



Neutral Citation No. [2024] EWHC 2485 (SCCO)

Case No: 23N51266923

SCCO Reference: SC-2024-CRI-000077

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 27th September 2024

Before:

COSTS JUDGE WHALAN

R

v

STUART FRANCIS GRANT

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)
Regulations 2013**

Appellants: Mr Peter Moulson KC

The appeal has been unsuccessful, for the reasons set out below.

COSTS JUDGE WHALAN

Introduction

1. Mr Peter Moulson KC ('the Appellant') appeals the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in relation to a claim submitted under the Advocate's Graduated Fee Scheme ('AGFS'). The issue in dispute concerns the Banding of Offences applicable to Scheme 11 (and later) of the Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'). The Appellant has claimed a fee based on Band 1.1 whereas the Respondent has assessed the case as Band 1.3.

Background

2. The Appellant represented Mr Stuart Grant ('the Defendant') who was charged with two co-defendants at Warwick Crown Court (sitting at Coventry) on an indictment alleging 5 counts of murder, conspiracy to rob and fraud. Count 2 alleged that the Defendant, along with his co-defendants, had on 3rd September 2023 murdered Mark Hoverd.
3. Mark Hoverd was 57 years old when he died. He was in poor health and frail. His numerous medical conditions including cirrhosis of the liver, curvature of the spine and a condition affecting his hands which had resulted in the amputation of some fingers. His mobility was impaired and he walked with a stick. Mr Hoverd lived alone in Flat 7, James Diskin Court, Highfield Road, Coventry. (The Prosecution's Opening Note records that the address was actually in Nuneaton.) James Diskin Court is described as 'sheltered accommodation for the elderly/infirm'. Access to the premises was restricted; residents carried a fob which enabled access. Residents had two care alarms, one suspended from a lanyard worn around the neck, the other situated within each flat. There was a warden in the reception area and Mr Hoverd had a carer who visited him every day. Nursing staff were in regular attendance and Mr Hoverd spent periods as a hospital in-patient prior to his death in 2023.
4. One of the Defendant's co-defendants, Francis Olmer, had previously lived at Flat 8 James Diskin Court. Flat 8 was occupied by Paul Sketchley, who was in a

relationship with Olmer's mother, and Olmer referred to him as his father. Olmer accordingly had a fob that allowed access to James Diskin Court.

5. It was alleged that on about 3rd September 2023, the Defendant and his accomplices, all of whom were heroin addicts, gained access to James Diskin Court, with the intention of robbing Mr Hoverd in Flat 7. When, presumably, they were confronted by Mr Hoverd, they subjected him to a violent assault. He died of a traumatic head injury.
6. In March 2024, following a three-week trial, Olmer was convicted of murder, while the Defendant and his other accomplice were convicted of manslaughter. All three co-defendants were convicted of conspiracy to commit robbery.

The Regulations

7. The Banding of Offences created under Scheme 11 (applicable thereafter, including Scheme 15, which covers this appeal) created three different bands under which the fee for representing a defendant charged with murder could be calculated. These bands are reproduced (or summarised) on page 3 of the Determining Officer's Written Reasons dated 10th June 2024:

Band 1.1 applies to cases involving "Killing of a child (16 years old or under); killing of two or more persons; killing of a police officer, prison officer or equivalent public servant in the course of their duty; killing of a patient in a medical or nursing care context; corporate manslaughter; manslaughter by gross negligence; missing for the killing"

Band 1.2 applies in cases involving "Killing gun with a firearm; the defendant has a previous conviction for murder; body is dismembered (literally), or destroyed by fire or other means by the offender; the defendant is a child (16 or under)"

Band 1.3 applies to all other cases of murder.

The Determining Officer applied Band 1.3. The Appellant, relying on the category "*Killing of a patient in a medical or nursing care context*", submits that this case falls within Band 1.1

Submissions

8. The Respondent's case is set out in Written Reasons dated 10th June 2024. The Appellant's case is set out in various notes submitted to the LAA, specifically the Further Note (7 pages) dated 1st May 2024. The Appellant has requested a determination on the papers. On 15th July 2024, I directed that any further written submissions from the parties should be filed by 30th August 2024. On 15th August 2024, Mr Carter of the LAA advised (by e-mail) that the Respondent did not propose to make any additional submissions, and drew the court's attention to the two cases referred to in paragraph 9 to 10 below. No additional submissions were filed by the Appellant.

Cases

9. In R v. Knight [2020] SC-2019-CRI-000052, I considered the issue of banding in a 'mercy killing' murder, where a man had killed his mother, an elderly woman with advanced Alzheimer's disease, at a time when she was within a few days of a natural death and receiving end of life palliative care. My decision is summarised at paragraph 10 of the judgment:

It seems to me that the intention behind the words "*killing of a patient in a medical or nursing care context*" was that the offence would not be defined simply by reference to the status and circumstances of the victim, but also that of the "killer". It implied, in my conclusion, the existence of a formal relationship between a patient and a healthcare professional, either doctor, nurse, healthcare assistant or care worker

10. In R v. Taylor [2020] SC-2020-CRI-000112, CJ Rowley considered banding in the case of a murder of a vulnerable 50-year old man who had longstanding problems with alcohol and epilepsy, and who benefited from a social care package funded by the local authority. The ratio is set out at paragraphs 20-22:

I think the sentiment is correct in that cases which appear to come within this categorisation are largely to be deaths arising from healthcare professionals abusing their position of trust. Like Master Whalan, I do not think that care provided by family members to the deceased can possibly be sufficient to come within the definition....

However, there is a further option as is demonstrated by this case where someone who is not a healthcare professional, nor a member of the family, provides caring services to another and ultimately ends up killing them. Where that occurs, it seems to me that the extent of the care provided will

need to be considered. If that care concerns matters of medication and hygiene of the sort that in hospitals would be dealt with by nurses then it seems to me to be appropriately described as a nursing care context in which the killing took place. I do not think the description of “social care” used by the determining officer covers what was done by Taylor in this case.

My analysis and conclusions

11. This case turns on the interpretation of the words “*killing of a patient in a medical or nursing care context*”, as set out in the Banding of Offences in Scheme 11.
12. The Appellant, in summary, relies on what he submits is a straightforward interpretation of “*killing of a patient in a medical or nursing care context*” (emphasis added). Mr Hoverd, a vulnerable individual with several incapacitating medical conditions, lived in sheltered accommodation. He had been released from hospital in August 2023, shortly before his death, and received some form of care at various times every day. The victim, in other words, was murdered in a ‘medical or nursing care context’, notwithstanding the fact that his assailant was not someone who provided any sort of care for the deceased.
13. The Respondent, in summary, submits the interpretation of the word “*killing of a patient in a medical or nursing care context*” implies the need for medical care relationship between the ‘killer’ and the deceased. The categorisation invokes, in other words, some abuse of trust from the carer. Ordinarily this would require the defendant to be a healthcare professional, or conceivably a member of the family providing caring services. The categorisation cannot be extended to cases where the killer has no caring relationship or connection with the victim.
14. I conclude, on the facts of this case, that the Determining Officer was correct to apply Band 1.3. I find, following the reasoning set out in R v. Knight and R v. Taylor (ibid), that categorisation cannot be defined simply by reference to the status and circumstances of the victim, it must also extend to that of the killer. The words “*killing of a patient in a medical or nursing context*”, in my conclusion, implies the existence of some form of formal (or arguably informal) caring relationship between the patient and his/her carer. It cannot include cases where a vulnerable victim was killed by someone with no medical or nursing care responsibilities for the deceased.

15. The appeal is dismissed, for the reasons outlined above.

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