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T-223 P0002/0013 E-527

IN THE CROWN COURT AT LIVERPOOL

REGINA

-v-

ANNE NIELD

APPLICATION FOR DISCLOSURE

The Charge

1. The defendant faces an Indictment containing one Count, namely False Accounting, contrary to s.17 of the Theft act 1968.
2. The defendant denies that she (a) acted dishonestly and (b) had an intention to gain or cause loss to any person as set out in her Defence Statement (Appendix 1).

The Application

3. This application is made under s.8 of the Criminal Procedure and Investigations Act 1996.
4. The defendant has sought, and been refused by letter dated 28th August 2012 (Appendix 2), disclosure of the following:
 - a. Details of complaints and investigations into the Horizon computer system;
 - b. Access to the Horizon computer system used by the defendant between the installation of the system in 2005 ~ 6th January 2012 for the purposes of expert examination by a Forensic Accountant.
5. The defendant now seeks an Order of the Court for disclosure of or access to the items listed at paragraph 4.a. and 4.b. above.

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Background

6. At the relevant time the Post Office held Sub-postmasters/mistresses personally liable for any monetary losses incurred by the Post Office they managed.
7. Horizon is a computer accounting system used by the Post Office. It was introduced to the defendant's Post Office around 2005. Prior to that the accounting system had been paper-based.
8. The defence are aware from articles in the Press and communications from the House of Commons (Appendix 3) that the Horizon system has been the subject of much controversy over the past few years and that a significant number of Sub-postmasters allege that the Horizon system published incorrect losses on the system. Further, that they have in many cases been wrongly convicted of False Accounting. The issue is serious enough to have warranted the involvement of Members of Parliament, the establishment of an action group 'Justice for Sub-postmasters', the launch of a class action against the Post Office and an agreement by the Post Office in June 2012 to appoint an independent review of some cases.
9. The defence are therefore confident that the Prosecution have in their possession, or easily accessible to them, records of complaints and investigations into the Horizon system.

Reasons for Application

Dishonesty

10. The first relevant issue is the question of dishonesty; in particular the subjective test expounded in the case of R. v. Ghosh [1982] 75 Cr.App.R. 154.
11. The Prosecution case is that the defendant dishonestly attempted to disguise losses raised by the Horizon system by attributing monies from other charity accounts to the deficit, rather than re-paying it herself. In fact, we understand that the Prosecution case is that the defendant took the money which created the apparent loss on the Horizon system.
12. When the Jury consider whether the attribution of monies in this way by the defendant was dishonest it is a relevant consideration whether or not the losses were 'real' and whether they were attributable to her. If the losses were the result of a computer error the Jury may well take

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a very different view of the defendant's mental state than they would if she had taken the money.

Intent to gain or cause loss

13. The second relevant issue is the question of the defendant's intention; whether she intended to make a gain for herself or cause loss to another.
14. If the apparent losses were caused by the defendant taking money from the Post Office, a Jury will have little difficulty in concluding that she covered the losses in order to make a gain for herself. Similarly, if the apparent losses were actually incurred, for example as a result of the defendant's human error, the Jury may come to the conclusion that she covered the losses in order that she did not have to re-pay the Post Office for losses caused as a result of her errors. However, the Jury may take a different view of the defendant's intention if the apparent losses were the result of a computer error such that the defendant neither gained in fact (by taking the money) nor had any reason to believe that she owed the money as a result of her own error.

Submissions

15. It is submitted that material which suggests that the Horizon system has accounting faults is therefore relevant to, and of potential assistance to, the defence for the reasons outlined at paragraphs 12-14 above.
16. It is submitted that access to the Horizon system by a defence Forensic Accountant is necessary in an effort to detect faults in the Horizon system used by this defendant. Further, to identify where the apparent disguised losses occurred and whether they can be attributed to this defendant. The case against the defendant both at Trial and in any subsequent sentence would be very different if it can be established that the defendant did not take the money herself.
17. Furthermore, if a forensic examination of the Horizon system used by this defendant reveals that the losses were incurred as a result of computer error it may be that the Prosecution review the decision that pursuance of this case is in the public interest.

Charlotte Atherton

Exchange Chambers

12th September 2012