



Neutral Citation No. [2023] EWHC 3127 (SCCO)

Case No: T20220566

SCCO Reference: SC-2023-CRI-000081

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 1 December 2023

Before:

COSTS JUDGE ROWLEY

R
v
NIKOLLA

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)
Regulations 2013**

Appellant: Fahrenheit Law (Solicitors)

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

The appropriate additional payment, to which should be added the sum of £ (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

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

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. This is an appeal by Fahrenheit Law Solicitors against the number of pages of prosecution evidence (“PPE”) allowed by the determining officer when calculating the solicitors’ fee under the Litigators Graduated Fee Scheme set out in the Criminal Legal Aid (Remuneration) Regulations 2013.
2. The solicitors were instructed on behalf of Thanas Nikolla who faced a 1 count indictment regarding the production of cannabis. He originally pleaded not guilty but subsequently pleaded guilty on a basis which was not accepted by the prosecution and which led to a Newton Hearing.
3. As part of the served prosecution evidence, the solicitors received links on the DCS to two phone downloads, both of which came to 556 pages when downloaded. Exhibit 6 was described as a “Translated phone download” on the coversheet. Exhibit 7’s coversheet described it as a “phone download – Albanian” and indicated it was “Nikollo’s (sic) phone” and that it was the original uninterpreted download.
4. When it came to calculating the numbers of pages of PPE for the graduated fee, the determining officer allowed the translated download but not the original version. As such the figure allowed of 660 pages is 556 pages lower than the solicitors claim.
5. In his written reasons, the determining officer states:

“We note the solicitors have indicated that Exhibits J0006 and J0007 are different and have claimed both as PPE, stating that one is a translated version and the other is the original. However, reviewing the data provided, they are exact duplicates, page for page, therefore, only one is deemed payable as PPE and the other is deemed a duplicate.”
6. This is the heart of this appeal. There are no issues regarding service or importance or other issues regularly raised regarding claims for PPE. In their appeal form, the solicitors similar describe their “simple” argument in these terms:

“...the PPE claimed is not a duplicate, the documents are different, one contains a translation and one does not. One is a document which has been edited with the [addition] of the prosecution’s comments (interpretations) and one is the original best evidence. Both have to be put to the defendant, this is not duplication, but rather additional work required on the documents.”
7. Mr Ilyas, who appeared on the solicitors’ behalf at the appeal hearing, sought to emphasise the difference between the two exhibits by suggesting that the original version was an electronic document but the translated version was (or ought to be considered as) akin to a paper document. It had been provided by the prosecution to an interpreter who had then gone through the chat messages and provided an interpretation of those messages which were written in Albanian. Mr Ilyas argued that these interpretations could not be described as translations because there were

places where the interpreter had expressly noted that one passage was unintelligible given the absence of punctuation.

8. I do not think it matters how the annotations to the original document are described. Nor do I think that the suggestion that the translated version should be treated as a paper document is material to the decision I have to make in this case. The determining officer has already allowed for all of the pages of that version. It is the original version – which the solicitors accept is an electronic document – which has been disallowed. Whether the translated version is a paper document does not help the solicitors. There are other paper PPE which have been allowed but they cast no light on whether this electronic PPE should also be allowed. The same would be true of the translated version even if I accepted Mr Ilyas’ argument.
9. It seemed to me that Mr Ilyas’ submissions were on stronger ground when comparing the translated version with other documents which are produced from the original documentation such as maps and cell site locations. They were described as requiring the application of the human mind rather than a mechanistic approach of simply pushing a button such as to create the original download. The annotation of the original version with translated wording might fall into this category. It had certainly involved human interaction rather than just computer searching etc.
10. Mr Ilyas also told me that the translation of chat messages is often done by downloading the original text onto a spreadsheet and each line is then set out next to its translation. He would expect the LAA to treat that as a separate document and to be paid for in addition to the original documentation. Indeed, this approach is apparently taken to numerous schedules and not simply those concerning chat messages.
11. Mr Ilyas referred to an old case in the Crown Court Fee Guidance in previous editions called R v Brazier. He described it as being an authority for the proposition that where an original transcript had been expanded, both the original and the expanded version would be included in the PPE. Having consulted an old version of the Fee Guide, I have located this case which was apparently decided in 1998 and which is referred to in respect of the following point:

“When a transcript has been expanded, either by the prosecution or the defence, because the one provided by the prosecution was deemed to be insufficient to go before the jury, the fullest transcript produced should be included in the page count. The version that is in the committal bundle should also be counted.”
12. The annotating of the original download was, in Mr Ilyas’ submission, similar to the expanding of the transcript in Brazier. It was completely different from the usual duplication arguments regarding identical information supplied in both pdf and excel formats. It was also different from arguments that the timeline in one download simply replicated the information to be found elsewhere in the same download.
13. I accept entirely Mr Ilyas’ description of the usual duplication arguments and that any authorities in relation to them are irrelevant to this situation. I also accept that where the prosecution has produced maps or other documents which analyse or distil

information from downloads, then those documents would be expected to be claimed as additional PPE. But I am afraid that I do not accept that this is the situation in this particular case.

14. As I indicated earlier, the page count for both versions is the same, i.e. 556 pages. This makes it difficult to argue that there has been any literal expansion of the original document. More fundamentally, having sampled the entries at random throughout the document, I am satisfied that the translated version, save for the translations themselves, is the same document as the original version. The translations are brief and fit within the space between the various chat messages. The following is an illustration of this from page 288:

#1 Incoming Android System Messages

SMS

Porosia juaj nga Shqiperia ka ardhur dhe mund te vini ta merni ne postkodin Wd62ql
Faleminderit

23/01/2022 12:42:38 +447415845272 Your order from Albania has arrived and you can come to collect it from postcode WD62QL. Thank you

#2 Incoming Android System Messages

SMS

Pershendetje
Porosia nga shqiperia ka ardhur
Mund te vini ne postcode WD62QL
Jemi deri ne Oren 8pm
Faleminderit

23/01/2022 10:19:36 +447415845272 Helo
Your order from Albania has arrived
You can come to the postcode WD62QL
We are open until 8pm
Thank you

15. Many of the messages are in English and so there is no need for a translation. Most of the messages are extremely short and so any translations are similarly brief. The two examples above are longer than most of the messages.
16. It is entirely plain that the defendant's instructions could be taken solely by using the translated version since both the original Albanian and the prosecution's proposed translations could be viewed. In my judgment, the original version adds nothing to this position in terms of utility.
17. The only reason for considering the original version would be to check that there was no difference between it and the translated version in terms of numbers of pages or messages. Mr Ilyas raised the point as to why the prosecution had disclosed both versions if they did not expect the defence to check for differences. I have no information as to why the prosecution acted as it did. It seems to me that the prosecutor may have thought that the defence was bound to ask for the original – particularly as it was a focused extract – and so decided to short circuit the process. Whatever is the case, it is a served document and the defence are entitled to claim at least time for considering it by way of special preparation.

18. In my view, that is exactly how the original version should be remunerated. I do not accept the suggestion that it needed to be gone through in detail when it clearly appeared to be exactly the same as the translated version. Following an initial review of it, a closer check for differences would only require the attention afforded by special preparation time rather than the increased focus referred to in R v Jalibaghodelezi [2014] 4 Costs LR 781 which would promote the electronic evidence formally into being PPE.
19. Accordingly, this appeal is dismissed. If the solicitors wish to bring a claim for special preparation, I am sure that such a claim will be determined in the light of this decision, notwithstanding it would otherwise presumably be out of time.