

T v DPP [2007] Inferences under s34 CJPOA 94

T was accused of forcing his way into a house. When he was interviewed by the police, his solicitor advised he gave his account of what had happened by way of a prepared written statement. He denied the allegation that his entry had not been authorised. When he was then asked further questions he did not answer.

At trial he gave evidence, was cross-examined and was found guilty by the magistrates. The magistrates drew adverse inferences under section 34 of the Criminal Justice and Public Order Act 1994 from his silence at interview.

T appealed arguing that the magistrates had not been entitled to draw such an inference.

Held

Appeal allowed. Conviction quashed.

T had remained silent during interview but had already provided a prepared statement. The magistrates had misinterpreted the provision of section 34 of the Criminal Justice and Public Order Act 1994. They had drawn an adverse inference from T's refusal to answer questions rather than from anything that he relied upon in oral evidence at court, that he had failed to mention in interview.

The magistrates had also failed to show that they had given any consideration to the instance where a young person had, on legal advice, provided a pre-prepared account and then made no further comment. They then asked themselves whether he could reasonably be expected to mention any fact that he later wished to rely upon.

The incorrect inference that the magistrates had drawn had had a material effect on the decision of guilt that the magistrates had reached and so the conviction had to be quashed.

In instances such as this the court should ask:

- (i) In his defence had the defendant relied upon a fact that he could reasonably have been expected to mention in interview but had not done so?
- (ii) Was there any explanation for the failure to mention the particular fact in interview?
- (iii) Was it proper to infer his guilt where any explanation that is given is not reasonable?

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.