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**R. v. MARTIN**

SUPREME COURT (Alcantara, A.J.): May 4th, 1989

*Criminal Law—drugs—possession with intent to supply—street value of drugs—evidence of street value of drugs helpful in determining whether intent to supply present*

*Evidence—expert evidence—expert witnesses—drugs—police officer in Drug Squad for several years, with wide range of sources of information competent to give evidence on street value of drugs—for jury to determine what weight to attach to testimony*

*Sentencing—drugs—possession with intent to supply—street value of drugs—court not to attach too much weight to evidence of street value when sentencing—helpful in determining whether intent to supply present*

The defendant was charged with being in possession of Class B drugs with intent to supply, contrary to the Drugs (Misuse) Ordinance, s.7(3).

At the trial, the defence objected to police officers—one of whom had been in the Drugs Squad for seven years, the other for three, and both of whom received information from informers and those arrested about the street value of drugs—giving evidence for the prosecution being asked questions about the street value of the drugs on the grounds that no such information was in their statements and that they were not experts. The court ruled on the first ground, and decided to wait until after a *voir dire* had been held to rule on the second; the *voir dire*, during which the evidence of another police officer was examined, was duly held.

The defence submitted that since the police neither kept any statistics nor had done any research or comparative study into the street level price of drugs, the police officers could not be considered experts.

The Crown submitted in reply that (a) while no statistics were kept, the police officers received information about drug prices from drug users, informers and those arrested, and so knew the street value of drugs in Gibraltar, and had contact with overseas police forces for the purposes of comparison; and (b) the police officers, with their extensive experience, could be considered experts.

**Held**, making the following order:

Both police officers were competent to give evidence relating to the value of the drugs and their evidence would be admissible, although it was

for the jury to determine what weight, if any, to attach to it. Evidence of the street value of drugs could be relevant in determining whether a defendant had an intent to supply drugs—the assumption being that a high value meant that it was unlikely that the drugs were for personal use. Both officers were experienced in drug cases, and gathered information about the street value of drugs from a wide range of sources, and so were in a position to give evidence on street value. While the court should not attach too much weight to the value of drugs when sentencing, the present issue was one of admissibility, to which no such restriction applied (paras. 6–7; paras. 11–13).

**Cases cited:**

- (1) *R. v. Bryan*, English C.A., November 8th, 1984, unreported, *dicta* of Wood, J. applied.
- (2) *R. v. Gulraj*, C.A., Cr. App. No. 11 of 1988, unreported, distinguished.
- (3) *R. v. Patel* (1987), 9 Cr. App. R. (S.) 319, distinguished.

*C. Finch* for the defendant;  
*J.M.P. Nuñez*, *Crown Counsel*, for the Crown.

1 **ALCANTARA, A.J.:** The defendant is charged, *inter alia*, on two counts of being in possession of controlled Class B drugs with intent to supply, contrary to ss. 6(1) and 7(3) of the Drugs (Misuse) Ordinance. The first of the counts relates to cannabis resin and the second to amphetamine sulphate.

2 When Det. Const. Louis Vinet was giving evidence-in-chief for the prosecution, defence counsel objected to his being asked any questions on the street value of the drugs on the grounds that such evidence was not in his statement and, secondly, that he was not an expert.

3 I ruled on the first ground, although I forgot to say that this was a matter which should have been brought up at practice directions before the Registrar. It was obvious that the prosecution wanted to give evidence of street value: see Sgt. Massias' statement.

4 On the question of whether Vinet could be considered an expert for this purpose, I decided to leave the matter for a later stage, when the expertise of Sgt. Massias would also be considered on a *voir dire*.

5 The *voir dire* was held yesterday afternoon. Detective Const. Vinet gave evidence. He has been in the police force for 11 years: 2 years in the uniform branch, 2 years in the C.I.D., and 7 years in the Drug Squad. He has stated that he gathers information about the street value of drugs not only from persons arrested but also from informers who are drug-takers. Cannabis resin is a very common drug in Gibraltar; amphetamine came into the picture two or three years ago and is becoming very common.

6 He admitted in cross-examination that the police neither keep statistics

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as to value nor have done any research or comparative study. They compare prices with those in London and they are about the same. In his experience, the street value of amphetamine does not vary with purity. He can give the street value of cannabis resin and amphetamine.

7 The other witness is Det. Sgt. Isaac Massias. He has been in the police force for 10 years. He has spent one of the last four years in the C.I.D, and the other three in the Drug Squad. He has wide experience in drug cases. He receives information from users and from persons arrested. He also receives intelligence reports from the United Kingdom, and stated that cannabis resin is more expensive in the United Kingdom. The Gibraltar Police has no statistical survey but prices have been stable. He is in a position to give evidence on street value.

8 The questions before me are whether this evidence is admissible for the purpose of supporting the prosecution case that the possession was with the intent to supply, and also whether the two police officers can be considered experts.

9 I will refer first to *Bucknell & Ghodse on Misuse of Drugs*, para. 11.09, at 122 (1986):

“An intent to supply may be proved by an admission or by the circumstances of the possession or by the accused person having made an offer to a witness. Very often it is inferred from the fact that the defendant possessed a larger quantity than he would be expected to consume on his own.”

And, later on in that paragraph (*op. cit.*, at 124): “Evidence of the street level value of the drug may also be relevant.”

10 It also states (*op. cit.*, para. 11.10, at 124–125):

“Evidence is frequently called in order to prove that the value of drugs in the possession of an accused person is such that it can be inferred that the drugs are not for his personal use. This is done by calling a police officer who can say from his own experience what the street level price of certain drugs is likely to be . . . Surprisingly there does not appear to be reported authority on the admissibility of evidence of the street level value of controlled drugs.”

However, *Bucknell & Ghodse* quotes (*op. cit.*, para. 11.10, at 125) an unreported English case, *R. v. Bryan* (1), where Wood, J. said:

“The view of this court is that police officers with their experience of dealing with these problems, being on the streets and with their knowledge and meeting those having a drug problem and those pushing the drugs, have a very wide experience and can give evidence of fact of what takes place on many occasions on the street.”

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He was referring to evidence of value.

11 Counsel for the prosecution has referred me to *R. v. Patel* (3), and counsel for the defence has referred me to *R. v. Gulraj* (2). Those two cases were concerned with sentencing and not with the adducing of street value to prove intent to supply. Secondly, in neither of those cases was it held that a police officer with experience of drug cases was not competent to give evidence of street value, or as *Bucknell & Ghodse* very aptly puts it (*op. cit.*, para. 11.10, at 124) “what the street level price of certain drugs is likely to be.”

12 In the *Gulraj* case, the Court of Appeal criticized the trial judge (myself) in the following terms: “It is our view that the learned judge was mistaken in attaching weight to the value of the drug and in any event on the evidence we think he overstated the value by a not insignificant amount.” That criticism went to the sentencing process and not on the admissibility issue which was not before the Court of Appeal. The present case is distinguishable.

13 I have come to the conclusion that both officers are competent to give evidence in this case and that evidence is admissible. It is evidence that will be subject to cross-examination and it will be left to the jury to attach to it whatever weight, if any, they consider proper.

*Order accordingly.*