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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 22 November 2018

B e f o r e:

LORD JUSTICE LEGGATT

MR JUSTICE LEWIS

THE RECORDER OF RICHMOND ON THAMES
HIS HONOUR JUDGE LODDER QC

R E G I N A
v
ADAM JOHN SPEARS

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MR JOE HINGSTON appeared on behalf of the **Appellant**
MR ROBERT MORRIS appeared on behalf of the **Crown**

J U D G M E N T

(Approved)

1. **MR JUSTICE LEWIS:** On 6th December 2017 in the Crown Court at Maidstone the appellant, Adam Spears, who is now aged 80, was convicted of two offences of unlawfully obtaining personal data and two offences of dishonestly disclosing personal data, contrary to section 55 of the Data Protection Act 1998. He was fined £2,500 for each offence, resulting in a total fine of £10,000, and was ordered to pay costs in the sum of £2,500. He appeals only against the imposition of the £10,000 fine with leave of the single judge.

2. The relevant facts are as follows. On 2nd December 2004 a nightclub called the Voodoo Lounge burnt down. The owner, a Mr Cookson, made a claim to his insurance company. That company instructed the fifth defendant, a company called Woodgate & Clark (who are loss adjustors) to investigate the claim. The fourth defendant was one of the managing directors of the company. The third defendant was the loss adjustor with the company. The company and these two individual defendants decided to investigate the personal finances of Mr Cookson.

3. The appellant, Mr Spears, was a retired police officer who worked as a private investigator. He was instructed to obtain personal financial information about Mr Cookson. He knew the first defendant, Daniel Summers, and the methods that Mr Summers used to obtain such information. Mr Summers used a technique known as 'blagging', whereby a bank would be called up and deceived into thinking that it was dealing with the account holder. Bank staff would pass private financial information to the caller, thinking that they were providing information to the account holder.

4. The appellant asked Mr Summers to obtain information about Mr Cookson's finances. Mr Summers obtained information from a building society, the Abbey National (now Santander), about Mr Cookson's mortgage. Mr Summers also obtained information about Mr Cookson's current and loan accounts from Barclays Bank. Mr Cookson did not know about and did not consent to the provision of his financial information. The appellant provided the information to others and ultimately to Woodgate and Clark. Mr Summers was paid by the appellant for the information and the appellant in turn was paid by Woodgate & Clark.

5. All five defendants were charged with offences under section 55 of the Data Protection Act 1998, which was the provision then in force. Materially similar provisions are now contained in section 170 of the Data Protection Act 2018. The appellant was charged with four offences. Two were offences of unlawfully obtaining information relating to Michael Cookson (one in relation to Santander and one in relation to Barclays Bank); two were offences of disclosing personal data relating to Mr Cookson (one relating to the information obtained from Santander and one to the information obtained from Barclays Bank). Following a trial, the appellant was convicted of those four offences. The other four defendants were also convicted of a number of offences.

6. In sentencing, the judge noted that he only had power to impose an unlimited fine (see section 60 of the 1988 Act and now section 196 of the 2018 Act). He indicated that he would determine what was the appropriate amount of the fine for the offending of each individual defendant as a whole and would then apportion that amount between the individual offences for that defendant. In establishing the appropriate fine, he would

have regard to the culpability of the offender and the harm suffered. He observed that the fine may need to be adjusted to reflect a defendant's ability to pay. In relation to a company, the fine should be sufficient to bring home to shareholders the need to avoid criminal conduct.

7. In terms of culpability, the sentencing judge regarded the offence itself as relatively serious. The purpose underlying the particular offending was commercial. It was in the interests of the fifth defendant (Woodgate and Clark) to provide the insurer with as much information as possible in order to provide a good service and to retain a valued customer. The appellant, of course, was paid to obtain and disclose the information. The judge considered that the conduct was deliberate; further, there were multiple breaches.

8. In terms of harm, the judge considered that this was limited. Mr Cookson would, if asked, have provided the information willingly. He had also been compensated in civil proceedings for the breach of his right to privacy.

9. In relation to mitigation, the judge noted that all defendants, including the appellant, were of previous good character. He noted that the gain by the first defendant (Mr Summers) and the appellant was relatively modest.

10. The sentencing judge was referred to a sentencing decision in Southwark Crown Court in *R v Hill, Forest and Stewart*. He considered that that case involved offending on a much larger scale and in a more invasive way. He was provided with a schedule of fines imposed in magistrates' courts, but considered that was of little assistance given that the information about the facts of those cases was very limited.

11. In the circumstances, the judge regarded the fourth defendant, Mr Woodgate (the managing director) as the most culpable and fixed a fine, reflecting three offences, of £75,000. He then divided that amount equally between each of the three offences, resulting in a fine on each individual offence of £25,000. The fifth defendant (the company) was fined a total of £50,000 in respect of two offences, resulting in a fine for each offence of £25,000. The third defendant (the loss adjustor) was fined a total of £30,000 in respect of two offences, resulting in a fine of £15,000 for each offence.

12. The judge considered that the appropriate fine for both the first defendant and the appellant was £20,000. The judge considered that the first defendant had the means to pay the total fine of £20,000, and he apportioned that as £5,000 for each of the four offences. As far as the appellant was concerned, however, he had limited means to pay. The judge therefore reduced the total fine in his case to £10,000. He divided that equally between the four offences, resulting in a fine of £2,500 for each offence. He ordered the appellant to pay £2,500 costs, reflecting his proportion of the costs incurred, again reduced to reflect his limited means. The appellant was given twelve months to pay. The appellant appeals on the grounds that the fine of £10,000 was manifestly excessive.

13. Mr Hingston, on behalf of the appellant, submitted in his written and oral submissions that the harm was negligible and that the appellant made little financial gain from the

offending. He accepted that there were multiple breaches but submitted that they involved only two financial institutions. The information concerned one individual and was personal but not sensitive information. He submitted that, since these offences had been committed but prior to sentencing for the offences, the appellant had in fact received a custodial sentence for fraudulently obtaining personal data, and the judge should have taken into account the fall from grace and the punishment that the appellant had already received.

14. He referred to the appellant's age: he is now 80 years old. He referred to the fact that the offending had occurred eleven or twelve years before a decision to prosecute was taken, though he informed us this morning that an application to stay the proceedings on grounds of delay had not succeeded. He referred to the fact that the judge considered that Parliament was proposing to provide for custody to be an appropriate sentence in these cases, but in fact, under the 2018 Act, the penalty remains an unlimited fine, not a custodial sentence.

15. Counsel for Mr Spears submitted that the appellant had limited means. The evidence before the sentencing judge was, it seems, that he had a total annual income after tax, from occupational pensions and state pensions, of £28,243.12. Apparently he had no capital assets, and limited savings of approximately £2,500. Mr Hingston submitted that the fine reflected effectively four months' income. In all the circumstances he submitted that a fine of £10,000 was manifestly excessive.

16. In imposing a fine for breach of section 55 of the Data Protection Act 1998 a judge must have regard to the purposes of sentencing as set out in section 142 of the Criminal Justice Act 2003: that is, to punish offenders; to reduce crime, including by deterrence; to reform and rehabilitate offenders; to protect the public; and to make reparation by offenders to persons affected by the offending. The sentencing judge must have regard to the seriousness of the offence, which includes both the culpability of the offender and the harm caused (see section 143 of the Criminal Justice Act 2003). A judge must also have regard to section 164 of the Criminal Justice Act 2003 and must enquire into the financial means of the offender. The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence. The court must take into account all the circumstances of the case, including the offender's financial circumstances so far as they are known. In relation to the sentencing of commercial organisations, this court has given guidance in *R v Sellafield Ltd [*2014] Env LR 521. That guidance has been reaffirmed in *R v Thames Water Utilities Ltd* [2015] 1 WLR 4411 at paragraph 33.

17. In this case the judge did correctly follow those principles. He reached conclusions that he was entitled to reach on the material before him. First, he was entitled to regard the offence as serious. Culpability was high. The offending involved the unlawful obtaining and disclosing of personal financial information. The offences involved different types of financial information, concerning a mortgage, a current account and a loan account. They involved obtaining information from two separate financial institutions. The offences were deliberate and were done for financial gain.

18. In terms of harm, the judge was entitled to take the view that, on the facts of this case, the harm was limited, given the nature of the information obtained, the fact that the person concerned would have been prepared to consent to the disclosure of the information to the insurer in any event, and the individual had received compensation for the breach of his rights.

19. The judge took account of the mitigation available to the appellant, namely his age and his previous good character. We do not regard the fact that the appellant had been sentenced to a custodial term for other offending as a matter of much, if any, weight in the present case. Similarly, the period of time between the offending and the prosecution provides little, if any, mitigation in this case, given the history leading up to the decision to prosecute and the fact that an application to stay proceedings on grounds of delay failed.

20. The judge did have regard to the means of the appellant and his ability to pay the fine. He reduced the fine from £20,000 to £10,000 to reflect the information known to him about the appellant's financial circumstances. The appellant had an annual income, after tax, of over £28,000, and was well able to pay a fine of £10,000. Indeed, he was given twelve months to pay. It cannot be said that the fine was disproportionate or manifestly excessive. In all the circumstances, therefore, the appeal against sentence is dismissed.