

JERSEY / JUDGMENT

AG -v- Brennan [2016] JRC 199E (04 November 2016)

[2016] JRC 199E

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[2016] JRC 199E [New search] [Help] Hearing (Criminal) - application by the defence to exclude evidence. [2016]JRC199E Royal Court (Samedi) 4 November 2016 Before : Sir Christopher Pitchers, Commissioner, sitting alone. The Attorney General -v- Carl Roy Brennan R. C. P. Pedley, Esq., Crown Advocate. Advocate M. P. Boothman for the Defendant.

ruling

THE commissioner:

Introduction

1. The defendant faces an indictment containing one count of attempting to remove criminal property from Jersey, contrary to Article 31(1) of the Proceeds of Crime (Jersey) Law 1999 . 2. The allegation relates to £11,660 in cash found in his car as he was about to leave Jersey by ferry on 18 th June, 2016. It is the prosecution case that that money represented the proceeds of drug dealing on the Island. The defence deny that the money was criminal property. The defendant asserted to customs officers in interview that he had won the money gambling. 3. The prosecution wish to present as part of their case evidence of previous visits to Jersey and, in the case of a visit in May 2016, not only the fact of the visit but what happened then namely the discovery of a small amount of cocaine in his possession and his prosecution and conviction on a guilty plea of importing that cocaine into Jersey. The defence object to the admission of all that evidence on the grounds that it is not relevant to the charge or, to the extent that it may be relevant , "the admission of the evidence would so adversely affect the fairness of the proceedings that the court ought not to admit it". The test 4. The correct test in cases such as the present is that set out by the Court of Appeal in U v AG

- [2012] (1) JLR 349, where the court said: "39 The seminal exposition of the admissibility of background evidence of such a kind derives from the judgment of Purchas, L. J. in the case of *R. v. Pettman* (12): "Where it is necessary to place before the jury evidence of part of a continual background or history relevant to the offence charged in the indictment, and without the totality of which the account placed before the jury would be incomplete or incomprehensible, then the fact that the whole account involves including evidence establishing the commission of an offence with which the accused is not charged is not of itself a ground for excluding the evidence." ... "41 all that is required is that such evidence passes the threshold test for relevance; and, although background or historical evidence may include evidence of similar fact, it is important to distinguish evidence of background from similar fact evidence because of the higher test of admissibility invariably accorded to the latter. Professor Birch pointed out the distinction in his *Commentary on R.*
- v. Stevens ([1995] *Criminal Law Review* at 651): "Similar fact evidence is employed as evidence which tends strongly to prove a particular fact (identity, intent, causal connection or whatever) which could be proved by other means but which the prosecution has chosen to establish by reference to other misconduct of the accused. As such, the evidence may need to be possessed of a high degree of probative value in order to buy its ticket to admissibility, for it involves 'dragging up' material which is by definition prejudicial and which might have been left out. Thus it has been said that such evidence should be admitted in circumstances where it would be an 'affront to common sense' to exclude it (per Lord Cross in *Director of Public Prosecutions v. Boardman*
- [1975] A. C. 421 at p.456). Background evidence, on the other hand, has a far less dramatic but no less important claim to be received. It is admitted in order to put the jury in the general picture about the characters involved in the action and the run-up to the alleged offence. It may or may not involve prior offences; if it does so this is because the account would be, as Purchas, L. J. says [in *R. v. Pettman* (May 2nd, 1985, unreported)], 'incomplete or incoherent' without them. It is not so much that it would be an affront to common sense to exclude the evidence, rather that it is helpful to have it and difficult for the jury to do their job if events are viewed in total isolation from their history". Application to the present case 5. There is no issue in this case that the defendant was in possession of the money and was attempting to remove it from Jersey. Under Art 31 the prosecution must prove that the money was criminal property. The issue in the case is whether that is proved. Article 29 provides: "(1) For the purposes of this Part of this Law, property is criminal property if - (a) it constitutes proceeds of criminal conduct or represents such proceeds, whether in whole or in part and whether directly or indirectly; and (b) the alleged offender knows or suspects that it constitutes or represents such proceeds." 6. In summary, the prosecution rely upon a number of matters: (i) The money was concealed in the boot of the car; (ii) When questioned, the defendant asserted that he had won the money by betting on a named horse with a Jersey bookmaker about whom he gave considerable detail. That man was traced and denied ever having taken a bet or paid out winnings to the defendant. (iii)

The modest earnings that he described to the investigators were quite inconsistent with his legitimate possession of £11,660 in cash particularly when seen against the background of his previous visits to Jersey earlier in the year when he spent extravagantly on himself. (iv) The defendant had no connection with Jersey and no sensible reason to make six trips each of several days in five months. 7. The defence object to any evidence being called as to previous trips to Jersey and, specifically, the finding of cocaine on arrival in May 2016 and the subsequent conviction and sentence. 8. A central point in the prosecution case is that the defendant had hidden the money in the boot in order to conceal it from Customs as set out in sub-paragraphs (i) and (ii) above. His explanation was that he wanted to avoid "all this rigmarole" having been stopped coming in and going out. He was not stopped on the way in in June. He was stopped both in March and January and, with more 'rigmarole', in May. No proper consideration can be given by the jurors to this issue without examining his explanation for hiding the money. That inevitably must include a consideration of the 'rigmarole' to see whether it was such as to make avoiding it a possibly plausible excuse for the attempted deception of customs. 9. The evidence as to the trip in May is more than background. It is directly relevant to an important issue for the jurors. Indeed it is hard to see how the defence could conduct their case without reference to it. 10. Two further legitimate areas of exploration directly relevant to the offence with which he is charged are first the defendant's reason for coming to Jersey, a destination with which he has no obvious connection, and secondly what the source of the £11,660 could be if the jurors reject the explanation about the successful bet. They would be entitled to consider whether his modest declared income was sufficient to fund the trip with such a large sum left over. 11. As to his reason for coming to Jersey on 15 th June, he has a clear answer namely he was required to do so by order of a Jersey court. Quite apart from the prosecution wishing to explore this issue, the defence cannot present their case without reference to the earlier trip and the arrest. So far as the broader question of his connection with Jersey and his modest means but ready access to large sums of cash, the earlier trips are clearly relevant evidence and pass the test set out in *U v AG*. The defence have also served a witness statement going to this issue. No sensible consideration of the issues in the case could take place without that evidence being before the jurors. 12. There remains the question of the exercise of my discretion not to allow the admission of the evidence because of its adverse effect on the fairness of the proceedings. This relates only to the fact of the finding of cocaine in May and the subsequent prosecution. There is no prejudice involved in the mere fact of multiple trips to the Island. The authorities are clear that the fact that relevant evidence discloses previous criminality is not in itself a reason to exclude the evidence as a matter of discretion. 13. Here the disclosure that he was found in possession of a small amount of cocaine for what was obviously personal use and received a Bind-Over to leave the Island carries would have only a modest amount of prejudicial effect. As I have indicated in paragraph 14 above, it is hard to see how the defence can present their case without adducing evidence of the court order that he return to the Island. The evidence of the conviction and sentence are so closely bound up with the relevant admissible evidence that it cannot sensibly be separated. The relevant admissible

evidence is important to a central to the case. The prejudicial effect of part of it is modest and come nowhere near to outweighing the probative effect of that relevant evidence. 14. Two subsidiary points: (i) I have taken no account of the prosecution point about the defendant staying a day later than the date specified in the Bind-Over. The defendant gave the explanation that he had booked for the 18 th and had been back to the court to seek permission to stay an extra day. The prosecution have not produced evidence contradicting that. I do not regard the point made by the prosecution about the return date as having any real force. (ii) The evidence of the finding of the rolled up banknote in the possession of the defendant's woman friend in March and her admissions of drug use is not relevant to the present charge and will be excluded. 15. Subject to the two minor points set out in paragraph 17 above, the defence application to exclude evidence is refused. Authorities Proceeds of Crime (Jersey) Law 1999. U v AG

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