

163A

ROYAL COURT
(Assise Criminelles)

27th September, 1989

Before: The Deputy Bailiff, and
Jurats Blampied, Myles and Orchard.

Attorney General

- v -

DB

1. Court disallows question put by the Crown Advocate to the accused relating to an alleged assault committed by the accused against his son, T, following evidence T had given during the course of divorce proceedings between the accused and his first wife on the ground that its prejudicial value would outweigh its probative value.
 2. Court rules that a tape recording made by the accused of a telephone conversation that took place between the accused and a defence witness is admissible in evidence.
 3. By consent, the prosecution is allowed to recall a prosecution witness in rebuttal of matters arising from evidence given by the accused (which matters were not put to the prosecution witness during cross-examination).
 4. Court grants the prosecution leave to put questions to the accused with regard to the landing of undersized fish on the ground that the defence had raised this matter in relation to a prosecution witness and disclosure of the accused's record on the matter was necessary in the interests of a fair trial.
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J.A. Clyde-Smith the Crown Advocate
Advocate M. St. J. O'Connell for the accused.

JUDGMENT

THE DEPUTY BAILIFF: The decision of the Court is to disallow the last question about a beating up. In saying that I want to make it clear that all the previous questions were, in the view of the Court, perfectly in order and if objection had been taken earlier, we would have found in favour of the prosecution. But we think, on the balance of prejudice against probative value that to bring in a question of violence within a matrimonial setting is unnecessary and we disallow just that one question. I will tell the Jury merely that the accused is not required to answer the last question which Mr. Clyde-Smith withdraws.

Dealing firstly with the question of the tape recording, Archbold (43rd edn.) Vol. 1 at page 477, paragraph 4302 states that: "Provided that the accuracy of the recording can be proved" (here the accused himself took the tape recording) "and the voices recorded can be properly identified" (we are satisfied that they can be identified) "provided also that the evidence is relevant and otherwise admissible a tape recording is admissible in evidence. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances". That would be a matter for me to advise the Jury in the summing up. Therefore the tape recording is let in. It proves conclusively that a telephone call did take place. Beyond that the weight of the evidence is a matter for the Jury. So the tape recording will be played within this Courtroom to the Jury.

On the second matter by consent, the prosecution is given leave to recall Mr. Pritchard in rebuttal of certain matters.

On the third item with regard to undersized fish, we give leave to the prosecution to put questions to the accused about the formal warning in 1987 and the caution in 1988, the first of which the accused admits and the second of which the accused does not deny. We also give leave to the prosecution

to ask questions of the accused about the current prosecution, because the accused has entered a plea of guilty and must therefore be presumed to have admitted the facts, albeit the Magistrate could in certain circumstances direct a change of plea probably on technical grounds. It is the defence which has raised the question of landing undersized fish in relation to a prosecution witness. In the circumstances the prosecution is entitled to disclosure of the accused's own record on the same subject to ensure that the trial is a fair one. We would not take the same view if we were dealing with an accusation only, but the plea of guilty creates an entirely different situation.

Authority cited:

Admissibility of tape recording

Archbold (43rd edn.) Vol. 1 page 477 paragraph 4302.