



Neutral Citation No. [2023] EWHC 1476 (SCCO)

Case No: T20217204

SCCO Reference: SC-2022-CRI-000119

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 9 June 2023

Before:

COSTS JUDGE ROWLEY

R

v

BROWNSILL

**Judgment on Appeal under Regulation 29 of the
Criminal Legal Aid (Remuneration) Regulations 2013**

Appellant: Ashcott Solicitors

The appeal has been dismissed for the reasons set out below.

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. This is an appeal by Ashcott solicitors against the decision of the determining officer to refuse claims made for cracked trial fees in respect of two indictments which were stayed at the end of the trial.
2. The solicitors were instructed on behalf of Jack Brownsill who originally faced a four count indictment (“B6”) in respect of conspiracy charges regarding the supply of Class A and Class B controlled drugs, possessing of criminal property (i.e. the cash) and the commission of a robbery. The conspiracy was said to involve Craig Cox, Jason Cox, Lee Cox and Michael Nevin along with other unknown persons.
3. Subsequently, these four counts formed part of a 14 count indictment (“B7”) in respect of a trial at which Craig Cox and Michael Nevin along with two others as well as Jack Brownsill were to be the defendants.
4. However, this multi-handed trial did not go ahead, just as the original trial did not go ahead. Subsequently, Brownsill was tried on a five count indictment (“B9”) on his own. The first four counts of that indictment involved the same charges as in B6. A fifth count was added on the first day of trial involving “being concerned in supplying controlled drugs of Class B” during a period which differed from the period set out in the earlier indictments. Brownsill pleaded guilty to that count and the trial ran in respect of the other four counts.
5. At the end of the 11 day trial, HHJ Field, according to the court log at 10:46 said:

“I have anxiety with alliteration of indictments – must not be any outstanding indictments... I will stick to the trial indictment at B9 and stay all other indictments that apply to Jack Brownsill.”
6. I suspect that the trial judge was actually anxious to deal with a proliferation of indictments, but the sense of his comment is clear. Based upon that statement, the solicitors have claimed cracked trial fees for indictments B6 and B7 which were stayed in addition to the trial fee which they have received in respect of indictment B9.
7. The use of the Digital Case System has led to indictments being uploaded and then amended as case management progresses, up to and including the trial. This case is a good example of modern practice. The gang of co-conspirators were supplying drugs in large quantities and, presumably in order to assist that enterprise, the robbery count concerned them stealing drugs from another group. There were always a number of co-conspirators who were to face charges based upon the events in which Brownsill was involved.
8. In his written submissions on behalf of the Legal Aid Agency, Mr Jonathan Orde traces the numerous court appearances from the court log where defendants such as Brownsill appeared before the court. Mr Orde suggests that it is common practice for each individual defendant to be faced with an indictment which records the counts against them before they are consolidated once the various defendants are at a sufficiently advanced stage for a trial to occur. I have no reason to doubt that

description since the B6 indictment showed the counts against Brownsill and the B7 indictment contained counts against various other co-defendants which explains why it ran to 14 counts rather than the four with which Brownsill was faced.

9. Numerous co-defendants then pleaded guilty to the offences with which they were charged which left Brownsill to face trial on his own. The four counts on which he was indicted were the same as the original B6 indictment. The fifth count, concerning the supply of cannabis, was added at the beginning of his trial and to which, as stated above, he pleaded guilty straightaway. Accordingly, his trial simply involved the same four counts that he originally faced.
10. Prior to the digitisation of the criminal justice system, the staying of an indictment would have involved the paper document being put to one side and a new paper indictment being proffered by the prosecution. In such circumstances, it would be clear that the original proceedings faced by the defendant had come to an end and essentially new proceedings were being brought via that second indictment. Payment in respect of the defence of the first indictment would then be justified as a separate fee from the defence of the second.
11. However, this is a far cry from modern practice where amendments and variations to the indictment are carried out as part of the case management at the PTPH and other hearings. Indeed, as here, the indictment may be amended at the beginning of the trial itself to include a further count. None of this case management suggests that the defendant stopped facing one case and was suddenly faced with a second case to defend.
12. Given this change in practice, there have now been numerous Costs Judge decisions which have concluded in these circumstances that only one fee is payable. If the indictment is severed so that there are two separate trials, then two fees would be payable. But something as significant as this is required. Notwithstanding Colin Wells of counsel's spirited advocacy in respect of the change in the facts and personnel at various parts of the proceedings, I am not persuaded that any such significant change to the case facing Brownsill occurred here.
13. Consequently, in line with my decision in R v Wharton and the various other Costs Judge's decisions referred to in Mr Orde's skeleton argument, I uphold the determining offices conclusion that there was, as a matter of law, only one indictment for which a single fee is payable and that has already been paid in respect of indictment B9. Accordingly, this appeal fails.