

TESSIDE CROWN COURT

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Before:

HIS HONOUR JUDGE R A R STROYAN QC

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Held at:  
THE LAW COURTS  
VICTORIA SQUARE  
MIDDLESBROUGH

C

On:  
Thursday 12 March 1981

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R E G I N A

- v -

JOHN ALEXANDER SYMONDS

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(Transcript of the shorthand notes by Mrs L Taylor of HUMPHREYS, BARNETT & CO, Official Shorthand Writers, 19 Queen Victoria St, Leeds. Tel 455082)

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MR RIVLIN QC assisted by MR RATCLIFFE appeared as counsel on behalf of the Crown

MR SYMONDS was unrepresented

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Thursday 12 March 1981

A HIS HONOUR JUDGE STROYAN: I understand that the present position is that the defendant has been feeling unwell and has been medically examined and that it is for that reason I have not come into court until twenty minutes to one, which it now is. Unfortunately we have lost the morning.

Is the medical condition clear now so far as anybody knows?

B DEFENCE SOLICITOR: I do not think it is clear, your Honour. I have been given information which leads one to believe that the doctor who is to examine the defendant would rather like him to undergo certain tests.

JUDGE STROYAN: Mr Symonds, have you any objection if the doctor told me what she thought was the matter?

MR SYMONDS: None at all, Sir.

C JUDGE STROYAN: I think the best thing to do would be if the doctor could come to court and I will close the court, if that is your wish, and hear her in chambers so that what she says is not made public, then we can decide what to do after that, but I will not hear her unless you would like me to, Mr Symonds;

MR SYMONDS: I am quite happy, your Honour.

D JUDGE STROYAN: I should add one thing, Mr Symonds. I have been handed, with the knowledge of your solicitor, and I think his approval, the written statements of a considerable number of witnesses, which I have read, and that, I think, saves the necessity of asking you to read them to me when you come to make your submission. You can, of course, point out any passages which you would like me to bear in mind. It will save you further effort if I tell you I have read all those statements and I think I have understood them.

E I should perhaps add, for the sake of completeness, that I have, a long time ago now, read the transcript of the telephone conversation between the defence solicitor and Miss Waugh.

MR RIVLIN: I am told that the defendant would like to add that and Miss Waugh's section 9 statement, which you have also read, to the list.

JUDGE STROYAN: I have also read that, yes.

F MR RIVLIN: As a note is being taken of that which is being said now, may I say for the purposes of these proceedings - and by that I mean the trial within a trial only - and in order to save time and trouble the Crown are willing to agree the evidence that you have read this morning.

G JUDGE STROYAN: Yes, well I am grateful. My Symonds, you heard that. You can rest assured I have carefully read all the statements which have been handed to me and it will be unnecessary for you therefore to read them out in open court.

Well then, I think all I can do is to rise now and as soon as the doctor can be brought into court I think it would be convenient to hear her, and if further medical treatment is suggested then I will do what I can to see that that happens if possible straight away.

H I think there is no more I can do until the doctor arrives. It may be better, Mr Symonds if you remain where you are rather than go down and come back.

(The evidence of Doctor Pinto is heard in chambers)

JUDGE STROYAN: Now, Mr Symonds, at the present stage I have read the evidence which has been put before me. I understand you do not in fact now wish to call any more witnesses?

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MR SYMONDS: No.

JUDGE STROYAN: That is right, is it?

MR SYMONDS: Yes.

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JUDGE STROYAN: I think what we will do today, we will hear Mr Rivlin's submissions so that you may know what they are. Mr Rivlin has indicated he will not be very long. Then you will have some time to prepare what you have to say - that is if you want to address me; you need not if you do not want to - and if you are fit enough I will hear you tomorrow morning, but I will be perfectly prepared not to do so until eleven or twelve o'clock.

MR SYMONDS: I would like some time in the morning.

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JUDGE STROYAN: How long are you likely to be?

MR SYMONDS: Not long, my Lord.

JUDGE STROYAN: If I said I would hear you at twelve o'clock, would that give you time?

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MR SYMONDS: I hope so, my Lord.

JUDGE STROYAN: You will be able to consult with your solicitor about what you want to say. Very well, I will hear you at twelve o'clock tomorrow morning, are you happy with that?

MR SYMONDS: Yes.

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JUDGE STROYAN: You will not have any more strain today. Very well, if it is convenient, Mr Rivlin, I will hear you now and the defendant can hear you now and tomorrow morning at noon we will hear him, and we will see what happens after that.

MR RIVLIN: Your Honour, may I say this. If your Honour were to rule in favour of the Crown and against the defendant on these submissions, would you be willing to say we need not have any witnesses here tomorrow?

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JUDGE STROYAN: Yes, certainly.

MR RIVLIN: I am obliged because I do not think, given I have to open the case to the jury, very much could be done in that respect at all.

JUDGE STROYAN: Certainly. If the matter does go to trial I certainly would not anticipate getting any further than the opening.

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MR RIVLIN: And indeed, your Honour, I wonder if you would be willing to say this, that it may be, if the defendant gets down to business with his solicitor at nine o'clock in the morning, he might be ready before twelve. Would you be willing to say you would hear him before twelve if he was ready before twelve?

JUDGE STROYAN: Oh, yes, certainly.

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MR RIVLIN: It is not a case of 'not before twelve'?

JUDGE STROYAN: No, I do not want to waste any time. I will be ready to start at eleven o'clock and if Mr Symonds is ready by then, then I will hear him.

A MR RIVLIN: Very well, your Honour. I propose to address you on behalf of the Crown and I think I can best assist by dealing with the matter in two stages, first by making one or two submissions about the law, and then by dealing briefly with the evidence. Your Honour, in making my brief submissions about the law I am anxious to assist the defendant as much as the court.

B Your Honour, first the law. In our submission, in conducting this exercise of a trial-within-a-trial the court has followed what appears to have become a well-established practice where authenticity and originality of taperecordings is challenged, but it is a practice which the courts have only adopted with great reluctance because once a prima facie case on originality is made out all questions of weight of evidence are for the jury and, your Honour, I would like, if I may, to read to you two short passages from two cases which have gone to the Court of Appeal, so that not merely you, but also the defendant, will appreciate what the Court of appeal has had to say about this type of situation.

C Your Honour, the first one is the case of Magsood Ali, reported in 1965 Queen's Bench Division reports, volume 1, in which Marshall J delivered the judgment of the Court of Appeal in that case.

JUDGE STROYAN: I have it here.

D MR RIVLIN: I have the Queen's Bench Division report.

JUDGE STROYAN: Yes, I have it.

E MR RIVLIN: And at page 703 this passage is to be found: "In the normal case of a trial-within-a-trial the issue clearly raised is whether evidence such as statements are voluntary or if voluntary whether they were obtained in conformity with the Judges' rules. Here the judge was pressed to undertake an enquiry into the weight of the evidence, and although reluctant at first he ultimately agreed to do so. In the view of this court the cases must be rare where the judge is justified in undertaking his own investigation into the weight of the evidence which, subject to proper directions from the judge, is really the province of the jury, but the court sees that there can be cases, though they must be rare, where the issues of admissibility and weight can overlay each other. We think this was one of those rare cases in which the judge was justified in doing what he did."

F The other authority to which I would like to refer you is that of Stevenson and others which is reported in the Criminal Appeal Reports, and I will give you the reference.

JUDGE STROYAN: I have got it in the All England.

G MR RIVLIN: Well, it is 55 Criminal Appeal Reports, page 171, and if I might I will just read a short passage from that report at page 173.

H "Certain passages in the judgment of the court" - that is in Ali and Hussain - "clearly indicate when dealing with this type of evidence" - that is the evidence of authenticity of taperecordings- "particular care is required and contemplate that issues of truth or falsity may in some instances have to be considered as matters of admissibility. Moreover, in the recent case of Senat, while approving the admission of taperecorded evidence, Lord Parker CJ would appear to have kept open the issue whether taperecordings may have been tampered with or may have been wrongly transcribed. Consequently in this case an extremely lengthy and detailed examination of the evidence has taken place on the *voire dire*. This examination has been conducted with very great

A care. It has been highly technical and very scientific at times and extremely burdonome for everybody engaged in this case. I interpolate to say that I have been greatly assisted by the way in which this examination has taken place, greatly assisted by those who have the difficult duty of producing it, by those who have given evidence, and by counsel who have proved that evidence before me. Nevertheless, as a general rule, it seems to me to be highly undesirable, and indeed wrong for such an investigation to take place before the judge. If it were to be regarded as a general practice it would lead to the ludicrous situation that in every case where an accused person said that the Prosecution evidence is fabricated the judge would be called to usurp the function of the jury."

B JUDGE STROYAN: It was for that reason that I expressed myself in the early stages of this case as being reluctant to hear this issue on the voire dire.

C MR RIVLIN: Certainly the issue has been heard; in my submission it has been rightly heard, we make no complaint about that, but in our submission it is very important, not merely for the court, but, with respect, for the defendant to understand that all that the Prosecution must do at this stage is to lay before the court prima facie evidence which it can accept, on a balance of probabilities, that a case on originality is made out, and once it has done so all questions of weight are for a jury.

Now, having said that about the law, I propose to turn to the evidence. In our submission, we have established a strong prima facie case on originality and authenticity in relation to the recordings which are exhibits, numbers 1 to 7. I think it may assist the court if I take and deal with the three categories of evidence which the court has heard in this regard.

D The three categories that I have in mind are as follows: one, the evidence from any person who was actually involved in the conversation in question; two, the evidence of those who set up the recordings and maintained custody of the tapes; and finally, the expert evidence.

E Now, dealing first with the first two categories, in our submission at the present time the evidence is all one way. There is prima facie evidence, creditable evidence, that the voices on the tapes are those of the defendant and Perry. That is Perry's evidence, leaving aside any other evidence that the court has heard that the defendant was present at these public houses at the time alleged. In the second place there is prima facie evidence that the original tapes were taken into the immediate custody of the newspaper reporters and labelled as originals, and that evidence comes from three sources, from Mr Lloyd, Mr Mounter and Mr Hawkie.

F Mr Lloyd and Mr Mounter have given detailed and, in our submission, careful evidence relating to the marking of the tapes when they were taken from the recorders and the effect of their evidence, in our submission, is clearly that these tapes were the originals. Mr Hawkie said that he was present when this was done and that he witnessed the writing on the labels by Mr Lloyd and Mr Mounter.

G There is not, as your Honour knows, a label of identification on exhibit number 7 which is the cassette, but the cassette itself has been identified by Mr Hawkie as the original cassette that was used as a backup recording of the other two that were taking place on 21 November. All three have identified exhibit number 7 as being the original cassette.

H Going on from there and from the identification of the spools and the boxes that have been produced in court, one considers a point that has been made by the defendant where he quite properly and understandably has pointed out to the court that at one or two of the boxes of the copy tapes there is reference to the word 'master', and another 'retained on copy tape box number 1', and that those references have been crossed out. Well, he is quite right,

A of course, to have drawn those matters to your Honour's attention, but they are references that have been crossed out; and in the case of the first one, copy tape box number 1, where there is a reference to 'master' and 'nagra from mobile'. That, in our submission, is explained. It is explained by Mr Mounter who told the court that on 21 November there was a fourth recording, or what they believed to be a fourth recording when Mr Howkie and Miss Millicard were listening in to the conversation that was taking place, but, as your Honour knows, there was no recording on that tape and so it was not thought necessary to produce it in evidence to anyone, and in our submission there is therefore, in relation to that box, a very sensible and creditable explanation as to how that reference came to be on the box and as to how it came to be crossed out.

B JUDGE STROYAN: That is copy tape number 1.

MR RIVLIN: Yes. Now, if the defendant feels that he has got a strong point here, despite what I have said, then of course he is entitled to make the point but in our submission it is not a point that should seriously affect your judgment as to whether we have proved that exhibits, numbers 1 to 7, are authentic and original recordings.

C I come on now to the second point that I would like to make about originality and authenticity and that is this, that in our submission there is prima facie evidence, and strong prima facie evidence, that the content of the conversations has not been interfered with or tampered with. That comes from the following sources; first, Mr Lloyd, who listened to the tapes and who confirmed that the tapes that he heard in court were the same as the tapes that he heard immediately after the recordings had been taken. There was similar evidence from Mr Mounter. There was similar evidence from Mr Howkie whom the defence regard as a reliable and - at least if not reliable, an honourable witness who told the court, "I have no doubt that the tapes that I heard this morning were the originals" and who further said that the reporters did not behave improperly in any way. And finally you heard from Perry in cross-examination that the tapes that he had heard conformed with his recollection of what was said during the conversations that he had with the defendant and that there was nothing so far as he was concerned that had either been put into the tapes, inserted into the conversations, or deleted from the conversations so as to render them fabricated.

E JUDGE STROYAN: Well, Perry is, of course, to be regarded as an accomplice, isn't he?

MR RIVLIN: Yes, he is.

F JUDGE STROYAN: And he would require corroboration if his evidence stood alone.

G MR RIVLIN: Absolutely, yes, but there is corroboration from Lloyd and Mounter, and Howkie. Your Honour, it is because Perry is an accomplice that I refer to him last. Your Honour, that would be our respectful submission to the proposition that the content of the conversations has not been tampered with. There may be further corroboration from the experts called on behalf of the defendant, but I am not going to go into that because there is, in our submission, ample corroboration from the witnesses who were there at the time.

H JUDGE STROYAN: Yes.

MR RIVLIN: As to the subsequent custody of the tapes and what the defendant refers to as their 'continuity of handling', this is what we have to say. In our submission the value to the defendant of any break in the chain, or any unusual feature in handling, is as follows, that if that can be established

A he may claim that someone may have had the opportunity to tamper with the tapes, of course such evidence would be valuable to him, or could be valuable to him, where there is no primary evidence, or no credible primary evidence of authenticity and that the tapes have not been tampered with, but there is primary evidence, and credible evidence in this case, that the tapes have not been tampered with - that is the evidence to which I have already referred - and so even if we do not dot every i and cross every t, we submit that the evidence that we have adduced amounts to a strong prima facie case, but my submission is that we have adequately covered the question of continuity of handling. We have called the newspaper reporters who have told you that they kept the tapes in their close custody, with the exception of such time or day when they went to location sound facilities for copying. We have called Mr Ashburn to prove the two days upon which the various tapes were handed over to him, the 2nd and 5th December. We have called Mr Collins to cover the weekend between Mr Vernon becoming the exhibits officer and Mr Ashburn leaving that post. We have called Mr Vernol who has proved the custody of the tapes since 1970 to 1980 when they were handed over to the present exhibits officer, and the experts who have been called on behalf of the defendant have, I think, been unanimous in expressing their impression that the police were taking the custody of the tapes very seriously indeed, and what I would say is this, that if after all of that the defendant believes that he has some point on continuity of handling - and he may, I don't know - that would be a point to be left to a jury to consider whether any break in continuity could conceivably affect the so far strong evidence that these tapes were the original and authentic tapes and recordings.

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D I now turn finally to the question of the expert evidence. In our submission they have proved no more than that which the Prosecution accept, namely that in the early stages of the Times investigation tapes were used which were not 'factory fresh'. Now, your Honour enquired yesterday whether this was accepted at the previous trial-within-a-trial. Our investigations suggest that it was accepted that the tapes, or some of the tapes - certainly tape number 5 was not 'factory fresh', and your Honour, in support of that - and I do not invite you to look at it because it is evidence which has not been adduced in court - may I tell you that volume 5 of the notice of additional evidence is a notice of further evidence from Mr Hawkie about tape number 5; it is a statement dated 19 November of last year which was served on 25 November of last year, but be that as it may, since these matters were further investigated in 1980 - and it must be appreciated that there is a very long time between 1972 and 1980 when people had other matters on their mind than this case because Mr Symonds was not here; be that as it may, the situation is that the Crown quite properly and, in our submission, inevitably accepts the proposition that these tapes, early tapes, were not 'factory fresh' and you have had the evidence of the experts that that was transparently the case to any expert who might be examining the tapes.

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G Now, it may be that Mr Symonds feels that he can now derive some comfort from the evidence of the experts, and it is possible that he can, but in our submission it must be the situation that, if so, these are points best fitted for consideration by a jury and they are not points which could possibly justify the defendant in asking you to take these matters out of the hands of the jury. Far from it.

H Let us consider the broad sweep of the evidence of the experts. One, the words allegedly used were used; two, there is no evidence whatsoever that the content of conversations; three, in relation to tapes 2 and 14 there is no criticism at all, and tape 14 in our submission, which is exhibit number 5, is a tape which is highly incriminating so far as the defendant is concerned; four, tape 15, exhibit number 7, no criticism at all, except that it is a poor quality recording. Point five, if the tapes have been tampered with, they must - and in our submission this is the weight of the evidence of the experts - they must have been tampered with by experts with time on their

A hands, and in our submission there has been no allegation as to who the experts may be; there is no evidence that experts did have time on their hands to tamper with these tapes. Far from it. And finally, no motive has been or could be suggested as to why any experts might be minded to tamper with these tapes and so, in our submission, we are simply not within sight of a situation where it would be reasonable or appropriate to invite you to withdraw this evidence from the consideration of the jury.

B Now, there is a matter that I ought to deal with; it is a nettle which will have to be grasped sooner or later, but in our submission the time for it to be grasped is before the jury, and that is this, that Mr Hawkie has claimed that the tapes which were used were 'factory fresh' tapes, whereas it is crystal clear that not all of them were, and indeed we know in relation to tapes numbers 3b and 5 that those tapes bear other material, other recordings on them, and the way in which we would put the matter is quite simply as follows. Mr Hawkie must be wrong about that and indeed he is transparently wrong about that. It may be that he believed that he was being given fresh tape. It may be that he believed that he was being careful and using 'factory fresh' tape, but in our submission, what happened here - or at least there is prima facie evidence that what happened here was that in the early stages, as the reporters have said in evidence, they may not have used 'factory fresh' tape.

C Now, that is a matter, in our submission, that will have to be considered by a jury and they will have to make their minds up about it in the light of all the other evidence in the case, but it is certainly not a matter which could justify you in coming to a conclusion that these various tapes had been tampered with in the light of the other evidence, the main evidence, the primary evidence to which I have referred, because Mr Hawkie himself said - and I repeat, "I have no doubt that the tapes that I have heard this morning in court were the originals."

D Now, your Honour, unless there is any other feature in this case about which you would like assistance from me, I do not think I can take my submissions any further.

E JUDGE STROYAN: Thank you, Mr Rivlin. Well, Mr Symonds, that is as far as we go today. You have heard what Mr Rivlin has said. You will have an opportunity of dealing with that, if you think right, tomorrow. I will be ready to hear you at eleven o'clock if you are ready, but if you are not I am perfectly prepared to give you until twelve o'clock. That should give you at least three hours to consider your submissions with your solicitor.

F MR SYMONDS: Thank you.

JUDGE STROYAN: You are happy with that, are you?

MR SYMONDS: Yes, thank you

G JUDGE STROYAN: I think I should also direct that you see the prison medical officer when you get back, and no doubt you would like me to direct that he has with him the document from the North Tees hospital.

MR SYMONDS: Please.

JUDGE STROYAN: I am sure the prison authorities will give you such help as they can to enable you to prepare your submissions and to ensure you are here in good time tomorrow morning.

H MR RIVLIN: Your Honour, I am asked to request a direction from you that Mr Moody can now be released - not a release from custody but can be released from attendance at this court so that he can return to the prison from whence he came.

JUDGE STROYAN: Yes.

MR RIVLIN: Certainly for the time being.

JUDGE STROYAN: Yes, he may or may not be needed later, we do not know, but for present purposes he may be released.

MR RIVLIN: I am obliged.

JUDGE STROYAN: I do not mean released from prison, but he can go to some other prison.

THE COURT ADJOURNS

I certify that I took shorthand notes in part of the trial R -v- SYMONDS and that pages 1 - 8 are a complete and accurate transcript of my said shorthand notes to the best of my skill and ability.

*E. Taylor*.....