IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202400769/A3
NCN: [2024] EWCA Crim 558

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 17 April 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE HOLGATE

MR JUSTICE BOURNE

REX

V

PAUL JAMES MERRELL

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MR W DOUGLAS-JONES appeared on behalf of the Appellant.
MR B MILLS appeared on behalf of the Crown.

J U D G M E N T

1. MR JUSTICE HOLGATE: On 27 October 2023, in the Crown Court at Birmingham, the appellant changed his plea to guilty on count 2 of the indictment, possessing, selling or distributing a device designed to circumvent technical measures, contrary to section 296ZB(1)(c) of the Copyright, Designs and Patents Act 1988 and on count 3 providing, promoting, advertising or marketing a service, the purpose of which is to circumvent technical measures, contrary to section 296ZB(2). On 2 February 2024, the appellant was sentenced by HHJ Drew KC to concurrent terms on each count of 12 months' imprisonment. Count 1, fraudulent trading and counts 4 and 5, supplying an article for use in fraud, were ordered to lie on the file. He appeals against sentence with the leave of the single judge.

2. The offences were committed between 1 January 2017 and 28 January 2021. The appellant was a deputy headteacher of a school. He also derived a substantial income by illegally providing access to subscription-only television streams. He did this through his branded business, Media Maverick. He would source customers online for a fee to provide them with software and online access to subscription-only streaming services. He would then maintain those services. In early 2021, he claimed to have had about 2000 customers. The channels to which he enabled unlawful access included Sky TV and BT Sport. His customers gained access to national and international football matches, motor racing, rugby, film and other channels. The appellant's packages cost about £10 a month, or £75 - £120, very much less than the true cost of those subscription services if bought lawfully from the providers. The appellant was aware of that because he had previously paid £100 a month for a Sky subscription. He did not keep proper business records or accurate accounts.

3. Count 2 related primarily to the selling of software and the distribution of the product

designed to circumvent technological measures. The appellant made that software available to download to facilitate the viewing. Count 3 related to the running and maintaining of a business which included the provision, promotion, advertising and marketing of the services for which he charged a fee and made profits.

4. As an example, the broadcasting of FA Premier League matches is vulnerable to this sort of offending. The FA is a non-profit making organisation authorised by its members to arrange the filming of matches and to licence broadcasters throughout the world to transmit coverage. Sky, BT, the BBC and Amazon Prime Video had bought the rights. They were highly valuable. For example, between 2017 and 2019, those rights had cost in the region of £5.1 billion. Broadcasters generate income from subscriber subscriptions and from advertising. The more customers they have, the higher their income and the more they are prepared to bid for the rights. The money paid by the broadcasters is then reinvested into sports such as the Premier League.

5. Those concerned to protect such rights became aware of the appellant's activities. They instructed an investigator to carry out test purchases. He looked into Media Maverick. He went online and found a professional-looking website run by the appellant which promoted the supply of means to circumvent the technological measures put in place by the service providers. The site had home pages, payment pages and choices for packages.

6. On 3 April 2020, the investigator conducted a test purchase of a "Black Full" package for £10. He made a payment by PayPal to a gmail account, "stoppingfrost" which was the appellant. Having created an account on the Media Maverick website, he received a welcome email and then further emails entitled "customer invoice" "order confirmation", "invoice payment confirmation" and "new account information". The "new account" email included the details necessary to access the service, including a user password and

URLs.

7. On 6 April 2020, the investigator logged into the same website and was given details of the product he had purchased including host username and password. This gave him unauthorised access to multiple commercial channels, including streams of TV channels belonging to Sky and BT Sport.
8. In November 2020, the investigator made a second test purchase. For a package costing £10 a month he gained unlawful access to streaming content, which included the UEFA Champion's League, Europa League and other well-known leagues, Moto GP events, English rugby and Aviva premiership matches and many other channels and films. By contrast, Sky was charging £51 a month for its "premium television package".
9. On 28 January 2021, a warrant was executed at the appellant's home. Five electronic devices were seized and analysed. They contained evidence of the appellant running Media Maverick as a busy, substantial, well-organised streams reseller business.
10. In interview, the appellant said he had begun the business in 2017. He found out about Internet Protocol Television on Facebook. He then took out a subscription with Flawless as a customer. Flawless provided illegal streaming services on a massive scale, and then would ask customers if they wanted to be resellers. The appellant thought this would be a good way of making some money. Flawless told him how to set things up. He established Twitter and Facebook groups under the name "Robert Frost".
11. On the issue of copyright, the appellant said that he knew that people owned their rights to the images and materials. He took no steps to check the legality of what he was doing. He said he had had about 1000 customers since 2017.
12. In his tax return for 2017-2020, the appellant declared self-employment as "educational resources and online support". For 2017-2018 he declared turnover of around £47,000,

total expenses of about £22,000 and profit of about £25,000. Similar amounts were declared in the two following tax years. The turnover and expenses declared bore no correlation with the sums going through his Pay Pal account, which indicated the total gross revenue he received, trading as Media Maverick, was over £400,000.

13. The appellant was 43 at the time of sentence. He was of previous good character. We have read the good character references which were provided to the judge. The pre-sentence report revealed that during his offending the appellant had in fact discussed with others whether his activities were unlawful. He concluded that it was a grey area or that no wrong was being done. He was assessed by the author as posing a low risk of causing serious harm to the public and suitable for a community order with requirements for a rehabilitation activities requirement and unpaid work.

14. In his sentencing remarks, the judge said that from the appellant's emails and the articles he had been reading, it was clear that he knew at the time that what he was doing was unlawful. The fact that he did not keep proper records and make accurate tax returns showed that he had not been running a genuine business. The judge considered that the annual profit had been in the region of £50,000 amounting to about £200,000 over 4 years. Up to £2 million - £3 million of revenue had been diverted from the companies affected. The judge applied the sentencing principles in R v Evans [2017] EWCA Crim 137 for this type of offending.

15. The judge referred to the appellant's personal mitigation, which included his career in education, his contribution to the school he had been leading, the effects of his fall from grace, the strains that he and his wife had been under and the delay in the proceedings. The judge said that no-one could say that the appellant would be able to keep his job if he received a non-custodial sentence, or that if he was sent to prison, the school would be

unable to find a new headmaster. He concluded that, after a trial, the appropriate sentence overall would have been 18 months' imprisonment, which he reduced to 15 months for the guilty pleas. He then decided to reduce that further to 12 months for the personal mitigation. But he concluded that the offences were so serious that that sentence could not be suspended. The judge also made a confiscation order for an available amount of £91,254 having assessed the benefit as £240,705.

16. We are grateful to Mr Douglas-Jones for his written and oral submissions. In summary, he submitted that it was wrong in principle for the judge to have decided that an immediate custodial sentence had to be imposed applying the guideline on the Imposition of Community and Custodial Sentences. He set out the serious effects which the offending, the confiscation order and sentence had had on the appellant and his family.

17. In the written submissions prepared by leading counsel who had previously represented the appellant, there was a description of the educational needs of the pupils met by the Elmfield School, the financial issues which it had experienced and how the appellant had been instrumental in improving its cost base and funding to improve the chances of it surviving in the long term. The Chair of the Governors wrote to the judge to say that if the appellant lost his liberty the school would be forced to closed. Mr Marklew submitted that the judge's observations had been inconsistent with that letter. We are grateful to Mr Douglas-Jones for his realistic concession this morning that that part of the appeal should not be pursued. He says that partly as a result of the helpful written submissions made in the Respondent's Notice by Mr Ben Mills.

18. Turning to the substance of the appeal as now presented, Mr Douglas-Jones submitted in relation to the guideline on the Imposition of Community and Custodial Sentences, that this was not a case where the appellant presents a risk or danger to the public or has a

history of poor compliance with court orders. There is a realistic prospect of rehabilitation. There is strong personal mitigation and significant harmful impact on others, in particular the appellant's family, which includes his son aged 6.

Mr Douglas-Jones submitted that those factors in combination outweighed any need for immediate custody in order to achieve appropriate punishment.

19. ***Discussion***

20. In Evans the Court identified a number of factors which are relevant to the offending in this case. First, illegal downloading and distribution is difficult to detect and investigate. It can give rise to serious problems for the owners of the rights involved, which may be exacerbated by the cumulative effects of offending by many individuals. Hence, deterrent sentences are generally necessary. Second, the duration of any offending will always be highly relevant. Here it was 4 years. It only came to an end when test purchases were made to gather evidence and a search warrant was executed in January 2021. Third, the profit accruing to the offender as a result of the unlawful activity will always be relevant. Here, the sums involved were significant. Fourth, there are the potential losses to the owners of the rights. Fifth, regard should be had to personal mitigation, which in this case is significant. Sixth, unless the activity is very amateur, minor or short-lived, an immediate custodial sentence is likely to be appropriate unless the mitigation is particularly compelling or there are other exceptional circumstances.

21. Even before the concession made by Mr Douglas-Jones this morning, we had reached the provisional view that the evidence before the Court, read fairly and as a whole, does not support the submission that the school would close unless the custodial sentence is suspended. The material provided to the Court did not address the fundamental issue as

to whether the serious nature of the appellant's offending over such a long period, and his apparent lack of any insight about it, makes him unsuitable to lead a school, irrespective of whether the prison sentence is suspended. Accordingly, the judge was entirely correct to be sceptical about attaching any weight to the submission about the effect of the appellant receiving an immediate custodial sentence on the school's future, as opposed to the effect of the appellant's offending and conviction on his future at the school.

22. We conclude that the judge had full regard to the appellant's personal mitigation and all the factors weighing in favour of a suspended sentence order, persuasively put this morning by Mr Douglas-Jones, as they also were before the Crown Court. We cannot fault the balance that the judge struck. He was entitled to conclude that this offending was so serious that overriding weight should be given to the imposition of immediate custody in order to achieve appropriate punishment. His judgment was neither wrong in principle nor unreasonable. Accordingly, the sentence was not manifestly excessive and the appeal must be dismissed. However, we would like to repeat our gratitude to Mr Douglas-Jones for the helpful way in which he presented his submissions on behalf of the appellant this morning.