

IN THE CROWN COURT AT BRADFORD**REGINA**

– v –

S

NOTE OF JUDGMENT ON CTL APPLICATION

“Mr S who is 32 years of age has been remanded in custody subject to an indictment charging two counts of rape against Ms K and two counts of doing an act tending to pervert justice. Those two counts, counts 3 and 4, relate to an allegation that he deleted CCTV evidence which has in fact been recovered by technical experts at around the time of the alleged rapes and count 4 is essentially trying to persuade the victim not to pursue the rape allegations. This was done, it is said, with the assistance of a co-accused called Ms S. It is said that Ms S was in a relationship of some kind with Mr S at the relevant time. Ms S is the principal actor as she made the contact with Ms K. Mr S is in custody but the other two co-accused are on bail. The trial was listed and due to start yesterday. Along with all trials, it has been adjourned to be rearranged due to the pandemic. The defendant’s CTLs expire on 20 May 2020. This therefore is the prosecution’s application to extend the CTLs until shortly after this case can be relisted. Unusually for a case of this length there is a trial slot in the relatively near future namely 28 September 2020, the next date after that being in February 2021. Enquiries have not been made with other court centers as to any other earlier available dates, however, I suspect given the current backlog it would not be possible to accommodate the case elsewhere.

“Bail was refused for Ms S by the Magistrates after he was charged with the events relating to count 4, the rape allegations go back to 2018. Bail was refused by HHJ Burn in December 2019 on the grounds that there is a substantial likelihood of failing to surrender, commission of further offences against public justice and interfering with the witness. This was reconsidered by HHJ Burn

following a change of representation in March 2020 but his remand continued because the bail application was refused. The prosecution's application to extend the CTLs was uploaded on 1 May 2020. The defence response was uploaded on 8 May 2020. Given the extreme and unusual circumstances of the pandemic there is no dispute that there is "some other good and sufficient reason" for extending the CTL and I agree with that concession is proper and find as such. The contentious issue for me to determine is whether the prosecution has acted with all due diligence and expedition.

"First dealing with the law, the case of Gibson has been uploaded to the digital case, in the judgement of Lord Woolf C.J. as he was then he cited with approval the judgement of Lord Bingham C.J.. My attention has also been invited to para.16 of an earlier judgement in Bagoutie. In the application the prosecution have provided a chronology of the case. One date is omitted which is 28 February 2020 when there was a hearing before HHJ Rose at this Court when it was indicated that an application to dismiss count 4 was not pursued, information was given to this Court that Ms S was due before the Magistrates Court on 31 March 2020 and the Judge ordered she should appear before this Court on the next day due to the proximity of the trial.

"I make some observations on the case as a whole. Count 4 is clearly important not just in relation to itself but evidentially in relation to the case as a whole, because of course it is alleged that the defendant Mr S was behind an attempt to get the complainant to change her evidence. The integrity of the case would require all four counts to be tried together which would require all three defendants to be tried together. However, the history of the case is that Ms S was not in fact before the Crown Court until yesterday and clearly without any consideration of the background the trial could not have gone ahead in her case because stage 1 had not been set, which I will do once I have dealt with this application and any further application for bail. The prosecution prepared the case for trial yesterday, until they were told the trial would have to be taken out, to try the two male defendants alone. The possibility would have arisen of trying

Mr S on count 4 on his own or putting aside count 4 and refusing the prosecution to rely on any evidence relating to that count. No application has been heard on those possibilities. The defence contend that all three defendants should have been before the court within the CTLs.

“The issue of due diligence relates to Ms S. On 19 November 2019, a charging decision was made on Mr S in relation to count 4. That charge was authorized by CPS direct and it is said that CPS direct did not deal with the case of Miss S. I do not know the precise date on which she has been interviewed but she was arrested on 17 November and one would have expected an interview shortly thereafter. Authorization for her charge was not given at the same time as Mr S. Count 4 relates to 14 November 2019. Mr S first appeared on 20 November 2019 and he was remanded in custody having been on bail previously. Mr R was also sent to the Crown Court. There was an application for bail before HHJ Burn on 13 December 2019 and on 18 December 2019 the PTPH took place and the 11 May trial date was set then. The PTPH related to the two male defendants. There is a reference to 16 December 2019 in the chronology that the reviewing lawyer was not informed that there was a third suspect and was not aware until the pre-trial preparation review. That was just short of a month after she had been arrested. In so far as requesting statements in relation to Ms S there was a request on 15 January 2020, approximately a further month later. Then there is a reference to 28 January 2020 which is when there was authority to charge. That is over two months after Mr S was charged. This was following the review of further material submitted by West Yorkshire Police. The first hearing should be expedited it was ordered. The 28 February 2020 hearing included the direction by HHJ Rose, having been told the first hearing in the magistrates court was not until 31 March 2020, that Ms S should be before the Crown Court on 1 April, allowing six weeks before the trial on 11 May 2020. I do not know why it took from 28 January, where an expedited hearing was advised, to 31 March 2020 for that hearing to be arranged. The delay thereafter seems mainly to be because of the covid 19 crisis. On 31 March 2020 because of the crisis the case was dealt with by a legal advisor

using delegated powers adjourning the case to a date well after the trial date. The reviewing lawyer contacted the magistrates' court on the same day to see if the hearing could be brought forward but was rebuffed. On 28 April 2020 arrangements were made for the case to be listed on 6 May 2020 and she first appeared before this Court yesterday.

"I won't repeat the submission in the written documents on the DCS. The submissions made and amplified orally are as follows: the prosecution submit that in effect the failure, if such there be, by way of delay have not had an impact on the readiness of the parties on 11 May 2020 because they submit the case could have been trial ready on 11 May 2020 had Ms S had been sent to the Crown Court as anticipated on 1 April. The defence are more skeptical about that. The prosecution say "the culpable delay" was occasioned by the health crisis and the delay in the magistrates' court. There is little explanation in the chronology for the cumulative delays leading to the charging decision on 28 January 2020, two months following Ms S' arrest and Mr S' charge. The fact that Mr S was charged so quickly, no doubt because he was already charged on counts 1 and 2 and had been arrested on suspicion of doing an act tending to pervert the course of justice I have already mentioned. It is not unusual for a defendant not in that situation to be charged a little later, but even so it was over two months before her charge was authorized and some of that time appears to have been explained by the fact that the OIC had not contacted the reviewing lawyer about her until mid-December. There is no explanation for why it took two months from 28 January to get a date before the Magistrates' Court. Certainly, on each listing of this case Judges at this Court emphasized the need to get Ms S before this Court in good time for the trial date of 11 May 2020.

"Applying the law, as I have already outlined, the case falls in my judgement somewhere between the position that Lord Woolf mentioned in Gibson namely that for example at an early stage there is a delay which could not have delayed the trial itself and perhaps a more "culpable delay" to use Mr Howards' phrase as if Ms S' case had just gone to sleep and not been pursued so that it could have

been ready for trial on 11 May 2020. There is clearly delay, some of it unexplained, between 19 November and 28 January and again between 28 January and 31 March. It is for the prosecution to satisfy me on the balance of probabilities that they have acted with all due diligence and expedition. On the one hand it is right that the prosecution submit that the delay in sending on 31 March was out of their hands and was due to the pandemic and the course taken by the magistrates' court for which I of course do not criticize them. However, it goes without saying that had there been less delay in the case, if there had been better communication between the OIC and the reviewing lawyer that the decision to charge could have been taken at an earlier stage and in which case Ms S would have been before the magistrates court sooner and could have been sent to this Court before the pandemic stopped most bail cases being sent. The case falls between that envisaged in Gibson and the worst case which might arise.

"I have decided in the end that first of all count 4 is in so far as I can see on the state of the evidence integral to the trial. It would have been artificial to try and hive off count 4. The prosecution have known from an early stage, from judicial intervention if nothing else, that the position of Ms S was critical and yet authorization for her charge was not given until 28 January 2020 when it seems to me it could have been given earlier and I have not been shown on the balance of probabilities that it could not have been. It also seems that on 16 December 2019 that the OIC had not advised the reviewing lawyer of this third suspect, namely Ms S. In all of the circumstances I am not satisfied that the prosecution has acted with all due diligence and so I have decided not to extend the custody time limit in this case."

12th May 2020