

R v Ameer & Lucas [1977]

Crim LR 104

Ameer & Lucas were arrested in possession of a large amount of cannabis by the police who were posing as purchasers. All negotiations had been conducted between Ameer and a trusted police informant, B, whom the prosecution declined to call. He was subpoenaed by Ameer who applied for prosecution evidence to be excluded on the ground that it had been elicited by the activities all of an 'Agent Provocateur', or alternatively that it had emerged in the course of a police conspiracy and the court ought not to receive it.

The informant B's testimony relevant to the first ground, was that he had approached Ameer, whom he knew to be involved in the social smoking of cannabis and he approached him with cocaine, asking him to help him sell it. Ameer refused this bait but agreed after much persuasion from B who said, 'I had to use every trick in the book' to procure cannabis for some enthusiastic purchasers.

As a result of B's incitement, Ameer approached Lucas who obtained 50lb of cannabis for a third party. B arranged the meeting and helped to count the money before the enthusiastic purchasers revealed their true police identities. Ameer told of B's involvement and backed up his account claiming he would not have acted without B's repeated request for help in the matter. The Police said they relied on B and did not monitor his negotiations with Ameer.

On the second ground, the informant B alleged that police 'licensed' him to deal in drugs. They had supplied him with some of the drugs from deals he set up and he also received part of the proceeds of his sales. They had in fact, he stated, given him some of the cannabis seized from Ameer, who was charged with possession of some 36lb of cannabis. The police denied these allegations although they were at a loss to explain how B was able to produce to the Court some official exhibit labels which appeared to relate to the cannabis in this particular case.

The court had a discretion to exclude the evidence on either ground. No finding was made on the second ground, but the evidence was ruled inadmissible because it had been obtained by the activity of Agent Provocateur. In deciding whether to exercise this discretion, the judge accepted the relevance of seven factors, which were extrapolated from decided cases, the 1929 Royal commission on policing, and the 1969 Home Office guidelines to police:

- 1 Was a crime of the same kind as that charged already a foot at the time of the intervention of the police agent?
- 2 Had the defendant committed an offence of a class he would not have committed but for the encouragement of the police agent?
- 3 Had the defendants a propensity to engage in the crime charged? (Ameer and Lucas were social smokers and there was no evidence that they had been involved in drug supply on any other occasion).
- 4 Did the police agent play a major part in the criminal activity?
- 5 Is the court certain, in retrospect, of the informant's reliability? (In the course of the *voire dire*, the prosecution itself made an all-out attack on B's credibility.
- 6 Was the informer's participation approved at a senior police level as required by the Home Office Guidelines of the day?
- 7 Was the offence so grave that the public interest could justify the use of such 'entrapment' techniques?

This case was then superseded by the ruling in R v Sang [1979] HL 25 JUL 1979

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Reference should always be made to the original case.*