

In the House of Lords

Regina - v - Torch

Agreed Facts

Mr Fortune was an assistant chief investigating officer of Customs and Excise. He was in the process of divorcing his wife, Christina, when he was informed that she had been having an affair with the appellant, Torch, for a number of years. Fortune arranged for a listening device to be installed on Christina's home telephone line (she no longer lived with Fortune). The device was installed solely for Fortune's own private purposes in relation to the divorce proceedings and his superiors had no knowledge of it.

On the evening of 5 November 1999, an industrial garage maintained by Fortune for the purpose of storing his collection of vintage cars was set alight, causing extensive damage to both the garage and the cars. Fortune was notified immediately. On 6 November, whilst at work, Fortune was monitoring Christina's telephone line by way of the listening device. At about 10.30 am, a conversation between Christina and the appellant became audible, and Fortune decided to record it. During the course of the conversation the appellant indicated that he had set fire to Fortune's garage in accordance with Christina's instructions. Fortune later prepared a transcript of the tape recording and handed that transcript and the original tape over to the police.

The police arrested and interviewed Christina. The appellant was then arrested and interviewed in the presence of his solicitor. At the outset of the interview, one of the interviewing officers told the appellant that the police were in possession of a transcript and tape recording of a telephone conversation between the appellant and Christina Fortune that had commenced at 10.30 am on 6 November. As a result, the appellant made a number of admissions that amounted to confessions. Consequently, he was charged with, inter alia, conspiracy to commit arson.

The proceedings below

The case was set down for trial in the Crown Court before a judge and a jury. In a voir dire, counsel for the appellant made an application to exclude all the evidence obtained as a result of the telephone intercept. The Crown, whilst accepting that the intercept had been illegally obtained, opposed that application. Having considered the submissions, the trial judge, in ruling that all the evidence was admissible, concluded (i) that, although the intercept had been obtained illegally in breach of s 1 of the Interception of Communications Act 1985, nothing in s 9(2)(a) of that Act prohibited the admission of the evidence, because Fortune was not acting as an officer of the Crown at the time that the intercept was made; (ii) that, in relation specifically to the confession evidence, given that the admissions were not made as a result of trickery or a deliberate misrepresentation of the evidence, the evidence was not liable to be excluded under s 76 of the Police and Criminal Evidence Act 1984; (iii) that, for the purposes of s 78 of the Police and Criminal Evidence Act 1984, neither the introduction of the evidence nor the circumstances in which it was obtained were such as to render the appellant's trial unfair. The appellant did not give evidence and was convicted. He appealed against his conviction with the leave of the single judge.

The Court of Appeal, in upholding the decision of the trial judge, dismissed the appeal, but certified that a point of law of general public importance was involved in the decision and granted the appellant leave to appeal to the House of Lords. The case was thereafter presented to the House of Lords and set down for hearing.

The appeal

The Court of Appeal certified the following question of law of general public importance, namely:

- (a) 'Is it the law that material obtained illegally through the public telecommunications system by means of an unauthorised telephone tap by a person committing an offence under s 1 of the Interception of Communications Act 1985 is admissible in evidence?'
- (b) 'If material were obtained in contravention of a statutory prohibition on interception, and such material was *inadmissible*, but that material was used by the police in interview to obtain a confession, should the judge exercise his discretion, at common law or under s 78 of the Police and Criminal Evidence Act 1984, in order to exclude that confession?'

This problem is taken from the final of the Blackstone Herbert Smith GTI Law Journal National Mooting Competition 2000–2001, and was written and provided by Lynne Townley.