



Neutral Citation No. [2023] EWHC 1472 (SCCO)

Case No: T20200653

SCCO Reference: SC-2022-CRI-000100

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
CHEN

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

Appellant: Mumin Hashim (Counsel)

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

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. This is an appeal by Mumin Hashim of counsel against the decision of the determining officer to calculate counsel's fee under the Advocates Graduated Fee Scheme ("AGFS") by reference to band 6.4 rather than 6.2 in the banding document which forms part of the Scheme under the Criminal Legal Aid (Remuneration) Regulations 2013.
2. Counsel was instructed on behalf of Hang Chen who was charged with an offence under section 327 Proceeds Of Crime Act 2002 regarding dealing with criminal property. Mr Chen was arrested by the police whilst in possession of a backpack containing virtually £70,000 in cash along with a smaller bag containing £1,275. Mr Chen said that he was carrying the bag at the request of someone else and the police's hypothesis was that he was couriering criminally obtained money and that the smaller sum was his fee for so doing.
3. In support of the prosecution's case, 23 pages of statements were served together with 463 pages of exhibits. The contents of Mr Chen's phone were downloaded and the determining officer concluded that 713 pages of electronic pages of prosecution evidence ("PPE") were to be included in the calculation of the fee. This made a total of 899 PPE.
4. The AGFS banding document sets out the various categories of crimes involving dishonesty including money laundering at Band 6 and there is a sliding scale of the value of the dishonest enterprise. For the top two categories, as an alternative to the value itself, a minimum number of pages of PPE may be used to classify the correct band and for which the pages are obviously a proxy for the complexity involved. The bands are as follows:
 - Band 6.1: Over £10 million or over 20,000 pages.
 - Band 6.2: Over £1 million or over 10,000 pages.
 - Band 6.3: Over £100,000.
 - Band 6.4: Under £100,000.
 - Band 6.5: Under £30,000.
5. Given the contents of the bags, this case falls within band 6.4 based on the valuation of the crime. Counsel argues that the correct banding should in fact be 6.2 based upon the number of pages of evidence served by the prosecution electronically.
6. In both the written documents for the appeal and at the hearing of his appeal before me, counsel explained in some detail the need to look at all of the electronic evidence provided by the prosecution. There is no doubt that it was served and counsel quite rightly said that as a result he needed to look at all of it. There were plainly difficulties with viewing the material that were experienced by both counsel and his instructing solicitor. Whilst some searching, for example using Ctrl + F was possible, that did not assist, for example, in ascertaining any existing patterns of communication or evidence suggesting money laundering.

7. I accept all of this from counsel but I do not accept the leap that is then made by counsel that all of the electronic documentation must therefore count towards the PPE. The determining officer has set out, in his written reasons, Schedule 1 to the 2013 Regulations and in particular the interpretation section at the beginning of that schedule regarding PPE. The key subsection is as follows:
 - (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 into account the nature of the document and any other relevant circumstances.
8. Unlike paper evidence, which is simply counted in its entirety, electronic evidence has to pass this further threshold of being sufficiently important to qualify as PPE. If it does not do so, then, at most, a claim for special preparation can be made. The decision in The Lord Chancellor v Edward Hayes & Nick Wrack [2017] EWHC 138 (QB) concerns the extent of the evidence which needs to be served upon the defence. It is not an authority that, once such evidence has been served, there is no need to consider its importance in accordance with subparagraph (5) above. The valuable control mechanism of this further test was emphasised in The Lord Chancellor v SVS Solicitors [2017] EWHC 1045 (QB) heard shortly after the Edwards Hayes case.
9. According to the written reasons, the determining officer has allowed PPE in respect of calls, chats and contacts as is usually the case. He has then allowed 5% of the images in accordance with the approach taken by Senior Costs Judge Gordon-Saker in R v Sereika. There are apparently 7,194 pages of images, or more than half of the 13,426 pages of the download in total.
10. In order for counsel to achieve a banding of 6.2, he needs to establish that over 9,000 pages currently disallowed are sufficiently important to count as PPE so that the total amounts to 10,000 pages or more. This would require an allowance of virtually all (if not indeed all) of the images which would be a very unusual occurrence. There may be a somewhat rigid adoption of the figure of 5% in the calculation by the determining officer but the percentage would have to be at the other end of the possible range to assist counsel here and not simply some modest increase on the percentage allowed. I have had the benefit of viewing the Cellebrite version of the evidence and the images are, in my view, as is usually the case, largely irrelevant to the case. Whilst there are some pictures of cash and people, there are the usual emojis etc which cannot involve more than a glance and do not amount to pages which can be categorised as PPE.
11. But even if all of the images were allowed, there are also elements of standard downloads, such as the timeline, which are usually disallowed. The timeline, which here runs to 2,628 pages is essentially duplicative of other parts of the download. If only that aspect of the download was disallowed, almost every other page would need

to be included. Given my view that the images are largely irrelevant and so the 5% allowed for by the determining officer cannot be said to be wrong, then many of the other pages would be disallowed.

12. The purpose of the banding document, amongst other things, was to avoid the need for precise page counts and the broad thresholds of 10,000 and 20,000 pages enables a broader approach to be taken. Therefore, although the determining officer has in fact produced a specific page count, all I am required to do is to consider whether the electronic PPE satisfies the subparagraph (5) test so that enough pages would be allowed to reach the 10,000 threshold, including the 899 already allowed. For the reasons I have given, I do not see that the contents of the download are sufficiently important in large parts of it to justify categorisation as PPE and as such, this appeal fails.