

R v MOON [2004] EWCA 2872

Without any authorisation for undercover operation in force an undercover police officer had asked M if she could purchase drugs from her. Initially M refused but after the officer had pleaded with her several times M had relented and supplied the drugs. M stated that she had not intended to supply the drugs but had felt sorry for the officer after hearing her predicament and having felt under pressure to do so.

The police officer stated that she had acted as a 'test purchaser' planning to buy drugs from persons frequenting a bus station, which was a particular problematic area. She had observed M believing that she was dealing in drugs and had seen such that would cause her to suspect that M was also in possession of them. She accepted that she had pressed M but insisted that this had been no more than any other addict in need of a drug.

At trial the judge rejected M's argument that there should be a halt to proceedings because of the abuse of process on the basis that whilst the operation had not been properly authorised and having regard to all the circumstances, the operation had been bona fide. Given the seriousness of the crime that the police had had reasonable grounds to suspect was being committed the actions of the police and the woman officer had been proportionate.

M argued that the judge had been wrong in his application of Attorney Generals Reference (No3 of 2000) and had been wrong in his finding that he preferred the evidence of the police officer to that of M.

Held - Appeal allowed. Conviction quashed.

What had been critical as accepted by the prosecution was that at all times M's status had been one of addict with no evidence of dealing and there was no evidence that she had ever acted as a dealer.

In addition there had been no evidence that M would have been prepared to supply drugs to any purchaser except the single act of supply to the police officer. This had been done as a direct result of her persistence and stories. M had even told her that she would not do so again which had significant weight.

Whether the proper safeguard of an authorisation being issued or the examination of M's previous history or the actual behaviour of the police is scrutinised, the conclusion is that the police officer had trapped M into commission of the crime rather than only providing the opportunity for M to commit it. The police officer had created the crime.

The interpretation and comments made within this document are not to be considered as legal advice.

Reference should always be made to the original case.