



SENIOR COURTS
COSTS OFFICE

SCCO Ref: AGS/171/19

Dated: 18th March 2020

ON APPEAL FROM REDETERMINATION

REGINA v DOWEN

COURT OF APPEAL (CRIMINAL DIVISION)

APPEAL PURSUANT TO ARTICLE 30 OF THE CRIMINAL DEFENCE SERVICE
(FUNDING) ORDER 2007

CASE NO: 201803318 C2

REGISTRAR OF CRIMINAL APPEALS CASE

DATE OF REASONS: 22nd May 2019

DATE OF NOTICE OF APPEAL: 20th June 2019

APPLICANT: COUNSEL
Mr John Butterfield QC
No 5 Chambers
DX 16075 Birmingham FC

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

The appropriate additional payment, to which should be added the sum of £450 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**ANDREW GORDON-SAKER
SENIOR COSTS JUDGE**

REASONS FOR DECISION

1. This is an appeal by Mr John Butterfield QC against the decision of Mr Ahmed, a Determining Officer in the Criminal Appeal Office, to allow a fee of £1,050 for a written advice and draft grounds of appeal, rather than the fee claimed of £1,800.
2. Mr Butterfield was instructed to represent Brandon Downen who was convicted of manslaughter following a trial by jury in the Crown Court at Stafford. In short, the deceased was a taxi driver. Downen and his co-defendant confronted him, believing that he had upset Downen's girlfriend. The deceased was assaulted by Downen. When the deceased drove off the defendants followed him. The deceased collided with a tree and the prosecution case was that he died from the chest injuries that he sustained in that accident.
3. The deceased had undergone a triple heart bypass operation. The defence case was that the deceased could have suffered spontaneous cardiac dysrhythmia, unconnected to the actions of the defendants, which caused him to lose control of the car.
4. Six grounds of appeal were put forward: that the trial judge should have acceded to the half-time submission; that the possibility of the deceased losing control of the vehicle without losing consciousness, for which there was no evidence, had been left to the jury; that the unlawful act relied on was not sufficiently particularised; that the unlawful act had been broadened to include mere threats; that the jury should have been directed to consider whether the deceased was in fear of physical injury immediately before his injuries, rather than immediately before his escape; and that the trial judge should not have restricted what had to be foreseen by the defendant regarding the response of the deceased.
5. As is clear from his fee note Mr Butterfield's fee was based on 12 hours preparation which would give an hourly rate of £150.
6. In his written reasons the Determining Officer explained his view that "12 hours preparation ... was considered far too high for preparing the 9 pages Advice and Grounds" given that counsel was familiar with the case "having acted below at sentencing on the same day".
7. Mr Butterfield points to the complexity and uncertainty of the law in this area, the expert evidence (the prosecution called 3 medical experts at trial), the large volume of transcripts which had to be synthesised, reference to multiple authorities, and Downen's youth (he was 19 years old) and good character.
8. The Determining Officer's duty is to allow a reasonable amount in respect of all work actually and reasonably done. Mr Ahmed appears to have accepted the hourly rate of £150 but concluded that no more than 7 hours would be reasonable.

9. The assessment of costs involves making a value judgement. I would not lightly disagree with an experienced Determining Officer but I do think that he has undervalued the task faced by counsel. The advice and grounds is merely the end product of a process which will have involved reading the transcripts, thinking, researching, rejecting the not properly arguable and honing the arguable. I cannot say that a total of 12 hours is unreasonable for that.
10. Accordingly the appeal is allowed and Mr Butterfield should be paid the fee claimed.

TO: Mr S Ahmed
Criminal Appeal Office
DX 44451 Strand

COPIES TO: Mr John Butterfield QC
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The Senior Courts Costs Office, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL DX 44454 Strand, Telephone No: 020 7947 6468, Fax No: 020 7947 6247. When corresponding with the court, please address letters to the Criminal Clerk and quote the SCCO number.