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COURT OF APPEAL (ENGLAND)

JEFFREY v BLACK

Lord Widgery CJ, Forbes, Croom and Johnson JJ

14 July 1977

(1978) 1 QB 490; [1977] 3 WLR 895; [1978] All ER 555; 66 Cr App R 81

CRIMINAL LAW – ADMISSIBILITY OF EVIDENCE UNLAWFULLY OBTAINED – ACCUSED INTERVIEWED ABOUT AN ALLEGATION THAT HE STOLE A SANDWICH – DURING THE INTERVIEW AND WITHOUT THE ACCUSED'S CONSENT, THE POLICE SEARCHED HIS HOME AND FOUND DRUGS OF ADDICTION – ACCUSED CHARGED WITH DRUGS OFFENCES – WHETHER EVIDENCE IN RELATION TO THE DRUGS OFFENCES ADMISSIBLE – FINDING BY COURT THAT SUCH EVIDENCE ADMISSIBLE – WHETHER COURT IN ERROR.

The defendant was arrested by two police officers of the drug squad for stealing a sandwich from a public house. After he was charged, but before he was granted bail, the police officers told him that they were going to search his lodgings. He accompanied the police officers to his lodging and unlocked the door of his room, so that they could enter. The police found cannabis and cannabis resin in his room. He was charged with possession of those drugs, contrary to section 5(2) of the *Misuse of Drugs Act* 1971. The justices found that the defendant had not consented to his room being searched and they accepted a defence submission that, as the police had no authority to enter and search the room, evidence obtained during the search was inadmissible. They dismissed the informations. The prosecutor appealed.

HELD: Appeal allowed. Remitted for determination by a differently-constituted Bench.

1. It is not accepted that the common law has yet developed to the point, if it ever does, in which police officers who arrest a suspect for one offence at one point can be as a result thereby authorise themselves, as it were, to go and inspect his house at another place when the contents of his house, on the face of them, bear no relation whatever to the offence with which he is charged or the evidence required in support of that offence.

2. It is firmly established according to English law that the mere fact that evidence is obtained in an irregular fashion does not of itself prevent that evidence from being relevant and acceptable to a court.

***Kuruma v The Queen* (1955) AC 197, applied.**

3. One must firmly accept the proposition that an irregularity in obtaining evidence does not render the evidence inadmissible. Whether or not the evidence is admissible depends on whether or not it is relevant to the issues in respect of which it is called.

4. The justices were not justified in exercising their discretion favourably to the defence simply because the evidence in question had been obtained by police officers who had entered without the appropriate authority.

LORD WIDGERY CJ: (With whom the other members of the court concurred) This is an appeal by case stated by East Sussex justices sitting in and for the petty sessional division of Brighton in respect of their adjudication as a Magistrates' Court in Brighton on March 18, 1976.

On that day informations had been laid against the defendant charging him with two offences. The first was that on December 10, 1975 he unlawfully had in his possession cannabis resin, and the second was that on the same date he unlawfully had in his possession cannabis, in each instance a controlled drug the possession of which without lawful excuse is of course an offence.

The two cases were tried together by consent, and the justices found the following facts. The defendant was arrested by two members of the police drugs squad in Brighton but his arrest was nothing to do with drugs at all. He was arrested for the offence of stealing a sandwich from a public house. After he had been charged with the offence and before he was bailed, he was told by the

police officers that they intended to search his premises, meaning thereby the premises in which he lived. The defendant went with the officers to his home. He opened the door with a key. The officers then entered the premises and as they crossed the hall they were asked by the defendant to be quiet because he did not wish his landlady to know what was going on. The defendant then showed them to his room and they commenced to search that room.

At that point objection was taken by the defending solicitor that it was not competent for the police officers to go further and give evidence of what they had found in this room. The evidence had reached the brink of discovery, as it were, but objection was taken to the matter going any further. The basis of the objection was that, unless the accused had consented to his room being entered by the police officers, it was submitted that their entry would be unlawful, and it was further submitted that in following upon such unlawful entry any evidence acquired would itself not be admissible.

The first question which the justices had to decide was whether consent had been given or not, and they clearly came to the conclusion that it had not. We approach this case on the footing that the police officers entered without the consent of the defendant, the occupier.

Nothing daunted by this, Mr Farquharson for the prosecutor contends that as a matter of law the police officers were entitled to enter without the consent of the occupier, and so the first question of law for us to decide is whether that is a correct submission or not. Mr Farquharson has shown us all the authorities. We are very grateful to him for so doing. He admitted quite readily that there is no authority which takes him all the way in his submission that the police officers here acted lawfully, but he invites us to say that this is a part of the law which is developing rapidly to the point when this particular entry by the police officers was not unlawful.

The last authority in line upon this subject to which I want to refer contains the words of Lord Denning MR in what I believe to be the furthest point to which the courts have gone, and moreover to be the clearest and most helpful authority available to us in this case. The extract I want to refer to is contained in *Ghani v Jones* (1970) 1 QB 693 where Lord Denning MR said, at p706:

> 'I would start by considering the law where police officers enter a man's house by virtue of a warrant, or arrest a man lawfully, with or without a warrant, for a serious offence. I take it to be settled law, without citing cases, that the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be, material evidence in relation to the crime for which he is arrested or for which they enter.'

I draw particular attention to the fact that Lord Denning MR is expressing the opinion that this activity on the part of the police officers is permissible in law if the goods which they find are goods which they reasonably believe to be material evidence in relation to the crime for which he is arrested. It may very well be that if the police officers in the instant case had had any sort of reason for thinking that the defendant's theft of the sandwich required an inspection of his premises, they might very well have made that inspection without further authority. But it is perfectly clear that when they sought to enter his premises, and did enter his premises they were not in the least bit concerned about the sandwich. Their concern was something quite different, namely, whether they would find drugs on the premises.

In my judgment, without, I hope, disrespect to Mr Farquharson's most helpful argument, the first point in this case is concluded by those considerations. I do not accept that the common law has yet developed to the point, if it ever does, in which police officers who arrest a suspect for one offence at one point can be as a result thereby authorise themselves, as it were, to go and inspect his house at another place when the contents of his house, on the face of them, bear no relation whatever to the offence with which he is charged or the evidence required in support of that offence.

However, Mr Farquharson, having failed to succeed on his first point, is by no means exhausted in this matter because the next point he takes is that, even if the justices were right in holding that the entry of these two police officers was unlawful, that does not prevent any drugs or the like which they found in the house from being the subject of admissible evidence in the trial.

It is firmly established according to English law that the mere fact that evidence is obtained in

an irregular fashion does not of itself prevent that evidence from being relevant and acceptable to a court. The authority for that is *Kuruma v The Queen* (1955) AC 197, and I need only refer to one passage to make good the proposition which I have already put forward, and this is at p 203 and reads:

> 'In their Lordships' opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is admissible and the court is not concerned with how the evidence was obtained. While this proposition may not have been stated in so many words in any English case there are decisions which support it, and in their Lordships' opinion it is plainly right in principle.'

There one has that pronouncement from the Privy Council, and I have not the least doubt that we must firmly accept the proposition that an irregularity in obtaining evidence does not render the evidence inadmissible. Whether or not the evidence is admissible depends on whether or not it is relevant to the issues in respect of which it is called.

At this point it would seem that the prosecutor ought to succeed in his appeal because at this point what he appears to have shown is that the justices were wrong in failing to recognise the law as stated in *Kuruma v The Queen* (1955) AC 197. But that is not in fact the end of the matter because the justices sitting in this case, like any other tribunal dealing with criminal matters in England and sitting under the English law, have a general discretion to decline to allow any evidence to be called by the prosecution if they think that it would be unfair or oppressive to allow that to be done. In getting an assessment of what this discretion means, justices ought, I think, to stress to themselves that the discretion is not a discretion which arises only in drug cases. It is not a discretion which arises only in cases where police can enter premises. It is a discretion which every judge has all the time in respect of all the evidence which is tendered by the prosecution. It would probably give justices some idea of the extent to which this discretion is used if one asks them whether they are appreciative of the fact that they have the discretion anyway, and it may well be that a number of experienced justices would be quite ignorant of the possession of this discretion. That gives them, I hope, some idea of how relatively rarely it is exercised in our courts. But if the case is exceptional, if the case is such that not only have the police officers entered without authority, but they have been guilty of trickery or they have misled someone, or they have been oppressive or they have been unfair, or in other respects they have behaved in a manner which is morally reprehensible, then it is open to the justices to apply their discretion and decline to allow the particular evidence to be let in as part of the trial. I cannot stress the point too strongly that this is a very exceptional situation and the simple, unvarnished fact that evidence was obtained by police officers who had gone in without bothering to get a search warrant is not enough to justify the justices in exercising their discretion to keep the evidence out.

Just what the justices' view on this discretion was is very hard to say from the case. The case itself seems to suggest that the whole issue was fought out on the question of fact, namely, whether the police officers had or had not permission to go in. It was pointed out by Forbes J in argument that it does seem probable that the justices had their attention drawn to the existence of the discretion because they refer in their case to *King v The Queen* (1969) 1 AC 304 which is a case on the exercise of this discretion, and they also refer to *Archbold Criminal Pleading Evidence & Practice*, 38th ed. (1973) para.1408 dealing with the same topic.

It seems to me, therefore, that in fairness to the defendant we ought to assume that the argument as to discretion was put forward, and we ought to consider whether the justices in this case could support their discretion. In my judgment, they could not. For the reasons I have already given the justices would not be justified in exercising their discretion favourably to the defence simply because the evidence in question had been obtained by police officers who had entered without the appropriate authority.

For those reasons I think that the appeal should be allowed and I would send the case back for a re-hearing before a different bench.
