



Neutral Citation No. [2022] EWHC 2396 (SCCO)

Case No: T20207106

SCCO Ref: SC-2021-CRI-000058

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 14/09/2022

Before:

COSTS JUDGE NAGALINGAM

Between:

R

-v-

John Doyle & Dean Doyle

and

IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION

Harris Solicitors

Appellant

- and -

The Lord Chancellor

Respondent

Hearing date: 25/04/2022

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:

1. The appeal has been dismissed for the reasons set out below. There shall be no order as to the costs of the appeal.
2. The Appellant is a litigator firm which represented Mr John Doyle and Mr Dean Doyle, and subsequently submitted a claim for two case fees; a trial fee and a cracked trial fee. The Determining Officer assessed that only a single trial fee was payable and awarded remuneration on the basis of a 5 day trial in the sum of £107,970.13. A cracked trial fee in the sum of £35,597.46 was disallowed.
3. This is an appeal against the decision to disallow the cracked trial fee.
4. The basis of the appeal is that a new indictment was preferred on 17 March 2021, against Dean Doyle, containing a single count of possessing a firearm with intent to cause fear of violence. The Appellant submits that the earlier indictment was stayed, and therefore claims a cracked trial fee on the basis that this represented an additional case.

Background

5. The defendants were initially charged with the following offences on indictment:
Count 1 - "Possessing a firearm with intent to endanger life" – both defendants;
Count 2 - "Making a threat to kill" – John Doyle only against alleged victim 1; and
Count 3 - "Making a threat to kill" – John Doyle only against alleged victim 2.
6. A plea and trial preparation hearing proceeded on 15 May 2020 and a trial was fixed for 13 January 2021.
7. On 6 October 2020, the prosecution applied to add a new count of "possessing a firearm with intent to cause fear of violence" to the indictment (count 4), which was applied to the Defendants jointly.
8. On 6 October 2020, John Doyle pleaded not guilty to count 1, and guilty to counts 2, 3 and 4. The Prosecution did not pursue count 1 and John Doyle's sentencing was adjourned to the end of Dean Doyle's trial.
9. On 6 October 2020, Dean Doyle pleaded not guilty to counts 1 and 4, and his trial began on 17 March 2021. The Prosecution elected to not pursue count 1 and so the jury were put in charge of count 4 only, upon which a guilty verdict was handed down.
10. Sentencing proceeded on 16 April 2021 where the Prosecution formally offered no evidence on count 1 in respect of both defendants.

Regulations

11. In respect of the definition of a “case”, Schedule 2, Part 1 of the Criminal Legal Aid (Remuneration) Regulations 2013 (the “Remuneration Regulations”) sets out at Paragraph 1 (1) that:

“1.—(1) In this Schedule—

“case” means proceedings in the Crown Court against any one assisted person—

- (a) on one or more counts of a single indictment;
- (b) arising out of a single notice of appeal against conviction or sentence, or a single committal for sentence, whether on one or more charges; or
- (c) arising out of a single alleged breach of an order of the Crown Court,

and a case falling within paragraph (c) must be treated as a separate case from the proceedings in which the order was made;”

12. The relevant Crown Fee Court Guidance provides at paragraphs 2.2 and 2.3 as follows:

“Definition of a Case

2. A case is defined as proceedings against a single person on a single indictment regardless of the number of counts. If counts have been severed so that two or more counts are to be dealt with separately, or two defendants are to be dealt with separately, or if two indictments were committed together but dealt with separately, then there are two cases and the representative may claim two fees.

3. Conversely where defendants are joined onto one indictment or a single defendant has been committed separately for matters which are subsequently joined onto one indictment, this would be considered to be one case and the litigator may claim one fee. Refer to Costs Judge decision: Eddowes, Perry, and Osbourne (2011) which held that in cases involving multiple defendants represented by the same solicitor one claim should be submitted with the appropriate uplift for the relevant number of defendants.”

Decision

13. It is accepted that in determining whether two case fees are payable, the key issue is whether there was more than one indictment, because the appeal fails if the Appellant fails to demonstrate there was more than one indictment. I find that, according to the court log, and consistent with the submissions heard, there was one set of proceedings against the two named defendants, and one indictment.
14. Section B of the digital case system (DCS) is where the indictment was uploaded. During the course of the criminal proceedings, the indictment was updated and amended such that ultimately the record shows four developing versions of the same, labelled as B1, B2, B3 and B4.
15. In seeking to argue there were two indictments in this matter, the Appellant impliedly accepts that each ‘B number’ does not equate to a separate indictment. That is of course correct. However, in order to bring this appeal, the Appellant has arrived at the conclusion that versions B3 and B4 of the indictment may be treated as separate

indictments, with the argument made that version B3 was stayed and B4 was proceeded with.

16. The Appellant's case is that the first three counts (as listed above) were uploaded to the DCS as "B1" on 5 May 2020, and that on 6 October 2020 both defendants pleaded not guilty to count 1, and John Doyle pleaded guilty to counts 2 and 3.
17. Thereafter the Appellant's case is that the addition of the new count 4, on 6 October 2020, led to the creation of indictment B2 in the DCS. However, the Appellant accepts, at paragraph 4 of their skeleton argument, "there was in reality now a single 4 count indictment".
18. The Appellant proceeds to describe B3 as a "new indictment" whilst at the same time acknowledging that "B3 reflected the joint 4 counts at B1 and B2", and then describes the crown's pursuit of Dean Doyle only as a "new, single defendant indictment" on 17 March 2021 (being B4 in the DCS).
19. Amongst the documents filed in support of the appeal is a single page which was uploaded as being "Note from Trial Judge", timed at 11:50am on 16 April 2021, the origin of which is the DCS. The note refers to a "Drugs indictment", "Dangerous driving indictment", and a "Firearms indictment". The note concludes by stating "The following indictments stayed.. Firearms B3.. Dangerous driving B1 and B2.. When the co-defendants are sentenced on the drugs indictment the indictment at B1 will be stayed".
20. There is also a separate signed note of Mr Jeremy Hill-Baker, counsel for the defendants, dated 21 April 2021 which is consistent with the note referred to above.
21. The 'B' numbering referenced at paragraph 19 above clearly demonstrates separate indictments for entirely separate categories of offending, and to be clear this appeal is not concerned with the indictments for drugs or dangerous driving.
22. Further, regardless of how matters were presented in the DCS, in relation to the offending of possessing a firearm with intent to endanger life, threats to kill, and possessing a firearm with intent to cause fear of violence, there has only ever been one indictment.
23. That indictment was originally labelled B1, the 'B' part simply denoting that indictments are saved in a section of DCS called 'B'. B1 is a version of the indictment showing count 1 against both defendants, and counts 2 and 3 against John Doyle only.
24. On 6 October 2020 the crown applied to add a fourth count against both defendants, the "violence" count, which is effectively the same as count 1 but with a lesser intent factor.
25. The outcome of that application is reflected in the court log at 10:15 on 6 October 2020 where it records "**Judge Addresses Advocate** .. I shall add the count 4 to the original indictment at B1 for arraignment. Prosecution to then upload the amended indictment to dcs ."
26. The court log reflects the 'addition' of count 4, and treats that addition as being an amendment to the existing indictment, not a new indictment. This is further reflected in

the court log on 6 October 2020 at 12:44 where the log states “**Add Count..** Count 4 added to indictment 1”.

27. When the prosecution carried out the judge’s direction, the uploaded amended indictment was labelled “B2” in the DCS.
28. “B3” is simply a labelling amendment to the original indictment to show all four counts had been consolidated.
29. Dean Doyle did not face counts 2 and 3. The court log at 12:46 on 25 March 2021 refers to indictment 1 and count 1 being “no verdict”, being a consequence of the prosecution’s decision to not pursue count 1. The court log at 12:51 on 25 March 2021 refers to indictment 1 and count 4 being “Verdict Guilty”.
30. In each instance, i.e. counts 1 and 4, the court log reflects those counts as sitting on “indictment 1”.
31. The notion of Dean and John Doyle facing a single indictment is further underlined by page 37 of the court log and in particular the multiple references to all 4 counts sitting on one indictment (referred to as “indictment 1”), at 12:00 on 16 April 2021 to 12:04 on 16 April 2021. This shows the court sequentially addressing all 4 counts of a single indictment case.
32. The offering of no evidence in relation to count 1 does not equate to a cracked trial because in any event the prosecution proceeded to pursue count 4. Further, the decision to not pursue count 1 cannot have been a cracked trial because count 1 did not sit on a separate indictment.
33. In arriving at this decision I have taken into account the screenshot from the DCS (note of Mrs Wendy Clarke) which, by the Appellant’s own admission, does not assist when considered in isolation. Further, having taken into account the documents referred to as “Note of counsel” and “Note from Trial Judge” I am not persuaded that reading all three documents together leads to any reasonable conclusion that there was more than one indictment at play (in relation to the 4 counts of possession and intent referenced above).
34. In *R v Wharton* (SCCO ref: SC-2020-CRI-000195), at paragraph 13, it was observed “The fact that two separate documents have been uploaded rather than annotating the original indictment in some fashion is simply how modern technology is likely to be employed. Ease of practice dictates this approach as was confirmed by the trial judge. It does not enable further claims to be made for fees in respect of what is very much the same work...”. The manner in which the Appellant seeks to treat the different iterations of the same indictment strikes me as an invitation to permit further claims be made for what is very much the same work.
35. It is an invitation I decline to accept. The appeal is dismissed.