

IN THE CROWN COURT AT WOOD GREEN

REGINA

-v-

MOGENS HAUSCHILDT

SUBMISSIONS RE: CLOSING SPEECHES

Introduction

1. This has been a trial in which the defendant has:
 - i) not been present;
 - ii) not been represented;
 - iii) not given evidence;
 - iv) not called any witnesses;
 - v) not advanced a positive case.

2. In these circumstances, it is submitted that, while counsel appointed by the court ought to be allowed to address the jury in closing, the prosecution do not have a right to make a second speech, and ought not to be allowed to make one.

Right of court-appointed counsel to make a speech

3. It is submitted that counsel appointed to safeguard the defendant's interests during this trial has the right to address the jury at the close of the prosecution case.

4. The prosecution addressed the jury in opening, and it must therefore be right in the interests of a fair trial that such response as can be made is presented to the jury by court-appointed counsel.

5. While reference may be made to the defence statement, the address will of necessity principally be concerned with putting the prosecution to proof.
6. The address must be limited to an exploration of the prosecution evidence (there having been no evidence called on behalf of the defendant) with a view to testing, so far as is possible, the prosecution case that the jury can be sure of guilt on all counts.

General rule re: prosecution closing speech

7. The general rule is that prosecuting counsel is not allowed a second speech where a defendant has called no witnesses apart from himself.
8. It must follow that where a defendant has called no evidence whatsoever, the circumstances in which prosecuting counsel is entitled to make a second speech must be even more strictly limited.
9. While there do not appear to be any authorities dealing with a situation such as the present one - with the defendant not participating in the proceedings at all - this is a still more exceptional state of affairs, and it is therefore submitted that particularly strong grounds would be required were the general rule to be departed from.

Departures from the general rule

10. The general rule may be departed from where there are issues arising during the defence case upon which the jury would be assisted by comment from prosecution counsel.¹

11. However, in the present case no positive case has been advanced, as compared with the case of *R. v. Stovell* and the more recent authority of *R. v. Rabani*².

¹ *R. v. Stovell* [2006] EWCA Crim 27
² [2008] EWCA Crim 2030

unrepresented gave evidence
para 54 CR no right two counsel
→ make closing prosecution
under spec stat.

para 58

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12. Counsel appointed by the court have no instructions and have therefore been limited to testing the prosecution evidence in a manner that was entirely possible to anticipate at the start of the trial. Accordingly, the nature of the proceedings has not been "adversarial" in the usual sense of the word, and to permit the prosecution a second speech would go further than merely balancing the speech to be given by court-appointed counsel – it would, it is submitted, unbalance the proceedings in a way which would render the trial unfair.

ED JENKINS QC
DOMINIC LEWIS
13th December 2008