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FRANCIS KEENAN

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY ED MOLONEY AND IN THE MATTER OF DECISIONS MADE BY HIS HONOUR JUDGE ANTHONY HART QC DATED 23RD AUGUST AND 2ND SEPTEMBER 1999

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To John Murphy

EVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989
SCHEDULE 7

ORDER

...nty Court Division of Belfast

...as it appears from the application on Oath of Todd Clements, a Detective ...or of the Royal Ulster Constabulary of Antrim Road CID, that there is ...nable cause to believe that certain material, to wit, notes (whether in hand-...en form, type-written form, on tape or on computer disc or any other means of ...ce) taken by you in the course of interviews with Mr William Stobie which took ... between 12 February 1989 and the time of his being charged on 23 June 1999 ...e murder of Mr Patrick Finucane on 12 February 1989 is in your possession, ...tody or power and you are hereby directed to:-

...uce it to a constable for him to take away

...in seven days of the date of this Order.

...er directed to:

...: Ed Moloney

...DRESS: 28 Bawnmore Road
BELFAST BT9 6LB

...this 8th day of July 1999.

County Court Judge
for the said County Court Division

dcs\S91.53

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DOCKET FOR EX-PARTE MOTION

19 99 No.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN BENCH DIVISION (CROWN SIDE) DIVISION.

IN THE MATTER OF AN APPLICATION BY ED MOLONEY AND IN THE MATTER OF DECISIONS MADE BY HIS HONOUR JUDGE ANTHONY HART QC DATED 23RD AUGUST AND 2ND SEPTEMBER 1999

Plaintiff:

Defendant.

Mr. Lavery QC to move on day the day of 19 99 on behalf of the Applicant for an order[a] in the terms of the Statement attached.

(a) State in precise terms the order applied for

(b) State Documents relied on with dates of Filing the Affidavits

Readings [b] 1. Order 53 Statement of Ed Moloney.
2. Affidavit of Francis Keenan and Exhibits.

(Signed). Francis Keenan

Solicitor for Applicant

Address Francis Keenan, Lyndon Court, 32/38 Queen Street, Belfast.

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1999 No:

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY ED MOLONEY
AND IN THE MATTER OF DECISIONS MADE BY
HIS HONOUR JUDGE ANTHONY HART QC DATED
23RD AUGUST AND 2ND SEPTEMBER 1999

STATEMENT

PURSUANT TO ORDER 53 OF THE RULES OF THE
SUPREME COURT (N.I.) 1980

1. The Applicant is Mr Ed Moloney, the Northern Editor of The Sunday Tribune newspaper.

2. The relief sought is:

(a) An Order staying the Order made by His Honour Judge Hart on 2nd September 1999 requiring Mr Moloney to produce notes to a Constable within seven days.

(b) An Order of Certiorari to remove into this Honourable Court and quash decisions made by His Honour Judge Hart on 23rd August and 2nd September 1999.

(c) A declaration that the said decisions are and were at all material times null and void.

(d) Further or in the alternative an Order of Mandamus directed to His Honour Judge Hart requiring him to order that certain documents be disclosed by the Police to Mr Moloney or staying the application of the police until those documents are disclosed.

(e) Such further or other relief as to the Court may seem just.

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(f) Costs.

3. The grounds on which the said relief is sought are that:

1. In the absence of Crown Court Rules, natural justice requires that the grounds on which the application was made and pursued by the police should have been stated clearly and all relevant documents provided in advance of any hearing: in particular since one issue was whether the production of notes by Mr Moloney was likely to be of substantial value to a terrorist investigation as required by Paragraph 3 (5)(a) of Schedule 7 of the Prevention of Terrorism (Temporary Provisions) Act 1989 it was fundamentally important to see what information the police already had so as to enable the Court to assess the likely value of any notes which Mr Moloney had.

2. The interests of natural justice required that the steps referred to at paragraph 1 above should have been taken before the application was allowed to proceed: in the alternative the application should have been stayed until the said conditions were complied with.

3. Contrary to the rules of natural justice, the Learned Recorder failed to ensure that the Applicant was given access to the material referred to at paragraph 1 above.

4. Contrary to the rules of natural justice the Learned Recorder permitted the police to alter the basis on which the Order was sought and which was notified to the Applicant by way of the two page "Statements of Facts" (FK3) as the basis upon which the Order which had been obtained ex parte would be justified.

5. Contrary to the rules of natural justice, the police altered their evidence about Mr Stobie's admissions in 1990 and/or

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the grounds upon which the Applicant's notes were likely to be of substantial value without giving notice to the Applicant so that the Applicant had an opportunity to address these new issues.

6. There was no basis of security or prejudice to the police investigation into the murder of Patrick Finucane upon which the documents referred to at paragraph 1 above could have been properly denied to the Applicant.

7. The Learned Recorder was in breach of the rules of natural justice in denying the Applicant access to the documents which he himself had seen at the time of the ex parte application on 8th July 1999, whether or not those documents were or appeared to him to be relevant to the inter partes hearing on 23rd August.

8. It is clear from the Statement of Facts in support of the application (FK3) that the Learned Recorder was misled at the ex parte application because the said document stated that Stobie had denied any involvement in the murder of Patrick Finucane when questioned by the police in September 1990 whereas the Court was told on 23rd August by Chief Inspector Turner that Stobie had admitted supplying firearms knowing that a man was to be killed and that he recovered these firearms after Mr Finucane's murder - see page 3 of the judgement and, in the transcript, pages 44 and 64-68.

9. For the same reason it is also clear that the Applicant was misled by the said Statement of Facts and furthermore that the question of seeing details of the 1990 interviews at which Stobie admitted his involvement did not arise because the Applicant had been misled. This must inevitably have undermined the credibility of Mr Turner and raised serious issues as to the reasons for his failure to provide information, make notes available and answer questions.

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10. The said Statement of Facts gave two reasons for the Applicant's notes being of substantial value (see FK3, page 2 at paragraphs 3 and 4). These reasons were that the notes would directly corroborate and go to the credibility of Mr Mulholland and further that whereas Stobie made very few answers to any questions during interviews (in June 1999) the Applicant's article contained clear admissions of supplying the murder weapon and recovering it afterwards. The Learned Recorder rejected the first reason at page 13 of his judgement and did not consider the second reason because it was not advanced at all on the hearing on 23rd August. If it had been advanced it would necessarily have been rejected in view of the disclosures about the 1990 interviews and admissions by Stobie.

11. Instead the Learned Recorder made the Order on 2nd September 1999 on the basis of a different reason i.e. that there were further lines of enquiry which the police wanted to follow into the murder - see page 14 of the judgement. In particular the Learned Recorder referred to evidence about references in the Sunday Tribune article to those who actually took part in the murder and to the need for the police to ascertain the identity of those involved. Quite apart from the fact that this was not contended by the police in the Statement of Facts, Mr Turner did not in fact assert in his evidence that the police did not know the identity of those involved - see page 57 of transcript at lines 20 - 29. Furthermore there must be a high degree of probability that Stobie had identified those people during his interviews with the Police in September 1990 so that the information was already available to the Police.

12. The police did not identify any new factor emerging from Mr Mulholland's evidence or the Applicant's article which they were not already aware of, either in specific or even in general terms. Bearing in mind the consistency between the three versions as accepted by Mr Turner in the 1990 interviews of Stobie, Mr Mulholland's evidence and the Applicant's article, there must be a high degree of probability that there is nothing in the Applicant's notes in relation

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to the murder of Patrick Finucane of which the police are not already aware.

13. The Learned Recorder misunderstood Schedule 7 to the 1989 Act and erred in law by considering the application before him in terms of the benefit to the prosecution of Stobie rather than the benefit to the investigation of the murder - see judgement at page 13.

14. In light of the grounds referred to above:

(a) The Applicant was denied a fair hearing.

(b) The decision of the Learned Recorder was wrong in law.

(c) In the absence of evidence that the Applicant's notes were likely to be of substantial value to the police investigation the application of the police should have been refused.

15. The denial of a fair hearing to the Applicant was contrary to the rules of natural justice and to Article 6 of the European Convention on Human Rights, the right to a fair trial. Furthermore ordering the Applicant to hand over his notes in the circumstances was wrong, unfair and contrary to Article 10 of the European Convention on Human Rights, freedom of expression.

16. The said decisions were Wednesbury unreasonable.

17. In the circumstances the said decisions were unlawful, irrational and procedurally improper.

Dated this 7th day of September 1999

Signed: Francis Keenan
FRANCIS KEENAN
Solicitor for the Applicant

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1999 No:

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY ED MOLONEY AND

IN THE MATTER OF DECISIONS MADE BY

HIS HONOUR JUDGE ANTHONY HART QC

DATED 23RD AUGUST AND 2ND SEPTEMBER 1999

I, FRANCIS KEENAN Solicitor of Lyndon Court, 32/38 Queen Street, Belfast make oath and say as follows:

1. I am the Solicitor for the Applicant in the present case and am authorised to make this affidavit on his behalf.

2. On 27th June 1999 the Applicant published in the Sunday Tribune newspaper an article entitled "The murder of Pat Finucane and how the RUC could have stopped it". I refer to a copy of the said article marked "FK1" and signed by me at the time of swearing hereof.

3. On 8th July 1999 an ex parte application was made by Detective Inspector Todd Clements of the Royal Ulster Constabulary to His Honour Judge Hart QC (the Recorder) pursuant to Schedule 7 of the Prevention of Terrorism (Temporary Provisions) Act 1989. The Application was granted, though not in full, by the Recorder following which an Order was served on the Applicant on the same day.

4. On 14th July 1999 an application to discharge the Order was made to the Recorder and was served with a letter of the same date in which an issue was raised about the necessity of the Applicant to have access to information. I refer to the said application and the said letter marked "FK2" and signed by me at the time of swearing hereof.

5. On 27th July 1999 a hearing took place before the Recorder at which submissions were made on the issue of access to documents. In the course of that hearing the Recorder specified the documents which he had asked for and/or which had been placed before him

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on 8th July. These were as follows:

(a) A witness statement of Neil Mulholland made on 3rd June 1999.

(b) A summary of the questions put to, and answers given by, Stobie during interview.

(c) Stobie's police statement of 23rd June 1999.

(d) A two page undated statement of facts in support of the application prepared and given to the Court by Chief Inspector Turner on 8th July 1999.

The Police did not resist the Applicant's application in respect of (d) but following submissions the Recorder ruled that he was not prepared at that time to direct the police to hand over any other documents though the matter could be kept under review and reconsidered by him.

6. The police then served a copy of the two page document referred to at paragraph 4 (d) above. I refer to the said document marked "FK3" and signed by me at the time of swearing hereof. In this document it is asserted that William Stobie, who was charged on 23rd June 1999 with the murder of Patrick Finucane, had been arrested and interviewed between 13th and 20th September 1990 but that he had denied any involvement in the murder and was subsequently released without charge. The grounds upon which the police relied for contending that the Applicant's notes would be of substantial value to the investigation are set out on the second page at the third and fourth paragraphs and are that the notes would directly corroborate and go to the credibility of Mr Mulholland. Further the police say that during Stobie's interviews he made very few answers to any questions whereas in the article there are clear admissions of supplying the murder weapon and recovering it after the murder. No other document was supplied by the Police to the Applicant prior to the inter partes hearing on 23rd August 1999 nor was any indication given that anything contained in the police statement was inaccurate in any way.

7. The application was heard by the Recorder on 23rd August 1999 and judgement was subsequently given by him on 2nd September

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1999. During the hearing on 23rd August the police provided a copy of a statement which had been prepared and given to them by the Defendant on 23rd June 1999. I refer to that statement, to a transcript provided by the Court of hearing on 23rd August and to the judgement marked "FK4" and signed by me at the time of swearing hereof. As appears from the Order attached to the judgement the Recorder again granted the police application though he did slightly vary his original Order (FK4) by adding two additional paragraphs which are numbered 3 and 4.

8. After giving judgement the Recorder declined an application made on behalf of the Applicant to allow six weeks for the Order to be complied with. The judgement was handed down on the basis that seven days would be permitted and the Recorder did not change his position on that. The Recorder confirmed on 2nd September that in his view he was exercising his jurisdiction as a County Court Judge under Schedule 7 of the 1989 Act and that he was not sitting or acting as a Crown Court Judge.

Save where otherwise appears I depose from the foregoing from facts within my own knowledge.

Francis Keenan

SWORN at 9 Wellington Place, Belfast
On the 7th day of September 1999
By Michelle Green
Before me a Solicitor empowered to administer Oaths in the Supreme Court of Judicature in Northern Ireland.

This Affidavit is filed on behalf of the Applicant by Francis Keenan, Solicitor of Lyndon Court, 32/38 Queen Street, Belfast.

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1999 No:

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY ED MOLONEY FOR LEAVE TO APPL
AND IN THE MATTER OF DECISIONS MADE BY
HIS HONOUR JUDGE ANTHONY HART QC DATED
3RD AUGUST AND 2ND SEPTEMBER 1999

HIGH COURT OF JUSTICE
FOR JUDICIAL REVIEW
-8 SEP 1999
NORTHERN IRELAND

This is the Affidavit marked "FK1" referred to in the Affidavit of Francis Keenan.

Signed:.....

FK1

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