

## **R v HARMES; R v CRANE, 2006 EWCA Crim 928**

### **Changing circumstances must be recorded and authorised**

In response to intelligence received relating to activities at a public house run by Harmes the police commenced an undercover operation purportedly authorised under RIPA 2000.

In June 2003, one of the undercover officers, had supplied Harmes with soft drinks, in exchange for a small amount of drugs. Harmes subsequently disclosed a system, whereby drugs could be imported into Heathrow, with the assistance of his associate, Gary Crane, who worked at the airport.

A test run was undertaken successfully but when an 'import' was attempted the package was not picked up and the police decided to arrest Harmes and Crane. At trial the defence asked for the indictment to be stayed on account of the activities of the undercover officers being unlawful and that they were guilty of entrapment. It was ruled that some of the 'supply' counts against Harmes should be stayed (finding that the request for payment in cocaine by the officers in return for the soft drinks had triggered the supply).

The defence was able to identify a number of breaches of the RIPA code, in relation to the authorisation. There was no reference in the authorisation of the plan to supply soft drinks as part of 'the plan'.

The prosecution could not answer the defences question of who authorised the tactics in the operation and when they were authorised. No records were present of sequential descriptions of tasks.

However, the charges of conspiracy were found not be tainted by the unlawful activity of the officers and therefore would remain. In those circumstances the Judge rejected the suggestion that they had been induced to commit 'a state generated crime'.

The Judge concluded:-

*'The defendants, on my view of the evidence, have willingly taken the opportunity to participate in drug smuggling, when offered, for their own substantial gain'.*

The Judge concluded that it was not the supply of cheap drinks or the hope of more cheap drinks that persuaded the defendant, Harmes, to become involved in the importation but 'the hope of big returns for himself'.

Both were convicted of conspiracy and appealed arguing,

- The agreement of the officers to supply the drinks in exchange for drugs was so seriously improper as to bring the administration of justice into disrepute and had been condoned by the court by proceeding to prosecute, and
- There had not been proper authorisation for the undercover operation in breach of RIPA 2000 which underpinned the impropriety of the officers conduct.

## Held

Appeals dismissed. Convictions upheld.

Sections 71 and 72 of RIPA 2000 provided the rules for when the court may need to assess the legality of any undercover operation. Inadequate compliance with the rules and provisions would severely hamper that task of assessment. It is clear that there had been serious breaches of the RIPA 2000 Act and the Covert Human Intelligence Sources Code of Practice concerning authorisation for the operation.

Breaches of the code or Act, however, whilst important, would not necessarily give rise to a prosecution being stayed but rather whether the unlawful conduct of the officers was such that the prosecution for conspiracy, the particular offence in question, should be stayed.

The trial judge had been right to conclude that the prosecution for the charges of conspiracy should continue because *'the officers' conduct, viewed as a whole, did not stray beyond that which was permissible to investigate and prosecute crime. In the instant case, that which had originally been suspected namely that the appellants were members of a gang engaged in the distribution of large amounts of cocaine, proved to be only too true'*.

The officers' suggestion that they be paid in cocaine in return for the soft drinks did not trap Harmes and Cranes into agreeing to import larger amounts through Heathrow and it had not been the chance to benefit from more cheap drinks that had persuaded Harmes to act as he had but rather the hope of bigger benefits for himself.