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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

S.C.A. No. 14 of 2008

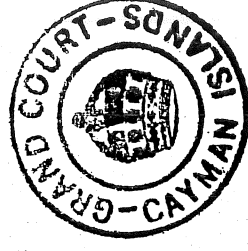
JARRETT ALLEN DANIELS

V.

REGINA

Appearances: Mr. Howard Hamilton Q.C. instructed by
Ms. Margetta Facey-Clarke of Facey-Clarke &
Associates for the Applicant

Ms. Tanya Lobban of the Government Legal
Department for the Crown, the Defendant



Before: Hon. Justice Henderson

Heard: May 15, 2009

JUDGMENT

1. Jarrett Daniels appeals from his conviction in the Summary Court on charges of being concerned in the importation of ganja with intent to supply on a single ground: that his statement to the police should have been excluded from evidence because he was not warned of his right to silence.
2. On the evening of February 7th, 2007, the police apprehended a group of people attempting to import a boatload of ganja into the Cayman Islands from Jamaica. Mr. Daniels was not among them.
3. One week later, two of the investigating officers (Police Constable Campbell and Detective Foster) went to the Mosquito Research Unit on Grand Cayman looking for Mr. Daniels. When they encountered him, they identified themselves to him as police officers. Constable Campbell told Mr. Daniels that he was conducting an investigation into “a quantity of vegetable matter resembling ganja recovered at

North Side.” Campbell added that he believed Mr. Daniels “could assist us with the investigation.” He asked Mr. Daniels why he had been at Morgan’s Harbour, the area where the ganja was to be unloaded from the boat, on February 7, 2007. Mr. Daniels replied: “somebody said I was there?” He then denied having been present in that area on the date in question. He said he had left work at 4:00 p.m. that day (a Wednesday) and had been home after that. He said that he only left his home once to go to a store and returned home immediately afterwards.

4. Constable Campbell then asked Daniels if he was familiar with a boat called the “Mount Zion.” This was the boat being used by the traffickers to transport the ganja. Mr. Daniels replied that he was not. Constable Campbell asked Mr. Daniels if he knew Sheena Minzett. She had been arrested when the boat and its crew were apprehended. Mr. Daniels replied that he knew her “from West Bay from school days.” At this point Constable Campbell asked Mr. Daniels “if he would be willing to give a witness statement in relation to what he had just told me.” Mr. Daniels agreed to that.

5. The two police officers accompanied Mr. Daniels to the George Town Police Station and began a conversation with him. Constable

Campbell began to write out a statement for Mr. Daniels on the standard witness statement form used in this jurisdiction. After making a note about where Mr. Daniels was employed, Constable Campbell heard Mr. Daniels say:

“I went down there at Morgan’s Harbour and speak to people. If my name came up, I don’t know what they said about me. But I admit that I am involved. It doesn’t make sense giving you gentlemen the run-around. If it goes into black and white and I sign, I can’t change after. So I am not giving the statement. I think at this time, is it possible for me to speak with a lawyer?”

6. At this point, Constable Campbell interrupted and told Mr. Daniels that he was under arrest for the offences of importation and possession of ganja with intent to supply. He then administered the standard caution concerning the right to silence. After the caution, Mr. Daniels made no response. He was allowed to make a phone call and then advised the officers that his wife was in the process of obtaining a lawyer for him.

7. In cross-examination, Constable Campbell agreed that he believed that Mr. Daniels had been present at Morgan’s Harbour on the evening the drugs were to arrive when he approached him at the Mosquito Research Unit. He did not, however, regard him as a suspect. Later, however, in an interview conducted after the caution was

administered, Constable Campbell suggested to Mr. Daniels that he had been on the Mount Zion vessel and had disembarked from it. It is unclear, because the question was not explored further in cross-examination, whether Campbell held that belief before he approached Mr. Daniels for the first time.

8. Detective Foster, who accompanied Constable Campbell, testified that Mr. Daniels was told at the outset that “investigations had shown that on the night of the 7th February, 2007 he had been at Morgan’s Harbour dock conversing with at least two of the persons who are currently in custody prior to the boat Mount Zion leaving that said dock.” He said that Detective Campbell then asked Mr. Daniels: “what was his purpose for being there at the dock that night.”

9. In cross-examination, Detective Foster said he regarded Mr. Daniels as a potential Crown witness because he believed Daniels had been at Morgan’s Harbour talking to two of the defendants before the Mount Zion left the dock. He also asserted that he did not suspect him of complicity in a crime because “he could have gone there for any purpose to speak to them about anything.”

10. There was little evidence against Mr. Daniels other than his admission (quoted above) that he was “involved”. It was this self incriminating statement which resulted in conviction. Before the Learned Magistrate he argued, unsuccessfully, that his statements should be excluded because they were made before he had been warned of his right to silence.

11. In this jurisdiction, the *Judges’ Rules* of 1964 are still in effect. For present purposes, these are the material provisions:

“The Judges control the conduct of trials and the admission of evidence against persons on trial before them; they do not control or in any way initiate or supervise police activities or conduct. As stated in paragraph (e) of the introduction to the present Rules, it is the law that answers and statements made are only admissible in evidence if they have been voluntary in the sense that they have not been obtained by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression. The Rules do not purport to envisage or deal with the many varieties of conduct which might render answers and statements involuntary and therefore inadmissible. The Rules merely deal with particular aspects of the matter.

...

These Rules do not affect the principles

...

(d) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence;

- (e) That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

The principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these Rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

- I. When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.
- II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person ... has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms: -

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”

12. These Rules are not rules of law but rules of practice for the guidance of police officers: per Lord Goddard in *R. v. May* (1952)

36 Cr. App. R. 91 at 93. The test of admissibility is voluntariness; a breach of the Judges' Rules does not, in itself, render a statement to the police involuntary. Such a breach does provide the Court with a discretion to refuse to admit the statement: *ibid.*, and see *R. v. Prager* (1972) 56 Cr. App. R. 151.

13. Rule II requires that a defendant be warned of his right to silence “as soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence” This test is largely an objective one; the subjective belief of a police officer that he does not have evidence affording reasonable grounds for suspicion is a relevant consideration but far from determinative. What the Court must do on a *voir dire* when a breach of Rule II is alleged is assess, from the viewpoint of the reasonable and objective observer, whether the police officer had such evidence at the relevant time. The question must be answered by taking into account what the officer knew or did not know at that point in his investigation, without regard to what was learned later on. The issue is not whether the police officer suspected that he was questioning a person who had committed an offence but whether he had evidence which would give him a reasonable ground for suspecting that.

14. On the *voir dire*, the focus of the enquiry ought to be an examination of what the officer knew about the participation of the suspect in a crime and when he knew it. The evidence must afford reasonable grounds for “suspecting”, not “knowing” or “believing”. In a different context, Lord Devlin has commented upon the distinction between suspicion and proof:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; ‘I suspect but I cannot prove’. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage.

...

Their Lordships have not found any English authority in which reasonable suspicion has been equated with prima facie proof.

...

There is another distinction between reasonable suspicion and prima facie proof. Prima facie consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all.”
Shaaban Bin Hussien and Others v. Chong Fook Kam and Another [1969] 3 All E.R. 1626 (P.C.).

15. Two examples of an application of Rule II to investigations of driving offences were cited in argument: *Dilks v. Tilley* [1979]

R.T.R. 459 (Q.B.) and *Hennell v. Cuthbert* [1962] Crim. L.R. 104 (Q.B.).

16. The evidence shows that Constable Campbell believed Mr. Daniels had been at the dock where the boat was to unload the ganja, that he was familiar with the boat, and that Mr. Daniels knew one of the defendants who was importing the ganja into the Cayman Islands. There is no evidence that Constable Campbell's knowledge of the matter went further than that at the time he approached Mr. Daniels for a statement. Detective Foster believed that Mr. Daniels had been at the dock at the relevant time speaking with at least two of the persons who were involved in importing the ganja. There is no evidence that Detective Foster's knowledge, at the time he approached Mr. Daniels for a statement, went any further.

17. This evidence is not sufficient to permit a conclusion that either Constable Campbell or Detective Foster knew enough to provide reasonable grounds for suspecting that Mr. Daniels had committed an offence. That situation did not change until Mr. Daniels suddenly admitted, at the police station, that he had been "involved." It follows that there was no breach of the *Judges' Rules* on this occasion.

18. The evidence demonstrates that Mr. Daniels' self incriminating remark was voluntary; indeed, it was volunteered.

19. For these reasons, the Learned Magistrate did not err when she admitted the statement in evidence.

20. The appeal from conviction is dismissed.

Dated this 29th day of June, 2009

Henderson, J.
Henderson, J.
Judge of the Grand Court

