and indeed of substantially all of the contents of the interviews taken as a whole on the grounds, first, that they were not legally admissible and, secondly, that, in any event, they should be excluded in the exercise of the discretion of the Court. These objections were raised on a *voir dire* on which evidence was given by the two Customs Officers and by the defendant and which resulted in a formal Judgment by the learned Commissioner in which he correctly distinguished between the issue of legal admissibility, on the one hand, which was a matter for him and matters of fact and matters involving the exercise of a discretion which were matters for the Jurats on the other hand.

45 The provisions of the Police and Criminal Evidence Act, 1984, have not been extended to this Island and issues of admissibility and of the exercise of the Court's discretion remain a matter of the Law of Jersey. In a number of cases, notably Clarkin -v- A.G. (1991) JLR 232 CofA, a decision of this Court, the Law as it stood on the mainland, prior to the coming into force of the Act of 50 1984, has been adopted as part of the Law of Jersey and so it remains.

The issue as to the admissibility of the confessions as a matter of law was resolved by the Royal Court in favour of the prosecution and it has not been the subject of this appeal to this Court. That consideration apart, the matters argued before the Court of first instance have, for the most part, not been relied upon or raised in this Court and attention has been centred by the appellant's advocate's submissions for the purposes of this appeal upon the absence of any repetition of the caution on the second and third interviews.

It is common ground that the caution was administered at the start of the first interview by way of repetition of a caution administered when the appellant was apprehended. This is supported by the terms of the caution at the start of the first interview. Then, as I have already stated, there was legal advice by telephone between the first and second interviews. It was the fact that the appellant had received legal advice which, according to Miss Deveau, led to her belief that no further caution was required on any later resumption. She agreed that the appellant only made statements against her own interests after the interview had recommenced, she then not having been reminded of her rights.

Rule 10/5 of the Code of Practice for the Detention, Treatment and Questioning of Persons by Customs Officers provides as follows:

"When there is 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 given again in full when the interview resumes".

As to this, evidence was given to the Royal Court on the voir dire by Miss Deveau. So far as the second interview was concerned, she was asked "Do you think you ought to have cautioned her at the start of that interview and if you didn't, why didn't you?" She replied "At that stage Miss Goodman had just spoken to a legal representative and I had initially spoken to Advocate Sharpe, prior to this conversation taking place, and Advocate Sharpe advised me that she would be advising Miss Goodman of her rights and to her right to remain silent or not answer any questions and I therefore did not administer the caution on that occasion".

So far as the third interview was concerned, she was again asked why she did not administer the caution at that stage and she said again "Going on what had been previously said she had spoken to her advocate and I believe that that matter had been reinforced sufficiently and it was not necessary at that stage". The appellant herself, when she gave evidence on the voir dire and when asked whether she had been told by her lawyer that she could say nothing and could be silent if she wanted, said "Yes, I was".

"Did you ask for any assistance?" "I asked her to come down and be with me and she said there was no need for that, really". "And how did you feel about that?" And she said "Well, I wanted someone there on my behalf but she said it wouldn't be of any use and there was no point. And when I was talking to her it was the first nice, kind voice I'd heard all day and I got very emotional".

The Judgment of the Royal Court which, in this instance, was the decision of the Jurats was as follows. They accepted Miss Deveau's evidence in these terms:

"Miss 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".

This was a decision, as I say, of the Jurats for which we find that there was ample support on the evidence and which we consider to be beyond criticism.

In those circumstances and in the light of the appellant's withdrawal of the numerous other grounds relied on in the Royal Court, the scope for the exercise of the Court's discretion as sought in the Royal Court is now much reduced. That there is such a discretion in appropriate cases appears clearly from the decision of this Court in Clarkin -v- A.G. to which I have referred.

The learned Commissioner having quoted extensively from the Judgment in Clarkin in terms which I do not need to repeat here directed himself as to the principles to be applied and did so by indicating that a balance was to be achieved between, on the one hand, the interest of the State in the prosecution of those who are guilty of offences and, on the other hand, the proper protection of the liberty of the individual.

When the Court at first instance has correctly directed itself as to the principles to be applied, this Court will be slow to interfere with the exercise of its discretion. It is not for this Court to substitute its discretion for that of a lower Court and it will only be inclined to interfere with the decision of the Court below if it is plainly wrong or if it appears that the Court below has taken something into account which it ought not to have taken into account, or failed to take something into account which it should have done.

Not only do we not consider that the exercise of the discretion of the Royal Court - particularly having regard to

their acceptance of the explanation to which I have referred - was plainly wrong, we do not consider that it was wrong at all. The appellant had received the legal advice to which I have referred. She had been supplied with tea and food and with cigarettes and while it may be that she was tired after an all night journey and after the experience of being arrested and held in custody and was from time to time upset at the predicament in which she found herself, there is no reason to believe that she did not remain aware of a caution which had been administered on two occasions and as to the effect of which she had obtained legal advice. Accordingly, we find no reason to interfere with the exercise of the discretion vested in the Royal Court, and the first ground of appeal fails.

The second ground of appeal can be more shortly dealt with. The offence created by Article 77B of the Customs and Excise (General Provisions) (Jersey) Law, 1972, is one of being knowingly concerned in the fraudulent evasion of the prohibition on importation of the drug concerned. It has been contended on behalf of the appellant that there was no sufficient evidence that she was involved in such a way as to fall within those words and to use the words of her advocate that hers was a "purely passive involvement". This, of course, has to be approached by the evidence called by the prosecution, the appellant having elected as was her right, to give no evidence save that which arose on the *voir dire*. The words "concerned in" have been held to be of wide effect and to be of clear meaning requiring no close analysis. See McNeill v. H.M. Advocate (1986) SCCR p.288 at p.311, a decision of a Scottish Court of Appeal on the construction of provisions in the Customs and Excise Management Act, 1979, similar to those of the Jersey Law of 1972. We accept and adopt the approach taken in that case and briefly expressed above.

We are of the view that in circumstances in which the appellant was the owner of the vehicle in which the cannabis was secreted and carried and in which she was in the passenger seat when that vehicle was driven on and off the ferry and on to these shores, there is ample evidence to satisfy the language of the Law of 1972. Accordingly this ground of appeal likewise fails.

Authorities

A.G. -v- Heuzé (22nd July, 1988) Jersey Unreported.

Clarkin -v- A.G. (1991) JLR 232 CofA.

R. -v- Farr [1982] Crim. L.R. 745.

MacNeill -v- H.M. Advocate [1986] S.C.C.R. 288.

R. -v- Martin John King (11th May, 1984) Unreported Judgment of
the Court of Criminal Appeal of England.

R. -v- Keenan [1990] 2 Q.B. 54.

R. -v- Canale 91 Cr.App.R. 1.

R. -v- Oni [1992] Crim. L.R. 183, C.A.

Neal (1983) 77 Cr.App.R. 283.