

Case No: 200103678 W1

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT
(HHJ GORDON)

Royal Courts of Justice
Strand,
London, WC2A 2LL

Friday 11 October 2002

Before :

LORD JUSTICE RIX
SIR IAN KENNEDY

and

THE RECORDER OF BRISTOL

(Sitting as a Judge of the Court of Appeal, Criminal Division)

Between :

Regina
- and -
John Palmer

Respondent
Appellant

(Transcript of the Handed Down Judgment of
Smith Bernal Reporting Limited, 190 Fleet Street
London EC4A 2AG
Tel No: 020 7421 4040, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Mr Peter Kelson QC, Dr David Thomas, Mr Alexander Dos Santos and Miss Catherine Pattison
appeared for the Appellant
Mr David Farrer QC & Mr David Matthew appeared for the Respondent

POST JUDGMENT DISCUSSION

LORD JUSTICE RIX: We hand down the reasons for the judgment which we
announced on 31st July and those reasons indicated why we then gave judgment

quashing the confiscation order and reinstating the judge's earlier costs order in the sum of £266,367 and quashing his later costs order.

MR KELSON: My Lords will, I know, recollect that on 31st July my learned friend Dr Thomas made application for costs, a defendant's costs order as opposed to costs against the Crown. My Lord received the skeleton argument which he had prepared together with an analysis of such cases as he could locate by obviously some detailed research which might enlighten the position. Of course that application for costs was adjourned to today for the receiving of the reasons.

LORD JUSTICE RIX: We have read those submissions again and we have had a chance to look at the cases. Is there anything that you want to add to those written submissions?

MR KELSON: No there is not, I will simply be referring to those very full and thorough submissions.

LORD JUSTICE RIX: Thank you very much. Is that application opposed by the Crown?

MR FARRER: With respect, my Lord, I do not think strictly the Crown is party to it. I have no observations to make save that purely as a matter of fact, describe Mr Palmer as having been unrepresented until 2nd July 2001 is not entirely right. He had access to leading counsel throughout both trials. I am not suggesting that is a material matter.

LORD JUSTICE RIX: We have had an opportunity to consider the matter and we think you should get a defendant's cost order for costs to be paid out of Central Funds, and the matter will have to go off to the Registrar for assessment. Our reason is that in the light of our judgment in this case, the Crown has proceeded without jurisdiction in this matter. It follows that, without jurisdiction, these were matters which the court was wrong to consider.

MR KELSON: My Lord.

Do my Lords have Dr Thomas' skeleton argument immediately to hand. At paragraph 14 thereof, which is on page 6, the small page numbers in the bottom right-hand corner, Dr Thomas has helpfully, I submit, listed the five heads of costs no more than heads for the determination to follow. But my Lords could certify those heads in principle, with respect, that will obviously assist in the determination proceedings.

LORD JUSTICE RIX: I am not sure we can certify or direct. We can see that those are headings within the process, that the Registrar may well want to consider being the proceedings in July 2001. The proceedings in April 2002, and proceedings on this appeal and the preparation for the April proceedings in the form of response to prosecution survey and the obtaining of an accountant's report. Ultimately we think that is all a matter for the Registrar's assessment and, unless there is agreement on the matter, assessment will be carefully undertaken. The only other observation that we would make and it is only an observation, it is a matter for the Registrar in due course, is that we have noted in the appearances in this Court, how many counsel Mr Palmer has instructed. It will be a matter for the Registrar to decide what his reasonable and proper costs should be.

MR KELSON: My Lords, may I inform the Court, I hope for the further administration of this case generally, that on Monday of this week, by a letter handed to Master McKenzie, the application for leave to appeal against conviction by Mr Palmer was withdrawn. The reasons for that withdrawal are all set out fully in that letter, I need therefore say no more about that. That only leaves outstanding an application for leave to appeal against sentence. It is hoped, if it were at all possible, to expedite that since that will then be the last matter. It is worth mentioning because my learned friend Mr Farrer rightly points out to me that it is perhaps a case where the court would be assisted by the Crown on the matter on the appeal against sentence. I do not have a view on it. It means we can actually ask my Lords now whether in principle- we do not know who the Court will be when the application comes. But in principle would the Court be assisted by the attendance of the Crown?

LORD JUSTICE RIX: I do not have in mind at the moment what the issues on that appeal are.

MR KELSON: The application for leave to appeal against sentence, I can properly say, fairly familiar issues, not particularly unique or unusual issues, it is a fairly straightforward application for leave to appeal against sentence. The first application was drafted by him in person, and it has now been reviewed by us. But it is a complex case. I raise it because if the court had it in mind it might be necessary you could say so now. (Pause).

LORD JUSTICE RIX: Mr Kelson, I think the first question I would like to ask you is whether you are hinting in the application that you make that you might have authority to treat the application, were permission to be given, as the hearing of an appeal or whether you were contemplating, if you were successful in your application, there would be two stages in the process?

MR KELSON: May I be as candid as I have been throughout, I had not considered that matter. When I made my application a moment ago I had not considered that. It would, in the interests of costs, be extremely helpful if when the application is made, the Court were in a position to proceed should the application be allowed to deal with a substantive hearing which I do not anticipate takes more than a normal appealing against sentence, the issues are familiar.

LORD JUSTICE RIX: You could certainly get instructions as to whether your client would be willing to take that course, if the court was. Ultimately, it would be a matter for that.

MR KELSON: I feel I probably already have those. May I expressly ask those, I feel that has been done. (Pause) Yes, those instructions have been taken, that applicant would welcome that course. Mr Farrer have you any comment to make.

MR FARRER: There are two possible reasons why the Court might be assisted. It is plainly not a matter for me to say one way or the other. First of all there were two trials of considerable length with a vast volume of evidence. Secondly, perhaps more importantly, although as I have indicated Mr Palmer was represented in the sense on both, it was very much at arm's length. Whoever appears for him - I venture to think, I assume it was my learned friend - was not of course involved at the trial at all. Moreover, the history of this matter leads me to think that there is not a great deal of

common ground, save in so far as it may appear from the learned trial judge's observations in sentencing. It is for those reasons that I raise the possibility that the Court might be assisted, certainly if it was going to reach a final judgment on the question of sentence.

LORD JUSTICE RIX: Thank you very much indeed for assisting us both with those observations. We think that, in the light of the fact that you instructions to go through to a full appeal should permission be given and in the light of Mr Farrer's comments we will indicate that Crown counsel should be present on that application. We will make known to the office that have that authority and should proceed to a full appeal should the Court give you permission to.

MR FARRER: Might I mention one, I think last, matter today my Lord, one, I confess, I was not expecting to raise. My learned friend has indicated Mr Palmer has in effect abandoned any further grounds of appeal against conviction. There was of course a hearing of certain grounds, an application for leave in relation to certain grounds, in front of Rose LJ, in April. Shortly in fact before the proceedings which came, the appeal from which came before this Court. At that time, upon the Crown's application for costs in relation to that hearing Rose LJ pointed out that there were outstanding grounds therefore it was premature for the Court to make any order. I submit the time has now come - I apologise for the fact because I was not expecting to hear what I did a few moments ago - not in fact looked up the precise statutory provision. But I submit that, if the Court is minded to make an order for costs against Mr Palmer in relation to his unsuccessful appeal against conviction, the time has now come to do so.

MR KELSON: I am grateful to those instructing for reminding me that the appeal against conviction, that my learned friend refers to was by way of unusual proceedings. The Registrar himself referred that point in isolation from the remaining grounds. There was logic there, because if there was substance in the point it was a conclusive point. But, it got taken as it were out of turn by way of Registrar's referral. I am not trying to avoid the issue of costs. I wonder if in fact, since I am reminded of that point by those instructing there would be anything lost in deferring this to the Court who will hear the application for leave to appeal against sentence so that both parties just look a little bit more closely. I am not trying in principle to resist the obvious application but if it is put in by the Registrar, there may be an issue.

LORD JUSTICE RIX: That can conveniently be adjourned to that hearing.

MR KELSON: My Lord, thank you.

LORD JUSTICE RIX: Perhaps I should simply state in open court, in the light of the last paragraph of the reasons in our judgment that, having adjourned the Crown's application for leave to appeal, on 31st July 2002, we have now been notified of that matter and the question of certification and question is no longer a live issue.

If on consideration of the matter there is a substantive point about costs in favour of the Crown on the conviction application to appeal then a skeleton should be provided.

MR FARRER: My Lord.