R v Phillip Knight [2003] EWCA Crim 1977

Knight appealed against his conviction on two counts of indecent assault. The prosecution alleged that *Knight* took the ten year-old daughter of a friend for a walk in a wood and twice put his hand down her trousers. After the child complained to her mother, *Knight* was arrested.

He was cautioned in the proper way and the police sought to interview him. At the beginning of the interview process, a prepared statement was read out to the police by *Knight's* account and denying that he touched the girl in the way described.

Knight declined to answer any questions asked by police on his solicitor's advice. At trial, he gave evidence in his own defence in line with his statement and said that he had been advised by the solicitor not to answer the police questions. The Judge directed the jury that it might draw an adverse inference from *Knight's* refusal to answer police questions after the reading of the prepared statement and *Knight* was convicted.

On appeal, the issues were:

(i) Whether the purpose of s.34 Criminal Justice and Public Order Act 1994 was not only to encourage a suspect to give his full account to the police in response to an accusation made against him, but also (on pain of an inference being later drawn if he did not do so) to have that account subjected to scrutiny by police questioning at interview and

(ii) Whether a suspect's silence in interview was rendered immune from later inference if that course was taken because a solicitor advised it.

It was held that the true purpose of s.34 (1) (a) was no more than early disclosure of a suspect's account and not, separately and distinctly, the subjection of that account to the test of police cross-examination.

On that basis there was no room for any adverse inference to be drawn by the jury in this case where the defendant gave his full account in a prepared statement from which he did not depart from in the witness box or in his defence.

Knight had mentioned all the facts on which he later relied in his defence. There was misdirection and the conviction was unsafe.

They also held that:

'*We should emphasise, however, that the general consequences of that conclusion have to be looked at with some little care. The making of a prepared statement is not itself an inevitable antidote to later adverse inferences. The pre prepared statement may be incomplete in comparison with the defendant's later account at trial, or it may be, whatever degree inconsistent with that account*'

They continued to say:

'One may envisage may situations in which a pre prepared statement in some form has been put forward, but yet there is a proper case for an adverse inference arising out of the suspects failure "on being questioned under caution... to mention any fact relied on his defence..." We wish to make it crystal clear that of itself the making of a pre prepared statement gives no automatic immunity against adverse inferences under section 34.'

It was possible that there could be a case in which, although the solicitor had given no reasons or bad reasons to stay silent, it would be wrong to draw an adverse inference under s.34 against the defendant. For instance, he might be distinctly weak or vulnerable so that it would not be reasonable to expect him to give and account to the police. That would be a matter for the jury.

This case also reinforced the *Howell* judgement as good law and the appeal was successful due 'not least the fullness of the appellant's pre prepared statement.

It has to be remembered that this Judgement was based upon a statement which was full and complete and from which the accused did not deviate during his evidence at trial. The prosecution had argued that inferences were possible because all the accused had done was to hand in a statement and that this was not a 'sufficient' mentioning of facts for the purposes of s.34 was not about forcing a suspect to police questioning, but merely about whether they disclosed their defence at an early stage. But it doesn't prevent the police, faced with a statement from asking further questions.

Having received a statement the police officers concerned should consider what further questions to ask. This could be important at the trial stage since if they are relevant questions e.g. about the details of an alibi that has been put forward in general terms. It will be easier for the prosecution at trial to argue that although certain facts were mentioned in the statement, others on which the accused relies on at trial (such as the details of the alibi) were not mentioned and that it would have been reasonable to expect them to have done so because the police officers asked them question about those detailed facts.

Often pre prepared statements lack detail and are filled with gaps, anomalies, ambiguity and vagueness in the hope that they will be accepted and never probed. The justices said that the pre prepared statement is not an antidote to a later adverse inference and that it may be incomplete. It could be suggested that we should still be interviewing to check its completeness.

Bearing in mind the Judgement of *Lewis* there may be a lack of supporting fact within the pre prepared statement, which should be sought during the interview.

On receipt of the prepared statement, the interviewing officer should accept the statement and try to obtain a copy or the original from the solicitor and confirm that it is made by the accused. It should be signed by the accused. Some officers have tried – when the legal advisor has read out a statement rather than handed it to the officer – to force the legal advisor to hand it over, this cannot and should not be done.

It seems that in *Knight* the legal representative read it out rather than handed it in and there is no suggestion in this or any other case that a statement has to be handed in to be an effective mentioning of facts for the purpose of s.34.

The officers should then analyse the statement and look for missing information and/or jumps, gaps and any anomalies. They should also identify any technical jargon or vague language.

Any re interview after a prepared statement should then be based on this missing detail. *Knight* does not prevent the police from asking questions based on the contents of the statement. Officers should think about what is missing from the statement. Broadly, it is about asking question, which get at relevant detail about the defence that is being put forward in the statement – and that normally is about what is missing from it.

If we don't investigate thoroughly and identify any potential missing facts supporting a defence, we can't draw an inference. The defence will always try to negate any potential inferences. If we interviewed thoroughly those facts can be outlined to the jury, but the worst that can happen is that no inferences will be drawn.

A fact defined within the Oxford English dictionary as:-

'A thing that is indisputably the case. (Facts) information used as evidence or as part of a report'

Section 36 and section 37 CJPOA material may be present and again should be considered when planning any re interview after the prepared statement has been tendered.

We should always interview to establish detail that support facts asserted by a suspect that may be relied on later at court.