



JUDICIARY OF
ENGLAND AND WALES

In the Southwark Crown Court

Mr Justice Sweeney

The Queen

-v-

Vasiliki Pryce

Christopher Huhne

Judgment: Costs (1)

Introduction

1. On 4 February 2013, following the failure of dismissal and abuse of process applications made on his behalf, Mr Huhne pleaded guilty to an offence of doing an act tending and intended to pervert the course of justice. On 7 March 2013, at the conclusion of her re-trial, Miss Pryce was convicted of the same offence. On 11 March 2013 each was sentenced to eight months' imprisonment.
2. On 22 April 2013 I heard submissions in connection with an application by the prosecution, made under the provisions of s.18(1) of the Prosecution of Offences Act 1985, for a costs order against Mr Huhne in the sum of £108,541.15 (which included £31,000 in relation to Operation Solar) and against Miss Pryce in the sum of £48,695.56. In addition, an order was sought against each in relation to the sentencing hearing and to the costs hearing itself (amounting in total, subject to apportionment, of £1950).
3. Neither defendant objected in principle to the making of a costs order against them. However, various objections were made on behalf of Mr Huhne to

aspects of the sums sought against him. In particular, it was asserted on his behalf that no order should be made in respect of the Operation Solar costs.

4. Operation Solar arose in this way. At the outset of the case, which began in February 2012, the prosecution had relied, as against Mr Huhne, on the evidence of Constance Briscoe. Ms Briscoe had made a witness statement in May 2011 in which she related a conversation with Ms Pryce which incriminated Mr Huhne. In August 2012 Ms Briscoe made a second witness statement in which she stated, amongst other things, that she had not told The Mail on Sunday about Ms Pryce and/or others taking points for Mr Huhne.
5. During the course of a pre-trial hearing on 1 October 2012 I granted an application, made on behalf of Mr Huhne and supported by the prosecution, for a witness summons against Associated Newspapers Limited requiring it to produce any material in its possession which resulted from contact with Ms Briscoe, or anyone on her behalf where Ms Briscoe was the source. The material produced in consequence clearly showed that Ms Briscoe had been intimately involved with The Mail on Sunday and the publication of Ms Pryce's account.
6. In the result, the prosecution abandoned reliance upon Ms Briscoe as a witness of truth and Operation Solar was commenced to investigate the genesis of the claims made by Ms Pryce and Ms Briscoe against Mr Huhne. In consequence the making of the dismissal and abuse of process applications on behalf of Mr Huhne was delayed until Operation Solar had been completed. During the course of the abuse of process application reliance was placed, on Mr Huhne's behalf, on both the product from, and the alleged failings of, Operation Solar.
7. Ms Briscoe was first arrested in October 2012. Although she had not been charged at the time of the costs hearing in this case, a prosecution was begun against her thereafter.
8. This short judgment which, given the dispute about the Operation Solar costs, necessarily has to deal with Ms Briscoe's conduct, has thus been delayed by the need to avoid the risk of prejudice in the proceedings brought

against Ms Briscoe. Those proceedings have now been completed. Ms Briscoe was convicted, after a retrial, of three offences of doing acts tending and intended to pervert the course of justice. The first offence related to her witness statement made in August 2012, the others to subsequent conduct. On 2 May 2014 she was sentenced to 16 months' imprisonment.

Background

9. The events from March 2003 (when the defendants committed their offence) up to and including the hearing on 1 October 2012 are summarised in paragraphs 5 – 51 and 54 – 67 of my judgment entitled “Reasons: Witness Summons” dated 9 October 2012.
10. The events from the latter part of the hearing on 1 October 2012 until the conclusion of a subsequent hearing on 5 October 2012 are summarised in paragraphs 7 – 17 and 26 – 29 of my judgment entitled “Reasons: s.4 Contempt of Court Act 1981” also dated 9 October 2012.
11. The issues raised during the course of the dismissal and abuse applications are dealt with in my judgment entitled “Reasons: Huhne – Dismissal and Abuse of Process” dated 4 February 2013.
12. Further aspects of the background, with particular reference to Ms Briscoe, are summarised in paragraphs 3 – 27 & 32 of my judgment entitled “Contempt and Associated Issues” dated 5 July 2013. For the avoidance of doubt, the order made under s.4(2) of the Contempt of Court Act 1981 in relation to that judgment has now lapsed.
13. I underline, in particular, the content of paragraph 32 of that judgment, which included the following:
 - “(1) At the hearing on 27 July 2012 it was, at the least of it, arguable that The Mail on Sunday was likely to have material relevant to the issues that the court was going to be required to consider in relation to the prosecution’s application for the admission against Mr Huhne of hearsay evidence given by Ms Briscoe, including the apparent reliability of both the maker of the statement and the evidence as to the making of the statement,

as well as to wider issues in the trial – in particular the true genesis of the claim by Pryce that she had been coerced into taking the relevant points.

- (2) Mindful of the duty of the police/prosecution under paragraph 3.5 of the Code of Practice issued under Part II of the Criminal Procedure and Investigations Act 1996, to the effect that all reasonable lines of enquiry should be pursued, whether pointing towards or away from the suspect(s), I adjourned the case in order to enable the prosecution/police to comply with that duty in whatever way they thought fit.
- (3) Thereafter between 8 August 2012 and 4 September 2012 the police sought production orders against ANL in relation to any material relating to contact with Pryce or Ms Briscoe, or anyone acting on their behalf, which made reference to the speeding allegation; the police investigation into the circumstances surrounding it; any publication or proposed publication of an article about the allegation or investigation; and allegation that any person had accepted or may have accepted speeding points on behalf of Huhne – together with any material relating to any agreement or proposed agreement between Pryce and ANL concerning the publication or intended publication of the same matters, including any payment or proposed payment to Pryce.
- (4) In the interim, on 15 August 2012, Ms Briscoe supplied the Police with a copy of an agreement between Pryce and the Mail on Sunday dated 13 May 2011. The following day Ms Briscoe made a witness statement in which, amongst other things, she produced the copy agreement and asserted that, in relation to the speeding allegation and subsequent investigation, she had had absolutely no communication with the Sunday Times, The Mail on Sunday or any other newspaper.
- (5) In the result, believing that Pryce was a source of the Mail on Sunday in May 2011, and also relying upon what they took to be

clear assertions in the combination of emails from Reynolds Porter Chamberlain LLP and a witness statement by the Managing Editor of the Mail on Sunday, John Wellington, to the effect that there were two separate sources which fell within the categories sought; that an oral confidentiality agreement had been made with one of the sources in late 2010; that a written agreement had been made with the other source in mid 2011; and that Ms Briscoe was not the late 2010 source, the police abandoned their application in relation to Ms Briscoe during a hearing before HH Judge Hayward-Smith QC in the Crown Court at Chelmsford.

- (6) The application in relation to Pryce was, however, continued and resulted, that same day, in the judge making a Production Order in her regard. However, on 10 September 2012, Reynolds Porter Chamberlain LLP wrote to the CPS indicating that ANL had searched all of its available records and had found no material falling within the terms of the Order.
- (7) The following day Huhne's solicitors made a written application for a witness summons the effect of which was, as then drafted, to require ANL to produce any material which resulted from contact with Ms Briscoe (or anyone on her behalf when she was the original source) and contained reference to the speeding allegation, the police investigation, any suggested/proposed publication of an article and any payments made.
- (8) There was a short hearing at the Central Criminal Court on 14 September 2012, of which a transcript has been obtained. A timetable was set for the hearing of the application on 20 September 2012.
- (9) At the hearing on 20 September 2012, of which there is also a transcript, I adjourned the application until 1 October 2012 to enable the papers to be served on Ms Briscoe.

- (10) The transcript of the hearing on 1 October 2012 shows, inter alia, that:-
- (i) Counsel for Mr Huhne and the prosecution argued in favour of my granting the application. Counsel for ANL opposed the application.
 - (ii) I granted the application, as amended during argument, gave brief reasons for doing so, and reserved my full reasons which were delivered in the relevant judgment dated 9 October 2012.
- (11) ANL provided material in relation to Ms Briscoe, some of which was redacted with my approval. The material was provided both to those defending Huhne and to the Prosecution, and both before and after 3 October 2012 (with the final documents being provided on 15 October 2012).
- (12) On 3 October 2012, the Prosecution made clear in open court that they no longer proposed to rely upon Ms Briscoe as a witness of truth, and thereafter indicated (in part ex parte) that a further investigation would take place, in particular, as to the genesis of Pryce's claim that she had been coerced into taking Mr Huhne's points. On that same date I granted a witness summons against ANL in relation to documents in its possession relating to Pryce.
- (13) The reason for the Prosecution's stance in relation to Ms Briscoe was that, on the face of it, the material provided by ANL showed that, contrary to her August 2012 witness statement, Ms Briscoe was a source of The Mail on Sunday.
- (14) In the result, the investigation was only finally completed shortly before the eventual trial date in 2013. At an early stage of the investigation Ms Briscoe was arrested and was thereafter interviewed at length. The investigation led, amongst other things, to the uncovering of Mr Alderson as another source of The Mail on Sunday in relation to the Pryce & Huhne affair, and

to the discovery of telephone numbers related to Mr Alderson and ANL journalists.

(15) As indicated above, I heard argument in relation to the alleged contempt during two hearings in January 2013, prior to the eventual trial, because I understood that it was said to be necessary to determine the issue in order for the trial to be able to proceed. In the event, it became clear that that was not the case, and that the best course would be to decide the issue after the trial. In the meanwhile the CPS and police undertook not to use the disclosed material for any purpose other than in the proceedings against Pryce and Huhne.”

14. It is thus clear that:

- (1) At the outset Ms Briscoe was strongly relied upon by the prosecution as being an important witness against Mr Huhne.
- (2) As the principal aspect of her evidence that was relied upon was hearsay, the prosecution were under a duty to investigate her reliability.
- (3) That duty had not been fully complied with by the time of the dismissal / hearsay application hearing on 27 July 2012.
- (4) The prosecution’s attempts to fully comply with it thereafter were not successful either.
- (5) It was not until the success of the application made on behalf of Mr Huhne on 1 October 2012 that the reality began fully to emerge and Ms Briscoe was abandoned as a witness of truth by the prosecution.
- (6) Operation Solar uncovered further evidence of criminal conduct by Ms Briscoe.
- (7) The material which emerged from the combination of the success of Mr Huhne’s application and Operation Solar together formed the foundation of a substantial part of the prosecution and conviction of Ms Briscoe.

(8) The reality, confirmed by her conviction, is that whilst purporting to be a witness of truth Ms Briscoe was, in fact, perverting the course of justice.

15. Section 18(1) of the Prosecution of Offences Act 1975 provides that:

“...the court may make such order as to the costs to be paid by the accused to the prosecution as it considers just and reasonable.”

The Arguments

16. The prosecution underlined that, despite his many protestations to the contrary, Mr Huhne must have known all along that he was guilty. It was submitted that he was liable to pay all the just and reasonable costs incurred by the prosecution in his case – applying the proper approach to apportioning costs when there is more than one defendant in accordance with *R v Fresha Bakeries Limited* [2003] 1 Cr. App. R. (S.) 44. The constituent elements of the sum sought (itself representing a considerable reduction on the sum originally claimed in correspondence) were set out in documents put before the court.

17. In addition, by reliance on *Balshaw* [2009] 2 Cr. App. R. 6, the prosecution sought the police investigation costs of Operation Solar. It was submitted that the investigation had been the product of Mr Huhne’s pretence that he was not guilty. The costs, if ordered, would be paid by the CPS to the police and it was proper to order them because the Operation was required for the purpose of ensuring that the trial was fair and was therefore an integral part of the trial process in this case and could thus be distinguished from the ordinary investigation costs of the overall investigation (Operation Nigella) for which no application for costs was made.

18. On Mr Huhne’s behalf it was submitted that he was not liable to pay any of the investigation costs occasioned during Operation Solar. It was submitted, inter alia, that following the revelation of the material from The Mail on Sunday on 1 October 2012 it was obvious (and should have been before) that the police were under a duty (whatever the position of Mr Huhne) to investigate Ms Briscoe’s likely criminal conduct, and that the investigation

had confirmed that, far from being a witness of truth, Ms Briscoe had perverted the course of justice. No doubt today it would be pointed out, as I have indicated above, that the product of Operation Solar played a significant part in the prosecution and conviction of Ms Briscoe.

19. Considerable issue was also taken on Mr Huhne's behalf with aspects of the sums otherwise sought by the prosecution. It was submitted, inter alia, that the basis upon which prosecuting counsel had been remunerated (a mixture of VHCC and Graduated Fee) had resulted in costs that were unreasonable. It was submitted that a reasonable figure for prosecution costs in Mr Huhne's case was £25,000 – which would reflect pre-charge costs, costs post charge up until 27 July, costs relating to the dismissal and abuse of process applications and a generous amount more than that. Questions were also raised, for example, as to the number of hours claimed (without a detailed schedule) by the caseworker (who, with the CPS lawyer Mr Barclay, formed the CPS team that had worked on the case throughout).
20. On Miss Pryce's behalf the just and reasonable test was underlined. It was pointed out that in previous correspondence the sum claimed had been £38,473.85, but that that had been increased after the prosecution had decided (as to which there was no complaint) that all pre-charge costs should be equally apportioned. I was asked to bear in mind the totality of the expenses which Miss Pryce had already had to incur – particularly that incurred as a result of the way in which Mr Huhne had conducted his abuse of process application, and as a result of her re-trial. I was also asked to bear in mind her age.

Conclusion

21. I have presided over this case throughout almost all the proceedings. Whilst Mr Huhne falsely pretended over a long period, until his eventual plea of guilty, that he was innocent (including the assertion in his Defence Case Statement that he could state unequivocally that he had never asked anyone to accept responsibility for a speeding offence) I am not persuaded, in all the circumstances, that it would be just and reasonable to order him to pay any

of the investigation costs in relation to Operation Solar. On the other hand, I have no hesitation in rejecting the submission made on his behalf that the reasonable figure of costs in his case is £25,000. Having considered at length the materials put forward in support of the prosecution application, I have concluded (rounding down somewhat the sum sought) that the just and reasonable costs that Mr Huhne should pay is the sum of £76,000 plus £1750 to reflect a fair apportionment of the prosecution costs incurred in relation to the sentencing and costs hearings. The total costs order in Mr Huhne's case is therefore one of £77,750.

22. I have equally considered with care all the submissions made on behalf of Miss Pryce. There is clearly no need to adjust the final apportionment suggested by the prosecution. Having considered at length the materials put forward in support of the prosecution application, I have concluded (again rounding down somewhat the sum sought) that the just and reasonable costs that Miss Pryce should pay is the sum of £48,000 plus £1200 to reflect a fair apportionment of the prosecution costs incurred in relation to the sentencing and costs hearings. The total costs order in Miss Pryce's case is therefore one of £49,200.

23. I propose, next week, to hand down a second costs judgment dealing with issues in connection with Associated Newspapers Limited.

Sweeney J

9 May 2014