

ROYAL COURT

10th June, 1988

Before: the Bailiff,
assisted by
Jurats Hamon and Gruchy

Her Majesty's Attorney General

- v -

John Robert Patterson and
James Patrick Nolan

Application of the accused for leave
to inspect police officer's notebook
and to have it forensically examined

Advocate C.E. Whelan for the Crown
Advocate R.J. Renouf for J.R. Patterson
Advocate A.D. Robinson for J.P. Nolan

JUDGMENT

BAILIFF: Mr Renouf, Mr Robinson, we are going to lay down the principles as we see it. An application of this nature should normally only be made during the course of the trial and in the presence of the Jury and only when the ground has been laid in cross-examination of the witness, the police witness whose notebook is desired to be seen and that applies whether he has refreshed his memory from it or not, because it is a document which he used and which the defence might ask him to produce. So far as the point

raised by Mr Whelan is concerned, the Court accepts that any application of this nature should be made in front of the Jury. Naturally the type of application will vary depending on whether the notebook has or has not been used to refresh the witnesses' memory. But having said that we want to say that there appears to be two matters which we have to apply our mind to. The first is the release to the defence by the learned Magistrate of photostat copies of parts of the notebooks. Now the functions of the Magistrate are clearly to decide whether there is a prima facie case and we do not know whether he required the evidence of the police officers to be meticulously examined for that purpose or not, we are unaware of it. It may be that at the time he made the order he had not made his mind up and it may be that he was waiting to have a strong cross-examination, which we do not know whether it was done or not by the defence on those notebooks. We have no information about that at all. But on the assumption and it is only an assumption that he did not require cross-examination of that nature to assist him in deciding whether a prima facie case had been made up, we have come to the conclusion that if he did not need that cross-examination to assist him, then it was an error to release the photostat copies. It is not an important matter because we do not have to do more than express an opinion on it and it may well be that in certain circumstances it might be right, if he is going to try the case, or if he needs to examine an application that there is no case to answer. But generally speaking it is this Court which is the court of trial and it is here that the principles normally apply and we do not accept the submission of Mr Renouf that the Police Court is merely a part of this process of trial, up here it is not. This Court is a separate Court and it is in this Court in the course of an assize case that these principles are brought into play.

A second point is that due to some error, again it was an error, but an administrative error perhaps, rather than a judicial error, one of the accused's counsel, Nolan's counsel, Mr Robinson, was able to see for a short time, the possibly disputed, and I put it no higher, notebook. It seems to us that in this exceptional case and in order that Patterson does not feel a sense of grievance, which in our opinion he really has little grounds for feeling, but nevertheless he might well feel it, Mr Renouf should be entitled to the same consideration as Mr Robinson, but under the exceptional circumstances and as an exception to the general principle which I have

already stated that it is in this Court during a trial that the application should be made and after the proper ground has been laid by cross-examination.

If we are going to allow the application to this limited extent and we do not accept that it would be proper for us to allow preventive examination, the ground, and I repeat, has not been laid for any of these suggestions that there might be something wrong with the book by cross-examining the witness with the attendant risk of course which we acknowledge could arise and we are dismissing that part of the application, but we are going to allow the book to be seen and in order to perhaps allow Mr Robinson to have a further look at it by both counsel together in the presence of the police - but that is all.

Authorities

Archbold 42nd edn. 4-294 to 4-300.

Owen v. Edwards (1983) 77 Cr. App. R. 191.

Attorney General's Guidelines (1982) 74 Cr. App. R. 302.