

THE CROWN COURT SITTING IN NORTHERN IRELAND

THE QUEEN

-v-

EDWARD FRANCIS MAGILL
AND
ALAN McKENZIE

(Admissibility of Evidence of Handwriting of E F Magill)

DEENY J

[1] Part of the prosecution case against Edward Francis Magill in this matter is that documents were found, either in his home at Ravensdale, County Louth or in the motor car in which he was arrested on 12 March 2003, which point to him being involved in the smuggling and distribution of cigarettes, which were either counterfeit or on which duty had not been lawfully paid. The prosecution case is that a number of these documents are actually in his handwriting and therefore point strongly towards him having the necessary criminal intent on the charge he faces.

[2] The Crown proposes to call an expert in writing, Mr Brian Craythorne to give evidence in this regard. In order to give such evidence the expert requires a "control" piece of handwriting which is undoubtedly in the handwriting of Mr Magill. The Crown contention is that they have such a document, which has been referred to by counsel as the bone meal document and exhibited as Exhibit 37/STO134/IC07.

[3] The prosecution therefore bring an application before me under Section 8 of the Criminal Law Procedure Act 1865. This section reads:

"Comparison of disputed writing with writing proof to be genuine.

8. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be

genuine shall be permitted to be made by witnesses; on such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute."

Therefore this is a matter for determination by the judge and not the jury. When the section uses the word genuine it is clear that it means genuinely in the handwriting of the accused. In ruling on this matter I must be satisfied beyond reasonable doubt that the control sample is in the handwriting of the accused. Earlier doubts on that point have, it seems to me, been resolved in the Court of Appeal in England, whose decision I propose to follow. See R v Ewing[1983] QB 1039 and Archbold 14-64. An earlier decision of the Court of Appeal appears to have been made per incuriam.

[4] As Mr Thompson QC is anxious to include a reference to the documents being in Mr Magill's handwriting in his opening to the jury he has sought a ruling on this matter prior to that opening. On consent this matter was therefore addressed before me on Thursday 21 September. A difficulty arose about the admissibility or otherwise of Mr John Batch's statement included in the papers which had neither been signed nor witnessed. Although a photocopy of his original manuscript signed statement was subsequently produced it was agreed that Mr Batch himself would give evidence briefly on this point before me, on the voir dire, before the commencement of the opening and in the absence of the jury. I have just heard that evidence and accept that he stands over the statement which he made. I now propose to briefly review the arguments advanced by the Crown in support of the genuineness of this controlled piece of writing bearing in mind the vigorous submissions of Mr McCrudden with regard to the same. This ruling is to an extent ex tempore in the circumstances and therefore the order in which I deal with the different points is not necessarily the relative order of importance of those points.

[5] Accordingly to customs officer, Ian Campbell (page 479) he searched a BMW car being driven by Edward Magill on 12 March 2003. He found a number of items in the boot of the vehicle not all of which he described precisely. He placed them in a clear plastic bag with the seal number 0138599 the Exhibit No. IC07. On that same day another customs officer, Mr R Laurenson examined this exhibit. As recorded in his notebook at 20.30 he broke the seal on the plastic bag with the seal number 138599 exhibit reference IC07. Disputably this was the same bag that had come from the BMW. He then resealed it with the number 0138985. Subsequently as one sees at page 733 of the papers Mr S Tracy the investigating customs officer examined these exhibits and in particular broke the seal with that number 138985, Exhibit 1C07. Among the items he says that he found therein was one to which he gave the reference ST0134 which is the control sample bone meal

document. Subsequently he conveyed that to the Forensic Science Laboratory for me Craythorne's consideration.

[6] It took a little time for this continuity to be established to the court, culminating in oral evidence from Mr Laurenson on Monday 25 September with other witnesses. However this all came about because of Mr McCrudden divining an alteration in the seal numbers. I observe for completeness that while it is important, as here, to establish continuity, even if there had been some doubt about it. It seems to me that it would have required not only a customs officer to behave improperly and indeed illegally by planting this document in the bag so as to make it appear that it came from the boot of the BMW, but it would have required an almost super human effort of perspicacity on his part to have done so ie. that it would prove that this document was important in the course of the trial taking place 2½ years later. On the face of it it is not an incriminating document at all. While it might be consistent with Mr Magill using containers in which he had imported cigarettes to export something from Ireland, it is also consistent with many legitimate business activities. Furthermore I did not understand Mr McCrudden to have any answer to my question as to where the document would have come from if the customs officer had done this. If it did not come from the accused's car did it come from a search of his house. If so is that equally incriminating? If not did it come from the accused's wife's solicitor's office in Newry? That would be almost as incriminating but in fact there is no suggestion from anyone that her office was ever the subject of a search, and certainly not at this time. I will return to the significance of this document in due course. Mr Thompson QC also relied in making the case that the document ST0134 was in Mr Magill's handwriting on another document which the Crown contend was founding his vehicle also. That was a two page fax emanating from Invest Northern Ireland and linked to the bone meal document. I consider it right to address the issue of continuity in that regard as that was also attacked by Mr McCrudden. Mr Campbell, at page 479 says that he found a number of items on the back seat of the BMW which Mr Magill was driving at the time of his arrest on the 12 March. I note although he did not purport to be the legal owner of this vehicle he was also seen driving it on previous occasions by officers of the Customs and Excise. I note also that among the documents found in the boot of the car was said to be an old Irish passport in his name. Mr Campbell gathered up these documents and sealed them under the number 0138632 with the Exhibit No. IC06. Later in the same day Mr S Brown of the Customs and Excise, at 21.16, as he recorded in his notebook broke the seal to sift the evidence. He removed an uncounted amount of cash of various denominations and put that into a bag. He then resealed the rest of IC06 with the new seal 0138047. Mr S Tracey, at page 731 of the papers, records that he subsequently broke the seal of 0138047 on Exhibit IC06. He examined those contents and on 25 March as part of a continuing examination of Exhibit IC06 identified and

described the two page fax with a post it on it addressed to Mr Eddie Magill c/o of his wife's office in Newry. He gave this the reference ST0052.

[7] Among the papers in the case was a statement of Mr John Batch. He is a higher scientific officer with Invest Northern Ireland. His statement in the papers was unsigned. It was undated. There was no counter-signature. Mr Thompson subsequently sought to argue that none of these were necessary under the Criminal Justice (Serious Fraud) Order 1988. I need not rule specifically on that point but it is not really surprising that the document excited the suspicions of the defence. In the event the prosecution produced the handwritten statement of Mr Batch signed by him and countersigned on one page and they called him to give evidence and confirm his statement, for these purposes, on Monday 25 September, before me, but in the absence of the jury. He had been asked in the course of his duties to make contact with a man called Eddie Magill. He did so on or about 13 November 2002. He spoke on the telephone to somebody of that name. It should be noted that the conversation was entirely innocuous and there is no reason why somebody should have falsely given Mr Magill's name in the conversation with Mr Batch. He asked Mr Magill what the name of his company was and he replied that it was Tara Walsh. Ms Walsh is the solicitor wife of Mr Magill. However shortly afterwards Mr Magill said the company's name was Timex Trading. He, Magill, was asking about the possibility of exporting domestic waste from Northern Ireland in container to Africa, because apparently he had container coming into Ireland. They had some discussion about this and Mr Batch undertook to fax some further material. He did indeed do so and it has become clear that if you compare the facts which he exhibited with the fax document found as part of IC06 but they are one and the same. This is of considerable significance because the control document on which the Crown rely is clearly dealing with the same topic as that which Mr Batch was dealing with in his conversation and in his fax. The fax was sent to Mr Magill c/o Tara Walsh (Timex Trading). Mr Batch's file note bears out his statement as showing that the statement was on foot of his conversation with Magill on 13 November. It seems inconceivable that the Magill who talked to Batch was other than the accused in whose possession these documents were found and who has the relationship already pointed out.

[8] No suggestion is forthcoming from the defence as to who else might have penned the document. The note appears to be signed Ed Magill or possibly E F Magill. Ms Kate Davey who is another civil servant working for the Department of Agriculture and Rural Development on a related topic. The subject matter is the export of meat and bone meal for incineration. The name of Mr Batch appears as do the words environmental protection DARD Headquarters. "All paperwork" is requested to be sent to "Tara Walsh, Solicitors, 11 Railway". The offices of Ms Walsh at the time were 11 Railway Avenue, Newry. It will be recalled this document is found in the car which Mr Magill had been driving both on the day of his arrest and on previous

occasions. It seems to me that the Crown therefore have done enough to prove this beyond reasonable doubt. However they have the additional significant evidence that Mr Craythorne gives us his opinion that a number of the other documents found in the home of Mr Magill at Ravensdale, County Louth are written by the same person who had written the control sample. I take into account Mr Craythorne's comment that the author's writing varies a good deal and that the control sample is relatively limited in quantity but I am satisfied that the Crown had met the test which they have to meet under the 1865 Act and I admit the evidence. Insofar as any officer has not yet given evidence in this regard, Mr Thompson accepts that if he were to fail in some crucial proof this would have serious consequences but as he is anxious to open this matter to the jury he has invited my ruling at this stage.