

R v HEWITT & DAVIS [1992] 95 CrApp R 81

Protecting Informants – Observations Posts

The appellants appealed against separate convictions for supplying drugs. Both arrests followed covert observations by police in West London in an area said to be notorious for drug dealing. Observation posts were found in various buildings. Those involved were afraid that they would be subjected to violence if their co-operation with the police was discovered. For that reason the police did not use photography in case it was possible to work out from photographs the locations of the observation posts. Both appellants alleged false identification, maintaining that the purported identification was fabricated or mistaken. At the beginning of each trial an application was made for the police officers to be permitted not to give evidence that might disclose the whereabouts of their observation posts. The defence argued that without knowing the locations it would not be possible to ask relevant questions. On appeal it was submitted that previous authorities had been wrongly decided because the protection of the anonymity of observation posts was not covered by the doctrine of public interest immunity.

Held, dismissing the appeals. Putting observation posts in the same category as informers is not an unwarranted extension of the courts' protection given to police sources of information. The detection of crime calls for, in appropriate and carefully circumscribed ways, an increase in the anonymity granted to police action.

There is 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. There was no justification for deciding that the authorities were wrongly decided. They had prolonged an essential addition to the subject matters which may be protected by the exclusionary rule.

Once it is accepted that it is or may be in the public interest to protect the identity of police informers, there is no logical reason to deny the same protection to those who supply, not information, but the facility to gather information which an observation post may provide (See Commentary on Rankine [1986] Crim LR 464).

Two grounds are given for the rule about informers: first the need to secure the informer's own safety, and secondly the desire to ensure that the supply of information does not dry up (see Hennessey [1978] 68 Cr App R 419). Both apply equally to the supplier of an observation post: in fact it could be argued that the need for protection on both grounds is greater, as,

(a) the supplier of an observation post may be an easier target for retaliation, particularly if it is the supplier's own home which has been used,

and

(b) where the need is to police a particularly locality where crime is rife, the loss of an observation post may be an irreparable blow.

*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.*