



Neutral Citation No. [2024] EWHC 511 (SCCO)

Case No: T20217126
SCCO Ref: SC-2023-CRI-000036

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 05/03/2024

Before :

COSTS JUDGE NAGALINGAM

Between:

R

-v-

Cam'ron Dunn

and

IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION

JD Solicitors

Appellant

- and -

The Lord Chancellor

Respondent

Hearing date: 24/11/2023

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 was charged with murder and having an article with a blade or point, contrary to section 139(1) of the Criminal Justice Act 1988.
2. On 1 May 2021 a Mr Derlano Samuels was stabbed to death, with the Defendant standing accused of Mr Samuels' murder. The Defendant says he acted in self-defence.
3. The Defendant was observed to have left his home on his bike at 4.02pm and return home by 4.20pm, allegedly stabbing Mr Samuels to death in the intervening period. Almost every movement of the Defendant, his victims, and persons known to both, was caught on CCTV including the entirety of the stabbing.
4. The CCTV footage shows the Defendant drop his bike and then walk towards a car that was in the area, with the occupants seemingly known to the Defendant. Mr Samuels was not in this vehicle.
5. Mr Samuels was observed on foot and crossing a road to approach the Defendant, seemingly unarmed. The Defendant was observed removing a knife from the waistband of his trousers, and running at Mr Samuels. The CCTV footage shows Mr Samuels attempt to run away and the Defendant giving chase. During that chase, and up to and including the point Mr Samuels sought refuge in the store room of a local shop, he sustained 13 sharp force wounds, including at least 9 stab wounds, and other defensive wounds to his hands. The outcome was fatal.
6. The crown relied on the CCTV footage to rebut the defence of self-defence on the basis that Mr Samuels posed no threat, had fled and been chased down, was stabbed in an attack where he offered no resistance, produced no weapon, and was stabbed multiple times.
7. Thereafter the Defendant was observed running from the shop, still holding a knife, and then retrieving his bike. He is then observed entering a different shop in which he conceals the knife on his person before returning home. The murder weapon was not recovered. Mr Samuels died a little over an hour after the attack.
8. The persons in the car mentioned above sought to assist Mr Samuels and were known to him.
9. Upon his arrest the Defendant gave a 'no comment' interview save that to some questions he claimed to have acted in self-defence. Further, whilst the murder weapon was not found, a search of the Defendant's home address revealed he was in possession of large sheath knives and machetes. In addition, the Defendant's phone contained song lyrics relating to knives and knifing.

Submissions

10. Mr Selby appears on behalf of the Appellant. He acted as counsel for the Defendant. He observed that the true nature of the dispute between the parties is not the relevant case law or legislation, but rather how it is interpreted and applied.
11. Mr Selby invited focus on the pages of images, and the relevance of the same.
12. He submits that the image evidence was hugely relevant. The crown relied on image evidence and he notes the Determining Officer made an allowance for images, albeit in a significantly reduced amount.
13. Mr Selby relies on *Lord Chancellor v SVS Solicitors* [2017] 3 Costs LO 331, and in particular paragraph 47 of the same which provides:

“It will of course sometimes be possible for the prosecution to sub-divide an exhibit and serve only the part of it on which they rely as relevant to, and supportive of, their case: if a filing cabinet is seized by the police, but found to contain only one file which is relevant to the case, that one file may be exhibited and the remaining files treated as unused material; and the same may apply where the police seize an electronic database rather than a physical filing cabinet. Sub division of this kind may be proper in relation to the data recovered from, or relevant to, a mobile phone: if for example one particular platform was used by a suspect solely to communicate with his young children, on matters of no conceivable relevance to the criminal case, it may be proper to exclude that part of the data from the served exhibit and to treat it as unused material. But it seems to me that such situations will not arise very often, because even in the example I have given, fairness may demand that the whole of the data be served, for example in order to enable the defence to see what other use the defendant was making of his phone around the times of calls which are important to the prosecution case. The key point, as it seems to me, is that if the prosecution do wish to rely on a sub-set of the data obtained from a particular source, it will often be necessary for all of the data from that source to be exhibited so that the parts on which the prosecution rely can fairly be seen in their proper context.”
14. Mr Selby sought to stress that this is not a case where the Appellant is pursuing recovery as PPE of every section of the download report of the Defendant’s phone. The Appellant is only seeking remuneration in relation to the images.
15. In this regard, Mr Selby invited focus on pages 25,592 to 32,583 (said to amount to 6,991 pages, but later revised to 6,591 pages following further bundles uploaded to the document upload centre prior to the handing down of this judgment).
16. Mr Selby’s argument is that once the Determining Officer had determined that the images evidence was relevant, then the whole section should have been allowed, i.e. an allowance of 6,591 pages as compared with the 303 pages allowed by the Respondent.
17. If I am against Mr Selby in respect of his argument that if some images are allowed then all pages of images should be allowed, his argument in the alternative is that where a

percentage approach is applied it should be to the total number of images, not the pages.

18. In this regard, he points to there being some 37,570 images and submits that a percentage approach should be applied to that figure if anything. In effect, an argument is therefore advanced that 1 image be treated as being equivalent to 1 page as the starting point for applying a percentage reduction.
19. When asked to elucidate the relevance of the images evidence, Mr Selby explained that the background relationships and animosity between the participants to the attack were important.
20. Mr Selby explained all matters stemmed from a particularly unpleasant gang rivalry, and that the Defendant had been forced to become a member of the same gang Mr Samuels belonged to.
21. Mr Selby advised that the Defendant had been trying to leave the gang but was fearful of the consequences, including a risk to his personal safety. It was in this context that the Defendant had noticed and recognised Mr Samuels as well as the nearby car referenced above. The Defendant's explanation of his actions were that he concluded he was in imminent danger and his attack on Mr Samuels was an act of pre-emptive self-defence.
22. Mr Selby submits that the images were relevant in that they showed the history of association between the participants, including those in the car mentioned. He submits that the fact is the images section was deemed relevant by both the prosecution and the defence, and the fact that only a few images were found does not mean that the whole section did not bear close scrutiny.
23. Ms Quarshie appeared on behalf of the Respondent. She observes that simply because the Respondent has allowed some of the pages images it does not follow that all such pages should be allowed. Reliance is placed in the decisions of this court in *R v Sereika* (2018) SCCO Ref 168/13, *R v Lawrence* [2022] EWHC 3355 and *Lord Chancellor v Lam and Meerbus Solicitors* [2023] EWHC 1186 in support of Ms Quarshie's submission that the Respondent is entitled to take a proportion based approach, and that the burden is on the Appellant to demonstrate relevance if they wish to increase the proportion allowed.
24. Ms Quarshie submits that notwithstanding the availability of images evidence from the Defendant's phone and the prosecution's accepted relevance of the same, both the crown and defence ultimately placed greater reliance on the CCTV footage.
25. Ms Quarshie submits that the Respondent has already adopted a reasonable approach over what sections they have allowed and in what amounts, and observed that the balance of the images section would better be dealt with as a claim in special preparation. In all the circumstances she maintains an overall allowance of 2,375 pages is reasonable (based on 1,946 pages of electronic evidence of which 303 pages are for images based on allowing 5% of the pages of images).

Relevant Legislation

26. 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”.

Analysis and decision

27. Upon the invitation of the parties, this judgment focuses on the allowance for pages of images evidence only.

28. 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.

29. With regard to the images section of the data files sub-category of the handset report, the issue which arises is what percentage ought to be applied and to what pages. The Respondent contend for 5% of 6,591 pages. The Appellant not only contends for 100% of those pages but also that effectively 1 page be allowed per image.

30. There are approximately 5-6 images per page, many of which are stock animated images which could quickly have been dismissed for relevance. Further, the data associated with those stock images contains nothing other than technical information relating to software.

31. The notion that, as a starting point, I ought to take each image as being equivalent to a single page is rejected. I am conscious of cases where images include screenshots such

that digesting the content of the same may be a far more onerous task than viewing a photograph. I am also conscious of cases where identifying one person in a group photograph is more time consuming than an image of that same person alone. I also take account of those instances where an image may be of a document. However, no such arguments are made out in this matter and looked at objectively I cannot see that the Appellant has presented any arguments which would lead me to conclude that the appropriate starting point is that 1 image is equivalent to 1 page. It is not, and having looked through the images at some speed I am satisfied the appropriate starting point is 6,591 pages, to which a percentage approach should then be applied.

32. The question is therefore one of relevance, in the context of the offence with which the Defendant was charged and the extent to which the images evidence was relevant in establishing a defence to those charges.
33. The evidence relied on in the index case centred heavily on the available CCTV footage. Further, this is not a case where the Defendant denied his actions in light of that footage but rather he pleaded a lack of intent and that his actions were entirely in self-defence. In this respect, video evidence and qualified admissions already formed the bedrock of the case for both the defence and prosecution.
34. The prosecution accepted, to some degree, that images evidence was relevant and an allowance of 5% by the Respondent demonstrates an acknowledgment of relevance.
35. I am in no way satisfied that the Appellant has set out an argument that anything even close to 100% of the pages of images evidence ought to be allowed. That said, I accept that where a substantial part of a defence relies on establishing a prior and non-acrimonious relationship with both the victim and members of a gang to whom the Defendant used to belong, which then turned sour, there is potentially relevance in images which demonstrate as such.
36. Having taken all of the relevant factors into account, and having reviewed the images and noted in broad terms the categories of images in terms of those which are unique, those which were pre-loaded, those which were downloaded, screen-grabbed or otherwise, my conclusion is that a marginal increase in the percentage allowance should be ordered.
37. In that respect, I allow 10% of the 6,591 pages of images evidence as PPE, i.e. 659 pages. As already indicated by the Respondent, the balance may be claimed as special preparation.
38. The Respondent shall additionally pay the Appellant £750 plus VAT in costs plus the court fee.

COSTS JUDGE NAGALINGAM

