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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 17th July 2001

B E F O R E :

LORD JUSTICE BUXTON

MR JUSTICE HOLMAN

and

THE COMMON SERJEANT
(His Honour Judge Beaumont QC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

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R E G I N A

- v -

Victor LINDESAY

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MR C WELLS appeared on behalf of the Appellant

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JUDGMENT
(As approved by the Court)

17th July 2001

1. THE COMMON SERGEANT: On 27th April 2001 before the Bow Street Magistrates' Court the appellant, Victor Lindesay, pleaded guilty to three charges of causing unauthorised modification to the contents of a computer contrary to section 3(1) and (7) of the Computer Misuse Act 1990. He was committed on bail to the Crown Court at Southwark for sentence under section 3 of the Powers of Criminal Courts (Sentencing) Act 2000. There, on 27th June before His Honour Judge Elwen, he was sentenced to nine months' imprisonment to run concurrently on each charge. He now appeals against that sentence by leave of the single judge who refused an application for bail.

2. The facts, so far as they are relevant, are these. The appellant was a freelance computer consultant of very considerable experience and repute. He was working on a short contract with a computer firm which provided a number of services for various client companies, including maintaining their websites. The company was not satisfied with the appellant's work and he was dismissed on 14th July 2000. There was a dispute between him and his previous employers about money which he said that he was owed. This apparently left him with a sense of grievance.

3. All three offences took place around midnight on 12th August, so a month after his dismissal, when, as he was to tell the police later, after a few drinks and acting on impulse, he used his own internet account to gain unauthorised entry into the sites of three companies which were clients of his former employer. He made use of passwords that he had been given when working for the victim company and the three charges relate to each of the three company websites accessed which belonged respectively to a supermarket group, a communications company and a tour operator. At all three sites the appellant deleted some contents and data with the intention of causing inconvenience to his former employer. On two of the sites, those belonging to the communications company and the tour operator, he moved images around. At the website of the supermarket group he also sent a number of e-mails informing their customers that prices would go up and they could go elsewhere if they did not like that fact. He also changed some information given on the website about recipes.

4. The impact of the appellant's actions varied. In the first instance the victim company had to do considerable extra work to bring the sites of their clients back to their original state. Those in charge of the supermarket company had to send out e-mails apologising to their customers. Extra security had to be put in place to make the site more secure. The site was closed for approximately ten weeks after the breach. However the site of the communications company was restored in about three hours and that of the tour operator in about three and a half hours.

5. Originally it was thought that the cost of repairing damage done in that sense would be considerable. Sums in excess of £20,000 were mentioned. However as Mr Wells, who appears for Mr Lindesay today as he did at sentence, has indicated to us the costs were reduced on the date of sentence to approximately £9,000.

6. When he was arrested the appellant told the police that he deeply regretted what he had done and he wished to apologise to the companies whose websites he had altered.

7. When he came to sentence Judge Elwen, in extremely detailed sentencing remarks, identified the factors that he took account of and those that weighed in particular with him. He acknowledged, firstly, that the appellant had made full admissions and expressed remorse. He took into account the mitigation put forward, the fact of a plea of guilty at the

earliest opportunity and acknowledged that there was before the court a statement from Professor Baker of Reading University, for whom the appellant had been doing some part-time teaching. He clearly held the appellant in high esteem.

8. Secondly, he acknowledged that an experienced police officer charged with the investigation of these offences stated that the appellant was extremely candid with him, and commented that the offences were undoubtedly committed on the spur of the moment.

9. Thirdly, the court accepted that there was no damage to the software, no direct revenue loss, that straight forward repair work only was required and that there had been no tampering with sensitive data.

10. However, Judge Elwen found that the offences were so serious that only a custodial sentence could be justified. This was an act of pure and unmitigated revenge after a slight. It was analogous to someone shoving a glass in the face of another person in a public house because they did not like their attitude.

11. Leave was granted so that the full court should have the opportunity to decide if the offences passed the custody threshold and, if so, whether a shorter sentence than nine months should be imposed in the light of the mitigating circumstances.

12. The appellant is 47 and, as indicated, of previous good character. There was available a community punishment order outlined by the author of the pre-sentence report if such a sentence was deemed to be appropriate.

13. The grounds of appeal urge that the sentencing judge paid insufficient regard to the mitigating features available to the appellant. Mr Wells also urges on us this morning that the offences themselves fall at the bottom of the scale. He adds that consideration ought to be had to the devastating effect of serving a term of imprisonment on both the appellant and his teenage daughter. Additionally, Mr Wells submits that the judge erred in equating this case with a revenge glassing attack.

14. As to mitigating features, this court observes that there is no doubt at all, having considered the sentencing remarks, that Judge Elven had regard to them as he set them out very carefully. As to equating this case with a revenge glassing attack, what in fact Judge Elwen said was this:

> "This was an act of pure and unmitigated revenge for what you thought to have been a slight. It is entirely analogous to somebody shoving a glass in the face of somebody in a pub when they did not like their attitude."

15. This court does not find the analogy helpful. However, the conclusions reached by Judge Elwen in the sentencing remarks, taken as a whole, identify most importantly the gravamen of the appellant's criminality which is this. That however real the grievance, however impulsive the act of revenge and however inevitable the discovery of the appellant's responsibility for these acts, the fact remains that the appellant used his skill and his knowledge of his former employer's business to cause a great deal of work, inconvenience and worry to organisations that were entirely innocent. That was properly met, in this court's judgment, by an immediate sentence of imprisonment to mark the breach of trust.

16. As to the length, the sentencing judge undoubtedly had in mind, and gave proper effect to, such mitigating factors as bore upon that decision. This court cannot say, having reviewed them afresh, that the sentence of nine months' imprisonment in total was excessive, let alone

manifestly excessive. For those reasons this appeal is dismissed.

LORD JUSTICE BUXTON: The appeal will be dismissed. Mr Wells, we have the benefit of a form filled in by your client in respect of a recovery of defence costs order which the court has to consider. What we don't know is what his legal aid position was in the court below. Are you able to help us with that?

MR WELLS: My Lord, yes. My instructing solicitor sits behind me. It was under the old regime, both at Bow Street Magistrates' Court and Southwark Crown Court. It was only when it got this far that those provisions actually kicked in.

LORD JUSTICE BUXTON: May be they did, but what was the nature of his legal aid?

MR WELLS: As I understand it, it was a nil contribution.

LORD JUSTICE BUXTON: That is what I have here. I am marginally surprised by that. It was a nil contribution below. I see. Very well, this court will deem it not appropriate to make a recovery of defence costs order in this case. We are grateful to your client for having filled in the form.