218A.

ROYAL COURT

14th November, 1988

Before: The Bailiff and
Jurats Vint, Gruchy and Orchard

Her Majesty's Attorney General
- v -
Derek George Foster

Accused on trial in respect of
count of fraud preliminary decision
relating to admissibility of a
statement and subsequent question
and answer paper completed by
accused.

H.M. Solicitor General for the Crown
Advocate R.G. Day for the accused.

JUDGMENT

THE BAILIFF: This is an unusual application. The defence seeks to exclude as 'inadmissible', firstly the statement made by the accused on the evening of Wednesday, the 15th July, 1987, and secondly a question forming part of a group of questions which were put to the accused the following afternoon.

The allegations against the police are quite different from the usual allegations - they do not allege ill-treatment, or physical oppression. What is said is that at the time the statement and the supplementary confession (in the form of a question which was submitted by the police to be in fact an elucidation of the statement) were made, the facts had worked on the mind of the accused as a result of a number of hours of intensive questioning. In fact, if one looks at the schedule of questioning one finds that he was detained on the Monday after he had flown back from the United States, a fact not known to the police at the time of his arrest and detention. On the first day he was questioned for three hours, forty-eight minutes and on the second day, Tuesday, for four hours, thirty-eight minutes and on the Wednesday, in the morning, for one hour, thirty-one minutes. The accused made a draft statement and then he transcribed it and made a corrected statement on the official police form. The total number of hours during which he was interviewed over the four days was ten hours and nine minutes. The police recorded that he took three hours, thirty minutes to write his own statement, including the draft. As far as the time involving the interviews is concerned, they are fairly lengthy, but taken in perspective they are not. It is suggested that the reason he made the statement, in which there are two admissions, which it is said now are untrue, was that he wished, having been questioned by the police, to make a clean breast of it and admit this particular charge concerning the Grenville Street property, in order to protect his wife and friends from further difficulties.

Whether that is so or not we do not know; but the fact is that in considering whether we should allow the statement and question to be admitted, the question is really one of voluntariness, coupled with the overall discretion of the Court. As regards the question of voluntariness, it is quite clear that the position in English common law, is to be found in the case of Rennie, heard before the Lord Chief Justice and Muster L.J. and McCullough L.J. reported in 1982 C.A.R. 15th October and 6th November, 1981:

"And the principle is this that no statement by a defendant was permissible in evidence against him unless it was shown by the prosecution to have been made voluntarily in the sense that it had not been obtained from him either by fear of prejudice or hope of advantage or by oppression".

That was the principle we applied and we have particular regard to the second part of the judgment in which it says:

"When you apply the principle where the defendant when deciding to confess not only realises the strength of the evidence known to the police ..." (I interpelllate here the measure of the questioning must have indicated to the accused here the strength of the police evidence) "... and the hopelessness of escaping conviction but was conscious at the time of the fact that it might well be advantageous to him or someone close to him if he confessed such thoughts being prompted by an interrogating officer ..." (I should interpellate again there were no such thoughts prompted here by an interrogating officer)"... the trial judge ... apply his commonsense reminding himself that the word 'voluntary' in ordinary parlance means 'of one's own free will' accordingly".

We cannot overlook the statements at the beginning of the interrogation and the signing at the end, that there were no complaints against the police and the usual wording of the statement, that it was made 'of one's own free will and voluntarily'. Indeed in the course of his evidence in the 'voir dire', Mr. Foster, having put the words to that effect at the beginning of his draft statement was asked why he did so, and he said that: "those were the kind of words that were expected of him". We are quite satisfied that the Crown has proved to our satisfaction that both the confession and the subsequent question on page 821 of the documents were voluntary.

The next question we asked ourselves is whether or not, notwithstanding our finding, we should exercise our discretion to exclude the statement because although it would be admissible, the probative value would be outweighed by the prejudice caused. We cannot find that that is the position here today.

We therefore exercise our discretion against you, Advocate Day, and the two matters you have asked to be excluded will be admitted.

Authorities cited:-

R. -v- Rennie (1982) All ER 385 C.A.