

No: 200004682/Z5

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Neutral Citation Number: [2001] EWCA Crim 2251  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 5th October 2001

B E F O R E :

LORD JUSTICE KAY

MR JUSTICE BUTTERFIELD

and

SIR IAN KENNEDY

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R E G I N A

- v -

Barry Jones STRETTLE

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Computer Aided Transcript of the Stenograph Notes of  
Smith Bernal Reporting Limited  
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(Official Shorthand Writers to the Court)  
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MR M BARLOW appeared on behalf of the Appellant  
MR S MILLS appeared on behalf of the Crown  
MISS K STEYN appeared on behalf of the CICA

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J U D G M E N T

(As approved by the Court)  
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----- 5th October 2001

1. **LORD JUSTICE KAY:** This is a case in which on 25th June 2001 the full court granted leave to appeal against conviction and referred the related application for leave to appeal against sentence to the full court. At the hearing on 25th June counsel for the appellant, Mr Barlow, raised issues relating to possible fresh evidence. The case has now been listed before this court for directions in relation to two distinct matters of evidence which may arise at the hearing of the appeal. We propose to deal with each in turn.
2. The first is an application for disclosure of material held by the Criminal Injuries Compensation Authority relating to compensation claims made by two of the complainants in the case. The authority has provided copies of the material in question to the registrar on the express understanding that it would not be disclosed to the appellant's representatives without an order made by the court. Mr Barlow makes application that he should now be entitled to see that material.
3. It is necessary first to start from the proposition as to what powers the court has in relation to ordering a non-party to produce documents. That we are content, despite the fact that Mr Barlow was not in a position to assist us on the matter, arises from section 23 of the Criminal Appeal Act 1968. Subsection (1) of that section reads:

"For the purposes of this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice --

(a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case."
4. There are then other provisions relating to witnesses and the receiving of evidence which are not relevant to this application. The rules then make provision for the court to order that a party to the proceedings may inspect documents which have been produced pursuant to section 23. Thus we treat it as such an application to inspect those documents which have been produced to the court on the basis to which we have referred.
5. Section 23 has two hurdles that an applicant has to overcome. Firstly, for a document to be produced the court must think it necessary or expedient in the interests of justice. Secondly, any such document can only be produced if the production of that document appears to the court necessary for the determination of the case.
6. Mr Barlow's submission in relation to that matter is this. The two complainants each gave evidence that they were not interested in any compensation as a result of the proceedings and yet each has subsequently made an application. His first application is that he should be entitled to know the dates upon which those applications were made. Miss Steyn, who appears on behalf of the authority, agrees that such information is clearly information that is necessary if this point is to be made at all. It is in the interests of justice that the court should be aware of the dates and that the

appellant should be able to base any argument he wishes to advance on the clear knowledge of when those applications were made. Those dates have been disclosed orally during the course of these proceedings. They are now dates that are known to all concerned. The dates in question are matters therefore which can be relied upon by the appellant if it is thought necessary to do so. We find no need to make any further order relating to the date.

7. Mr Barlow, however, wishes us to go further and wishes an order that he be entitled to inspect the file in order to see whether the contents of the file in any way show that the complaints that were made to the police originally, and repeated in court, differed from that which was advanced on the application for compensation to the authority.
8. It seems to us that before any such application can properly be made an applicant has an evidential hurdle to overcome of showing that there is some basis for thinking that there is likely to be some distinction between the two accounts. To order, in the absence of any such evidence, that it be disclosed would simply be to authorise a fishing expedition on behalf of the appellant to hunt through, looking for some minute difference in order to suggest that the account differed in some way. Mr Barlow, in fairness to him, recognises that that is exactly what he is wanting to do. We have no doubt that the section does not permit us to do that, unless it is necessary that the document be produced for the determination of the case.
9. Nothing on the facts of this case in any way gives rise, so far as we are concerned, to a suggestion that there is a distinction of the kind suggested which really ought to lead to disclosure of those matters to the appellant. We therefore think that this application fails because it fails in any way to satisfy the court that these documents come within the requirements of section 23.
10. In any event, Miss Steyn, on behalf of the authority, makes the further point that there is a public interest element to this. These documents should only be produced if there really is some very good reason why they should be produced, otherwise the making of such applications may be hampered and there is a public interest that victims of crime should properly be compensated and should not feel in some way in making that application that every word that they have put down on paper is going to be poured over in the hope of finding some difference. We think there is that public interest reason why these documents should not be produced.
11. We make clear we have seen the documents and the procedure that has been followed in this case seems to us admirably to serve the interests of justice. Were there something exceptional in the documents, then the court would have to consider whether those exceptional features required something further in the interests of justice. There is nothing exceptional in this case. Save to the extent that the dates have now been established, we make no further order in relation to the Criminal Injuries Compensation Authority files.
12. The second matter that is raised relates to an application for public interest immunity which was made during the course of the criminal trial in chambers. A full transcript of what occurred is before the court. That transcript reveals that for a part of the time

leading counsel then appearing for the appellant, Mr Zeidman, was present in chambers. It seems to us that there is no good reason why that, which any event was known at the time to the defence team, should not be available to Mr Barlow when he conducts this appeal. Accordingly, we direct that those parts of the transcript which took place in the presence of Mr Zeidman should be copied and made available to the appellant.

13. So far as the whole is concerned, the Crown, of course, were party to the whole but have the disadvantage that counsel then appearing for the Crown has since been made a judge and will not, therefore, be conducting the appeal. It seems to us that there is no good reason why the Crown should not have a transcript of the full part of the proceedings, so that if some matter arises during the course of the appeal which would require further disclosure they will at least be aware of what happened at the crown court.
14. The next issue might have caused difficulty, that is whether there should be disclosure of some of the documents which were referred to on that application. The defence were told the general nature of the documents, namely that they were records relating to telephone calls made by one of the witnesses, Mr McDonald, and that those telephone calls were the subject matter of the application. Mr Barlow makes clear what it is that he would want from that source, namely any information relating to telephone calls between Mr McDonald and the appellant, any information relating to any telephone calls between Mr McDonald and any complainant and any information relating to telephone calls between Mr McDonald and the police.
15. The Crown have no objection to the supply of that information. It is the belief of Mr Mills, who appears here today on behalf of the prosecution, that all such material has been disclosed, but since he has not had specific conduct of the case himself he quite rightly wishes to check that that is so, and if any such material does emerge then it will be disclosed. In those circumstances, having recorded what has occurred today, there is nothing further that we need to do by way of any order and we do not, in those circumstances, make any order relating to disclosure.
16. A transcript of what I have said today will be made available to the court that hears this matter and should be made available equally to each of the parties so that they have a record of what has been said.