

The Crown Court at Plymouth recently heard the case of Manning and Baker relating to a prosecution brought by the Devon and Severn Inshore Fisheries and Conservation Authority relating to the vessel "STELLA MARIS" regarding iVMS offences.

It has been claimed that this ruling sets a precedent. The creation of precedent is restricted to the High Court, Court of Appeal and Supreme Court. This was a Crown Court ruling and does not create any legal precedent whatsoever and no other court is bound to consider or follow the ruling. The Judge, in numerous places within his ruling, stressed that this case was decided upon its own individual facts and should not be regarded as setting any precedent.

The first issue for him to rule upon was the prosecution's request to introduce medical evidence relating to one of the defendants. They wished to introduce new evidence to say one of the defendants was fit to be tried by the court. The Judge ruled that that additional medical report could not be introduced into the proceedings.

This left the Judge to rule on the question of whether the proceedings should be stayed as an abuse of the process of the court. The defendants said that the case should be stayed on the basis of a number of factors :-

- (a) Medical condition of one of the defendants, such that he could not participate in the trial and, therefore, have a fair trial;
- (b) The effect of the absence of that person at the trial on the other defendant, making it impossible for the other defendant to have a fair trial;
- (c) The prosecution authority contributing to the delay by insisting that the case below be delayed until the Gloucester Crown Court case had been resolved;
- (d) The prosecuting authority allegedly seeking to advance a case on a different basis from the way it was advanced in the court below in order to avoid criticism for relying on VMS data alone;
- (e) The prosecuting authority having withheld relevant disclosable material.
- (f) The prosecuting authority could not have conducted an appropriate view of the case to ensure it met the requirements of public interest;

- (g) The authority had commenced the proceedings on the basis of detecting a crime and fitting these facts to the circumstances rather than investigating the evidence and concluding a crime had been committed.

The court considered that application and in particular the fact that the power of the court to order a stay of proceedings is to be invoked only in the most exceptional of cases.

The Judge addressed the points raised by the fishermen as follows:-

- a) He said that one of the fishers was not fit to stand trial and that on that basis there could be a stay of the proceedings due to that appellant's medical condition.
- b) He felt it would be unfair on the other defendant not to have the ability to call evidence of his co-accused and, accordingly, the second of the two defendants could not have a fair trial.
- c) In respect of delay then, as previously indicated, the Judge found that there had been delay, but that delay was not sufficient on its own to order a stay.
- d) On VMS data; the Judge's conclusion was that a prosecution reliant entirely on VMS data would be difficult and, in his view, a prosecution was likely to fail but that alone was not sufficient to stay the case.
- e) The Judge found no withholding of evidence had taken.
- f) In terms of the issues of public interest and the merits of the prosecution, the Judge said that *"does not come close to even supporting a stay argument, let alone founding one."*
- g) The Judge also rejected any argument that the case had been developed to fit the facts rather than the facts being investigated.

As a result, the Judge did stay the proceedings as an abuse of the Court's process based on the medical issues alone.. The Judge's conclusion was that;

"this case does not establish any precedent; it is highly fact specific and exceptional. This judgment must not be seen as a critical of the decision to investigate or to prosecute. Whilst I do not agree with the prosecuting authority's assessment of the current public interest in prosecuting this case – I am not critical of it – they have done what they think right".

CONCLUSION

This case sets no precedent for the future; it is an isolated decision of the Crown Court in Plymouth, based entirely upon specific facts, centring around the health of one of the defendants, particularly their fitness to face trial, and the effect of their non-appearance on the fairness of the other defendant's trial.

The Judge, however, did indicate that on the information before him, he did not think that if the case had proceeded, it would have succeeded but, of course, that is a matter of speculation, and we shall never know.

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Andrew Oliver is a partner at Andrew Jackson Solicitors LLP and both defends and prosecutes IFCA case, he is also contributing editor to Halsbury's Laws of England and Wales in relation to fisheries.