



SENIOR COURTS
COSTS OFFICE

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SCCO Ref: 146/16

Dated: 28 November 2016

ON APPEAL FROM REDETERMINATION

REGINA v DINU

BLACKFRIARS CROWN COURT

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

CASE NO: T20150697

LEGAL AID AGENCY CASE

DATE OF REASONS: 19 JULY 2016

DATE OF NOTICE OF APPEAL: 16 AUGUST 2016

APPLICANT: SOLICITORS SVS Solicitors
DX 31956
Chalfont St Peter

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, should accordingly be made to the Applicant.

**J. SIMONS
COSTS JUDGE
REASONS FOR DECISION**

1. SVS Solicitors appeal against the decision of the Determining Officer at the Legal Aid Agency to reduce the number of pages of prosecution evidence ("PPE") forming part of the solicitors' Litigator Graduated Fee claim from 2,676 pages to 1,105 pages.
2. The solicitors represented Emilie Dinu pursuant to a representation order dated 28 September 2015. The client was charged with being concerned in a money laundering arrangement.
3. The point in issue is in relation to the "disclosed" telephone evidence on disc. This evidence was served on the solicitors by way of a letter from the Crown Prosecution Service dated 2 February 2016. The letter referred to the client and her co-defendants, referred to the court and hearing date, and stated:

"Please find enclosed a disc containing ongoing disclosure in relation to your client. The disc is encrypted and the password remains the same".
4. The solicitors accept that this letter is ambiguous as it does not state whether the disclosure is deemed to be served evidence or unused material. The solicitors submit that the evidence on the disc was central to the case. It showed the roles of each Defendant and the extent of their individual involvement. The client was the only Defendant who was acquitted at trial and it was upon the evidential basis contained on the disc that the defence were able to make submissions at trial consistent with her innocence. It showed that she had no contact with other Defendants. The material constituted the evidential basis upon which the Crown were able to prepare and put together the telephone schedules used at trial.
5. Consequently the solicitors submit that it was clear that this evidence was served evidence.
6. In written reasons dated 19 July 2016, the senior case worker at the Litigator Fee Team confirmed the Determining Officer's original decision that the disc was not formally served as evidence by the prosecution and consequently falls into the category of unused material. Unused evidence does not meet the PPE criteria. As the solicitors had been unable to provide any Notice of Additional Evidence or exhibit list to confirm that the disc was formally served, the material could only be deemed to be unused material.
7. The solicitors have requested that this appeal is dealt with in their absence.

"Criminal Legal Aid (Remuneration) Regulations 2013, Schedule 2

1. Interpretation

(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”.

8. In my judgment the regulations are sufficiently flexible to include documentation which are not included in a Notice of Additional Evidence as PPE. The Regulations state that PPE includes those documents which form part of the served prosecution documents **or** which are included in any Notice of Additional Evidence.
9. In my judgment the letter of 2 February 2016 served the relevant disc. The Regulations do not state that that documentation has to be formally served. The PPE forms part of the served prosecution documents or documents which are included in any Notice of Additional Evidence. The disc in this case was a served prosecution document.
10. If a prosecution document has been served, the Determining Officer is required to look in detail as to what the document consists of. There may be many instances where documentation or discs served under cover of a letter similar to that of 2 February 2016 are clearly unused material, or is material that is only peripheral to the case or the defence. In such a case the Determining Officer would be correct in determining that that material was not PPE.
11. However, there are cases such as this where it is quite clear that the content of the disc was central to the case (as opposed to just central to the defence) as it constituted the evidential basis upon which the Crown were able to prepare and put together the telephone schedules used at trial.

12. It would, in my judgment, be an unjust interpretation of the Regulations to conclude that material that had been served without a Notice of Additional Evidence must automatically be regarded as unused material and therefore excluded from the PPE count.
13. In my judgment, the material served under cover of the letter from the Crown Prosecution Service dated 2 February 2016 forms part of the served prosecution documents. I am satisfied that the contents of this electronically served material is such that, taking into account the nature and content of the document and all the relevant circumstances, it is appropriate that it be included in the PPE.
14. Accordingly, this appeal succeeds in full and I direct the Legal Aid Agency to pay the solicitors the balance of their Litigator Graduated Fee claim.

TO: SVS Solicitors
DX 31956
Chalfont St Peter

COPIES TO: Ms Helen Garton
Legal Aid Agency
DX 10035
Nottingham