

Occasionally – very rarely – circumstances may arise in which a court has to say that whatever apparent merits a prosecution may have, the court cannot allow the prosecution case to be taken forward to trial.

This arises from a fundamental principle that the court cannot allow itself to be party to improper conduct. Where there has been some aspect of the investigation or prosecution of a crime which is tainted in some way by serious misconduct to the point that the integrity of the court would be compromised by allowing the trial to go ahead, in the sense that the court would be seen to be sanctioning or colluding in that sort of behaviour, then the court has no alternative but to say “This case must go no further”.

Before this trial began, I dealt with an application by defence counsel that this was such a case. I heard evidence and I listened to legal argument and in the event, applying legal principles to the facts as the evidence showed them to be, I declined to accede to defence submissions that I should bring the trial to a halt there and then.

But matters have moved on since then.

When Mr Mahmood gave evidence to me on the 26th and 27th of June, he was asked three questions – questions of some importance:

“Q: I assume that Mr Smith did not have a recording device?

A: No

Q: But did you subsequently ask or find out, discuss with Mr Smith anything that was said in the car?

A: No

Q: Because I just want to see whether you were aware of this. Mr Smith made a statement to the police saying that in the car Ms Contostavlos was talking about drugs and saying that a member of her family had a drug problem and she disapproved of drugs. All I want to know from you is whether you discussed that with Mr Smith at any stage?

A: No”

When he gave evidence last week, he was asked questions on the same topic and gave answers which were entirely inconsistent with his earlier evidence. And it certainly appears that the contact he had with Mr Smith was not unconnected with a fundamental change in the evidence which it was anticipated Mr Smith was going to give. He was, as you will have understood, expected to be able to give evidence supportive of Ms Contostavlos – that she told him that she disapproves of hard drugs. But after his conversation with Mr Mahmood, he had changed his mind.

So the landscape has changed since I rejected the defence applications last month.

It should not be forgotten that Mr Mahmood is:
the sole progenitor of this case;
the sole investigator;

the sole prosecution witness;
a man who has exercised his journalistic privilege to create a situation in which the identities of others involved in the investigation are unknown to the defence (or the prosecution or even to me);
someone who appears to have gone to considerable lengths to get Ms Contostavlos to agree to involve herself in criminal conduct, certainly to far greater lengths than would have been regarded as appropriate had he been a police investigator.

None of that, taken on its own or taken together, was sufficient to allow me as a matter of law to halt this case.

But now there must be added to the mix two very important factors.

First, there are strong grounds for believing that Mr Mahmood told me lies when he gave evidence to me on the 27th of June

Secondly, there are also strong grounds for believing that the underlying purpose of these lies was to conceal the fact that he had been manipulating the evidence in this case by getting Mr Smith to change his account.

Had I known of that when I gave my decision at the end of last month, then I have no doubt at all that my decision would have been very different indeed.

And that is why I have now said, armed with the knowledge I now have, that this case cannot go any further.

One of the unfortunate effects of that is that Ms Contostavlos has not had the opportunity of placing her defence before you and a wider public. It seems to me only fair to tell you, as best as I can, what her account would have been had the case reached a point where she would have given evidence.

In essence, it is this. She was taken in by Mr Mahmood and believed that a film part was coming her way. But things were said by him and others associated with him which made her think her chances of getting the part would be boosted if she made herself out to be a street-wise woman, familiar with and to some extent involved in drugs. That is why she spoke as she did on the 10th of May. And once she had adopted that role, it was very hard to step out of it, hence the texts and calls later in the month. She never intended that drugs should be supplied to him by Mr Coombs or by anyone else. Anything which he did in that regard was out of a misplaced desire on his part to help her out of her dilemma, not because she asked him to do it; this was something she did not intend and knew nothing about.

There is a second effect. The reconsideration which I have now undertaken of the applications which I heard and rejected last month means that the clock has been put back. Had I made the decision then which I have made now, neither defendant would have been called on to answer the indictment, nor even to enter a plea to it. Indeed, neither defendant had done so by that stage. Just as I would

have stayed the indictment against Ms Contostavlos, so also would I have stayed it against Mr Coombs. His subsequent plea of guilty does not (and cannot) wipe out the improper conduct which has led me to end this case. Just as the case cannot properly proceed against Ms Contostavlos, so also it cannot proceed properly against him.

I wish to emphasise that the decision I have reached is based on the evidence as I have understood it and the legal principles which I must apply to the facts as they appear to me to be. My view of the evidence cannot bind any other court which may (or may not) be called on to consider this matter in a different context.