

BOY OTTO v THE PEOPLE (1970) ZR 65 (CA)

COURT OF APPEAL

DOYLE CJ, PICKET JA AND MAGNUS J

13th MAY 1970 10

Appeal No. 83 of 1969

Flynote

Criminal law and procedure - Recent possession - Explanation given by person found in possession - Crucial to produce in court all statements 15 whether favourable or against him.

Evidence - Statements made by accused to police - Duty of police to Produce in court all statements taken from accused whether favourable or against him.

Headnote

The appellant was arrested by the police on a charge of being in 20 recent possession of a stolen vehicle. While in custody the police took several statements from him. In one of the statements he had named the person from whom he said he had borrowed the vehicle, which was his defence. Before the trial magistrate this statement was not produced and the only evidence adduced by the police was a statement by the appellant 25 denying the charge. The magistrate convicted the appellant of the offence.

On appeal:

Held:

(i) In cases of recent possession the fact that the person found in possession gives an explanation is a matter which is so crucial 30 that it ought to be produced before the court to enable it to make a conclusion.

(ii) It is the duty of the police to produce before court all the statements taken from an accused whether favourable or against him.

(iii) In the instant case since all the statements were not produced 35 before the trial magistrate he was misled and did not take the steps as he would have done.

Judgment

Doyle CJ: delivered the judgment of the court.

This court has on numerous occasions in the past pointed out the waste of time indulged in by police when they take innumerable 40 statements from accused persons who are in custody. This court, however, has never said that the police should not produce these statements when they are of evidential

value either for or against the accused. It is completely contrary to any standards of justice and to any standards of

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DOYLE CJ

prosecution to do otherwise. If the prosecution are to take several statements from an accused person and then to select those which are put before the court, the court may be given an incorrect view of the case. In this case the police gave evidence of a statement made by the accused 5 person and what they said was, "He denied the charge", nothing more. The police had in their possession a statement in which the appellant had stated the name of the person from whom he said he had borrowed the car. That was his defence. In cases depending on recent possession the fact that the person who was found in possession gives an explanation 10 is a matter which is crucial. In this case the court which tried him was led to believe that no explanation whatever was given, but merely denial of the crime. In consequence the court when it came to deal with the appellant referred to the evidence he had given and came to the conclusion that he was a liar. A considerable part of the magistrate's 15 judgment is based on the fact that the accused had never given an explanation before he entered the witness box and produced it, as the magistrate said, by way of sudden inspiration. If the police had done their duty and the prosecution had done their duty the statement would have been before the magistrate. We have no doubt that the magistrate 20 would then have asked what steps were taken to trace this person Steve. We do not know whether any such steps were taken. Maybe they were taken and that Steve could not have been found. It may be that if the magistrate had made these inquiries he would have still come to the conclusion that the appellant was a liar and was knowingly in possession 25 of stolen property and that he was the thief; but that is a long way from saving the learned magistrate would have been bound to come to the same conclusion. We cannot say that this is the case. He might have had a reasonable doubt, in which case he would have acquitted the appellant. In the result appellant has been convicted by magistrate who was 30 completely misled. It was not the magistrate's fault. It was entirely the fault of the prosecution. We hope in the future that when state counsel receive a case he will immediately ask the police how many statements they have taken, and be in a position to put whatever is relevant before the court. In this court it may well be that a guilty person will escape. 35 It is impossible for this court to apply the proviso. The appeal is allowed. The conviction and sentence are quashed and a verdict of acquitted is entered.

Appeal allowed

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