IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2021] EWHC 2985 (Admin)

No. CO/4519/2020

Royal Courts of Justice

Thursday, 21 October 2021

Before:

THE HONOURABLE MR JUSTICE HOLMAN

B E T W E E N :

RODERICK ACTIL

Appellant

- and -

TRIBUNAL DE GRANDE INSTANCE DE PARIS (FRANCE)

Respondent

MR T. JAMES-MATTHEWS (instructed by Bindmans) appeared on behalf of the appellant.

MR A. TINSLEY (instructed by the Crown Prosecution Service (Extradition)) appeared on behalf of the respondent).

J U D G M E N T
(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

1. This is a substantive appeal from an order for extradition made in the Westminster Magistrates' Court on 27 November 2020 by District Judge Paul Goldspring. The order was made on a single conviction European Arrest Warrant, dated 14 September 2017. The appellant was arrested on 11 March 2020 and has been remanded in custody ever since.

2. The warrant arises from a five-day trial, which took place in Paris during June 2017, of altogether nine accused persons or defendants, including this appellant. All were convicted on one or more charges, and sentences were passed which clearly discriminated between the various defendants, and varied from seven years' imprisonment to 30 months' imprisonment. This appellant was sentenced to five years' imprisonment. Other defendants were present at the trial; but this appellant, who is British and appears to live in England, was tried in his absence and did not participate in the trial at all. The French authorities have made quite clear that, in those circumstances and if he is extradited, he can request a complete re-trial which would, in turn, carry a right of appeal in the event of a further conviction. Those very facts make the rule in relation to specialty and, accordingly, the requirement of sufficient particularity in the European Arrest Warrant important in the present case. It will be very important to know, with some particularity and clarity, what the appellant has been convicted of to date and for what he would be being extradited.

3. In a sentence, the case and trial involved large-scale importations of cocaine from the Dominican Republic into France, and its subsequent distribution or export into other European countries, including Great Britain. A very brief overview of the case may now be gleaned from a very recent document dated 30 September 2021, to which I will later refer more fully. On the

second page of that document, now at bundle page 167, the first deputy prosecutor of the relevant court in Paris says as follows

> "The Paris criminal court ruled that the investigation had demonstrated the existence of international trafficking in cocaine from the Dominican Republic to the Paris region, followed by deliveries to Great Britain. The court found that the criminals involved in this network had imported cocaine on three occasions using an identical *modus operandi*: delivery by plane from Punta Cana in suitcases which were then transported to a hotel in the Paris region, complicity at the airport of departure, negotiations and sales. The judges considered that, given the elements of the investigation, the three imports involved several dozen kilogrammes of cocaine each … The judges found that this was a large-scale trafficking operation, with a real organisation in the Paris region, starting from the Saint-Maurice Hotel where the drugs were kept during the negotiations with the British buyers, and that the members of this network constituted a criminal association dedicated to the organisation of drug trafficking with multiple preparatory and execution actions."

4. A central objection to extradition that was taken by Mr Tim James-Matthews, who appeared then, as he does now, on behalf of the requested person, and which is again at the heart of this appeal, is based on section 2 of the Extradition Act 2003. It is not necessary to read into this judgment the actual words of that section. It is sufficient to say that it has the effect that, before a person can be extradited, the warrant must include information which itself must include "particulars of the conviction". There is considerable jurisprudence in relation to the requirement of "particulars of the conviction". That jurisprudence was not, and is not, in issue in this case, and was very fully and correctly described and recited by the district judge in paragraphs 15 to 22 of his judgment. I can, accordingly, be concise as to that jurisprudence. At paragraph 17 of his judgment, the district judge quoted from a judgment of Cranston J in *Ektor v National Public Prosecutor of Holland* [2017] EWHC 3106 (Admin.) at paragraph 7 as follows,

> "… The description must include when and where the offence is said to have happened and what involvement the person named in the warrant had. As with any European instrument, these requirements must be read in light of its objectives. A balance must be struck between, in this case, the need on the one hand for an adequate description to inform the person, and on the other the object of simplifying extradition procedures. The person sought by the warrant needs to know what offence he is said to have committed and to have an idea of the nature and extent of

> the allegations against him in relation to that offence. The amount of detail may turn on the nature of the offence."

At paragraph 19 of his judgment, the district judge said, correctly, that

> "Plainly, what is required by way of adequate particularisation of a conviction will vary depending on the facts of a given case. However, it is clear that a 'broad omnibus description' of the criminal conduct will not suffice … "

At paragraph 20, the district judge cited from the judgment of Collins J in *Pelka v. Regional Court in Gdansk, Poland* [2012] EWHC 3989 (Admin.) as follows:

> "Certainly, where involvement in a conspiracy is alleged, it is not necessary to include any great detail as to the precise acts committed in furtherance of the conspiracy. But, as a general proposition, it seems to me that a warrant ought to indicate, at least in brief terms, what is alleged to have constituted the involvement or the participation of the individual in question. It seems to me that, *prima facie*, simply to say there was a conspiracy and he conspired with others to do whatever the end result of the offence is, is not likely to be sufficient."

5. I turn from those brief references to the legal framework to the warrant in question in the present case. At section 4(e), under a heading "Offences", the warrant states that it relates in total to seven offences. There is then a printed standard form heading,

> "Description of the circumstances in which the offences were committed, including the time, place and degree of participation in the offences by the requested person"

I pause there to note that this standard form language requires some description of the "degree of participation … by the requested person." The warrant then continues, specific to this case, as follows,

> "Perpetrator of acts committed in Paris, Roissy, Saint-Maurice, Epinay, in any case on the national territory, by indivisibility link in particular in the Dominican Republic, Great Britain, Belgium, Netherlands, in any case on the national territory and by

> indivisibility links notably in the Dominican Republic, Great Britain, Belgium and Netherlands and without any statutes of limitation between 1 and 16 January 2014."

6. Pausing there, that part of the description appears to refer altogether to acts committed in France, the Dominican Republic, Great Britain, Belgium and The Netherlands, and to a period specifically stated to be between 1 and 16 January 2014. It is not, at any rate at that point, limited to the period or dates of 15 and 16 January 2014. The description continues,

> "Roderick Actil is suspected of being involved in an international cocaine traffic between South America, the Caribbean, France and Great Britain involving several tens of kilogrammes of drugs. The drug transits through France before being sent to Great Britain. The involvement in the events of Roderick Actil emerges from surveillance with photographs and findings made by the gendarmes as well as statements by Kelly Gallonde, active member of the French trafficking network, allowing formal identification. Roderick Actil indeed came to France in the Parisian suburbs in Saint-Maurice on 15 January 2014 at the wheel of a VW vehicle [the registration number is then given] to then return to Great Britain at the wheel of this vehicle crossing through the Channel Tunnel while he had just been given five kilogrammes of cocaine according to Kelly Gallonde."

Pausing there, I note that there is, of course, specific focus in the last part of that description to events specifically on 15 January 2014. But that passage, as a whole, certainly refers to the appellant as being suspected of being involved more generally in the traffic of cocaine, and as being involved in several tens of kilograms of drugs, and not merely five kilograms on 15 January 2014.

7. The warrant then lists the actual offences of which he has been convicted as follows,

- unauthorised export of narcotic drugs - traffic
- unauthorised acquisition of narcotic drugs
- unauthorised possession of narcotic drugs
- unauthorised transport of narcotic drugs
- unauthorised offer or sale of narcotic drugs
- participation to a criminal association in view of the preparation of an offence punished by ten years' imprisonment

- unauthorised use of narcotic drugs

Again pausing there, one can readily see that if, specifically on 15 January 2014, the appellant was a "simple carrier" (a term used elsewhere in French documents and repeated by the district judge), then that would have involved unauthorised possession and unauthorised transport of the drugs, and possibly also unauthorised acquisition of the drugs. But, on the face of it, the description of the offending is much wider than that, embracing also "participation to a criminal association …" and also "unauthorised offer or sale of narcotic drugs", which clearly goes beyond the role of a mere carrier.

8. When the hearing was first opened before the district judge, he himself accepted that, at that stage, the warrant lacked sufficient clarity and particularity and, as a result, a request for further information was made to the French authorities. In response, they submitted, but simply submitted, a copy of the whole of the "correctional judgment" of the French court of 3 July 2017. This is a lengthy document, which comprehensively considers the roles and culpability of all nine accused persons or defendants. In relation specifically to this appellant, the charges are described at a page, which is not internally paginated, but now appears as page 100 of the present bundle before me (the pagination is different from the bundle that was before the district judge).

9. At this point in the correctional judgment, three charges seem to be identified as follows,

    - "To have in Paris, Roissy, Saint-Maurice, Epinay within the territory of the French Republic, by link of indivisibility in particular Great Britain, Belgium, The Netherlands, in the year 2013 and until 16 January 2014 … exported narcotics in the case in point cocaine …

- To have in Paris, Roissy, Saint-Maurice, Epinay within the territory of the French Republic, by link of indivisibility in particular Great Britain, in the year 2013 and until 16 January 2014, unlawfully acquired, possessed, transported, used, offered or transferred narcotics, in the case in point cocaine …

- To have in Paris, Roissy, Saint-Maurice, Epinay within the territory of the French Republic, by link of indivisibility in particular the Dominican Republic, Great Britain, Belgium, Netherlands, in the year 2013 and until 16 January 2014, participated in a formal gang or in an agreement established with the aim of the preparation, characterised by one of several material facts of the offences of import and drug trafficking, offences punished by ten years of imprisonment, in the case in point in particular by communicating by means of dedicated telephones, by making preparatory meetings, by organising the modalities of transport and sale of narcotics …"

Pausing there, that third charge in particular seems to be one of very considerable width, both geographically (including within it the Dominican Republic) and as to the period, including within it the whole of the year 2013, and also as to the acts done, which clearly include a number of preparatory and also organisational acts.

10. In a section headed "Statement of Facts", now on internal page 101 of the correctional judgment, it is stated that

> " … three cocaine imports took place on 20 December 2013, 14 January 2014 and 18 April 2014. The goods were transported each time by Walter Lombardi according to an identical *modus operandi*. The carrier was taking an Air France flight to Santo Domingo with one or two suitcases filled with cocaine and was on his way to Roissy Airport by taxi to the [named] hotel located in the town of Saint-Maurice where he deposited the bag and then immediately returned to the Netherlands by train leaving from Gare du Nord."

11. The narrative continues on page 102 that, "The English buyers were identified as Roderick Actil (for the second import of 14 January 2014) …" and three other named persons, one of whom is specifically tied to the third importation of 18 April 2014. Pausing there, that sentence clearly refers to this appellant as being not merely a "simple carrier" but being also a "buyer".

12. At page 104 of the correctional judgment, there is then a heading, "The Importation of 14 January 2104". Within the narrative in relation to that importation appears the following,

> "On 15 January 2014 at 17.35, Kelly Gallonde walked on foot in the hotel of Saint-Maurice. At 17.57, a VW van with an English registration [the number is then given] was parked close to the hotel's secondary entrance. The insurance of this vehicle came out in the name of Roderick Actil [whose address in London is then given]. At 18.10, Kelly Gallonde and Jean-Marie Lapeyron went out through the hotel's secondary entrance. Jean-Marie Lapeyron deposited the grey bag recovered by Walter Lombardi at the airport in the Volkswagen vehicle. The investigators followed the vehicle to the Eurotunnel site in Coquelles where it was positioned at 03.05 [viz. now in the early hours of 16 January 2014] for a scheduled departure at 03.22. The reservation was made in the name of Mr Actil residing at [his stated address in London]. It appeared that this same vehicle had made previous trips under the same name of reservation on 6 October, 9 October and 16 December 2013 …"

13. Considerably further on in the correctional judgment, there is a passage under the heading "Roderick Actil" on page 142 of the present bundle. There is stated as follow,

> "According to the procedure, he is the beneficiary of the delivery that took place on 15 January 2014 following the importation of cocaine the day before from the Dominican Republic. He was the subject of surveillance during the delivery of the goods in front of the hotel in Saint-Maurice, whereas it was used for the occasion a car insured in his name. This same vehicle was then followed to Coquelles where his driver had booked a Eurotunnel crossing on behalf of Roderick Actil, who had already made three trips of the same type during the previous months. This identification remained fragile despite the fact that the European criminal record mentioned several convictions under this identity in Great Britain.
>
> In view of the circumstances of this export of cocaine to Great Britain, delivery taking place immediately one day after the importation, one may prejudge the older person's [it seemed to be common ground between counsel that this is a reference to the appellant] participation in a larger criminal organisation even if his exact role could only be clearly identified as a simple carrier."

Pausing there, it is in that passage that one sees the reference to a "simple carrier", but, equally, it is "prejudged" that the appellant had participation "in a larger criminal organisation". The passage continues

> "In these circumstances, Roderick Actil will be found guilty for the following three offences:
>
> - export of drugs from January 2014 until 16 January 2014 in Paris, Roissy, Saint-Maurice, Epinay, in any case on the national territory, Great Britain
>
> - traffic of drugs from January 2014 until 16 January 2014 in Paris, Roissy,
>
> Saint- Maurice, Epinay, at least on the national territory, Great Britain
>
> - criminal association in connection with a traffic of drugs from January 2014 until 16 January 2014 in Paris, Roissy, Saint-Maurice, Epinay, in any case on the national territory, in Dominican Republic, Great Britain, Belgium and The Netherlands."

Pausing there, one sees in that statement of the offences of which he was found guilty references not specifically to 15 and 16 January 2014, but, in fact, to the whole of January up to, but not extending beyond, 16 January 2014. Further, there appears to be a clear reference to "criminal association" which does, or may, encompass a greater role than that of "simple carrier"; and one sees that the geographical ambit includes in the third bullet point, France, the Dominican Republic, Great Britain, Belgium and The Netherlands. The passage then continues, "He will be acquitted of the surplus (previous period and places)."

14. It is, I think, clear that the appellant was, therefore, acquitted in relation to any period previous to January 2014. But there is nothing to make plain that he was acquitted in relation to any period between 1 and 16 January 2014, which is, of course, a quite significantly longer period than that of simply 15 and 16 January 21, if his role was no more than that of a "simple carrier" in relation to drugs that had only been first imported into France on 15 January 2014. The

reference to "surplus" and "places" is, frankly, opaque, given the range of countries referred to in the three offences of which he was convicted. The passage then continues,

> "To take into account the seriousness of the acts, his proven involvement in a cocaine shipment within the framework of delinquency necessarily organised on a larger scale … he will be sentenced to five years' imprisonment …"

Pausing there, that appears firmly to indicate that he has been sentenced for "proven involvement in a cocaine shipment … necessarily organised on a larger scale".

15. Finally, towards the end of the correctional judgment at bundle pages 157 and 158, there is a full list of the charges upon which the appellant was declared guilty. Each of these charges refers to a period "during January 2014 and until 16 January 2014". The charges refer, variously, to France, Great Britain and The Netherlands, and in one case also to the Dominican Republic. The charges are traffic, acquisition, detention, transport, offering for sale, and then,

> "For the acts of participation to a criminal association in view of the preparation of an offence … committed from January 2014 and until 16 January 2014 in Paris, Roissy, Saint-Maurice, Epinay by indivisibility link in the Dominican Republic, Great Britain, Belgium and The Netherlands."

Finally, that passage ends, "Acquittal of Actil Roderick for the surplus of the prevention period."

16. Pausing there, this does clearly limit the period of involvement in relation to which the appellant was convicted to January 2014 until 16 January 2014. But again, the geographical scope appears to be wide, and one of the charges is clearly "participation to a criminal association in view of the preparation of an offence."

17. So far, I have, essentially, quoted from material, namely, the warrant itself and the correctional judgment, which was squarely before the district judge. On the basis of that material, the district judge said as follows, at paragraphs 50, 51, 52, and 55 of his judgment,

> "50. Specifically the judgment describes his conduct exhaustively, and that this involves him taking possession of the five kilograms of cocaine just imported to France and transporting it to the UK. To over complicate the detail so as to read in some doubt about the essential allegations and findings is unhelpful. It is not necessary to be excessively pedantic or technical.
>
> 51. There are three documented instances of drugs export in which other persons were involved, but his conviction and the request is limited to that instance which took place in January 2014. The RP's conduct justified this conviction for the seven offences, in a decision in which the court was careful to acquit him in respect of other chronological segments of the overall scheme. There is no risk that there is more, unparticularised conduct lying outside the confines of the judgment …"

Pausing there, it must be emphasised that the "confines" of the French judgment are the whole of January 2014 up to 16 January 2014. The confines of the judgment are not specifically 15 and 16 January 2014 alone. The district judge continued,

> "52. The judgment at [page 157 of the present bundle] states that the French court 'declares Actil Roderick guilty of the charges against him,' and then lists the seven offences. This is the dispositive part of the judgment. The EAW was itself based on seven corresponding offences, which confirms that was the disposal.
>
> ….
>
> 55. I have no doubt, when reading the information as a whole, that the RP's conduct consists in his taking possession of drugs in Paris and driving them to the UK in January 2014. There is no other conduct for which he stands convicted."

I have to say that, even on the basis of the material that was before the district judge, I could not myself have stated that "I have no doubt" that the conduct of which he was convicted was limited in that way.

18. Since the judgment of the district judge, however, further material has emerged from France. This, indeed, is very recent and results from six questions, which the CPS Extradition Unit submitted to the French prosecutor in mid-September 2021. That resulted in the prosecutor sending the letter dated 30 September 2021, to which I have so far relatively briefly referred.

19. At the hearing of this appeal today, both sides rely upon the letter of 30 September 2021 and the answers to the questions that were submitted in mid-September 2021. Since they each seek to rely on it, both counsel agree that the questions and answers should now be admitted into evidence. Technically, this material does not satisfy the normal requirements for admitting fresh evidence, since, of course, the questions could perfectly easily have been asked before the final hearing in front of the district judge, and the letter, which is in fact dated 30 September 2021, could have been written and made available before the district judge in November 2020. But, since both sides seek to rely upon it and the material has been obtained, it would be pedantic, and indeed not consonant with justice, for me not now to admit it, and I have done so. In terms of section 27(4) of the Extradition Act 2003, to which I will later refer, this is material which could, and frankly should, have been available at the hearing before the district judge, but which, as matter of fact, "was not available at the extradition hearing", so that the condition in subsection (4) of section 27 of the Extradition Act 2003 is engaged.

20. Altogether six questions were submitted, but, so as not further to lengthen this judgment, I will focus on questions 2 and 3. They read as follows,

> "2. Please confirm if Actil's conduct detailed in the correctional judgment - namely collecting five kilograms of cocaine in France and transporting it to the UK on 15 January 2014 - is that which constitutes his participation in **all** [emphasis in the original] offences, including (i) sale; (ii) use; and (iii) criminal association?
>
> 3. The correctional judgment states, in connection with two offences (export and criminal association) that the offending is said to have taken place 'by indivisibility link' in the Dominican Republic, Great Britain, Belgium and The Netherlands. Please can you explain the term 'indivisibility link'? Does this mean, as the defence allege, that there is other conduct of Actil's which occurred in Belgium and/or The Netherlands, not mentioned anywhere in the correctional judgment?"

21. Unfortunately, and perhaps unhelpfully, the reply from the French prosecutor, dated 30 September 2021, did not discretely address each of questions 2 and 3 separately and in turn. Rather, it elided the two questions under a heading "2 and 3" and then gave the following answer, the first part of which I have already quoted,

> "The Paris criminal court ruled that the investigation had demonstrated the existence of international trafficking in cocaine from the Dominican Republic to the Paris region, followed by deliveries to Great Britain … [see above] … The judges found that this was a large-scale trafficking operation, with a real organisation in the Paris region, starting from the Saint-Maurice Hotel where the drugs were kept during the negotiations with the British buyers, and that the members of this network constituted a criminal association dedicated to the organisation of drug trafficking with multiple preparatory and execution actions."

Pausing there, there is a clear reference there to members of the "network" and "multiple preparatory and execution actions". The letter continues,

> "The court retained involvement of Roderick Actil in particular in the events of 15 January 2014, considering he was involved in the case and participated in this network. The court retained the notion in French criminal law of co-action which means, when there is a plurality of participants, that the perpetrators act together, simultaneously and in a concerted manner. In this case they can be convicted together for several offences, even if the respective roles may vary from one person to another and from one offence to another. The court considers that Roderick Actil is involved in a network that operated in France and as an indivisibility whole in Great Britain, Belgium and The Netherlands."

Pausing there, there is of course in that passage a description of what we would recognise as joint enterprise, and a clear recognition that the respective roles of participants may vary from one person to another. But there is also a clear statement that the appellant "is involved in a network". Unfortunately, what is completely missing from that answer is any confirmation, as question 2 requested, as to whether collecting five kilograms of cocaine and transporting it to the UK on 15 January 2014 constituted the entire participation of this appellant "in all offences".

22. Finally, in answer to question 6, which I will not itself quote, the letter of 30 September 2021 states,

> "the judges considered that Roderick Actil was a member of a structured network that engaged in large-scale international cocaine trafficking, using logistical means, having recourse to external accomplices and engaging in preparatory and executive actions."

It is, frankly, very unclear from that sentence to what extent the appellant himself was "using logistical means" or "having recourse to external accomplices" or "engaging in preparatory and executive actions." But, in my view, that sentence, and the answers in the letter of 30 September 2021 generally, fall far short of limiting the conduct of which the appellant was convicted to simply that of being a "simple carrier" on 15 and 16 January 2014, of which the district judge felt so sure in paragraphs 55 and 57 of his judgment. The answers do, or arguably do, place the appellant firmly in the structured network, using accomplices and engaging in preparatory and executive action.

23. At the end of the day, I am left far from clear or sure whether, indeed, this appellant was convicted simply as a carrier, or as a more deeply-involved conspirator and planner. It may, indeed, well be that, if the district judge had had the questions and answers of September 2021 in front of him, he also would have felt doubts, which he would have expressed. All of this is highly relevant to specialty. The EAW, and the further material read as a whole, is, in my view, opaque and lacks the required particularity so as to enable the appellant to rely on specialty, in the event that he was retried in France on the basis of a wider or deeper involvement in the network or conspiracy. In short, and in a sentence, all the material as a whole, to my mind leaves opaque whether, in the end, this appellant is said to have been a "simple carrier" or a much more involved conspirator.

24. I have, as I have explained, taken into account the further information, consisting of the letter dated 30 September 2021, which was not available to the district judge. Accordingly, I propose to consider and deal with this case under section 27(4) of the Extradition Act 2003. That provides that the court may allow an appeal if the conditions in subsection (4) are satisfied, namely that

> "(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge."

25. In my view, evidence is available to me that was not available at the extradition hearing, namely the letter of 30 September 2021. In my view, that evidence would have resulted in the district judge deciding a question before him at the extradition hearing differently. He would not have expressed that he had "no doubt" that the appellant's conduct consisted only of driving the drugs from Paris to the UK on 15/16 January 2014, and he could not have been clear that the appellant was simply a "simple carrier".

26. It is, undoubtedly, possible that the district judge could still have made an order for extradition confined to certain specified offences only of those listed in the warrant, namely, "unauthorised possession" and "unauthorised transport" of the drugs. Today, Mr Alex Tinsley, on behalf of the respondent prosecutor, has submitted that, even if I consider, as I do, that the present order for extradition cannot stand, I can and should substitute an order based on those more specific and narrowly-defined offences. In my view, however, the overall picture here is so unclear that it would be unwise of me, and potentially unjust, to make an order for extradition on a filleted version of the European Arrest Warrant. In my view, on the evidence and in circumstances as they now are, the district judge would have been required to order the appellant's discharge and I, accordingly, allow this appeal, order his discharge and quash the order for extradition.

27. I wish to make clear at once, however, that, as is agreed by both counsel, it is open to the French authorities to issue a fresh European Arrest Warrant, which clearly identifies the scope of the conduct for which extradition is sought, and the date or dates of it, and the location of it.

28. The difficulty currently facing this court is the lack of particularity, and the lack of clarity, in a situation which, frankly, is thoroughly confusing. If I may be so presumptuous as to say so, it is open to the French prosecuting authorities now to learn from the experience of this case so

far and from this judgment, and to take care clearly and precisely to formulate exactly what it is that they say this particular appellant has been convicted of and for which his extradition is sought.

MR JUSTICE HOLMAN: I think that you have already drafted an order, Mr James-Matthews,

MR JAMES-MATTHEWS: Yes, the terms of which are----

MR JUSTICE HOLMAN: What have you done with it so far.

MR JAMES-MATTHEWS: I have emailed----

MR JUSTICE HOLMAN: I mean, have you sent it to me or my clerk?

MR JAMES-MATTHEWS: Yes, I did to your clerk.

MR JUSTICE HOLMAN: She has gone. I may not see it until Monday, but I do not -- well is this urgent? It is urgent, is it not?

MR JAMES-MATTHEWS: He is presently in custody.

MR JUSTICE HOLMAN: Because he is in custody.

MR JAMES-MATTHEWS: Correct.

MR JUSTICE HOLMAN: Well, we have got an associate. Have you got it?

THE COURT ASSOCIATE: No, my Lord, because there is an issue with emails from external. I have drafted one myself.

MR JUSTICE HOLMAN: Well, poor Mr James-Matthews spent some of his lunch drafting one.

THE COURT ASSOCIATE: Do you want to have a look at it?

MR JAMES-MATTHEWS: Can I see that?

MR JUSTICE HOLMAN: You have a look at what the associate drafted. I had not even noticed that you had come in. I saw the usher go out and I did not see you come in.

THE COURT ASSOCIATE: No.

MR JUSTICE HOLMAN: There are two alternatives. One is that we go, with any necessary amendments, with what the associate has drafted. The other is you can re-send. I am not

concerned about external sources, you can re-send your email to my own email address out there and I will look at it and print it off,

MR JAMES-MATTHEWS: They are similar but not identical and there is an issue about legal aid, a summary assessment -- a detailed assessment of costs.

MR JUSTICE HOLMAN: Well, it would not take you very long to add that, would it?

MR JAMES-MATTHEWS: No.

MR JUSTICE HOLMAN: That apart, are you content with what the associate has drafted?

MR JAMES-MATTHEWS: Yes.

MR JUSTICE HOLMAN: Well, let me have a look at it. I think he may have to spend tonight inside, because there is a limit to how late these things can be dealt with administratively. (pause) Well, I am afraid I would like to specify the names of counsel, so "Upon hearing Mr Tim James-Matthews, counsel for the appellant, and Mr Alex Tinsley, counsel for the respondent …" I have added in the names of counsel and I have added in the word "is". The associate can very rapidly do that. Can you do it here or do you have to go back to the office?

THE COURT ASSOCIATE: I have to go back to the office.

MR JUSTICE HOLMAN: But you want a bit added about legal aid. I was told that you were privately funded.

MR JAMES-MATTHEWS: Certainly not, no.

MR JUSTICE HOLMAN: Well, the case note prepared by the office clearly says, "Privately funded".

MR JAMES-MATTHEWS: That would be news to me, my Lord.

MR JUSTICE HOLMAN: Well, it would be good news to you, probably.

MR JAMES-MATTHEWS: It would be fabulous news.

MR JUSTICE HOLMAN: Anyway, you are not, so, if you are not, you are not.

MR JAMES-MATTHEWS: The only order that I seek is that there is to be a detailed assessment of the costs----

MR JUSTICE HOLMAN: If you write that in on here, give it to the associate and then she can make all these amendments when she gets back to the office and that will be the order. Can we deal with it like that? Will they get it tonight now or tomorrow?

THE COURT ASSOCIATE: Tomorrow. It is too late.

MR JUSTICE HOLMAN: He will just have to stay inside, I am afraid, tonight. Is there anything else?

MR JAMES-MATTHEWS: No, my Lord.

MR JUSTICE HOLMAN: I am sorry to have kept everybody late, but at least that completely disposes of this. In fact, given that he can now be released, it is right that he has not had to wait three weeks for a reserved judgment. All right, thank you very much indeed.

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