R v Shillibier [2006] EWCA 793

The victim of the killing was a young woman called Rebecca (or Becky) Storrs, who was 18 years of age. Her semi-naked body was found partially submerged in the River Ogmore behind a cash and carry store in Bridgend at about 11 a.m. on 6 March 1999. She had suffered a serious sexual assault and had been strangled.

There was evidence from two young men, Gareth Jones and Mark Hill, that in the early hours of 6 March they had gone with Rebecca to a party at the flat of a young woman called Katrina Wallace on the Wild Mill estate. They had left the flat sometime after 3.20 a.m. because they were fed up and Rebecca wanted to look for drugs.

Outside the flat - Jones said it was on the landing, Hill could not remember where it was - they met a man called "Shilbe" or something like that. Rebecca asked the man for drugs and he invited her to go with him, which she did. Jones then phoned for a taxi, a call which was timed at just before 4.00 a.m., and the two men went off in the taxi.

At an early stage of the police investigation the senior officers in charge, laid down a policy for the investigation. Decisions were kept in a policy file. Entries made in the file on the afternoon of 7 March referred to three relevant categorisations:

> i) "Significant witnesses". It was decided as a matter of policy that any significant witnesses who were asked to give witness statements would have their first account audio taped in order to avoid any subsequent dispute as to what was said.
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> ii) "TIE individuals". "TIE" stands for "trace, interview and eliminate". The judge was told in evidence that a person given a TIE nomination would be someone judged to have particular relevance to the enquiry but who was not at that stage a suspect. Only the senior investigating officer or his deputy could so nominate a person. It was decided as a matter of policy that witnesses nominated as TIE individuals would be cautioned by interviewing officers.
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> No specific instruction was given about the precise form of caution to be used, but the judge thought it likely that the senior officers would have assumed that a full caution in accordance with what was then paragraph 10.4 (now 10.5) of Code C of the PACE Codes of Practice would be used. That caution is in these terms: "You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."
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> iii) "Suspects", who were to be interviewed by officers trained in a particular method of interviewing which is given the acronym "PEACE".

It was decided that Gareth Jones and Mark Hill were to be treated as significant witnesses. Both of them were questioned on the evening of 7 March and witness statements were taken from them as the questioning progressed. At some point before or during their

questioning each was also nominated a TIE individual. In any event, in the case of each of them a full caution was administered at the start of, or soon after the start of, questioning.

> On the same evening, 7 March, Katrina Wallace herself was asked to attend the police station as a volunteer. She was questioned and a witness statement was taken from her. She too was given a full caution.
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> Warrants were also obtained to enable the police to search the homes of Jones, Hill and Wallace.

The information which the police had at that time as a result of the witness statements of Jones, Hill and Wallace was contradictory. On the one hand, Jones and Hill said they had left Wallace's flat with Rebecca, and that she had gone off with the unknown man while they then went off to find a taxi. On the other hand, the information given by Wallace was that Rebecca had gone off in a taxi with Jones and Hill.

It was only through subsequent investigations that it was established that the two young men had indeed gone off in a taxi, without Rebecca.

At 2.00 pm on 8 March a decision was taken to treat the unknown male referred to by Jones and Hill as a TIE individual. The stated reason was that he was the "last person to see the deceased alive and in her company"; though, as the judge observed, the police did not actually know whether the unknown male was the last person to see her alive since at that point they had two conflicting accounts.

An entry in the file later that afternoon recorded, in relation to this TIE individual: "The requirements are as follows: full statement to include movements during relevant times; obtain clothing of subject; obtain intimate samples of subject; take possession of any vehicles of subject and forensic examination of same; home address of subject to be searched; movements of subject to be verified by way of witness statements …."

An entry on the file at 10 a.m. on 9 March stated that the *appellant* was to be treated as a TIE individual, because of "research undertaken by intelligence cell". It seems that the connection was made through the similarity between the appellant's known nickname, "Shilly", and the name or names mentioned by Jones and Hill when describing their encounter with the unknown male.

In the afternoon of 9 March two police officers went to the address where the appellant was lodging and asked him to go to the police station to assist them with their enquiries. He agreed to go with them.

At about the same time a warrant was obtained to search the address where he had been lodging. The information for the warrant stated:

> "(ii) there is material on the premises which is likely to be of substantial value to the investigation of the offence …: clothing, footwear, sharp instruments and vehicles, likely to prove or disprove as below
>
> (iii) the material is likely to be relevant evidence …: likely to prove or disprove involvement in the commission of the offence …

(v)(d) the purpose of the search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them …: vital evidence could be destroyed."

At the police station the appellant was questioned and a witness statement was taken from him by a Det Sgt & Det Con.

The Det Sgt took a deliberate decision as to the form of the caution he should give the appellant. He knew that he had to give some form of caution because that was the policy laid down in relation to TIE individuals. But he said that he was concerned to ensure that the person questioned did not feel oppressed or a suspect, and he thought that the full wording of the caution under paragraph 10.4 of Code C might have that effect because of the words "it may harm your defence if you do not mention when questioned something which you later rely on in court".

The Det Sgt also stated in cross-examination that in a briefing on 8 March he had heard it said that the full form of caution had resulted in difficulties with communication with other volunteer witnesses.

In the result, what he said at the beginning of the first session of questioning was as follows:

> "Marc, in fairness to you, I have to caution you that you do not have to say anything unless you wish to do so. Anything you do say may be given in evidence. I am also duty bound to remind you of free and independent legal advice, and tell you that you are entitled to this at any time whilst you are a volunteer attender, that you are not under arrest and that you are free to leave at any time. You are entitled to contact a solicitor by telephone, and if you want a delay to speak to a solicitor, just say …."

The appellant was then asked if he wanted a solicitor, to which he replied that he did not and that his solicitor was in Plymouth and could not get there anyway. He was told that if he wanted to speak to his solicitor a room would be made available for him to speak on the telephone.

DS also read out the standard declaration at the top of the witness statement. When asked if he understood it, the appellant replied that he did, and there occurred the following exchange:

> "DS: What does it mean mate?
>
> Appellant: It means, give you any sort of lies, any sort of shit, and you're up for prosecution for it.
>
> DS: "Okay, that's if, if it's tendered in evidence. Yeah that's right."

The appellant was then questioned in detail and a witness statement was taken as they went along. The questioning took up six tapes, one of which was faulty. At the beginning of each tape a caution was given in the same form as we have described.

During the sixth tape the Det Sgt went out of the room and told the SIO & DSIO that in his opinion the appellant was lying as to his movements in the early morning of 6 March. What he had been saying was contrary to other information that the police had. A decision was

then taken by the SIO to arrest the appellant on suspicion of the murder of Rebecca Storrs. That was done at 8.45 pm on 9 March.

At the end of the sixth tape, when asked about the way the interview had gone so far, the appellant said there was nothing he wanted to say about it, and "I know it's done fair and square".

The following day, 10 March, there took place the first interview after the appellant's arrest as a suspect. A solicitor was present and a full caution was given. The statement made in the course of the previous questioning was read over to the appellant, who indicated that he wanted to add to what he had said to the police previously.

He said he had left out one thing: "I've left it out for one reason: fear and I ain't got a fucking alibi". It transpired that what he had left out was that, on his account, he had sat in his car with Rebecca and had supplied some amphetamine to her, and that he had then slept in his car rather than returning home.

At the trial the prosecution sought to rely on that and other lies alleged to have been told by the appellant in the course of questioning before he was arrested and interviewed under full caution. That led to an application to Aikens J to exclude from evidence, under 78 of the Police and Criminal Evidence Act 1984, the entirety of the questioning of the appellant prior to his arrest.

The judge's ruling on the caution issue

The judge rejected the defence application for reasons set out in a detailed and lucid ruling. His reasons were in summary as follows.

First, he rejected the submission that the appellant should have been treated as a suspect at the time when he was taken to the police station as a volunteer. The police had conflicting statements about what had happened to Rebecca. Nor was there any certainty that the unknown male was in fact the appellant. The known facts, taken together, could not reasonably make him a suspect of the offence of murder. The fact that the police obtained a warrant to search the house where he lived did not prove that he ought to have been treated as a suspect.

To obtain the warrant the police had to be satisfied that there was material at the house which was likely to be of substantial value to the *investigation*; but the police were trying to investigate so as to eliminate from their inquiry people who were at the scene at the relevant time but, upon investigation, could not be suspects. As the information stated, the search was likely to *prove or disprove* the involvement of any inhabitant of the house in the offence.

Thus judge held that there did not exist reasonable grounds to suspect the appellant of the murder and that there was therefore no requirement that he be cautioned as a suspect in accordance with paragraphs 10.1 to 10.4 of Code C.

Secondly, the judge held that Det Sgt's deliberate decision not to use the full form of the caution did not involve a breach of the Code. There was no obligation under the Code to caution TIE individuals at all. It was likely that the senior officers would have assumed that

the paragraph 10.4 form of caution would be used, but a failure to conform with an informal policy laid down for a particular investigation did not amount to a breach of the Code.

Thirdly, the judge held that even if, contrary to his view, the failure to use the paragraph 10.4 form of caution did amount to a breach of the Code, it was not a "serious and substantial" breach in the circumstances of the case. He was satisfied that Det Sgt acted in good faith. A form of caution was used which made it clear that what the appellant said as a volunteer could be used in evidence in court.

That, together with the declaration at the top of the statement, put him on notice that he had to tell the truth. It was reasonable for Det Sgt to consider that in relation to a witness, as opposed to a suspect, a reference to harming his defence if he failed to mention something when questioned might appear oppressive and threatening and might make the witness think he was indeed a suspect. Moreover the appellant was given all the other information mentioned in paragraph 10.2 of Code C, i.e. that he was not under arrest and was free to go. Overall, the appellant was adequately made aware of his rights *as a witness*.

Finally, the judge considered what might have happened if the full form of caution had been used. He was satisfied that the appellant would have carried on exactly as he did. He noted that when the appellant came to explain why he wanted to add to the story he had given, he did not say that it was anything to do with what he had been told earlier by Det Sgt, but that it was because he had been afraid and he lacked an alibi; which suggested that he knew perfectly well at the earlier stage that what he was saying was important, yet he was still prepared to go ahead and say it.

For all those reasons the judge concluded that the evidence should be admitted.

The interpretation and comments made within this document are not to be considered as legal advice.

Reference should always be made to the original case.