

CRIMEWATCH

COMMERCIAL
COMMONWEALTH

Issue No. 5, February 1995

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RECENT EVENTS

European Community Police Force

On 16 February 1994, the European Community Police Force (Europol) began its operations in The Hague. This is the first step towards the planned creation of Europe-wide databanks on crime and terrorism. One proposal is to form joint detective teams on the basis of agreements between member states, so that Europol could expand beyond just supporting the fight against drug dealing and money laundering to encompass dealing with other serious criminal activities.

Asia Money Laundering Secretariat

Representatives of 34 jurisdictions and international organisations attended the Asia Money Laundering Symposium held in Kuala Lumpur, Malaysia from 29 November to 1 December 1994. The Symposium welcomed the creation of an Asia Money Laundering Secretariat and asked it to collect and distribute information on money-laundering and anti-laundering counter-measures. It was agreed to hold a further Symposium in a year's time to evaluate progress.

The address of the Asia Money Laundering Secretariat is c/o National Crime Authority, GPO Box 5260, Sydney, NSW 2001, Australia. Tel: 61 2 373 2433; Fax: 61 2 373 2199.

TREATIES

Drug Trafficking

Exchange of Notes between the United Kingdom and the United States of America amending the Agreement concerning the investigation of drug trafficking offences was signed on 9 February 1988 and 6 January 1994. The Agreement entered into force on 6 January 1994.

United Kingdom entered into an Agreement with the Argentine on 27 August 1991. The Agreement entered into force on 1 June 1994.

United Kingdom entered into an Agreement with Panama on 1 March 1993. The Agreement entered into force on 1 September 1994.

United Kingdom signed a Treaty with Thailand on 12 September 1994

Mutual Assistance

United Kingdom entered into a Treaty with the United States of America on 6 January 1994. It has not yet entered into force.

LEGISLATIVE DEVELOPMENTS

Hong Kong

The *Organized and Serious Crimes Ordinance* became law on 21 October 1994. Parts of the Ordinance will come into operation on dates to be appointed by the Secretary for Security by notice in the *Gazette*. The Ordinance:- gives police, Customs and Excise officers and other "authorised officers" appointed by the Attorney-General wide-ranging powers to investigate organized crime and triads; gives the High Court and District Court jurisdiction to confiscate proceeds of serious crimes; creates an offence of money laundering in relation to indictable offences; and, enables the High Court and District Court to receive information about an offender and the offence in order to impose greater sentences.

Confiscation orders: The Ordinance provides for two types of confiscation orders:- (1) where a person has been convicted of a specified offence (or where he has pleaded guilty and asked the court to take other specified offences into consideration) and the proceeds of the offence are at least HK\$100,000; and (2) where, upon the request of the prosecution, the court determines that the Schedule 1 offence is an "organized crime" and the value of his proceeds from an Hong Kong offence are at least HK\$100,000.

Money laundering: It is an offence to launder the proceeds of an indictable offence if committed in Hong Kong, or if the conduct occurred elsewhere, it would constitute an indictable offence had it occurred in Hong Kong.

Note: Full details of the Ordinance are given in "*An Overview of the Organized and Serious Crimes Ordinance*" by Michael C. Blanchflower, Senior Assistant Crown Prosecutor, Asset Recovery Unit, Hong Kong. Copies are available from the CCU.

Australia

Foreign Evidence Act 1994,

1. re-enacts with minor changes, Parts IIIB and IIIC of the *Evidence Act 1905*. These relate to enabling evidence from other countries for use in Australian proceedings and preventing, for national security reasons, certain evidence being obtained in Australia for use in foreign proceedings;
2. provides new procedures for enabling authenticated foreign testimony, and exhibits to such testimony, to be admissible, subject to appropriate safeguards in criminal proceedings for offences against Commonwealth law and related civil proceedings; proceedings for offences against the law of a prescribed State or Territory and prescribed related civil proceedings; and civil proceedings (other than related civil proceedings) under the Corporations Law or the Australian Securities Commission Law to which the Australian Securities Commission is a party;
3. includes provisions to implement the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents so as to enable Australia to accede to the Convention. Australian law does not require legalisation and the benefit of accession to the Convention will relieve Australian residents of the need to get public documents legalised for use in countries that are party to the Convention.

CASE NOTES

Drug Trafficking

Drug Trafficking - Importation and possession - Sentencing guidelines covering the importation of class A drugs

The appellants were convicted of being knowingly concerned in the importation of cocaine or in one case of possessing cocaine with intent to supply. In each case the term of imprisonment was determined by the "street value" of the quantity of the drugs seized. The appellants appealed against their sentences of imprisonment on the ground that the figures used were unrepresentative and unfair and that a more satisfactory basis for assessing the importance of a consignment of cocaine was by weight rather than by street value.

Held: The better way to measure the relative significance of any seizure of class A drugs is by weight rather than by the street value. Where the weight of the drugs at 100% purity was of the order of 500 grammes or more, sentences of 10 years and upwards were appropriate, and where the weight at 100% purity was of the order of 5 kilograms or more, sentences of 14 years and upwards were appropriate. Guidelines laid down in *R v Bilinski* 9 Crim App R(S) 360 substituted. The court then considered and dismissed the appeals.

R v Aranguren and Others, Court of Appeal, U.K. (*New Law Journal* 24 June 1994)

Drug trafficking - Massive drug importation involving millions of pounds - Whether highest category of drug trafficking offences - Sentencing guidelines

The appellants, convicted for drug trafficking offences involving cocaine with a street value of millions of pounds, were given sentences ranging from 10 to 25 years. They appealed against their sentences.

Held: In dismissing the appeals,

1. The crimes committed by the appellants fell within the highest category of drug trafficking offences or "abnormal crimes" as described by Lawton LJ in *R v Turner* ((1975) 61 Cr App R 67). Therefore, where the court had to deal with massive drug importation involving street value of millions of pounds, those who were involved in the higher echelons of the enterprise had to receive sentences in the region of 25 years or perhaps even more as indicated by Lord Lane in *Scaramonie* ((1992) 13 Cr App R(S) 702).
2. A plea of guilty in such a class of case should result in a substantial discount and, likewise, assistance to the authorities before sentence would also result in a reduction. The extent of reduction would depend on a number of factors such as: the actual value of the assistance; the risk to the offender and his family of possible reprisals; and any evidence of the results of the assistance given. However, assistance offered or purported to be given after sentence, with a view to obtaining a reduction would not usually achieve that result, especially if the assistance could have been given before sentence.

R v Richardson and Others Court of Appeal, U.K. (*The Times* 18 March 1994)

Evidence

Exhibit - Drug in plant material - Examination by expert - Whether random sampling and visual examination sufficient

The appellant was convicted of importing cannabis. The plant material seized was weighed and examined by a chemist. On appeal against conviction it was argued, *inter alia*, that as the chemist had analyzed only 45g of the entire plant material, the prosecution had failed to show beyond a reasonable doubt that the entire plant material was 1,026g of cannabis as was claimed.

Held: In dismissing the appeal,

1. The definition of cannabis under the Misuse of Drugs Act (Cap 185) demanded the satisfaction of two criteria of the material analyzed: that it belonged to the genus cannabis and that the resin had not been extracted. The procedure of visual identification and random sampling was the standard procedure set out in the laboratory manual of the director of scientific services for the analysis of cannabis and was approved by the *UN Manual on the Recommended Methods for Testing Cannabis*.

2. Since no expert had been called by the appellant to challenge the correctness of this procedure, the trial court was correct in holding that the prosecution had shown beyond a reasonable doubt that the plant material seized from the appellant was 1,026g of cannabis.

Mat Repin bin Mamat v Public Prosecutor, Court of Criminal Appeal, Singapore [1994] 1 SLR 663

Legal professional privilege - Appellants's blood sample provided to defence expert for DNA testing - Whether sample "item subject to legal privilege" - Whether expert's evidence admissible against appellant

The appellant was charged with rape. At the trial the judge permitted the Crown Prosecution Service to interview a scientist who had carried out DNA tests on a blood sample given by the appellant to his doctor at the request of the defence solicitors. Subsequently, the judge ruled that the evidence of the scientist, who had been subpoenaed as an expert witness for the prosecution, was admissible. The appellant was convicted and appealed.

Held:

1. The trial judge had erred in admitting the evidence of the scientist as the sample had been given to the defence solicitors in confidence and was thus inadmissible being an item "subject to legal privilege" within section 10(1)(c) of the Police and Criminal Evidence Act 1984.
2. However, the Court was satisfied that no miscarriage of justice had occurred since there was ample evidence of the appellant's guilt quite apart from the weight the jury might have placed on the scientist's expert evidence.

R v R, Court of Appeal, U.K., [1994] 1 WLR 758; [1994] 4 All ER 260

Admissibility - Admissions made during interview with Bank of England official - Whether official "investigating offence" - Whether notes of interview to be excluded as having adverse effect on fairness of trial

The appellant was the chairman and managing director of a bank, W Ltd, which was subject to the supervisory powers of the Bank of England. He was invited to a meeting with the supervising manager at the Bank of England to discuss a liquidity problem at W Ltd, but, before this meeting took place, the manager received details of an alleged fraud by the appellant.

At the meeting conducted by the manager, the appellant admitted that he had bought certain securities knowing that they did not exist and notes of this interview were taken by another Bank of England official. The appellant was later charged with fraudulent trading, false accounting, obtaining property by deception, and theft. At a preparatory hearing, he unsuccessfully sought to have the notes of the meeting excluded. He appealed against the ruling on the ground, *inter alia*, that the Bank of England official was a person "charged with the duty of investigating offences" within the meaning of section 67(9) of the Police and Criminal Evidence Act 1984 (PACE), and was therefore required to have regard to Code C of the Codes of Practice issued under the Act; and that the interview should be excluded on the ground of unfairness.

Held: In allowing the appeal to the extent that the evidence of the interview be excluded:

1. Although the Bank of England had certain duties under section 47 of the Banking Act 1987 to investigate offences, the supervisory duties being exercised by the manager were to ensure that the minimum criteria for authorization by the Bank of England were met and maintained, and in carrying out those duties the Bank official was not a person "charged with the duty of investigating offences" within the meaning of section 67(9) and therefore, he was not required to have regard to the provisions of Code C.
2. The appellant had answered his questions in the context of an inquiry as to the action to be taken regarding the liquidity problems of W Ltd rather than at the early stages of investigation into fraudulent conduct by him. Accordingly, the evidence was to be excluded under the section 78 of PACE as its admission would adversely affect the fairness of the trial.

R v Smith (Wallace), Court of Appeal, U.K. [1994] 1 WLR 1396

Right to a Fair Trial

Right to call and examine witnesses - Constitutional protection - Expert report that substances were cannabis- whether a right to call maker of the report

Section 28B(1) of the Narcotics Act 1967 provided that a certified report of the Department of Scientific and Industrial Research in New Zealand on narcotic specimens or samples was conclusive proof of the truth of its contents without having to call the person who made the report to testify as to such report; section 28B(2) allowed the court, where a defendant challenged the truth of the contents of such a report, to reject the conclusiveness of the report. The question in issue was whether the provisions of section 28B were inconsistent with article 9(4)(d) of the Constitution, which provides that every person charged with an offence has the right to examine or have examined witnesses against him.

Held:

1. Section 28B(1) was inconsistent with article 9(4)(d) of the Constitution in that it allowed the prosecution to prove an essential ingredient of a charge without the defendant being able to examine or have examined the person whose statement was relied upon to establish that ingredient.
2. Subsection (2) simply gave the defendant the chance to satisfy the judge that he had reasonable grounds, other than the hearsay rule, on which to challenge the truth of the contents of the certificate; it did not restore the defendant's right to examine or have examined the maker.
3. In this case, no severance of the section was possible and, therefore, it was void in its entirety.

Police v Stehlin, Court of Appeal, Western Samoa, (1980-1993) *Western Samoa Law Reports* 568

Right to remain silent - privilege against self incrimination - European Convention on Human Rights 1950 - Statements obtained under compulsory powers - Use of incriminating evidence in criminal proceedings - Whether violative of Convention rights

Utilising powers under the Companies Act 1985, inspectors of the Department of Trade and Industry required the applicant to answer questions put to him concerning a claim that the company, of which he was the chief executive, had artificially inflated its share price during the takeover of another company. He was later charged with 37 offences and the evidence obtained by the inspectors was used against him. At the trial he unsuccessfully argued that the statements were inadmissible under the Police and Criminal Evidence Act 1984 because they had been obtained by oppression and contained self-incriminating evidence.

In his complaint to the European Commission on Human Rights, he submitted that his right to a fair trial had been violated contrary to article 6 of the European Convention on Human Rights.

Held: The applicant's right to a fair trial had been violated and, accordingly, the case would be referred to the European Court of Human Rights.

1. As a general rule, matters relating to rules of evidence were for national courts to determine. However, the right to silence and the privilege against self-incrimination were an inherent part of Article 6(1), even though the right to silence was not expressly guaranteed by the article, nor was it an absolute right. The privilege against self-incrimination was an important element in safeguarding an accused from oppression and coercion during any criminal proceedings. That privilege was closely allied to the principle of the presumption of innocence, which included an accused's right to refuse to make statements which would assist the prosecution in proving its case.
2. In the circumstances of this case, the applicant's statements formed a significant part of the case against him, and the fact that they contained admissions must have exerted pressure on him to give evidence rather than to exercise his right to remain silent. The use of incriminating evidence obtained under compulsory powers was oppressive and had impaired the applicant's ability to defend himself.

Saunders v United Kingdom, European Commission of Human Rights, 1994 (*The Independent*: 30 September 1994)

Right to be presumed innocent - Constitutional protection - Appellants charged with murder - "Extreme provocation" - Onus on appellants to prove provocation on a balance of probabilities - Whether in breach of constitutional right

The two appellants were charged with murder. At their trial they raised the question of provocation. The trial judge directed the jury that the onus of proof was on the appellants who needed to prove such provocation on a balance of probabilities in accordance with section 116(a) of the Belize Criminal Code. This provides that a person is deemed guilty only of manslaughter if it is proved on his behalf that he was deprived of the power of self-control by "extreme provocation".

The appellants were convicted of murder and sentenced to death and their appeals against conviction were dismissed by the Court of Appeal of Belize. They appealed to the Privy Council on the ground that, in each case, the trial judge's direction that the burden of proving provocation was on the appellants was not sound in law because it was inconsistent with section 6(3)(a) of the Constitution of Belize which enshrines the presumption of innocence. The Crown contended that the burden cast upon the accused by section 116(a) was no more than "the burden of proving particular facts" within the meaning of section 6(10)(a) of the Constitution to which section 6(3)(a) was subject.

Held: In allowing both the appeals to the extent that the verdicts of manslaughter were substituted for those of murder and remitting the cases to the Court of Appeal of Belize for sentence,

1. By placing the burden of proof on the accused, section 116(a) was in conflict with section 6(3)(a) of the Constitution and must be modified in order to remove such inconsistency. Section 6(10)(a) was not intended to apply to the essential ingredients of an offence.
2. In circumstances where it appeared either from the evidence of the prosecution or from the evidence put forward by the defence that an appellant might have acted under provocation, it was for the prosecution to negative any such suggestion if a murder conviction was to be obtained. Accordingly, the trial judge had misdirected the jury on the onus of proof.

Vasquez v R and O'Neil v R, Judicial Committee of the Privy Council, [1994] 1 WLR 1304; [1994] 3 All ER 674

International money laundering - Whether defence of entrapment available

The defendants were convicted by a jury of money laundering and related offences. An appeal court held that the defendants had been entrapped as a matter of law and were entitled to be acquitted. At a rehearing, the government's petition contended that the decision had created a new element of the defence of entrapment - "readiness" - and had thereby radically altered the law of entrapment.

Held: affirming and clarifying its earlier findings, predisposition induced by government action could not be used to defeat an entrapment defence and a defendant must be able as well as willing to commit the crime of international money laundering. Thus a defendant must by reason of previous training, experience, occupation or acquaintances be situated so that it is likely that if the government had not induced him to commit the crime some criminal would have done so. Here the defendants were not knowledgeable enough to be able to use either of their Caribbean banking licenses to launder.

The court also found that the defence of derivative entrapment rests on the recognition that one private person may be the government's agent for the purposes of entrapping another.

United States of America v Hollingworth and Pickard, Court of Appeals for the 7th Circuit, United States 27 F.3d 1196