R v Johnson [1988] 1 WLR 1377

'Informants protection – Observation posts'

In this case**,** the accused was charged with supplying controlled drugs. The evidence against him consisted almost entirely of observation evidence from police officers who carried out surveillance from several points in buildings in the locality in which the alleged dealing was taking place. Defence counsel wished to challenge the quality of the observation evidence in cross-examination. Having heard evidence from the police, in the absence of the jury, as to the difficulties in securing co-operation from members of the public in that particular locality, the judge ruled that police officer witnesses need not disclose the precise observation points although approximate details should be given. The accused was convicted and appealed on the grounds, inter alia, that the judge was wrong to rule that neither the observation points nor angles of view and so forth should be disclosed and was wrong to conclude that no miscarriage of justice would result.

Dismissing the appeal, the Court confirmed that, provided that there was a proper evidential basis for it, a trial judge may exclude evidence which, if given, would reveal not only where the police have kept observations from, but also, if they have kept observations from premises, the identity of the occupiers. The paramount consideration was whether the defendant had had a fair trial. Although the conduct of the defence was to some extent affected by the restrictions placed upon it by the judge's rulings, those rulings had been properly made and did not lead to injustice. Where the prosecution sought to exclude evidence of the identification of places of observation and occupiers of premises, they must place the judge in the best possible position to enable him properly in the interests of justice, which included affording the defendant a fair trial, to determine whether he will grant the police the protection sought. At the heart of the problem was the desirability of re-assuring people who are asked to help the police that their identities will not be disclosed lest they become the victims of reprisals.

The Court laid down the following **minimum evidential requirements** which must be satisfied in each case:

1. the police officer in charge of the observations to be conducted, who should be an officer not below the rank of sergeant, must be able to testify that beforehand he visited all observation places to be used and ascertained the attitude of the occupiers of those premises, not only to the use to be made of them, but to the possible disclosure thereafter of the use made and of facts which could lead to the identification of the premises and of the occupiers. That officer may also inform the court of any difficulties encountered in securing assistance from the public in that locality.

2. a police officer not below the rank of Chief Inspector must be able to testify that immediately prior to trial he visited the places used for observations, the results of which it was proposed to rely on in evidence, and ascertained whether the occupiers were the same as when the observations took place and whether they were or not, what the attitude of those occupiers was to the disclosure of the use previously made of the premises and of facts which could lead at trial to the identification of the premises and occupiers.

Such evidence should be given in the absence of the jury and the judge, in summing up or at some other appropriate time before that, should explain the effect of his ruling to the jury.

Johnson was followed by the Court of Appeal in **R v Hewitt and Davis** (1992) 95 Cr.App.R 81 and **R v Grimes** [1994] CLR 213. In **Hewitt and Davis**, Watkins LJ could *"see no essential difference between informers and the providers of observation posts for both in different ways provide the police with indispensable assistance in the detection of crime."*

The interpretation and comments made within this document are not to be considered as legal advice. Reference should always be made to the original case.