

4 pages.

ROYAL COURT
(Samedi Division)

191.

7th October, 1997

Before: F. C. Hamon, Esq., Deputy Bailiff.

The Attorney General

- v -

David Waller

Trial before the *Assise Criminelle* following a not guilty plea to:

1 count of grave and criminal assault (count 1); and

1 count of obstructing the Police in the execution of their duty (count 2).

Defence challenge to admissibility of evidence.

A.D. Robinson, Esq., Crown Advocate.
Advocate J. Martin for the accused.

JUDGMENT

5 THE DEPUTY BAILIFF: Miss Martin raised on the *voire dire* the admissibility of evidence regarding an alleged verbal exchange between the accused and P.C. Coxshall at Police Headquarters, after he had been arrested. We heard evidence on the *voire dire* from P.C. Coxshall, P.C. Kemp and from the accused.

10 The accused was arrested in the early hours of 22nd April, 1997, and is charged with the main offence of a grave and criminal assault on P.C. Coxshall. In his evidence before us this morning, P.C. Coxshall said that, while still in a state of shock and feeling physically sick, he came into the detention area of Police Headquarters, which is a room about 8 ft. by 10 ft. Sergeant Aubert was the Custody Sergeant and in the room were P.C. Hughes, P.C. Hingston and P.C. Kemp.

15 It is alleged that the accused said something to P.C. Coxshall to the effect that he was "out of order" when he came into the room to explain why the accused had been arrested and detained. P.C. Coxshall had stated that the accused had held him in a headlock and was on his back. It was at this point, he said, that the accused winked and said, 20 in a very quiet voice, "I heard you screaming". P.C. Coxshall, not unnaturally, was very shocked and said that it appeared that the accused had derived pleasure from having heard him scream. Or that was the impression that he had been given from that remark.

5 P.C. Kemp also heard a similar statement. He heard some aggressive words from the accused and P.C. Coxshall said "who was on top of whom?" The accused then said quietly "I heard you screaming". P.C. Kemp said that he had heard similar statements from other accused in similar circumstances and did not consider the remark as particularly relevant. Clearly, no other Officer in the room heard the words spoken.

10 P.C. Coxshall made a detailed statement at 2 o'clock in the afternoon of 22nd April, 1997. P.C. Kemp made two statements, one on 13th May, 1997, at nine minutes past ten in the evening and another, more or less repeating the words in the first statement, at seven minutes past four in the morning of 2nd June. A question and answer was carried out with the accused at nine o'clock on the morning of 22nd April.

At no time since the accused has been in custody has the alleged statements been put to him.

20 P.C. Coxshall said, as did P.C. Kemp, in the evidence on the *voire dire* before me, that he was aware of Code C of the States of Jersey Police Code of Practice and that he would normally have recorded the comment but felt at the time too unfit to do so. P.C. Kemp, apparently, did not see the significance of the exchange and did not mention it to anyone until his statement in May.

30 P.C. Coxshall's statement is not quite as precise in what it says when compared to what he told us in Court because the statement makes no mention of his having said that Waller was on top of him, words which - with slight variation - P.C. Kemp was able to recall in his two self-recorded interviews.

Rule 12(13) of Code C reads as follows:

35 *"A written record should also be made of any comments made by a suspected person including unsolicited comments which are outside the context of an interview but which might be relevant to the offence. Any such record must be timed and signed by the maker. Where practicable a person shall be given the opportunity to read that record and to sign it as correct or to indicate the respects in which he considers it inaccurate. Any refusal to sign should be recorded"*.

45 The remark which, I have to point out the accused, on oath, denied having made is outside an interview but I have to record that it was made in the relative calm and within the confines of a detention room at Police Headquarters. The Custody Sergeant did not hear it; P.C. Kemp did not record the remark; and there may have been at least one or, perhaps, two other officers present who, clearly, did not hear it either. P.C. Coxshall made a full statement later that afternoon to another Police Constable. However, it was only on 13th May that a statement was made by P.C. Kemp and then another self-recorded statement on 2nd June.

55 There has clearly been a breach of the Code and I refer to the words of the Court of Appeal in Clarkin -v- A.G. (1991) JLR 232, where it said this:

5 "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 1950 S.C. (J) 19; 1950 S.L.T. 37, applied, which was
cited by Lord Hodson in King -v- R. [1969] 1 A.C. 304; [1968]
10 2 All E.R. 610; (1968), 12 W.I.R. 268; 112 Sol. Jo. 419,
applied, and which seems to us to illuminate the problem in
words which we are happy to adopt (1950 S.C. (J) at 26-27:

15 "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
20 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,
25 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
30 safeguards for the protection of the citizen to vanish,
and of offering a positive inducement to the authorities
to proceed by irregular methods".

35 It seems to me that a statement not regarded at the time as
significant - although it was regarded as significant by P.C. Coxshall -
has now apparently become significant. But the rules are there and they
are there for obvious reasons. This is not a question of doubting the
integrity of Police Officers, but it is a question of whether the rules
40 have been adhered to by Police Officers who were under no pressure at
the time and who were working within the confines of Police
Headquarters. I feel, with some hesitation because I can see that there
might have been occasions where I would have taken quite the opposite
view, that, in fairness to the accused, I must exclude that part of the
45 statement and I so rule.

Authorities

Wayne Ward (1993) 98 Cr.App.R. 337.

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