



Neutral Citation No. [2025] EWHC 182 (SCCO)

Case No: T20210040
SCCO Ref: SC-2024-CRI-000051

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 28/01/2025

Before :

COSTS JUDGE NAGALINGAM

Between:

R

-v-

Kalim Chaudhry

and

IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION

Ashcott Solicitors Ltd

Appellant

- and -

The Lord Chancellor

Respondent

Hearing date: 13/12/2024

Approved Judgment

This judgment was handed down remotely at 4.30pm on 28 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Background

1. The Defendant was arrested during a routine response to a report of a suspected burglary. Whilst the Defendant was eliminated as a suspect to the crime of burglary, he was arrested and cautioned with respect to a suspicion of possession with intent to supply, following the seizure of £1,100 cash, snap bags and a cannabis bush from the address the police had reported to.
2. A black Nokia phone (Exhibit ELW/2) and a white Apple iPhone (Exhibit ELW/3) were also seized from the property, both of which were found in clear view, on the kitchen counter.
3. The Defendant initially provided no comment with respect to the seized phones, save that he claimed the iPhone belonged to his son. The Defendant declined requests to unlock this phone. Both phones were subsequently examined, data extracted, and served by the prosecution in the form of two download reports, running to 58 pages (ELW/2) and 9,351 pages (ELW/3).
4. The prosecution case alleged that both phones contained messages consistent with the Defendant's involvement in drug dealing. The Defendant denied ownership of one phone and claimed shared ownership of the other, meaning nothing on either phone could be conclusively attributed to him. Accordingly, he entered a not guilty plea 24 January 2022, and stood trial on 31 August 2023. However, on the second day of trial he altered his plea to one of guilty.
5. Prior to trial, the Defendant had objected to the admissibility of exhibits ELW/2 and ELW/3. The Defendant was also found to be in possession of an unlocked iPhone which the police attributed to the Defendant and marked as exhibit RBK/2, the contents of which were downloaded and analysed. The crown's case was that exhibit RBK/2 was the Defendant's personal phone.
6. The Defendant was indicted on 1 count as follows:

POSSESSING A CONTROLLED DRUG OF CLASS B WITH INTENT, contrary to section 5(3) of the Misuse of Drugs Act 1971. Namely, that on the 30th day of March 2020 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.
7. The litigator submitted a claim for remuneration based on 10,000 pages of prosecution evidence (PPE). The claim was assessed and paid on the basis of 259 PPE. This was based on 36 pages of witness statements, 23 pages of exhibits, 3 pages of streamlined forensic reports and 197 pages of electronic evidence.
8. The allowance of 197 pages comprised 17 pages of data from ELW/2 and 18 pages of data from ELW/3 (including native messages, recent messages, snapchat and instant messages).

9. During the hearing, and consistent with her written submissions dated 21 November 2023, Ms Walker for the Respondent, advised that the Respondent's allowance had increased to allow for:

Call logs (pages 712-714)
Chats (733-956)
Contacts (957-1,024)
Instant Messages (1,670-1,671)
Images (5% of images, equating to 217 pages).

10. As at the date this appeal is being heard, I am asked to focus only on exhibit ELW/3, and the images section of the same, falling into two categories. Namely, "video image thumbnails" (concerning 22 images found on 18 of the pages between pages 9,246 to 9,350), and the entirety of the images section (which runs from pages 3,445 to 7,776).
11. In the circumstances, this appeal has been successful to the extent of the concessions made by the Respondent. The extent to which any allowance beyond those concessions is permissible is discussed below.

Relevant Legislation

12. 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".

Submissions

13. Mr Wells, appearing for the Appellant, made his submissions in helpful and straightforward terms, namely that whilst he welcomes the Respondent's increase from 5% to 15% in terms of the image data, a page count based on 30% is the minimum the court ought to consider.
14. Mr Wells relies on the grounds of objection document filed with the appeal, and prepared on the Appellant's behalf by counsel Tony Montgomery. The essence of the same is to stress the importance of the phone evidence, especially with regards to attribution.
15. However, in so far as this appeal was originally brought on a wide ranging basis that, it is a credit to Mr Wells' helpful analysis and Scott schedule that this court is now asked to focus on the percentage of still images to be allowed, and whether in principle to allow stills taken from video files.
16. With reference to the draft defence case statement and amended defence case statement I was taken to, I accept that the analysis of exhibit ELW/3 was of central importance to the Defendant's pleaded case (at the time) of non-involvement in the criminal acts upon which he was indicted.
17. Mr Wells, whilst not seeking recovery for 100% of the pages of images, takes issue with how those pages ought to be treated. He accepts there are some pages which are capable of swift dismissal in terms of their relevance. However, he submits (with examples given) that there were many instances where an image had to be enhanced using zoom-in functions in order to assess it for relevance. This included images showing or potentially showing drugs, drug paraphernalia (use or sale) or items associated with drug dealing such as cash or weapons.
18. Mr Wells also submits there was a need to scrutinize images showing individuals or groups of people, in so far as they may have been relevant for attribution purposes, when the Defendant's case was that the phone did not belong to him.
19. Ms Walker, appearing for the Respondent, centred her submissions on three areas. The proportion of images, allowances for thumbnails of video files, and the costs of the appeal.
20. Ms Walker confirmed that the Respondent had now conceded to a PPE allowance based on the figures confirmed in her written submissions, but with an allowance of 15% of the pages of images rather than the allowance previously made.
21. Ms Walker said that the Respondent accepts the importance of exhibit ELW/3 in establishing attribution and involvement in drug dealing, but submits that an allowance of 15% of the pages of images (in addition to the allowances made for other categories of documents) was more than reasonable.
22. With regards to drug use or production/sale, Ms Walker advised the Respondent had identified 66 relevant images and therefore accounting for 5% of the images to cover that aspect was "generous". Ms Walker also considered that an additional allowance of 10% to cover attribution was reasonable.

23. Ms Walker took me to examples where the number of images on a single page were as little as six. She also invited me to view the format of the report, and that a PDF style document was in essence designed to mimic how that same document would look on paper.
24. Ms Walker also took me to examples of where the same or very similar images were repeated over many pages in order to alert me to the risk of “double-counting” if I didn’t take duplicated images into account. She also took me to examples of repeated blank images.
25. Citing the Appellant’s Scott schedule, Ms Walker considers that the same in fact demonstrates that the Respondent’s allowance of 10% towards images for establishing attribution is fair and reasonable.
26. With regard to the video thumbnails, Ms Walker acknowledged that the decision in *R v Parle* is not in her favour, but advised me that decision is in the process of being appealed and that if I were minded to make any allowance I should stay that part of my decision pending the outcome of that appeal.
27. She relies on the approach adopted in *R v Bowman* and submits it is not appropriate to remunerate videos as electronic PPE. Alternatively, that with the disputed element running to only 18 pages, Ms Walker suggests I could subsume any allowance into the 15% the Respondent has already permitted or.
28. Finally, in relation to costs, Ms Walker submits that the Appellant had a duty at the outset to set out the realistic proportion of PPE they were realistically entitled to, and that they did not meet that burden until the last moment – i.e. when Mr Wells became involved.

Analysis and decision

29. The fact that something might require a page by page analysis does not automatically lead to the conclusion that 100% of those pages should be remunerated as PPE.
30. The parties having now focused on the images section of ELW/3, the question is what percentage ought to be applied. The Respondent contend for 15% of 4,331 pages and the Appellant contends for not less than 30%.
31. The number of images per page varies from as little as 5 or 6, to as many as 8 or 9. Many of the images are of a “stock” nature and could quickly have been dismissed for relevance. Further, the data associated with those stock images contains nothing other than technical information relating to software.
32. Where it comes to the issue of images of drugs or paraphernalia associated with the same, one must recall that drugs, associated paraphernalia and a substantial amount of cash were found at the address the Defendant was arrested at. Thus importance of the images must be measured against the availability of physical evidence too.
33. As both advocates acknowledged, the role of the court is not to undertake a forensic analysis of thousands of image thumbnails in order to arrive at a page count, but rather to adopt the settled case law approach of assessing the relevant pages and deciding on a

percentage which reasonably reflects the importance of the evidence and the size of the data set.

34. Aside from the pages of stock images, emojis and graphics, are various original images and many of those are likely to be unique that phone. I accept that for the purpose of attribution it was necessary to consider images of some persons and groups, but not all.
35. I appreciate and acknowledge that it is no easy or straightforward task to carry out analysis of the image data when it is presented in thumbnail format. Having said that, presentation in such a format does ensure that multiple images can be very quickly dismissed for relevance.
36. With regards to the images only, I consider an allowance of 20% to represent a reasonable level of remuneration in order to consider those 4,332 pages for relevance in terms of drugs / paraphernalia associated with the same, and attribution. That allowance is in addition to the other categories of documents the Respondent has already allowed for.
37. With regards to stills of videos, it strikes me that where it comes to the appeal in *R v Parle*, any invitation to stay part of my decision should not be applied inconsistently. In that regard, I have resolved to decide the issue of thumbnails relating to videos in this matter.
38. In that regard, I am not minded to depart from settled case law in this area. I cannot see how a still from a video could qualify as PPE, when the Appellant's argument for all other documents is to consider their paper equivalent. There is no paper equivalent to a video. Time for watching those videos is capable of forming part of a non-PPE claim for remuneration. Further, a still could be taken from any part of a video and still not represent the true nature of the content.
39. Thus whilst Ms Walker invited me to subsume any allowance into the amount for images if I was against her on this point, and Mr Wells said he would rather concede the point than have the decision stayed, I am content to make the decision today. No allowance for stills of video.

Costs of the Appeal

40. Unusually, the Respondent seeks an order that there be no costs as to the expense of the appeal based on the Appellant's conduct.
41. This appeal bears similar hallmarks to my 2023 decision in *R v Gaxha* where the parties accepted my invitation for a one week stay of my judgment to explore settlement, in circumstances where the Appellant's revised position was only really known shortly before the hearing.
42. Ms Walker, reasonably in my view, queries why the Appellant originally sought remuneration based on a claim for 10,000 PPE yet as of today seeks remuneration based on the allowances of the Respondent, plus a suggested 30% of the images and a modest claim for images from video stills. She argues that had such a stance been set out sooner, today's hearing (and as a consequence Mr Wells' fees) could have been avoided.

43. Mr Wells, sensibly in my view, concedes the Appellant ought to have set out their revised stance sooner. However, he submits that has already been taken into account in seeking appeal costs of £1,500. Mr Wells advised me that he usually charges a fixed fee of £3,000 for a hearing. He says that the Appellant firm are not seeking any of their own appeal costs, and that Mr Wells himself has engaged in an additional 3 hours of work he has not sought to seek from the Respondent.
44. In my view, it is obvious that the Appellant has achieved a degree of success in bringing this appeal. The issue I have to consider is the extent to which the extra work involved in securing more that the Respondent has conceded to would have been required in any event, or was otherwise avoidable.
45. I consider that whilst the Respondent has been pragmatic in altering their stance, and the Appellant has very belatedly adopted a more realistic approach, the appeal and consequent hearing were very unlikely to be avoided. The Respondent has still had ample opportunity to review the relevant exhibits and form a view.
46. In particular, I am persuaded by the fact that the Respondent appears to criticize the timing of the Appellant's production of a Scott schedule in circumstances when the hearing notice in fact directed the *Respondent* to produce such a schedule which the Appellant could then respond to.
47. In the circumstances, and the appeal having succeeded, I allow £1,250 for the Appellant's costs (fully inclusive).

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