



SENIOR COURTS
COSTS OFFICE

SCCO Ref: SC-2020-CRI-000096

Dated: 22 December 2020

ON APPEAL FROM REDETERMINATION

REGINA v PARI

BRISTOL CROWN COURT

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID
(REMUNERATION) REGULATIONS 2013

CASE NO: T20170653

LEGAL AID AGENCY CASE

DATE OF REASONS: 18 MARCH 2020

DATE OF NOTICE OF APPEAL: 30 APRIL 2020

APPLICANT: PRIYA PATEL	SOLICITOR ADVOCATE	
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The appeal has been successful (in part) for the reasons set out below.

The appropriate additional payment, to which should be added the sum of £750 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

COLUM LEONARD

COSTS JUDGE

REASONS FOR DECISION

1. This appeal concerns a claim for special preparation under Paragraph 17 (1)(b) of Schedule 1 to the Criminal Legal Aid (remuneration) Regulations 2013 (“the 2013 Regulations”). The date of the Determining Officer’s written reasons, as shown in the cover sheet to this judgement, is taken from the Notice of Appeal: in fact the relevant correspondence appears to have extended into May 2020. In any event, insofar as an extension of time is required for this appeal, it has been granted.
2. Schedule 1 sets out the Graduated Fee Scheme for payment of defence advocates under a Representation Order (here, made on 14 November 2017). One of the factors by which payment is calculated (under the 2013 Regulations as applicable at the relevant time) is the volume of prosecution evidence served, measured by the number of Pages of Prosecution Evidence (“PPE”). The PPE count is however capped, and the special preparation provisions of Schedule 1 include provision for additional payment where the actual PPE count exceeds the capped figure.
3. The relevant provisions are as follows:

“17. — Fees for special preparation

(1) This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under Part 2 or Part 3...

(b) the number of pages of prosecution evidence, as defined in paragraph 1(2), exceeds 10,000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule...

(2) Where this paragraph applies, a special preparation fee may be paid, in addition to the graduated fee payable under Part 2 or Part 3.

(3) The amount of the special preparation fee must be calculated...
from the number of hours which the appropriate officer considers reasonable to read the excess pages...”

Background

4. The Appellant represented Dhanesh Pari (“the Defendant”), who was one of three defendants charged in connection with an alleged systematic fraud through which persons extracted payment from applicants for education or training by falsely claiming to be representatives of education and training institutions.
5. The Defendant faced five counts of acquiring criminal property. The case against him was that money received from the victims of the fraudulent operation was paid into his bank account and withdrawn by him.

6. The Defendant's case was that to support an application for a bank loan to pay wedding expenses, his bank wanted to see funds moving through his current account. He himself was not well educated, and his understanding of English limited and poor. A friend called Dhwani "Bitu" Shah, who said that he owned Jay Ambe Trading ("JAT"), a money transfer business next door to the Defendant's place of work, offered to help. Bitu arranged for money to be transferred into his account, and the Defendant then withdrew the money and handed it over to Bitu. The only money that was otherwise coming into the Defendant's account was his earnings of £1,500 per month.
7. The Defendant claimed that he thought the entire arrangement was legitimate. He did not know that other peoples' names appeared in his banking records in connection with these transactions until a friend read his bank statements to him, and Bitu had explained this by saying that the persons concerned were friends and customers from the money transfer business. The Defendant did not understand how the banking system worked, and accepted the advice Bitu gave him. The Defendant asked Bitu to stop the payments once he had had a sufficient traffic through his account to support the loan, but the bank then froze his account pending enquiries as to the source of the money.
8. The Defendant was in India when he became aware that the police in the UK were looking for him, and he nonetheless returned. A mobile phone taken from the Defendant contained texts exchanged with "Bitu" and regular notifications from Barclays bank informing him of the deposit of funds and the available balance.
9. The prosecution was initiated by Trading Standards officers of Bath & North East Somerset Council, and the Appellant had major concerns both about their jurisdiction and the way in which they handled the case. Ultimately the CPS, which adopted the existing indices and served evidence, took over the case.
10. The Appellant says that a particularly difficult feature of this case was that, at the initial stages of the investigation, Bitu Shah was identified, interviewed, and released without charge. In fact there was ample evidence to suggest that JAT, which had been extensively involved in the receipt and distribution of money received through the fraud, was controlled by Bitu Shah, either instead of or in conjunction with Sanketkumar Patel, a co-defendant who was accepted by the Prosecution to be the owner. Mr Patel denied any involvement on the part of Bitu Shah and prosecution proceeded without reference to Bitu Shah at all, leaving it to the Defendant to show the extent of his involvement. The Appellant says that this approach was informed by a desire to avoid the embarrassment of having let Bitu Shah go. I take no view on that, but I accept that in consequence it fell to the Defendant's defence team, and the Appellant in particular, to substantiate the Defendant's case by demonstrating, insofar as was possible, the role played by Bitu Shah.
11. The Defendant's solicitors attempted to trace Bitu Shah but could not, so it fell to the Appellant to extract from the documentary evidence sufficient information to demonstrate that Bitu Shah played a key role in the affairs of JAT. Most or

all of the work for which a special preparation fee is claimed was aimed at achieving that, and the Appellant succeeded in doing so to the extent that after the first trial, there was a hung jury and a retrial had to be listed. At the retrial, it was established that the Crown's expert evidence was so deficient as to merit significant further expert analysis and reporting, including as to the evidence relating to Bitu Shah. The trial was, of necessity, adjourned again.

The Work in Issue

12. The Appellant seeks payment for a total of 746 hours' special preparation. This is based on a total PPE count of 111,347 pages. There are some differences between the Appellant and the Determining Officer as to the way in which the page count should be carried out, but for reasons that I hope will become clear I do not need to go into that in any detail.
13. This appeal concerns two particular tasks undertaken by the Appellant. The first is the review and analysis of "YOA/10 listing", a spreadsheet summary of metadata extracted from a laptop taken from JAT's business premises, which was ordered to be supplied to the defence team as part of the served evidence. 300 hours has been claimed for undertaking that analysis, and 80 allowed.
14. The second is the review and analysis of exhibits KH/07/01 and KH/13. Both comprised served data extracted from a computer belonging to Sanketkumar Patel. The data, provided in spreadsheet, PDF and other formats, comes with an HTML index. 133 hours has been claimed for this exercise, and 80 allowed.

The Principles

15. Much of the reasoning which led to the Determining Officer's allowance of 80 hours for the above tasks turns upon an evaluation of its relevance. In consequence, it has been necessary for the Appellant to supply me with a great deal of information aimed at demonstrating that in fact the body of data reviewed (albeit, inevitably, incorporating information which on examination proved to be irrelevant) was, for the purposes of the exercise being undertaken, of evidential significance.
16. Whilst on what I have seen I tend to agree with the Appellant, in my view there has been too much emphasis on the relevance, or lack of it, of large parts of the data. That is a key criterion for the purposes of deciding what should be included within the PPE count, which is presumably why both parties have referred extensively to Costs Judge decisions on PPE. Those decisions to my mind have a limited bearing on this case.
17. I say that because when it comes to special preparation, the regulations require only that the time spent should be reasonable. It would follow that relevance will only be a consideration where, for example, a given body of evidence is so obviously irrelevant that little or no time may be spent on it. It is already accepted in principle that it was appropriate for the Appellant to examine the body of data upon which this claim is based. The only question that remains is whether the time claimed for doing so was reasonable in amount. Having seen

the data myself, it is entirely clear to me that the Appellant could not realistically have started by separating out parts of it as exempt from examination. She would have had to review all of it to determine what was relevant and what was not.

YOA/10

18. "YOA/10 Listing" is a very large spreadsheet containing metadata from the laptop taken from the offices of JMT. There has been much discussion of an appropriate page count for this exhibit, and I believe that the Appellant is right in pointing out that the right way to evaluate the volume of information to be reviewed is to note that the exhibit comprises (as I have seen for myself) some 945,470 uninterrupted lines of data entries. On a simple analysis, YOA/10 comprises three columns of data of which, on my monitor at a standard resolution, I can read one "page" of 19 lines at a time. It seems to me to be reasonable, particularly as the data in question is intended to be viewed and analysed on screen, to leave aside the complications and inconsistencies of Excel print page counts, and (in the absence of any alternative format that might mimic production on paper, such as PDF) to conclude that this comprises $(945,470 \div 19) = 49,762$ pages of data.
19. The question, then, is how much time would reasonably have been required to review this data. The Appellant says that the task in hand was to examine the metadata for any entries that might lead to evidence of Bitu Shah's involvement in the business of JMT: the Crown would on request supply, if not already supplied, any files to which the metadata related. The Determining Officer's allowance has been informed by his conclusion that the Appellant did not make enough use of search terms to speed up the process of examination and analysis.
20. The Appellant says that she did use keyword searches (in fact she has produced a list of them). With her copy of this exhibit however she found that search terms did not function consistently and reliably. I have not been able to substantiate that myself. In the example she has given of a search not working, the Appellant has searched for the term "Placeserver" and highlighted, as an example of the search failing to work, an entry which reads "PlacesServer". As far as I can see, the problem is that the search term was not correctly spelt.
21. Nonetheless the Appellant must I think be right in saying that she was not able to rely upon search terms when she could not produce a definitive list of search terms to use. She was looking for any entry that might help substantiate the involvement in the business of Bitu Shah, which, was (at least on the Defendant's case) intended to be hidden. By definition, the material before her was not necessarily going to be transparent in its references to Bitu Shah. Accordingly, she fell back on skimming through the material looking for any reference that might produce a positive result. She could not rely upon search terms: she had to view the material and exercise her judgement.
22. On balance, in the circumstances of this case, that seems to me to have been a reasonable approach.

23. "YOA/10 List" has, as I have said, three columns of data. The first is headed "Path Name", which I understand to be a reference to the file's location. The second is headed "Name", referring to the file name. The third is headed "MD5 Digest". This, I understand, is a reference to a "hash function", which attaches a value (a series of letters and numbers) to data, usually for the purposes of storage and retrieval.
24. It seems to me that only the "Name" and "Path Name" columns could have been capable of identifying anything that might lead back to Bitu Shah. Each entry in the "MD5 Digest" column is an artificially generated series of letters and numbers which is as far as I can see quite incapable of rendering anything useful, other than perhaps to an expert.
25. I found that treating each 19 lines of data as a page, it was possible for me to click rapidly from one "page" to the next without missing any lines. Having taken several trial runs through parts of the spreadsheet in this fashion, most of the data that presented itself could be seen, at a glance, to be of no evidential value, allowing me to work through the entries at some speed. Bearing that in mind, the Determining Officer's allowance of 80 hours, representing as it does about 10 "pages" per minute ($49,762 \div 10 \div 60 = 83$ hours), does not seem to me to be as arbitrary as it plainly seems to the Appellant.
26. I must however make allowance for the conscientious approach evidently taken by the Appellant to the examination of all available data; that the Appellant will have been reviewing lines of data for hours on end, with an inevitable effect on pace; that keyword searches would not have presented a complete solution; that this particular computer seems to have been central to the business of JAT; and the likelihood that among the very many pages of "YOA/10 List", a significant number will have borne closer analysis than most of the material. On that basis, the best that I can do to achieve a fair result is to allow 166 hours, representing about 5 screen "pages" per minute.

KH/07/01 and KH/13

27. KH/07/01 contains an index in HTML format, a "resources" folder which appears to contain nothing of significance and a "Webpages" folder which despite the name, actually contains another subfolder named "Fragments" itself containing a collection of Excel, PDF, PowerPoint and RTF documents. The Appellant says the total number of files come to 5,520. On the "fragments" folder alone there are, according to my PC, some 4,490 files.
28. I appreciate that many of the files are unremarkable, routine documents designed for both domestic and work purposes. There are quite a few standard templates and much duplication. Nonetheless, every file would have to have been opened and checked. The Appellant, who says that she skimmed less obviously relevant documents, has spent 77 hours on this exhibit, which comes, on the "Fragments" folder alone, to over 58 files per hour. That does not seem to me to be an unreasonable rate of review.

29. KH/13 comprises data extracted from a computer belonging to Sanketkumar Patel. It is organised in the same way as KH/07/01, and again includes documents in PDF, Excel, PowerPoint and RTF format. The Appellant says that it contains 3,850 documents, and my computer tells me that the "Fragments" folder alone contains 3,673 files. They include spreadsheet files called "Sanket Sheet" or similar names, which appear to contain multiple references to Bitu Shah. I understand that these files played a key role in the Defendant's defence.
30. The Defendant says that she spent 56 hours on this exhibit, which comes to over 65 documents per hour on the "Fragments" folder alone. Again, that seems to me to be a reasonable rate of review, not least given the importance of some of the documents to the defence.
31. For those reasons, my conclusion is that the Appellant should be paid the full 133 hours claimed for reviewing these two exhibits.

Summary of Conclusions

32. I have concluded that the Appellant should receive, for her review of "YOA/10 List", payment for 166 hours' special preparation (a further 86 hours over the 80 hours allowed by the Determining Officer). For her review of KH/07/01 and KH/13, the Appellant should receive the full 133 hours claimed by her (an additional 53 hours over the 80 hours allowed by the Determining Officer).

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