

In the Crown Court for the Division of Antrim

The Queen

V

James Rooney and Brenda Smyth

Bill No. 86/05

Smyth J

Proceeds of Crime; sections 239 and 340 of the Proceeds of Crime Act 2002; Grand Jury Abolition (NI) Act 1969.

1. James Rooney and Brenda Smyth are jointly charged, under section 329 of the Proceeds of crime Act 2002, with being in possession of criminal property, money, knowing or suspecting it to represent, either in whole or in part, the proceeds of crime. James Rooney is separately charged, under section 21(1) of the Theft Act (NI) 1969, with dishonestly receiving a United Kingdom passport knowing, or believing, it to be stolen.
2. Very briefly the salient facts are: On 13th November 2004 the accused were stopped, in a planned search under warrant, in a car as they arrived at Belfast International Airport to take a flight to Spain. They are brother and sister. Also in the car, but not charged, was Mrs Smyth's husband. According to both of the accused this was intended to be a short visit to Spain where Mrs Rooney and her husband had a property. A considerable amount of cash was found. In a bag Mr Rooney said was his two envelopes containing 5,390 euro and, exactly, £9,000 sterling were found. Both amounts were in high denomination notes, including 100 x £50 Bank of England notes. Also in the bag was a blank UK passport that did not possess a number. At

the scene Mr Rooney stated that there was £12,500 in the envelopes.

3. Mrs Smyth, after being told that a warrant existed to search her under the 2002 Act, told police she had £10,000 cash in her handbag to purchase furniture for an apartment she owned in Spain. Although it is not entirely clear from my reading of the papers, two bags appear to have been found. One contained over £10,500 in sterling including some in high denomination notes and the other over 3,000 euro. The accused were interviewed by police under caution and I refer to this later.
4. Mr Doran, on behalf of Rooney, and Mr Duffy, on behalf of Smyth, have drawn attention to my powers to issue a “no Bill” under section 2(3) of the Grand Jury Abolition Act (NI) 1969 and invited me to exercise these on the basis that an essential ingredient of the offence was absent, namely evidence that the money was “criminal property” as defined in the Act. Mr Doran has further argued that there is no evidence that the passport was in fact stolen property. Mrs Kitson, who appears for the prosecution, has argued that, despite the absence of direct evidence of the provenance of the money and the passport, there is sufficient evidence to meet the tests I have to apply and from which the jury could properly conclude that the money was criminal property and that the passport was, in fact, a stolen one. I record here my gratitude for the succinct arguments of counsel and also for their helpful skeletal arguments.
5. I have been referred to R v Adams (1978) 5 NIJB and R v Montilla (2005) 1 All ER 113 to which can be added Re Macklin’s Application (1999) NI 106 and Hart J. in an unreported Crown Court case of R v McCartan (13/05/2005). The provisions of the Grand Jury Abolition Act (NI) 1969 are unique to Northern Ireland.
6. I set out the test I have to apply. The evidence of the Prosecution on the papers must be taken at its reasonable best, the trial ought to proceed unless I am satisfied that the evidence does not disclose a case sufficient to justify putting the accused on trial and, ultimately, I have to decide whether, upon the evidence contained in the papers and approached on this basis, a reasonable jury properly directed **could** find the accused guilty.

In consideration of this I apply the test formulated by Lord Parker CJ, Practice Note (1962) 1 All ER 448.

7. Section 329 of the Proceeds of Crime Act 2002 refers to criminal property and that term is defined in section 340 (3) of the Act. Property is “criminal property” if two matters coincide. Firstly, the property must either **constitute** a person’s benefit from criminal conduct or it must **represent**, in whole or in part, directly or indirectly, such a person’s benefit from criminal conduct. Secondly, the accused must be shown to either know or suspect that the property constitutes or represents such a benefit. Counsel has referred to these respectively as constituting the “actus reus” and the “mens rea” of the offence.
8. Whether that is so or not, I agree that the prosecution has to establish both matters before a jury can convict. That is both the effect of the plain language of section 340 (3) and is also clear from their Lordships judgement in Montilla. Evidence that could be relied upon to show knowledge on the part of an accused, for the reasons examined in Montilla, may be evidence that can be relied upon to prove the fact that the property either constituted or represented a person’s benefit from “criminal conduct”. Evidence of suspicion, or from which suspicion may be inferred, on the part of an accused may not be. This is precisely to avoid a situation where an ingénue may, genuinely but wrongly, suspect that property has resulted from criminal conduct when it in fact has a legitimate origin.
9. There is the added problem in this case, certainly at this stage, of keeping admissions or concessions made in interview of one accused out of consideration of the case against a co-accused. I also bear in mind, as argued by Mr Doran, that, since his client is not at this stage relying upon any facts but seeking only to challenge the adequacy of evidence against him, that no adverse inference can be drawn against him from any failure to give explanation for the way in which he came into possession of the money. Rooney did however say he would provide an explanation later and, to that extent and in some other respects, his interview was not a “no comment” interview.
10. An inference that the money was to further a future crime, such as the purchase of illicit drugs or cigarettes to be imported as contraband would not be sufficient. A reasonable jury, properly

directed, on the evidence before me and taken at its reasonable height, must be able to conclude that the money in the possession of the accused either constituted, or represented in whole or in part, a persons benefit from crime, namely in the past. There are no statutory inferences or persuasive or evidential burdens placed upon the defence that the prosecution can call in aid. An inference drawn by the jury must be such that it excludes all possibilities consistent with an innocent explanation as to the provenance of this money.

The case against Rooney:

- 11.**Rooney was admitted that he was in possession of £12,500 in cash. He did not have to volunteer an explanation. He said he would do so later. He was on his way to Spain for a short period. His sister was found to have an amount that was roughly similar in size. The tickets had been arranged by his sister. The amount and its composition both in sterling, euro and in high denomination notes I have already referred to. In the same bag was found a blank passport without a number. There is no direct evidence as to the actual provenance of the monies found. It is unlikely that the monies came from the accused's job as a taxi driver, or from his bank account, given the absence of any reference that corresponds with the amount found and its size and composition. The papers appear to rule out the accused's occupation or his savings being the source of these monies or that they came from his bank account. He accounted for various smaller sums found at his house.
- 12.** At this stage I a jury could infer that the monies, at least in part, did not come from legitimate activities by him and must have come from his or from another person's benefit from criminal conduct. At this stage a reasonable jury properly directed could, in my view, be satisfied that some of this money represented a person's benefit from past crime. I have regard to what has to be proved. The prosecution must at least satisfy the jury that part of this money, even indirectly, represented a person's benefit from crime. It does not have to be the accused's own benefit and the jury can examine all the relevant circumstances in assessing whether they are sure that, to this extent, the monies were criminal property.

13. In relation to the possession of the passport, is there evidence upon which a reasonable jury properly directed, could be satisfied that the passport was in fact stolen? I am of the view that this **could** be a proper verdict given the evidence of Mr Mann to the effect that the only place unnumbered passports are present is within the Security Printing and Systems Ltd site and given the accused's responses to questions.

The case against Smyth:

14. Smyth was stopped in the same car. She told police at the scene that she had £10,000 in her handbag to buy furniture in Spain. She later in interview said that she had this money from savings and repeated that it was her intention to use it to buy furniture in Spain for her apartment. She subsequently retracted this and alleged that she had been asked by her brother to take the money when they were sharing the car to the airport. She said she was going to Spain for a short holiday. She said she had booked the flights and that her brother was a taxi driver. She said she did not know the provenance of the money apart from being asked by her brother to take it. She said she did not know what the intended purpose for the money was. She surmised the purchase of cigarettes. When the police asked her if she suspected there was something "iffy" about the money she nodded and said "yeah". She went on to explain that she maybe thought he was going out to buy cigarettes. I take the point that much of this is more relevant to her suspicion as to the provenance of the money but does it permit a reasonable jury properly directed to conclude that in fact the money represented, at least in part, another person's benefit from crime?

15. Again, I am of the view, considering the overall facts, the amount, makeup and composition of the monies found in the car, the circumstances of the trip, the concessions made by the accused about knowing this to be money, about how much it was, that it was not hers, and that she had not only initially concealed that fact but had deliberately misled the police, a reasonable jury, properly directed, could conclude not just that the accused suspected this was criminal property but that in fact it represented, wholly, or in part, directly or indirectly, another person's benefit from criminal conduct.

16.I therefore do not exercise my powers under the Grand Jury Abolition (NI) Act and the arraignment can proceed.