IN THE CROWN COURT
AT BLACKFRIARS

T20137190

1-15 Pocock Street
London
SE1 OBJ

Tuesday, 19 November 2013

Before:

HIS HONOUR JUDGE PETER MURPHY

R E G I N A

-v-

RENATA ANDREWS AND OTHERS

MR E. CONNELL appeared on behalf of the Prosecution
MR M. NEOFYTOU appeared on behalf of the Defendant **RENATA ANDREWS**
Mr C. WELLS appeared on behalf of the Defendant SIOBHAN WILLIAMS
Mr B. SQUIRREL appeared on behalf of the Defendant ASA HARRIS
Ms C. WIGGETT appeared on behalf of the Defendant **DANIEL KOUSSOU**

RULING Corrected and revised by the Judge

Digital transcript of **WordWave International Ltd**

(A Merrill Communications Company)
8th Floor

Merrill Legal Solutions (A Merrill Communications Company)
2nd Floor | 101 Finsbury Pavement | London | EC2A 1ER
Tel: 020 7422 6130 | Fax: 020 7422 6089
DX 42621 Cheapside | www.merrillcorp.com/mls

165 Fleet Street, London EC4A 2DY
Tel: 020 7421 4036 Fax: 020 7404 1424
Email: courtcontracts@merrillcorp.com
(Official Shorthand Writers to the Court)

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B

C

D

E

F

G

H

Merrill Legal Solutions (A Merrill Communications Company)
2nd Floor | 101 Finsbury Pavement | London | EC2A 1ER
Tel: 020 7422 6130 | Fax: 020 7422 6089
DX 42621 Cheapside | www.merrillcorp.com/mls

Tuesday, 19 November 2013

RULING

[1] THE JUDGE: A matter has arisen which requires me to give a ruling. Before doing so I will make one or two preliminary observations. First, I will give the ruling without making any particular comment on the matters with which I have to deal, beyond the decision and reasons for it. I take that course because I think that the subject matter of this ruling needs to be brought to the attention of others, and I direct that a transcript of what I am about to say shall be prepared and sent to the resident judge of this court, His Honour Judge Marron, with a view to onward transmission to higher sources within the CPS.

[2] Second, the three defendants are charged in an indictment with two counts of conspiracy to supply class A drugs. The evidence against them falls under a number of different heads. But in relation to two of the three defendants, the case against them involves only a willingness to allow bank accounts to be used for the purpose of laundering money representing the proceeds of the sale of drugs, a matter which seems to me to be almost entirely divorced from the subject of the

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2nd Floor | 101 Finsbury Pavement | London | EC2A 1ER
Tel: 020 7422 6130 | Fax: 020 7422 6089
DX 42621 Cheapside | www.merrillcorp.com/mls

evidence with which I am asked to deal.

[3] The subject of this ruling is the failure of the prosecution to serve before now, the second day of trial, evidence on which it proposes to rely; and the prosecution's further failure to advise the defence whether the material in question is used or unused material. The question raises serious issues about the practice of the CPS in cases where complex evidence is involved.

[4] I begin with a statement of well-known principles. Initial prosecution disclosure is routinely made subject to a fixed timetable. That timetable is expressed in terms of steps being taken within a matter of so many days after the case is sent for trial. One of the reasons why the timetable must be adhered to is that it affects the lodging of the indictment, and the date of and preparation for the plea and case management hearing. The plea and case management hearing depends fundamentally on initial disclosure being made by the prosecution within the prescribed time. The Consolidated Criminal Practice Direction, paragraph IV.41.8 states:

"Active case management at the PCMH is essential to reduce the number of ineffective and cracked trials and delays during the trial to resolve legal issues. The effectiveness of a PCMH hearing in a contested case depends in large

Merrill Legal Solutions (A Merrill Communications Company)
2nd Floor | 101 Finsbury Pavement | London | EC2A 1ER
Tel: 020 7422 6130 | Fax: 020 7422 6089
DX 42621 Cheapside | www.merrillcorp.com/mls

measure upon preparation by all concerned and upon the presence of the trial advocate who is able to make decisions and give the court the assistance which the trial advocate could be expected to give."

The prosecution's duty of disclosure is a continuing one. The Crown is under a continuing obligation to disclose information that may undermine its case or assist the defence, and particularly when so requested in a defence case statement.

[5] In the present case, I was not myself involved at earlier stages, but on the 4th October of this year I conducted a pretrial review, during which I was told two things relevant to the present question about the state of the evidence. One was that draft admissions were being prepared; the second was that the Crown intended to adduce further cell site evidence.

[6] The Crown is entitled at any stage to serve notice of further evidence. If no prejudice is caused to the defence, the court will generally allow the evidence to be given. In this case, however, the defence made representations which one can well understand, to this effect: that depending on the nature of the evidence on which the Crown relied, not only might the defence wish to challenge that evidence, but it might be

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Tel: 020 7422 6130 | Fax: 020 7422 6089
DX 42621 Cheapside | www.merrillcorp.com/mls

necessary for the defence to instruct an expert. With today's trial date in mind, or yesterday's trial date in mind I should say, I made a direction that any further cell site evidence should be served within 7 days, and if the Crown had further evidence not covered by that direction, they were to serve it within 14 days.

[7] A further hearing was held on 8 November, because by that time, it was clear that the Crown had not complied with the direction given on 4 October with respect to the cell site evidence. By 13 November, when the case was mentioned yet again, the Crown had still not complied with that direction, but stated, somewhat bizarrely, that the prosecution was ready for trial. I then indicated that, because of the failure of the prosecution to comply with the direction that I had given about cell site evidence, I would not allow the Crown to rely on it at trial. Counsel who was then present, Mr. Pons, asked if I would leave that matter open so that Mr. Connell, who is trial counsel, could argue the matter again yesterday and I agreed to that course.

[8] Mr. Connell duly raised the matter again

yesterday, the first day of trial. I was given detail that I think had not been placed before me before. The detail was that the evidence in question, the only "new evidence" as it was put, consists of a statement by Mr Baxter, the Crown's expert, which does two things. Firstly, it puts in pictorial form or an easier form for the jury to understand, the detail of the cell site evidence. Secondly, it adds to that some ANPR evidence. I was also told that the raw data of the cell site analysis had been served on the defence as long ago as April in the form of one or more discs, and runs to some thousands of pages. It was argued that I should allow the evidence to be given because, in effect, there was very little, if anything, new about it of which the defence was not already on notice.

[9] The defence took the position that there had been a clear deadline; that the Crown was in breach of that deadline; and that it was not sufficient for the prosecution to say, "well, we have already served this material in raw data form", but that rather the evidence on which the Crown proposes to rely should be properly served and it should be indicated whether it is served as used or unused material. The Crown replied that the CPS

had made no decision in that regard. Mr Connell told me that the CPS prefers to make decisions of that kind in-house, rather than delegating them to trial counsel. He undertook to consult with the CPS about the matter, a process which, through no fault of his, took some considerable time. He returned to court to tell me that the Crown's application today was to serve, presumably as used material, those parts of the evidence on which the prosecution intended to rely, hoping that the defence would then cooperate in the preparation of some admissions to put before the jury in convenient form the evidence that was relevant. The Crown say that in any event most of the evidence served on the discs is not really very relevant.

[10] What is disturbing about this is that I was told very candidly that the application by the Crown was being made primarily on financial grounds. If I am understanding that correctly, I think it means that there are financial implications in serving a large number of pages of evidence that then have to be reviewed by defence counsel. Of course, once so many pages are explicitly identified, that obviously does have financial implications - and so it should. Why the CPS

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should concern itself with considerations of that kind was not explained, although it certainly calls for some explanation. But whether this, or any other financial considerations are involved, it is in my view quite wrong for such considerations to stand in the way of the Crown properly complying with its disclosure obligations. I am also seriously concerned that the CPS does not allow decisions of this kind to be made by trial counsel, whose responsibility it is to conduct the trial, and who is best placed to make the decision. Quite apart from the problems it causes – of which this case is a prime example – the CPS's practice seems to me to fly in the face of what is required by paragraph IV.41.8 of the Consolidated Practice Direction, to which I referred earlier.

[11] So, the position is that on the second day of trial, the Crown now proposes for the first time to select certain portions of the cell site evidence, to serve it as used material, and to invite the court to admit it on that basis. I regard that proposition as completely unacceptable. I wish to make clear that in my judgment, no criticism at all attaches to Mr Connell, whom I have known for several years

as a very competent, experienced barrister who invariably acts in the highest traditions of the Bar. Nor is any criticism to be attached to the officers in this case, who have clearly tried their best to respond to the very understandable requests made by Mr Connell and by the defence.

[12] The problem, in my judgment, has been created by the refusal of the CPS to make a decision about basic disclosure until the very last moment. It seems to me, going back to first principles, that the mandatory timetable for initial service by the Crown and for the plea and case management hearing, is not intended simply to impose some bureaucratic regulation on trial preparation. Its purpose is to give effect to an extremely important underlying principle and that principle is one of fairness. The defence are entitled to know, not on the second day of trial but in advance of trial, what the case is that they are expected to meet. While it may be in some cases that the case can be deduced from a simple reading of the papers, I do not think that that is true of this case. I cannot judge that matter definitively because I have not been supplied with the evidence in question. I do not criticize anyone for that. There is no reason

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2nd Floor | 101 Finsbury Pavement | London | EC2A 1ER
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why I should be provided with it. But relying on the accounts that I have been given, it seems to me that it would have been extremely difficult for the defendants to anticipate the case against them without reading many pages, for which, as I have been rightly told and candidly told, it would be highly unlikely that the defence lawyers would be remunerated.

[13] The issue is, therefore, one of fairness. The rules do not exist in a vacuum for their own sake. They are there because it is incumbent on the prosecution, which brings a charge against a defendant, to give precise and proper notice of that evidence on which it seeks to rely. That is a principle which underlies the common law. It underlies article 6 of the European Convention on Human Rights, the provision regarding fair trial, and it is spelled out in so many words by the Criminal Procedure Rules.

[14] Rule 1.1 provides that the overriding objective is that criminal cases be dealt with justly. Rule 1.2 requires each participant in the case to prepare and conduct the case in accordance with the overriding objective and to comply with the rules, practice directions and directions made by the court and at once to inform the court and all

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parties of any significant failure to take any procedural step required by the rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

[15] All parties are free at any time to invite the Court to grant an extension of any time laid down for a particular act to be done, and the Court recognizes that there will be many cases in which this is appropriate, especially in a difficult case. But the defence say that this is not such a case. The defence say that the application is a cynical device by the CPS which cannot be permitted to succeed; and that it is not right that the prosecution should now be permitted to cherry-pick bits and pieces from the various discs and give what is essentially initial disclosure, on which the Crown intends to rely, on the second day of trial.

[16] I agree entirely with the submissions made by the defence. I will not permit the prosecution to adduce evidence in circumstances in which there has clearly been wilful, calculated and prolonged disobedience, not only to the rules but also to the specific directions given by this Court. As Edmund Davies LJ said in *Ford v. Lewis*

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DX 42621 Cheapside | www.merrillcorp.com/mls

[1971] 1 WLR 623:

> "Had Veale J known that [the breach] was the result of a deliberate decision based upon the tactical value of surprise I regard it as inconceivable that he would have ruled in favour of admitting the statement. But … I go so far as to say that, even if he had, such an attitude ought not to be countenanced by this court. A suitor who deliberately flouts the rules has no right to ask the court to exercise in his favour a discretionary indulgence created by those very same rules. Furthermore, a judge who, to his knowledge, finds himself confronted by such a situation, would not, as I think, be acting judicially if he nevertheless exercised his discretion in favour of the recalcitrant suitor. The rules are there to be respected, and those who defy them should not be indulged or excused. Slackness is one thing; deliberate disobedience another. The former may be overlooked; the latter never, even though, as here, it derives from a mistaken zeal on the client's behalf. To tolerate it would be dangerous to justice."

Although Edmund Davies LJ was speaking of a quite different set of rules, and in a civil case, his words are even more apposite when criminal liability is at stake. In any event, I would in the circumstances exclude the evidence under section 78, holding that to admit it would have such an adverse effect on the fairness of the proceedings that I ought not to do so.

[17] I have been told by Mr Connell that the result of this ruling is that he will offer no evidence against the defendants. I am not clear why that result should follow. I simply record that I did earlier inquire as to the extent of other

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evidence available, and that in the case of the two defendants against whom the case is essentially one of money laundering, I fail to see the relevance of the cell-site evidence. But that is not a matter for me. It is a matter for the Crown, and on the Crown's request, if that is still its wish, I will have the jury brought down and I will direct them to return verdicts of not guilty accordingly. I will, as I have indicated, refer this ruling to Judge Marron because of the concerns I have about the conduct of the CPS.

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2nd Floor | 101 Finsbury Pavement | London | EC2A 1ER
Tel: 020 7422 6130 | Fax: 020 7422 6089
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We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Signed on behalf of **WordWave International Limited**

26 November 2013

Judge Murphy: I have today corrected and revised this ruling, which was given *extempore*, to explain my reasoning in more detail, but without changing the outcome or the basis of the ruling.

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2nd Floor | 101 Finsbury Pavement | London | EC2A 1ER
Tel: 020 7422 6130 | Fax: 020 7422 6089
DX 42621 Cheapside | www.merrillcorp.com/mls