



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 142/18

Dated: 17 January 2019

ON APPEAL FROM REDETERMINATION

REGINA v SHOAIB

MINSHULL STREET CROWN COURT

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID
(REMUNERATION) REGULATIONS 2013

CASE NO: T20167534

NATIONAL TAXING TEAM CASE\ LEGAL AID AGENCY CASE

DATE OF REASONS:

DATE OF NOTICE OF APPEAL:

APPLICANT: BMS SOLICITORS	SOLICITORS	
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The appeal has been successful for the reasons set out below.

The appropriate additional payment, to which should be added the sum of £1360 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

COLUM LEONARD

COSTS JUDGE

REASONS FOR DECISION

1. This appeal concerns payment to defence solicitors, pursuant to the Criminal Legal Aid (Remuneration) Regulations 2013 (as applicable before 1 April 2018) for working on evidence received from the Crown. Payment is claimed under the provisions of the Litigators' Graduated Fee Scheme set out at Schedule 2 to the 2013 Regulations.
2. Payment for working on evidence served by the Crown is made by reference to the number of Pages of Crown Evidence ("PPE"), subject to an overall "cap" of 10,000 pages.
3. Paragraph 1, (2)-(5) of Schedule 2 explains how, for payment purposes, the number of pages of PPE is to be calculated:

"(2) For the purposes of this Schedule, the number of pages of Crown evidence served on the court must be determined in accordance with sub-paragraphs (3) to (5).

(3) The number of pages of Crown evidence includes all—

- (a) witness statements;
- (b) documentary and pictorial exhibits;
- (c) records of interviews with the assisted person; and
- (d) records of interviews with other defendants,

which form part of the committal or served Crown documents or which are included in any notice of additional evidence.

(4) Subject to sub-paragraph (5), a document served by the Crown in electronic form is included in the number of pages of Crown evidence.

(5) A documentary or pictorial exhibit which—

- (a) has been served by the Crown in electronic form; and
- (b) has never existed in paper form,

is not included within the number of pages of Crown evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of Crown evidence taking into account the nature of the document and any other relevant circumstances."

4. The PPE count in this case was originally put at 3403 pages, of which 1651 had been served on paper. The rest was electronic (14,083 pages served, of which 1752 were initially included in the PPE count). At the request of the Appellant, the Determining Officer increased the total PPE count to 7827 pages.
5. Subsequently, the LAA took the view that the appropriate page count, including electronic evidence, was 5873, comprising the evidence served on paper and additional 4188 pages of the Crown's download reports in PDF format, served on disc. That was the position taken before me by Mr Rimer for the LAA. I understand that arrangements have already been made, on that basis, for the LAA to recoup part of the payment already made to the Appellant.
6. Before me, Mr Edwards argued for a PPE count of 7830, to include an additional 1,957 image files. All other material served on disc is conceded by the Appellant to be insufficiently relevant and/or duplicative.
7. Mr Rimer for the LAA concedes that all the evidence in issue was served: the question is the extent to which it should, applying paragraph 1 (5) of Schedule 2, be included in the PPE count.

The Background to the Appeal

8. The Appellant represented Mohammed Shoaib ("the Defendant") who was charged with conspiracy to defraud. He was alleged to have been the ringleader of an organised credit card fraud involving 15 co-defendants. He and his co-defendants used the details of compromised credit cards to obtain car insurance. A few days later they would arrange, at minimal cost, for the purchase of additional cover using their own, legitimate, cards. They would then cancel the amended policy. Upon cancellation they would receive a refund credited to the most recently used card (their own). 33 such transactions, to a value of over £100,000, took place over a period of about a month before the fraud was detected.
9. The evidence served by the Crown included downloads from the mobile phones of a number of defendants, including the Defendant himself and others with whom he was directly associated. That included text messages; evidence from social media and messaging applications; image files of financial documents; image files evidencing association between co-defendants; image files evidencing a criminal lifestyle; emails; and other phone content.
10. The Appellant has undertaken an analysis of the image files which, on the Appellant's case, should be included within the PPE count. On that analysis, of a total of 4981 images 808 show association between co-defendants; 200 are fraud-related; and 949 were lifestyle-related (hence the claimed total of 1957). The Crown's download reports in PDF format did incorporate images in a reduced size, but to see them clearly it was, says the Appellant, necessary to go to the originals, which were not ordered in the same way, making it necessary to run through all the images to find the right one.

11. Mr Rimer argues that, as witness statements demonstrate, the Crown appears really to have relied upon a very small selection of images. Those have already been included within the PPE count and were in any event very much of secondary importance as evidence. At most, they put the Defendant's actions in context.
12. The key evidence, he says, directly showed the Defendant's involvement in the fraud. For example, the Defendant had himself received two refunds totalling in excess of £6500. When police searched his home they found, among other evidence, debit cards belonging to other conspirators, handwritten notes concerning the sale of the card to the Defendant by one of the people whose cards he held, and vehicle log books in several different names. A review of the Defendant's bank accounts revealed payments passing between him and other conspirators.
13. Further, Mr Rimer argues that all of the images relied upon by the Crown were adequately reproduced, albeit at a small size, in the PDF reports. The original image files could in so far as necessary be accessed by utilising a link provided in the PDF reports.

Conclusions

14. I am unable to accept that only those specific images selected by the Crown as exhibits to witness statements should be included within the PPE count. A much larger selection of images was included in the PDF reports served on disc. The Crown may well have selected a small number of images to put to the jury, but the question is the extent to which the images which the Appellant seeks to include within the PPE count substantially supported the case against the defendants.
15. It would seem that they did. For example, the presence of multiple photographs of financial documents on mobile telephones belonging to various defendants was in itself remarkable. It may well have carried less weight than the direct evidence of financial transactions passing between the Defendants, but that did not render it so unimportant or irrelevant as to be excluded from the PPE count. Similarly, the "lifestyle" and "association" photographs were all evidently relevant.
16. I am not persuaded that all of the relevant images were already to be found in the PDF reports. In his written submissions Mr Rimer concedes that one of the three discs served, GDC/1 (which includes downloads from the Defendant's mobile telephone) contains images which are not reproduced in a PDF report.
17. In so far as they were incorporated in the PDF reports, it is also apparent that a number of the images are too small to see clearly and I am not satisfied that the original, full-sized images were available quickly and easily by using a hyperlink. Mr Edwards advises me that he could not use either the PDF images or accompanying hyperlinks to access a clear, full, image file. That also seems to have been the experience of the Appellant and (Mr Edwards advises me) of other defendants' representatives. My own spot checks did indicate that I could

open a full image file by clicking on a smaller reproduction within a PDF report. The process, at each attempt, was however surprisingly cumbersome and slow.

18. Overall my impression was that that in this case, running through the original image files would have been more reliable and efficient than tracking images through the download reports and attempting to follow links. The only way in which the Appellant could ensure a thorough and complete review of relevant image files was to search through all of them. Having done that, the Appellant seeks only to include within the PPE count those files that are, on the criteria offered by the Appellant (which I accept), relevant.
19. For those reasons, it seems to me that the PPE count presented to me by Mr Edwards is a fair and appropriate one. The appeal, accordingly, succeeds. Any recoupment of fees should be reversed.
20. Both Mr Edwards and the Appellant seem to have gone to a great deal of trouble to identify truly relevant material. This contrasts with other recent appeals in which appellants have argued simply (and, before me, unsuccessfully) that every part of the served evidence must be included within the PPE count. It seems to me that the work undertaken to present a more measured, reasonable case must be properly recognised and acknowledged. For that reason, I have allowed the Appellant's costs as claimed.

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