R v JOHN PALMER

FURTHER (14.03.02)

SKELETON ARGUMENT (BY COUNSEL) SOLELY IN RELATION TO THE MATTER OF THE INDICTMENT

Those instructing have kindly forwarded to me the registrar's letter dated 13th March 2002 and enclosures.

It is important that the Registrar is correctly informed when he makes his decisions in respect of this difficult matter.

To that end I respectfully submit that the following will assist him:

1 **Transcript of the 16th May 2000**: p4C – Mr Farrar refers to "the propriety of using the existing "*indictments*" – [emphasis added].

2 Judge Gordon then explains the law to Mr Farrar, and with respect he explains it entirely accurately, concluding at 4G with the following – "Then a further bill of indictment is prepared and, if time has passed, leave sought for it to be preferred **and signed** so that there are against each defendant at some time two indictments in existence?" [emphasis added].

3 Mr Farrar then disagrees with Judge Gordon and in so doing, with respect, gets the law wrong at p5A.

4 At P6D-F the Judge discusses the matter with counsel for the coaccused specifically including the following, at 6F: "Judge – I do not think they were amended. Whitehouse – I think they were just joined. Judge – They were just joined were they not? Whitehouse – Yes. My Lord, in that case there had been separate committals…"

5 At page 7C the Judge decides to "leave the technicalities to one side.." and thereafter the matter is left.

6 **Transcript of the 16th May 2000:** at P22A the Judge returns to the matter raised on the 16th May referring to there being 2 indictments in existence covering the same defendant provided that both are not proceeded with. He specifically goes on, P22B-D, to state facts and possibilities which make it clear that what he understands is occurring is the proposed creation of a new indictment as per his discussion on the 16th May. Mr Farrar does nothing to disabuse him of this understanding.

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7. At P22E – G Judge Gordon invites submissions "about your nephew being joined in the trial with you" and goes on to make what is, in my submission the vital order in this case: **<u>"In that case I will order that Andrew Palmer be joined to the indictment... the number of which I do not have...that John Palmer and Miss Ketley currently face, as a defendant to counts 1 and 5."</u>**
8. At P25F Judge Gordon enquires of Mr Farrar in respect of an amendment to "this document" ie. the new joined indictment.
9. At P25G Mr Farrar invites the judge to stay some of the counts.
10. At page 27E the Judge states – "I think what I had better do, in view of the fact that you are going to have to amend now that Mr Hannon has gone, is say that I approve in principle, and the final draft can be circulated and available at the next hearing." Mr Farrar then moves the Judge onto other matters.
11. At P44G Mr Farrar discusses arraignment: "..bearing in mind the new form of the indictment it may be necessary to arraign all three defendants upon that form of the indictment at this juncture."
12. **THEREFORE, AT THAT STAGE IN THE PROCEEDINGS A NEW INDICTMENT HAD BEEN PREFERRED IN WHICH ANDREW PALMER HAD BEEN JOINED; IT IS REFERREDTO ON ITS FACE AS "JOINDER INDICTMENT"; THE COURT RECORD REFERS TO THIS NEW DOCUMENT AS "JOINDER INDICTMENT"; SEVERAL FURTHER CHANGES HAVE BEEN MADE TO THE INDICTMENT BUT THESE ARE EXPRESSLY BY WAY OF AMENDMENT TO THE NEW JOINED INDICTMENT; THE NEED TO REARRAIGN BECAUSE THIS IS A "NEW FORM OF INDICTMENT" IS ACKNOWLEDGED BY MR FARRAR.**
13. It is against that background and against those orders made by Judge Gordon that page 45 of the transcript has to be read. What is plain is that a new joined indictment had been created as opposed to the mere amendment of the existing indictment against Mr Palmer.
14. P49A of the transcript therefore shows no more than that Count 1 had been amended as shown by the above extracts as had count 5 but to both counts Andrew Palmer had been joined. The learned Judge is plainly distinguishing between the amendments and the joinder. The transcript of 16th May discloses the learned Judge's understanding of the legal position and that which

occurred on the 26th May merely confirms that that is what occurred.

15 In those circumstances it is a misunderstanding of what occurred to suggest that the addition of Andrew Palmer was merely an amendment to the existing indictment against John Palmer and Ms Ketley. It was not by way of amendment of an existing indictment it was by way of creation of a new indictment, a "joinder indictment".

16 Further confirmation of the fact that the judge understood that there was now in existence a new indictment is to be found at P68G where he states: "I have not ordered the service of one in respect to **this indictment** yet." [emphasis added].

17 Similarly Mr Farrar states at P71: "Yes, I think that is right now that a **fresh indictment** has been…" [emphasis added].

18 It is abundantly clear that the learned Judge was well aware of the significance of a "joined indictment" not only by reference to the transcript of 16th May 2000 but also by P6D of the 26th May 2000 transcript wherein he expressly refers to another "joined indictment preferred out of time" in respect of Hannon.

19 **IN THOSE CIRCUMSTANCES THE NEW "JOINDER INDICTMENT" SHOULD HAVE BEEN SIGNED OUT OF TIME EXACTLY AS THE LEARNED JUDGE ENVISAGED AS REFERRED TO AT PARAGRAPH 2 ABOVE.**

PETER JOHN KELSON QC 14.03.02

STUDIO LEGALE INTERNAZIONALE

15 March, 2002

Master McKenzie CB QC

Royal Courts of Justice

Strand, London WC2A 2LL

RISERVATO E URGENTE

Dear Master McKenzie:

R-v-PALMER 2001/03678/W1

Thank you kindly for your letter to our agents Messrs. Attridge Solicitors the contents of which are duly noted and appreciated. Please find attached for your urgent consideration a new skeleton argument from Mr. Peter Kelson QC together with the transcript of 16th May 2000.

Mr. Kelson QC would appreciate an opportunity at speaking with you on the telephone regarding this matter and has, we understand, attempted to make contact.

In light of the skeleton argument and the transcript of 16th May 2000 now supplied and any conversation you may hold with Mr. Kelson QC you may feel inclined now to list the matter urgently with an application for bail to follow (depending on the outcome of the key issue) this next week.

May we also draw your kind attention to the top right hand corner of the indictment upon which our client was tried which fully supports the view taken by Mr. Kelson QC: "JOINDER INDICTMENT." We are of the view, with respect to all concerned who administered the trial that where doubt exists upon interpretation one must rely upon the document. The indictment is conceded to be unsigned and is clearly identified as a "Joinder Indictment." Upon such prima facia evidence your immediate reaction on 14th March 2002 when you kindly granted me a substantial personal opportunity at making representations was to call for an urgent and immediate hearing before the full Court to decide this issue in the interests of justice within ten days. In our humble view this was and remains the absolutely correct position, now fully supported by Leading Counsel and having been communicated to our client, any serious variation of such would without doubt be taken by our client as a loss of faith in the Judicial system.

We shall deliver the attached faxed documents to your office during the course of Friday 15th March 2002 and it would be appreciated if you would be so kind as to let us have sight of the skeleton argument kindly prepared by the Crown.

Sincerely,

Avv. Giovanni Di Stefano
STUDIO LEGALE INTERNAZIONALE

CC PAUL MARTIN (ATTRIDGE SOLICITORS)
MR. PETER KELSON QC

VIA TOMMASO SALVINI 15 · ROMA · 00197
PHONE: +39 06 85203516 · FAX: +39 06 80692652
WWW.STUDIOLEGALEINTERNAZIONALE.COM
ENAZIONALE@TISCALINET.IT

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No. 990825, 990915, 971547

THE CENTRAL CRIMINAL COURT

Old Bailey
London
EC4M 7EH

B

Tuesday, 16th May 2000

Before:

HIS HONOUR JUDGE GORDON

C

R E G I N A

-v-

D

BRENDAN HANNON, ANDREW PALMER, JOHN PALMER and CHRISTINA KETLEY

MR D FARRER QC, MR M MATTHEW and MR S DENISON appeared on behalf of the prosecution.

E

MR S KAY QC appeared on behalf of the defendant Hannon.

MR D WHITEHOUSE QC and MR J COLE appeared on behalf of the defendants Andrew Palmer and Ketley.

MR JOHN PALMER appeared in person.

F

ALL PROCEEDINGS

Computerised transcript of the Palantype notes of
Smith Bernal Reporting Limited
180 Fleet Street, London EC4A 2HG
Tel: 020 7404 1400 Fax: 020 7404 1424

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JUDGE GORDON: Yes.

MR FARRER: Frankly, the formality, if it is a formality, of arraignment is something which could be deferred. The Crown is much more concerned about the mechanics, so to speak, of this indictment being resolved for reasons your Lordship will be familiar with, because, I think I mentioned to your last week, if we are wrong in the argument we advance as to the propriety of using the existing indictments, then it will be necessary for us to apply for a voluntary bill.

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JUDGE GORDON: Unless you are entitled to apply to prefer a further bill out of time and proceed on that, the original bills of indictment at some stage being stayed, which is not unusual.

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MR FARRER: Yes, but we could only -- absent a further transfer, which obviously nobody proposes, the only further bill of indictment would be, I submit, a bill preferred as a voluntary bill. In any event, my Lord --

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JUDGE GORDON: It is not unusual, is it, where there have been separate committals for there to be two original indictments, signed?

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MR FARRER: Yes.

JUDGE GORDON: Then a further bill of indictment is prepared and, if time has passed, leave sought for it to be preferred and signed so that there are against each defendant at some time two indictments in existence?

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MR FARRER: No, it is not uncommon, but, with great respect, the creation of a third independent indictment is not a matter which, I submit, could be dealt with by this Court. That is why we are anxious, if at all possible, to deal with the matter on the basis of one or other of the present indictments in a way which I will outline, if I may, in a moment.

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The course to which your Lordship alluded a moment ago is, I think, a course which the Court -- the first instance court adopted in the case of **Cairns** with the difficulties which were later identified by the Court of Appeal.

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JUDGE GORDON: Is not **Follet** the one which is looked at the previous authorities?

MR FARRER: Yes.

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JUDGE GORDON: Does that not say that it is an acceptable procedure these days?

MR FARRER: My Lord --

JUDGE GORDON: Perhaps I ought to deal with the timing of the matter before getting into the merits of it. I understand, whatever the application is, the need for speed. Obviously there is. I have received a copy of a letter that Mr Palmer has sent to Mr Doherty and of course I have now heard from Mr Whitehouse. Clearly there is, although Mr Whitehouse has not said it in terms, I rather take it from what he says that there is

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an application in respect of Andrew Palmer not to deal with that matter today. Are you actually making that application, Mr Whitehouse?

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MR WHITEHOUSE: My Lord, so far as the application to join is concerned, I am afraid I have not had any opportunity really to consider the law. I am afraid I did not get an agenda until I spoke to my junior at 11 o'clock last night.

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JUDGE GORDON: As counsel for Miss Ketley, the possibility of a joint trial has been pretty obvious from the moment --

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MR WHITEHOUSE: My Lord, I have always assumed that the rule in **Groom's** case would apply.

MR FARRER: I agree with you.

JUDGE GORDON: Was that done my way of amendment of by way of a further indictment?

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MR WHITEHOUSE: In **Groom's** case they were amended to join the two separate committals together.

JUDGE GORDON: I do not think they were amended.

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MR WHITEHOUSE: I think it was just joined.

JUDGE GORDON: They were just joined, were they not?

MR WHITEHOUSE: Yes. My Lord, in that case there had been separate committals. I do not know if it makes any difference that there had been transfers. I cannot see how it could make a difference.

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JUDGE GORDON: I think one of the cases that I have been

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given a copy of was one, I think, committal and one transfer and they said, "So what?".

MR WHITEHOUSE: Absolutely. My Lord, that is **Cairns** I think. My Lord, in any event the overall merits of the matter make it quite clear that there ought to be a joinder here.

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JUDGE GORDON: Perhaps I could just find that out and leave the technicalities on one side. Mr Kay, so far as you are concerned, subject to the technical position, is there any opposition to the Crown's desire for there to be a single trial of four?

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MR KAY: My Lord, what we would ask the Court to entertain is this: because of instructions and discussions that have been taking place recently between my instructing solicitor and the lay client -- I have been outside the jurisdiction and I have only just come in and, so to speak, have not been able to take control of matters. It may well be very advisable for, certainly in our case, time to be given so that I can have a full conference with Mr Hannon and resolve certain issues and make sure that proper advice has been tendered.

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JUDGE GORDON: I follow that.

MR KAY: In those circumstances it may well, depending upon the outcome of that and everyone has been properly advised, be a clearer picture for the Court as to the future progress of the case.

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JUDGE GORDON: I follow that and clearly there must be opportunity for proper advice to be given and full consideration. As against that, I have to bear in mind that we have a trial date for a trial in September. I bear in mind also that before it there are bound to be preparatory hearings from which there can be appeals and that quite a proportion of the time between now and the start of the trial is taken up by what is still called the long vacation. Therefore, it may be that there are a number of matters that can be dealt with while the sort of discussions and advice which you have mentioned are going on that do not really affect them. I am not suggesting that what you should suggest should not happen, but merely how it affects timing.

MR KAY: The joinder issue, so to speak, impacts upon our view of the case.

JUDGE GORDON: Does it? If that is right, how long are you asking for?

MR KAY: This has suddenly arisen and an already complicated diary had been set for me for this week and next week. I do not think I would be able to see Mr Hannon until next Friday.

JUDGE GORDON: That is the Friday before the Whitsun -- the late May Bank Holiday.

MR KAY: Yes.

JUDGE GORDON: That would be the 26th, would it not, that

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you would be able to see Mr Hannon?

MR KAY: Yes.

JUDGE GORDON: If I were to give you until then, how soon afterwards would you be prepared to be in a position to participate in a hearing dealing with matters such as joinder?

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MR KAY: I obviously need to speak to the Crown about various matters.

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JUDGE GORDON: Could that be done at court?

MR KAY: We are going to have a short conversation today. I say "short", because I am simply not in a position at this stage to deal with things because it is an entirely unexpected event that has taken place.

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JUDGE GORDON: What you are in effect asking for is for really until -- it is not going to be the week after that?

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MR KAY: No. In a way I am apologising for non-participation. It is pointless in participating and creating events and matters to be done for the Court if ultimately they are not needed. I have been able to have a short conversation with the lay client this morning.

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JUDGE GORDON: It might be that I ought to, whatever happens this morning, perhaps say, for example, that the case ought to be mentioned at 2 o'clock. It will mean he will have to stay here until 2 o'clock rather than go

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