

R v Christou & Wright [1992] 95 CrAppRep 2

Exclusion of 'unfair evidence'

Two undercover police officers set up a second hand jewellery shop, 'Stardust Jewellers' purporting to be conducting a business of buying and selling jewellery. Covert surveillance equipment was recording the activities in the shop. A few legitimate transactions took place but the purpose of the 'sting' was to identify stolen property, the thieves, burglars and handlers of stolen property. The recording equipment identified property and individuals at the shop counter.

The undercover officers obviously asked the types of questions that 'dishonest jewellers' would have asked, E.g. *'where did the gear come from as it would be unwise to try and sell it on in that area'*. They also obtained signed receipts.

As a result of this operation the Police arrested and charged some 30 individuals, two of whom were Christou and Wright.

At their trial they challenged the admissibility of the evidence gathered against them, but pleaded guilty to handling after the trial judge ruled against them and concluded as follows;

'That, since the evidence from the shop had admittedly been obtained from the appellants by a trick, he had a discretion to exclude the evidence if it's admission would prejudice a fair trial. He held that, while the discretion under s.78 might be wider than the common law discretion identified in R v Sang, the criteria of unfairness were the same whether he was exercising his discretion at common law or under the statute'.

The Judge in a victory for common sense said that the challenged evidence would not adversely affect the fairness of the trial, *"since the trick was not applied to the appellants; they voluntarily applied the trick to themselves"*.

They appealed on the following grounds;

- That the whole concept was a trick designed to deprive customers in the shop of their protection against self incrimination and ought to be excluded under the common law principle in Sang [1980] or Section 78 of PACE 1984
- That they considered the questioning that had taken place in the shop was 'an interview' under the auspices of the Codes of Practice (PACE 1984) and should rightly have been conducted under caution. (See R v Bryce 1992)

HELD - Appeals dismissed.

The Court of Appeal gave two grounds for dismissing the appeals:

- *The evidence in the shop had been obtained by a trick, but after the offences themselves had been committed. **The officers had not participated in any of these offences or incited them.** The evidence would not affect the fairness of the trial and the trial judge was right not to exclude it;*
- *Although Code C extends beyond those in police detention it was intended to protect suspects who were vulnerable to abuse or pressure. The situation in the shop was quite different, the suspects were not being questioned by police officers acting as such. The conversation was on **equal terms** and there was no question of pressure or intimidation by a 'person in authority'. Therefore the judge was correct to allow the evidence.*

Their Lordships also were not prepared to accept that the whole operation was contrary to public policy and that the undercover officers should have arrested the offenders as soon as they had sufficient evidence. That was clearly a matter for police policy and was an operational decision.

It would be wrong for police officers to adopt an undercover pose to enable them to ask questions uninhibited by the requirements of the Codes and in order to circumvent them. This case is not an authority to question suspects about past offences specifically under investigation; *R v Bryce* [1992] 4 All ER 567

A number of challenges have been made on the fairness of evidence obtained by a trick; see also *R v McLean and Kosten* [1993] and *R v Mason* WLR 139 [1988]

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.