

JERSEY / JUDGMENT

Jordan - v - AG [2005]

JCA 061A (29 April 2005)

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judgment

the deputy bailiff: 1. The matter before me this afternoon is an appeal against a taxation made by the Greffier on 2 nd March 2005. It arose out of a criminal trial where the Defendant was charged with possession with intent to supply some heroin. On the evidence there was no dispute that the Defendant had been in possession of the container in which was to be found the heroin; it was in her handbag, as I recall. So there was no dispute that she knew that she had something in her bag. The sole issue was whether she knew or had reason to believe or suspect that it was heroin; she said that she had no idea that that was so. So it was a simple case with a simple issue. It was crystal clear, in my judgment, that there was a prima facie case in the sense that she did have the item containing the heroin in her custody and control and she knew that. Therefore, the question was whether she could take advantage of the statutory defence. There was a one day trial and she was acquitted. Therefore, she is entitled to her costs and this taxation arises out of that costs order. 2. Advocate Tremoceiro , her Advocate, who had successfully defended her at trial, entered a bill of £32,464.77. This was reduced by the Greffier, following a hearing, to £19,490.84. The Defendant now appeals, saying that certain items were wrongly disallowed by the Greffier. By way of general background, an order for costs of this nature is an order on a standard basis. It follows from that that any doubts as to whether costs were reasonably incurred or were reasonable in amount are to be resolved in favour of the paying party, as set out in Rule 9(A)(4) of the Royal Court Rules (1992) which then applied. Matters are further governed by the Practice Directions of 5/99 and 2/99. 3. There are a number of issues which Mr Tremoceiro has raised. The first relates to the question and answer interview. The Defendant was interviewed by Customs. She chose not to exercise any right of silence and gave a full account of what had happened and what she believed. Mr Tremoceiro was present throughout that interview. The Greffier disallowed all of that time on the basis that, in legal aid cases, there was a practice that Advocates did not, in general, attend such interviews save in exceptional cases and he did not consider that this was an exceptional case. I consider that the Greffier erred in that respect. No distinction is, in my judgment, to be drawn between a legally aided defendant and a non-legally aided defendant in respect of taxation. One only has to pose the question as to whether, if an ordinary defendant faced with such an important interview, wished to have his Advocate present, and if he subsequently were awarded costs, would such costs be recoverable as being reasonably incurred?

And one can see that the answer must be yes. It is clearly reasonable for a defendant in an important case of this nature, where the defendant intends to answer questions rather than say 'no comment', that his Advocate should be present. I therefore hold that it was reasonable for Mr Tremoceiro to attend the question and answer session and, therefore, the costs are recoverable.

4. The second area related to the rate at which Mr Tremoceiro's costs were allowed for time he spent, both in the Magistrate's Court and the Royal Court. The Greffier allowed the rate for a qualified Advocate who is not a partner. This is lower than the rate for an Advocate who is a partner. He did so on the basis that, having regard to the nature of the case and the fact that much of the time was in the Magistrate's Court, it was not reasonable to expect a partner to attend and this is the rate which is normally allowed, I understand, in the Magistrate's Court. Nothing I say is intended to cast doubt on that principle; it is clearly important that over-qualified persons should not be sent to the Magistrate's Court to carry out work for which the public then have to pay. But this is a very exceptional case. Advocate Tremoceiro is a sole practitioner and indeed has no assistance and no other qualified Advocates in his firm. Therefore there was nobody else who could be sent to represent the Defendant during the course of her trial. Advocate Tremoceiro is the principal of the firm and therefore is the equivalent of a partner. Given that there simply was no alternative and that this was a legal aid case where he had no alternative but to appear, I consider that it would not be right to deprive him of costs and to pay him less than any other partner would receive. As Mr Tremoceiro pointed out, by sending along a non-partner, a partner of a larger firm is left free to charge out at his full rates. That is not something available to Mr Tremoceiro. Mr Baker did not oppose the point, in my view rightly I therefore hold that Mr Tremoceiro is entitled to a partner's rate for the time that he properly spent.

5. The third issue relates to the Committal Hearing. Mr Tremoceiro asked for an Old Style Committal and some nineteen hours time was spent on that. The Greffier allowed 9 of those hours. In my judgment no time should have been allowed. This was a case where the prosecution case was crystal clear and there was no dispute that the Defendant had control or custody of the package which contained the heroin. There was, therefore, no dispute that she was in possession of the heroin and the sole question was whether she had the statutory defence available to her. There was, therefore, absolutely no chance of a submission of "no case to answer" succeeding and there was absolutely nothing to be gained by testing or exposing the Prosecution evidence because it was not, in fact, disputed. I consider, therefore, that it was wholly unreasonable to ask for an Old Style Committal. That being my finding, I consider that all of the time in relation to it should be disallowed.

6. That leaves the final aspect. This was a case which took one day and where there was a single issue as to whether the Defendant knew, or had reason to suspect, that she had heroin. According to the Crown, the bill put in for taxation shows a total of 129 hours being spent on this case. At a 35 hour working week that's 18 days over 3 ½ working weeks. I must emphasise, as did Crown Advocate Baker, that there is no suggestion that Mr Tremoceiro deliberately worked unnecessarily long hours. That would be a foolish thing to do given that an advocate on legal aid receives no remuneration if the case is lost. Furthermore Mr Tremoceiro's conscientiousness and integrity are well known to this Court.

7. I have to say that I do agree with the Crown that such a number of hours is wholly out of proportion to what was at issue in this case. Even if one knocks off the 19 hours allocated to the Committal one is still left with 110 hours

which is about 3 working weeks on the preparation and hearing of this straight forward case. Were I conducting this matter afresh, I have no doubt that I would have taxed this matter down much more than the Greffier did. Even at his level, I consider that a figure of £19,000 is far too high for such a case. But the Crown did not appeal the Greffier's decision. It may be that, technically, I have jurisdiction to vary his decision even without a cross appeal, but I consider that an undesirable way to proceed. The absence of a cross appeal means that the issues have not been developed as fully as they would have been had that been the case and in particular the Defendant, through her counsel, has not had such an opportunity to address all the issues. 8. Accordingly, I do not feel inclined to vary the Greffier's decision as to the hours which he disallowed, save to repeat that had I been sitting to consider the matter I would undoubtedly have disallowed much more. The result is, however, that I allow the appeal in the way that I have described, namely that the time for the Q and A session should be allowed, the rate should be the equity partner rate; as against that I disallow all the Committal time. Other than that, I uphold the Greffier's decision as to the hours which he allowed. 9. As to costs, I think the justice of the case is that there should be no order for costs today because, although Mr Tremoceiro has succeeded, I have made it clear that he could consider himself fortunate as a result of the Greffier's decision. I think the overall fairness and equity of this case is met by no order for costs today and I will not interfere with Greffier's order as to the costs of taxation. No Authorities Page Last Updated: 03 Mar 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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