

NOTE

R –v- PALMER

As a result of the Judgement in R –v- Archer today at the Court of Appeal, Criminal Division (Lord Justice Rose, Mr. Justice Coleman and Mr. Justice Stanley Burnton) -a matter in which I assisted last year by filing the submissions to the Prison Service for review of category for Lord Archer whilst he was at HMP Wayland- I have identified new potential grounds of appeal in the matter of R-v-Palmer that we have previously not considered.

- 1 The first issue is the question of “original documents” in a trial. In the Archer trial the questions raised to secure the conviction surrounded a 1987 diary. There were in fact two diaries one of which was “the” diary which Lord Archer was accused of falsifying and the other was a duplicate “Economist” diary. The evidence at trial related to what were the entries in the original trial (libel trial in the High Court against The Star) in the diary? At trial Lord Archer was shown a diary with an entry dated 8th and 9th October 1986 and he answered questions on such. As it emerged the day upon which he was supposed to have been with a prostitute was in fact the 10th October and the defendants had wrongly pleaded the defence of justification. When the libel trial took place Lovells Solicitors notified Mischo n de Raya Solicitors (for Archer) that they had wrongly pleaded the dates and leave to amend was sought. The “Economist” diary was thus ‘doctored’ by Mrs Peppiat (Archers secretary) to alter where Lord Archer was on 10th October. The charge of perverting the course of justice follows such. At the trial in the CCC in 2001 the original diary and the “Economist” diary had been destroyed since none even considered they would be required further some 14 years later. The issue relating to Palmer is as follows: what duties are required to ensure ORIGINAL documentation is preserved at trial and upon which the Prosecution can rely to secure a conviction and what would be the effects of relying upon photocopies of copies as evidence? Under International Law only original documents can be relied upon or sworn testimony that a copy is consistent to the original. Lord Justice Rose clearly stated during submissions by Mr. N. Purnell QC that “such was the importance of preserving original documentation submitted as evidence as a proper basis for securing a conviction”. How did he overcome his own interpretation? He stated that the photocopies must be “genuine” because they had not been challenged either in the lower court or in the Court of Appeal! It is thus important that since Mr. Palmer did not raise the question of the authenticity of the first trial indictment (of which no original exists) and we have not pleaded such in our grounds or in the previous hearing IT MUST BE PROPERLY pleaded now notwithstanding that

I have filed submissions with the ECHR. Counsel is thus asked to draft a new ground of appeal to encompass this factor since to date **NO ORIGINAL INDICTMENT** exists and we only have a working photocopy without any assurance that the signature was not, for example, placed afterwards and no sworn testimony that such is authentic and consistent to the original.

- 2 The nature and quality of the incarceration for certain defendants sentenced to imprisonment. Mr. Parnell QC submitted that such was the case in Lord Archer and that press intrusiveness, the fact he spent three months at the beginning of his sentence as a Cat. B (HMP Wayland) then six weeks as a Cat. C (HMP Wayland) and only after “exhaustive” submissions made to the Prison Service was he treated in accordance with his index offence. Lord Justice Rose stated that where a trial judge was aware (for ex. Policeman, prison officer, etc) that a certain type of detention would follow outside the norm. a sentencing judge should bear such in mind with “all other relevant factors”. In the Palmer case HH Judge Gordon knew **WITHIN** the slip rule period that Palmer was treated as High Security Double Cat. A prisoner and could have, in fact was bound to consider such for sentence. His failings to do so must now be properly considered by the Court of Appeal and with the assistance of a psychiatric report will assist the court when dealing with sentence. For these purposes Dr. Hayes has been instructed and will attend Mr. Palmer this Wednesday at 14.00pm to produce a report. It is my intention to ask Master Mackenzie the Registrar to allow us an expedited hearing on sentence alone in August. Can counsel kindly draft a new ground of appeal against sentence based upon the above factors upon delivery of the psychiatric report. Notice has been given to the Registrar that a psychiatric report is being commissioned.
- 3 Directions of the Trial Judge in Summing Up- this was a point laboured by Mr. Purnell QC for Archer. Mr Purnell QC complained that at the conclusion of the Summing Up by Mr. Justice Potts certain matters were omitted. The Trial Judge in Archer, namely Potts, J told Mr. Purnell QC to re-address the jury and “correct those himself”. This he was forced to do. The complaint however, was that the Authority of a direction coming from a Judge would have by far a greater impact on the Jury than those coming by defence counsel. This led Lord Justice Rose in saying that “the judicial sponge must be used carefully and it was for the trial judge to ensure at all times that the defence case was properly put and remind the jury not only of the defence case but the evidence that supported such including any admissions made or police interviews or when none existed.” Applying such to the Palmer case HH Judge Gordon, in my view, failed to properly and fully put the defence case as a whole and certainly did not remind the jury of the evidence that supported the defence case. The important factor here is “reminding the jury of the evidence supporting the defence case wholly.” It is not sufficient in my view simply for a trial judge to remind the jury “of the evidence” since that would only carry half weight. **FURTHER**, the Trial Judge most certainly in Palmer **FAILED** to explain to the jury **WHY** the

defendant had made no police interviews. The jury would no doubt have been aware that the normal course in crime is for the defendant UPON ARREST to be interviewed. In this specific case Palmer surrendered himself in 1997 of his own accord when he heard he was wanted, attended a police station, was charged and as such under PACE was precluded from being interviewed. The Jury however, without a proper explanation may very well have taken the view Mr. Palmer was trying to hide something. We will never know if they had any thoughts on such because the Judge failed to instruct them on how Palmer had come to be arrested or explained why he was not interviewed. Why, for example when warrants were executed in 1994 Palmer was not interviewed? What if Palmer had been interviewed and said he knew nothing about the frauds? What if he had said he was never in the office and left all decisions and the running to Hannon or the other co-defendants and that he was holidaying as a playboy? If such were his defence, and part of such was certainly the case had he been interviewed his version of the events would have been consistent from 1994 onwards and may have impressed the jury! Lord Justice Rose commented on the “proper and adequate safeguards of the degree of culpability which can be determined by inference from the first police interview onwards.” It was absent in the Palmer case (Archer was able to rely upon such since he was interviewed by police). As such in my view this is potentially the most important new ground of appeal against conviction and counsel is asked to draft such in the format as above.

4 Lord Justice Rose also dealt with the question of joinder!!!! Francis the co-defendant was joined to the indictment of Archer. Lord Justice Rose reminded those drafting indictments to be aware of the “improper use of joinder” where the defence of a main defendant is exploited and compromised by joining a secondary (less important) co-defendant at the cost of the first especially where the secondary co-defendant is subsequently acquitted. Extremely similar to John Palmer whose position and defence was indeed compromised at his cost by the joining of Andrew Palmer to the indictment who, like Francis in the Archer Case, was subsequently acquitted. (I did wonder whether Rose, LJ was having a pang of conscience over the Palmer case)!!!! It is a point worth re-considering and this is a different point to our unsigned indictment. This issue is the improper use of joinder. At this stage Counsel is simply asked to consider this point.

5 There is then the question of delay and in the Archer case much was made of this. Lord Justice Potts, the trial judge, dismissed an application to stay the Archer trial for delay saying that “witnesses had a good reason to remember events in different ways.” Commenting Lord Justice Rose said that all witnesses when delay is in question have good reasons to remember but “is the memory good and reliable.” The real question on delay was whether there was a “real risk to prejudice” by delay. If there was prejudice one could not excuse the delay. Prejudice in any trial was sufficient for a trial judge to stop the proceedings even if the delay was a day. Once identified and the longer the time the longer the chances-a trial should be

stopped. Mr. Purnell QC did not address the application to stay as an abuse in the lower courts for prejudice but simply on the memories of the witnesses. In Palmer delay has played a key role and if we couple this with the failure of the police to interview Palmer and the failure of Judge Gordon to direct the jury on why Palmer was not interviewed, it may prove a Eureka moment.

- 6 An amusing moment in the Archer case not at all relevant to Palmer. Lord Archer was portrayed as a happily married man stated Lord Justice Rose. This was obviously not the case butted in Mr Justice Coleman. But Mr. Purnell QC re-iterated that Lord Archer was indeed a happily married man and the fact he had countless affairs was irrelevant as there was no evidence he was not a happily married man whose wife was even present in Court!!!!!!!!!!**

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