APPEAL COURT, HIGH COURT OF JUSTICIARY

[2024] HCJAC 5
HCA/2022/558/XC

Lord Justice General
Lord Woolman
Lord Matthews

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD JUSTICE GENERAL

in

NOTE OF APPEAL UNDER SECTION 74(1) OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

by

CAROL McCRONE

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Culross; Craig Wood, Inverness
Respondent: Goddard KC (sol adv) AD; the Crown Agent

17 February 2023

Introduction

[1] On the afternoon of 24 August 2021 two police officers on traffic duty received information from colleagues that a car being driven north on the A9 was suspected to be carrying controlled drugs for onward supply. The appellant was named as the keeper.

[2] Later that evening, the officers saw the car near Findhorn Bridge. They activated their blue lights and siren. The car pulled into a layby. The officers spoke to the appellant through her car window. They told her that she was being stopped for a routine vehicle inspection. On request she produced her driving licence. There was no physical interaction between the appellant and the officers.

[3] About a minute later, an unmarked police car drew up. This was occupied by the officers who had provided the initial intelligence about the controlled drugs. They commenced the detention procedure under section 23 of the Misuse of Drugs Act 1971 and found a sizeable quantity of controlled drugs in the appellant's car.

[4] The appellant took a preliminary point before the sheriff. She argued that the traffic police had unlawfully detained her under section 23, because they had no direct knowledge of the intelligence available to the other officers (*McAughey* v *HM Advocate* 2014 SCCR 11 following *O'Hara* v *Chief Constable of the RUC* [1997] AC 286). The recovery of the drugs was therefore not admissible in evidence.

[5] The sheriff rejected the argument on the basis that, as the sheriff had found as a matter of fact, the traffic officers had not detained the appellant. They had stopped her, as part of a routine procedure under sections 163 and 164 of the Road Traffic Act 1988, to verify her identity and to check her driving licence. She had voluntarily complied with that process. She had been free to leave if she had chosen to do so, even if any attempt to depart may have been thwarted.

[6] The appellant submitted to this court that the sheriff erred in finding that the appellant had not been detained by the traffic police (*HM Advocate* v *L* 2012 SCCR 347 at para [15]). She argued that the detention was irregular. The police had given inaccurate reasons for stopping her. The original intelligence was not sufficient to justify detention

(*McAughey* v *HM Advocate* at paras [16] and [19]; *HM Advocate* v *PB* 2013 SCCR 361 at para [27]).

[7] The Crown replied that police officers in uniform were entitled to stop a car under the Road Traffic Act 1988 (s 163), provided that they did not act oppressively (*Stewart* v *Crowe* 1999 SCCR 327 at 328). A car had been stopped in *Haashi* v *HM Advocate* 2015 JC 4 and the circumstances thereafter had entitled the police to carry out a search for drugs (see para [7]). Even if there had been an irregular search, its product may still be admissible (*KB* v *HM Advocate* 2015 SCCR 101).

[8] This is an example of a common situation. Police officers receive intelligence that controlled drugs are being transported by car on a public highway. They will often (as here) be in an unmarked car as presumably in plain clothes. Since they are not in uniform they do not have the power to stop a car and it would be a dangerous thing to attempt. They therefore ask uniformed officers in a marked police vehicle to stop the car under suspicion, pending their arrival.

[9] Whether a person has been detained in terms of section 23 of the Misuse of Drugs Act 1971 is primarily a matter of fact for the court of first instance to determine. The decision can only be impugned if the court has erred in law or in the assessment of the circumstances (*Haashi* v *HM Advocate* 2015 JC 4, LJG (Carloway), delivering the opinion of the court, at 6). The sheriff has found as fact that the traffic officers stopped the appellant pursuant to their powers under sections 163 and 164 of the 1988 Act. The fact that they had been told that it was suspected that the car was carrying drugs does not remove their powers to stop it for a routine check. It was the officers in the unmarked police car who had thereafter detained the appellant, having had reasonable grounds to do so under section 23 of the 1971 Act.

[10] As sheriff reached the correct conclusion, the court will refuse the appeal.