



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 239/18

29 April 2020

ON APPEAL FROM REDETERMINATION

REGINA v DRAGNEA

LIVERPOOL CROWN COURT

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

CASE NO: T20171215

DATE OF REASONS: 15/11/2018

DATE OF NOTICE OF APPEAL: 19/11/2018

APPELLANT: DDE Law Ltd

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

The appropriate additional payment, to which should be added the £100 paid on appeal and £400 for the fees of Mr Lawlor in attending the appeal, should accordingly be made to the Applicant.

**MASTER NAGALINGAM
COSTS JUDGE**

REASONS FOR DECISION

1. This is an appeal by DDE Law Ltd (the Appellant) against the sums allowed by the Determining Officer under the Litigators Graduated Fee Scheme. In particular, the solicitors challenge the number of Pages of Prosecution Evidence (“PPE”) allowed by the Determining Officer when calculating the graduated fee.
2. The appeal also included a claim for a cracked trial fee which was conceded prior to an earlier listed hearing, where additionally an order and directions were made for provision of the digital evidence in support of the PPE claim to both the court and the Respondent, there having been historic issues with the provision of the digital evidence to the Legal Aid Agency.
3. The Appellant was instructed on behalf of Robert Dragnea who was charged with four counts of arranging or facilitating the travel of another person with a view to exploitation, contrary to section 2(1) of the Modern Slavery Act 2015, on dates ranging from 23 March 2017 to 22 June 2017, and one count of controlling prostitution for gain, contrary to section 53 of the Sexual Offences Act 2003, between 1 July 2016 and 20 September 2017. The Defendant pleaded guilty to one count of arranging or facilitating the travel of another person with a view to exploitation and one count of controlling prostitution for gain, with all other charges dismissed.
4. The Appellant subsequently claimed a graduated fee of 7,178 PPE based on 56 pages of statements, 413 pages of exhibits and 6,174 pages on disc. On first determination, the Determining Officer allowed 2,548, based on 56 pages of statements, 413 pages of exhibits and 2,079 pages on disc. At the time of the submission of the appeal, the Appellant sought a balance of 4,026 pages, comprised entirely of image data in the form of screenshots, downloads and images of computer screens. However, and as set out below, the Appellant has advanced a further alternative page count based on allowing 4,026 pages in total inclusive of the allowance already made.
5. The Respondent elected not to be represented at the hearing of this appeal and instead relies on the Determining Officer’s written reasons and amended written submissions from Mr Rimer. The Appellant is represented by Counsel Mr Lawlor and additionally relies on their grounds of appeal and appeal bundle.
6. It is common ground that the subject of this appeal is digital exhibit 32 (reference MW2-A), which contains 3 folders marked as ‘Handset’, ‘Sim Card’ and ‘Screen shots of Facebook Messenger, Whatsapp, Email and other apps’. The PDF reports on the digital exhibit have been allowed. Further, it is accepted that the PDF handset report contains all of the images which the Appellant seeks additional remuneration for in a separate folder said to comprise a further 4,026 pages.

7. The Respondent submits that to allow any further pages to account for the image data would amount to duplication given that the image data is already viewable within the PDF reports that have been allowed.
8. Further, the Respondent disputes the relevance of the image data even when considered in thumbnail format within the PDF report. To quote from the amended written submissions of Mr Rimer; "It Is clear from a quick perusal of the images section that a proportion of the photos concern the underlying case. There are pictures of women of an adult nature. There are also pictures of receipts and, possibly, travel documents. These pictures appear among a vast number of pictures of Mr Dragnea, of pictures of building works, family pictures and holiday pictures. There are a large number of images which are not photos, but are computer images which have no connection with the underlying case".
9. It is apparent that the Appellant accepts to some degree the Respondent's concerns as to relevance. Mr Lawlor referred me to correspondence dated 25 April 2019 which explains why the additional count sought on appeal has reduced to 4,026 pages. That correspondence also states "If appropriate the figure of 4,026 pages of PPE to be adjusted less the 1,257 pages of the report which the LAA have previously paid". Mr Lawlor explained that the Appellant accepts that some of the images were of construction sites and building projects which were capable of quick dismissal in terms of relevance. He accepted such images were readily discountable.
10. I have considered the digital exhibit in question. There is no dispute that the digital evidence was served as used evidence. There is also no doubt that all of the image data the Appellant seeks be allowed as additional PPE was contained as thumbnails in the PDF report, remuneration for which has already been made.
11. The difficulty which the Appellant encountered was the consideration of those images for relevance. As per Mr Lawlor's submissions, it is the case that the PDF version of the digital exhibit report does show thumbnails of all the images but the size of the thumbnails means they cannot be reliably viewed unless the image is opened. I was unable to hyperlink to or view any of the images in larger format from the PDF report and so was compelled to consider the separate images files in the digital exhibit.
12. Consideration of the images file showed, as per Mr Lawlor's submissions, several examples of pictures taken of a computer monitor displaying hotel, train and flight bookings, screenshots of message exchanges between persons other than the Defendant (for example between what appear to be 'escorts' and 'clients'), pictures of what appear to be 'escorts' holding up a piece of paper to show either who they are or where they were located (typically a hotel and room number) and pictures of receipts and bank transfers. The images collectively demonstrate a pattern of offending that was both on a UK nationwide and international scale.

13. I am satisfied that the image data was both important and relevant. I am also satisfied that consideration of the same effectively could not have been conducted on the basis of thumbnail images alone and regardless of whether images were expanded using hyperlinks or directly clicking in to the images folders of the digital exhibit, I do not consider it would be duplication to allow an additional amount as PPE. **That is because if one cannot readily decipher or consider the contents of a thumbnail image then it is not duplication to consider that image in an expanded format.**
14. In determining what was a reasonable course of action, the use of hindsight must be guarded against. In this case, an inspection of the image data show that there are streams of pictures of construction sites which, on the Appellant's own case, were not relevant to the defence. It is on that basis, it appears, that since submission of this appeal the Appellant has proposed an effective allowance of a further 2,769 pages to allow for consideration of the relevant image data.
15. The Criminal Legal Aid (Remuneration) Regulations 2013 (the "regulations"), and the High Court decisions which have interpreted those regulations, do not suggest that the Determining Officer is required to contemplate on literally a page by page basis the electronic PPE contained within a digital exhibit in order to establish whether each page is relevant and important enough to count as PPE in itself. The regulations (at paragraph 1(5) to Schedule 2) refer to the "nature of the document" and whether to include "it" in the PPE. A document may run to many pages but there is nothing to say that each page needs to be considered individually for all of the pages to be allowed as PPE.
16. It is not clear to me where the reference to 4,026 pages arises from. Various on the digital exhibit are folders for images with image numbers ranging from 4,104 (thumbnails folder), 4,009 (images sub-folder in the handset folder) and 301 (screen shots folder). However, on further analysis of the appeal bundle it is clear to me that the reference to 4,026 pages is in fact 4,026 images. In that regard, I do not consider it appropriate to take 4,026 pages as any form of realistic starting point for the purpose of a PPE count. The appeal bundle of example printed images consistently presents 2 to 3 images per page plus brief accompanying text explaining what can be seen in the image. This demonstrates that in fact it would be wholly inappropriate to consider each image as a single page for remuneration purposes.
17. Notwithstanding the Appellant's observations as to the appropriateness of including in the page count what ultimately proved to be irrelevant images, the manner in which the image data was served meant that relevance and importance could not be ascertained without closer inspection. I consider that closer inspection is appropriately remunerated as additional PPE taking into account the extraction report formats and the importance of substantial portions of the image data to both the prosecution and the defence.
18. **Further, I do not consider it appropriate to allow remuneration of image data based only on a proportion of images which were deemed relevant and**

important after inspection. The image data in this matter was relevant and important, and having ruled it may be remunerated in addition to the PPE count already allowed, I consider it appropriate to allow the additional image data in full.

19. That does not lead to an allowance of a further 4,026 pages but adopting a broad paper page equivalent of allowing for an average of 3 images per page I consider an additional allowance of 1,300 pages to be appropriate in addition to the PPE allowance by the Determining Officer.
20. Accordingly, this appeal succeeds.

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