



Neutral Citation No. [2023] EWHC 3033 (SCCO)

Case No: T20220134
SCCO Ref: SC-2023-CRI-000026

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 14/11/2023

Before :

COSTS JUDGE NAGALINGAM

Between:

R

-v-

Khaleel Siddiquee

and

IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION

Lloyds PR Solicitors

Appellant

- and -

The Lord Chancellor

Respondent

Hearing date: 07/07/2023

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COSTS JUDGE NAGALINGAM

Costs Judge Nagalingam:

Background

1. The Defendant in this matter was charged with the importation of controlled drugs, including several packages of cannabis and cocaine, possession with intent to supply, and possession/control of articles for use in fraud, following an operation by the UK Border Force.

2. The Defendant was indicted on 4 counts as follows:

Count 1 – POSSESSING A CONTROLLED DRUG OF CLASS B WITH INTENT, contrary to section 5(3) the Misuse of Drugs Act 1971. Namely, on the 21st day of April 2022 the Defendant had in his possession a quantity of cannabis, a controlled drug of Class B with intent to supply it to another in contravention of section 4(1) of the Misuse of Drugs Act 1971.

Count 1 – POSSESSING A CONTROLLED DRUG OF CLASS A, contrary to section 5(2) the Misuse of Drugs Act 1971. Namely, on the 21st day of April 2022 the Defendant had in his possession a quantity of cocaine, a controlled drug of Class A, in contravention of section 5(1) of the Misuse of Drugs Act 1971.

Count 3 – POSSESSION OF ARTICLES FOR USE IN FRAUDS, contrary to section 6(1) of the Fraud Act 2006. Namely, on the 21st day of April 2022 the Defendant had in his possession or under his control an article for use in the course of or in connection with fraud, namely various bank cards in different names.

Count 4 – FRAUDULENT EVASION OF A PROHIBITION, contrary to section 170(2) of the Customs & Excise Management Act 1979. Namely, between the 13th day of April 2022 and the 21st day of April 2022 the Defendant was in relation to certain goods, namely 100kg cannabis, knowingly concerned in a fraudulent evasion of the prohibition on the importation thereof imposed by section 3(1) of the Misuse of Drugs Act 1971.

3. The litigator submitted a fee claim, in October 2022, for a class K, 6-day trial with 10,000 pages of prosecution evidence (PPE). The claim was assessed and paid as a class B, 6-day trial with 2,137 PPE. On redetermination, the PPE allowance was increased to 5,213, and then further increased to 5,279 pages.
4. At the present stage of this appeal, the Appellant now claims 7,222 PPE. This is 1,943 more pages than has been allowed.
5. Whilst this is a litigator's appeal, the Appellant has instructed counsel Mr Nutkins to represent them. Mr Nutkins represented the Defendant as trial counsel in this matter.
6. Generally, the Respondent accepts that all of the work done relates to served evidence and is remunerable. It is a question of how much work is remunerated as PPE and what balance may then be subject to a special preparation claim.

Relevant Legislation

7. The applicable regulations are The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), and in particular paragraph 1 of Schedule 2 to the 2013 Regulations which provides (where relevant) as follows:

"1. Interpretation

...

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

(3) The number of pages of prosecution 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 prosecution documents or which are included in any notice of additional evidence.

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

(5) A documentary or pictorial exhibit which –

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

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

The Parties' Submissions

8. The Appellant relies on their grounds of appeal dated 10 March 2023, submission in reply document dated 6 July 2023 and the oral submissions of Mr Nutkins.
9. In his oral submissions, Mr Nutkins described the balance of the dispute as a "narrow issue", being not so much a question of which documents qualify as PPE for the purpose of a count, but rather whether or not there has been duplication.
10. With reference to the CCDCS, Section J of the exhibits bundle, Mr Nutkins invited focus on the manner in which the investigating officer, PC Semple, had filtered and presented the evidence in, as Mr Nutkins put it, "a very specific way". The argument being that by the time of trial, the evidence the crown relied on appeared in a different format to the original exhibits.
11. It is the manner in which the evidence was organised and presented by PC Semple which appears to be the central plank in the Appellant's case as advanced today. The Appellant argues that the evidence at trial was presented in a completely different format to how it would otherwise be viewed electronically, and that it was decided by trial counsel on day 2 of the trial that a lot of CCDCS, J section should be printed out and handed to the jury, witnesses and judge, in consistency with the referrals to

evidence as described in PC Semple's witness statement.

12. Mr Nutkins recalled that he cross-examined PC Semple with reference to the evidence in the specific format PC Semple had created (and latterly been printed out). The crown's expert witness was also cross-examined on the evidence presented in that manner.
13. The Appellant's case is because PC Semple arranged the evidence in the very specific way described in the grounds of appeal that consideration of pages in this format should not be viewed as duplication, notwithstanding an implicit acceptance that the documents in PC Semple's evidence were drawn from the source electronic material of 5,279 pages which the Respondent has already allowed.
14. Mr Nutkins, recalling his experience as trial counsel in this matter, also explained that different case management software had been used to filter the evidence such that it was put in an order different to the e-bundle and much removed or unrecognisable from the same, in order to present the crown's evidence in a digestible format.
15. The Appellant also seeks to place great importance in the fact that the printed bundles were to be handed to every member of the jury, the witnesses and the judge, such that it was very important to agree the content of the printed bundles being handed up, and to check nothing inadmissible or inaccurate had been included.
16. Mr Nutkins submits that once both trial counsel had agreed to print out and distribute PC Semple's version of the evidence to the trial judge, witnesses and jury then consideration of the same became much more important, such that it is reasonable to remunerate the same as PPE as opposed to a claim in special preparation.
17. Thus the Appellant's position is even where an element of duplication might arise, it doesn't mean that remuneration of any such element is automatically limited to a claim in special preparation only.
18. The Appellant relies on *R v Napper* (SCCO Ref 160/14) in terms of inviting the court to consider the degree of consideration required as compared to the facts and nature of the case. Mr Nutkins also relies on *R v Everett* (SC-2019-CRI-000038) and submits that it is a question of fairness as to the level of remuneration for the work done because of specifically how the evidence was arranged by the crown, printed out and placed in the hands of the jury and judge.
19. The Respondent, represented by Mr Orde, relies on their written reasons dated 12 January 2023, written submissions dated 3 July 2023, and the oral submissions of Mr Orde.
20. Mr Orde observed that PC Semple's statement provided an explanation as to the methodology he had adopted in arranging the evidence, such that the Appellant could easily identify what had and hadn't been referred to, thus negating the need to look holistically at the crown's presentation of the evidence as well as the electronic evidence in its totality.
21. Mr Orde accepts that PC Semple presented evidence in a different format and order to the electronic evidence. However, he invites consideration of PC Semple's witness

statement, which explains precisely how the evidence had been arranged. Mr Orde submits that the explanation enabled the exhibits to the witness statements to be paid as PPE, and the balance of exhibits not attached to the statements to also be paid as PPE.

22. The Respondent's position thereafter is that any additional consideration of documents which has already remunerated as PPE could instead be remunerated in a claim for special preparation.
23. Mr Orde referred to the written reasons dated 12 January 2023. Whilst he acknowledges that the Determining Officer may have adopted an unorthodox approach when deciding what to count first, he ultimately stands by the remuneration outcome concluded by the Determining Officer because it is the same outcome he would arrive at properly applying regulations 1(3) and 1(5).
24. PC Semple's witness statement demonstrates a detailed and methodical explanation of what he did, meaning that it ought to have been a straightforward task for the Appellant to know what had and hadn't been referred to, and what the balance in terms of a page count would be.

Analysis and decision

25. In so far as the Appellant's grounds and written submissions rely on the decision in *R v Jalibaghodelezi* [2014] 4 Costs LR 781, the Respondent submits that decision does not assist. I am inclined to agree in that the question now at the heart of this appeal is not whether a sufficient amount of the electronic material has been allowed as PPE, but whether the Appellant ought to be remunerated for considering that same evidence in a different format by way of a claim in special preparation or as additional PPE. There is no dispute as to the importance of the evidence, but in my view that goes to the issue of whether that evidence in its unfiltered format goes to the PPE count, not the question of how a second or third consideration of that very same evidence should be accounted for (when presented in a different format).
26. In so far as the Respondent relies on *R v Baptiste* (SCCO Ref 189/18), it strikes me comparison may fairly be drawn with the index matter. In that case, Judge Brown addressed the remuneration of a 'timeline' section of the electronic material and the approach to be adopted where other sections had already been allowed as PPE and the timeline section was drawn from those allowed sections. The observation at paragraph 19 of that judgment was:

"Perhaps the most substantial element of dispute was in respect of the section headed 'Timeline'. Mr. Wade contended that it was necessary for him to consider the relevant communications in chronological order and by doing so he obtained a better appreciation of the sequence of events. However, as he acknowledged the messages and call information as they appeared in 'Timeline' were the same messages and call information as was available in other sections already allowed as PPE. They presented the data in a consolidated chronological form, but it was clear to me that there was consideration duplication between the information as it appears in the relevant 'Timeline' section and the sections which have been allowed as PPE. There were some

1,014 pages in the ‘Timeline’ section of the telephone and some 1,400 pages containing communications within the material allowed as PPE. In these circumstances and on the basis of the account given to me by Mr. Wade to the effect that the ‘Timeline’ section was the better way to view the material, it appears it might have been open to the LAA to allow fewer pages than had in effect been allowed. I do not, in the circumstances, consider it appropriate for there to be a further separate allowance for the pages in the ‘Timeline’ section”

27. That decision does not mean that a claim for a timeline would never be paid as PPE but it does encourage the adoption of closer scrutiny where the electronic evidence as a whole is remunerated as PPE yet a claim is made for further PPE when elements of what has already been paid for are presented in a different format.
28. The Respondent seeks to draw analogy between the presentation of a ‘timeline’ with the index matter, where instead a printed bundle based on PC Semple’s evidence was presented.
29. In so far as I am referred to R v Everett, I don’t agree that the same introduced a test of the “blindingly obvious”. That was a term of art deployed by the advocate for the respondent in that particular appeal.
30. Where the case *is* relevant is in terms of the judge’s analysis of the extent to which evidence presented in two formats are readily comparable. In *Everett*, the judge concluded that such a detailed analysis was required of each version of the evidence presented that both would count to the PPE count.
31. However, where the index case may be contrasted is the presence of PC Semple’s explanatory witness statement, which in effect is the “detailed analysis and comparison” spoken of in *Everett*.
32. Ultimately, there is an economic balance to be struck. All of the source electronic material is being paid as PPE, at 5,279 pages, and there is no dispute that the additional 1,943 pages claimed are drawn from the 5,279 already allowed.
33. In my view, those additional pages, presented and referenced in the format preferred by PC Semple, required close scrutiny and were certainly important. However, having already made a substantial allowance for the source material from which PC Semple’s version was drawn, and with the not inconsiderable benefit of PC Semple’s detailed explanation of where he drew evidence from, I am minded to treat the additional pages as largely representing duplication.
34. I say “largely” representing duplication because taking into account the importance of that evidence, I do not consider it reasonable to dismiss the appeal entirely in terms of remuneration by way of PPE. Instead, I consider a broad percentage approach to be reasonable, and in that regard I allow 20% of the additional pages claimed as PPE. That is, an allowance of an additional 389 pages, with leave for the Appellant to make a claim in special preparation for the remaining 1,554 pages if so advised.
35. The Respondent shall additionally pay the Appellant £1,000 in costs plus the court fee.

