

R v LOOSELY; A-G's Ref (No.3 of 2000) UKHL 53

Incitement and Entrapment by an undercover officer

Entrapment is not a defence recognised by the law of England and Wales. (See also case of R v Sang 1980)

In this case the appellant Grant Spencer Loosely was one of three men charged with conspiring, supplying and being concerned in the supply of class 'A' drugs. The appeal was to stay the proceedings on the grounds of abuse of process. His defence being that as a result it was impossible for him to receive a fair trial. The Judge was also invited to rule the evidence of the undercover officer inadmissible, if the proceedings were not stayed, exercising his power under Section 78 of the Police and Criminal Evidence Act.

The undercover operative had on a number of occasions been supplied small amounts of heroin valued at about £30 by Loosely. The operative had initially made contact with him through a third party, nickname Piggy, who had supplied him with a telephone number for 'Grant'. The operative had rung the number and the conversation went as follows,

O: "Hello mate can you sort us out a couple of bags?"

Loosely replied "Who is that?"

O: "Well I ...I got your number from Piggy down at the Wooden Bridge Pub last night. I tried you several times".

Loosely said "Who is it?"

O: "My name's Rob".

Loosely: 'Yes, I'll sort you out mate"

O: "You'll sort me out. Oh cheers mate, I'm right on me fucking arse at the moment".

The Judge ruled that the undercover officer had made initial contact with Loosely presenting himself as an ideal customer for a drug deal. The Judge found specifically that he did not go beyond that portrayal. In other words, he presented himself exactly as someone in that world who would expect to see a heroin addict, albeit one seriously addicted. The corroborative evidence presented to the court gave a degree of support to the prosecution

that Loosely was an active and current drugs dealer. A relationship between Loosely and the undercover officer revealed that Loosely was steeped in the drug culture and encouraged the officer, whom he probably saw as a lucrative customer, to take more heroin from him.

If the Police behave improperly by instigating the commission of an offence which would not otherwise have been committed, the court has jurisdiction to stay proceedings as an abuse of process **and** a discretion to exclude evidence under section 78 of PACE. A stay is the most appropriate remedy in response to entrapment.

In many such cases the exclusion of the operatives evidence would bring the proceedings to a conclusion. However, if the operative has done no more than give the accused an opportunity to break the law, and they have freely taken advantage in circumstances where it appears they would have behaved in the same way if the opportunity had been offered by anyone else, then there is no reason why the operatives evidence should be excluded.

Below are some of the more important issues raised in this important case;

- Whether the defendant would not otherwise have committed the offence or was this the creation of 'State Crime'
- The nature of the offence
- The nature of the suspected entrapment
- Whether the police already had 'suspicion'
- Was the operation properly supervised
- How active or passive was the role of the operative
- Was the defendant presented with a 'unexceptional opportunity' to commit the offence
- Would the public condone the police action
- Was the police action seriously improper and bring the administration of justice into disrepute