



SENIOR COURTS
COSTS OFFICE

SCCO Ref: AGS/88/19

Dated: 4th July 2019

ON APPEAL FROM REDETERMINATION

REGINA v SHABIR

CROWN COURT AT WOLVERHAMPTON

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

CASE NO: T2017 0014

LEGAL AID AGENCY CASE

DATE OF REASONS: 27th February 2019

DATE OF NOTICE OF APPEAL: 18th March 2019

APPLICANT: SOLICITORS
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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 £1,530 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**ANDREW GORDON-SAKER
SENIOR COSTS JUDGE**

REASONS FOR DECISION

1. This is an appeal by Good & Co Solicitors LLP, of Leeds, against the calculation of a litigator's graduated fee by the Legal Aid Agency.
2. The solicitors were instructed to represent Kamran Shabir who was charged with possessing a controlled drug of class A with intent, possessing a controlled drug of class A, possessing a controlled drug of class B with intent and possessing a controlled drug of class B. Shabir was stopped by the Police in a motor car which had been reported as stolen. On searching the vehicle, the Police found 20 small wraps and 10 large wraps of cocaine hydrochloride and a bag of cannabis.
3. Shabir pleaded guilty to possession with intent to supply on the basis that he had purchased the drugs to share with his friends to make money in order to fund his own habit. He denied being a street dealer and said that he worked as an actor in the film industry where there was a culture of recreational drug use.
4. The court did not accept the basis on which the plea was tendered and directed a Newton hearing on the question of whether Shabir was a street dealer. In the event, the court accepted that he was not and he was given a suspended sentence.
5. Seven discs of telephone evidence were served by the prosecution. Disc 1 contained the full download of Shabir's mobile telephone and sim card. Disc 7 contained the download of the memory card linked to the telephone.
6. The solicitors submitted a graduated fee claim on the basis that there were in excess of 10,000 pages of served prosecution evidence. The Determining Officer allowed a fee based on 20 pages of witness statements, 4 pages of exhibits, 3 pages of a forensics report and 4,038 pages served electronically. In her subsequent written reasons, the Determining Officer explained that she had allowed only those pages of electronic evidence which were "relevant and integral to the case", namely: on disc 1 - 68 pages of call logs, 2,647 pages of chats, 279 pages of contacts, 288 pages of emails, 4 pages of instant messages, 15 pages of MMS, 692 pages of SMS, 3 pages of sim contacts and 2 pages of SMS on the sim card; and on disc 7 – 40 pages.
7. On this appeal the solicitors maintain that they should be allowed a higher fee. At the hearing Mr Wells, counsel for the solicitors, limited the scope of the appeal only to a further 3,132 pages of web history, which had been disallowed by the Determining Officer. Much of the written submissions filed in advance of the hearing therefore fell away.
8. The representation order was granted on 6th January 2017 and so the claim is governed by the Criminal Legal Aid (Remuneration) Regulations 2013.

9. Paragraph 1 of Schedule 2 provides:

(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 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 into account the nature of the document and any other relevant circumstances.

10. There is no issue that the documents served on disc were documentary exhibits. The only issue on the appeal is whether the Determining Officer should have decided that it was appropriate to include the 3,132 pages of web history served electronically.

11. On behalf of the solicitors Mr Wells explained that the web history showed DVLA searches for registration plates, body building, quad bikes, used cars, vehicle checks and tax. None of this suggested that Shabir was a street dealer and the web history was consistent with his case that he was a social supplier. The case that they had to meet was summarised in the Police report:

The footage off the phone makes him look like a drug dealer and shows a lifestyle consistent with someone with a lot of money.

12. Mr Wells submitted that the sentencing judge had considered this evidence to be crucial, because it showed no evidence of commercial dealing. Had Shabir been a street dealer there would have been a history of visiting websites concerning chemicals or drug paraphernalia or websites consistent with high value spending.

13. On behalf of the Lord Chancellor, Mr Rimer submitted that the web history would not have been relevant because the prosecution was not relying on it. Essentially the evidence considered was relevant only to mitigation. That counsel for Shabir had been allowed a fee based on a higher page count was

immaterial. Each claim should be decided on its own merits and the Lord Chancellor considered that the determination of the advocate's fee had been "overgenerous".

14. It is not in issue that the Determining Officer should allow as pages of prosecution evidence material served electronically which was central or pivotal to the case and which required a similar degree of consideration as pages of evidence served in paper format (see paragraphs 8 and 16 of Mr Wells' skeleton argument and paragraph 17 of the Lord Chancellor's written submissions).
15. I do not accept Mr Rimer's submission that this evidence was relevant only to mitigation. It went to the basis of the plea which was the subject of a Newton hearing. The obligation of the lawyers to consider the evidence would be the same whether it was relevant to guilt or to the basis of the plea.
16. I am satisfied that the 3,132 pages of web history were of central relevance to the issue in this case, which was whether the defendant was a street dealer or a social dealer, and that they would need to be considered with a similar degree of care as served paper pages. The solicitors have made sensible concessions in relation to the metadata, images and timeline. However it seems to me to be inconsistent to allow the call logs, text messages and emails but disallow the web history. Accordingly the appeal is allowed to the extent that the fee should be recalculated on the basis that there were 7,217 pages (4,085 + 3,132).
17. In relation to the solicitors' costs of the appeal, I agree with Mr Rimer's submission that the costs claimed (£4,710) appear very high. I would allow 3 hours for the solicitors' preparation time at £185 per hour and counsel's brief fee of £975.

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