Beeres v CPS [2014] EWHC 283

This case concerns the circumstances when a confession obtained at a police station should be excluded pursuant to sections 76 and/or 78 of the Police and Criminal Evidence Act 1984 and Code C thereof which concerns the detention, treatment and questioning of persons by police officers. In particular it concerns the requirement to advise a detainee of their right to legal advice, and of the approach officers should take when interviewing a person who might be sleep deprived and/or drunk. The point has particular resonance on the facts of this case because the decisive evidence relied upon by the prosecution was the confession in issue and if it should have been ruled to be inadmissible.

In March 2013 the Appellant was convicted of an offence of assault on her partner John Leeson. During an argument between the Appellant and Mr Leeson the Appellant picked up a baseball bat and struck Mr Leeson unlawfully causing him injury. Mr Leeson did not, however, make a complaint or give evidence in the course of the Appellant's subsequent trial. The only evidence came from the police officer who attended the scene and arrested the Appellant, and the officers who subsequently interviewed the Appellant at the police station. There was no forensic evidence adduced in the course of the trial and there was, as noted, no statement from the injured party. The sole evidence proposed by the Crown to be put before the Court concerned (i) a confession that the Appellant made when interviewed under caution, and (ii) evidence relating to an alleged admission made when she was arrested.

The gist of the Appellant's case is that when she was interviewed at the police station she was not given proper advice as to the availability of a "duty solicitor"; and that, in any event, the fact of her interview whilst drunk and/or sleep deprived made her confession in the course of the interview unreliable and its admission into evidence unfair. It was argued before the Judge that by virtue of these facts and matters evidence of her admissions ought to be excluded pursuant to sections 76 and/or 78 PACE 1984. The Appellant therefore applied at an early stage in the trial to exclude both (a) the alleged admissions made to police officers at the scene of the incident prior to arrest and (b) the confession made in interview.

In order to determine the application the Judge heard evidence from the two custody sergeants and the two interviewing officers. He also heard evidence from the Appellant herself. Having heard the evidence he excluded the evidence from the arresting officer of the alleged admission to the assault made at the scene. However, he rejected the application to exclude the confession evidence in interview pursuant to sections 76 and/or 78 PACE 1984.

The Appellant was subsequently convicted but applied to the Judge to state a case to the High Court testing the correctness of his decision to admit the confession evidence. The Judge acceded to this application.

The Magistrate has accordingly stated a case for the decision of the High Court. In paragraphs 6(a) and (d) of the Case the Judge has identified the two main issues and he has set out certain questions in relation to those issues. I set out paragraph 6 in full below:
"6 – The application to exclude the evidence of the interview was based on alleged breaches of the Code of Practice, Code C, governing detention and interview of suspects.

(a)(i) It was submitted that the "right to legal advice." contained in Code C:3:1 was inappropriately given in accordance with Code C:6:1 and that therefore the interview evidence should be excluded. An agreed transcript of the booking in procedure at the Police Station is attached, together with a copy of an agreed transcript of the start of the appellant's interview under caution. PS Wilkinson conceded in evidence that he did not make reference to the words "Duty Solicitors Scheme" when giving the appellant her right to legal advice. The case of R v Vernon 1988 CLR445 was cited, but no transcript of the case was provided to the Court.

No complaint was made by the appellant in her evidence that she did not understand or appreciate her entitlement to free legal advice.

(ii) I determined that there was no breach of Code C:6:1 on the evidence :
The appellant had been told;

- she had the right to legal advice
- that advice would be free of charge and "cost nothing"
- that the legal advice would be independent of the Police
- that the advice could be on the phone or in person
- that the right was an ongoing one and could be exercised at any time
- the right to legal advice was reiterated in similar detail at the point of interview by the interviewing Officers.

The judge decided that the failure to use the expression "Duty Solicitors Scheme" was not fatal to the proper obligation under Code C:6:1 and that the appellant was in a position to properly exercise an informed choice about her entitlement.
Was he correct to do so? If not, should the interview have been excluded on the basis?
(b) It was secondly submitted that there was a breach of Code C:12:1 in that less than 8 hours continuous rest was permitted after detention at the Police Station had been authorised.

The evidence from the custody record was that:

- detention was authorised at 04.07
- the interview commenced at 09.55
- fingerprints were taken between 05.26 and 05.42

In evidence, the appellant said that she had consumed 5 pints of lager prior to arrest and maintained she was "quite drunk". Her evidence was inconsistent with the CCTV evidence of her being booked into the Police Station (which was viewed) and the observations of the Police Officers. In addition, six hours had elapsed since the appellant's arrival at the Police Station and her interview. I discounted alcohol as being a significant factor in her fitness to be interviewed.

Further, the interview evidence revealed the appellant made coherent, appropriate and logical answers to question put and there was no evidence that her understanding of the interview process was compromised.
As to Code C:12:2, the 8 hour rest period is said to be allowed "in any period of 24 hours". This appellant had only been in custody for some six hours at the point of interview. Of that time, the custody record showed a maximum period of continuous rest of just under three hours.

The judge took the view that consistent with the Police's duty to investigate expeditiously, they were entitled to interview when they did and that the right to eight hours uninterrupted rest did not apply in these circumstances, given the limited period during which the appellant was detained.
Even if that were incorrect, it seemed to me that the exception at C:12:2 (a) ii applied, in that not interrupting the appellant would delay unnecessarily her release from custody. Was the Judge correct to so find? If not, should the interview have been excluded on this basis?"

<u>Conclusion of Appeal</u>
In conclusion the appeal is dismissed. Insofar as it is necessary in view of the Judges reasons above to express an opinion on the questions posed in the Case Stated then he would do so in the following way:

i) The Judge was correct to reject the submission that the Appellant had not properly or adequately been informed of her right to legal advice.
ii) The Judge was correct to find that the officers were entitled to come to the conclusion that Appellant was in all respects fit to be interviewed.
iii) The Judge was correct to find that accordingly the confession evidence of the Appellant was in all respects both reliable and fair and that neither section 76 nor section 78 PACE 1984 applied to exclude the confession.