

IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2022] EWCA Crim 1868



No. 202201719 A4

Royal Courts of Justice

Friday, 16 September 2022

Before:

LORD JUSTICE SINGH
MR JUSTICE FRASER
MR JUSTICE HENSHAW

REX
V
LEE ALEXANDER

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MS G TURUDUJA-AUSTIN appeared on behalf of the Appellant.

THE CROWN did not appear and were not represented.

J U D G M E N T

MR JUSTICE FRASER:

- 1 This is an appeal against sentence, following the grant of permission by the single Judge. The appellant has been represented before us by Miss Turuduja-Austin, to whom we are grateful for her helpful and succinct submissions. She also appeared for the appellant at the proceedings below.
- 2 On 6 May 2022 the appellant was sentenced in the Crown Court at Oxford by the Honorary Recorder of Oxford, His Honour Judge Pringle QC, on one count of fraud, contrary to section 1 of the Fraud Act 2006, to which the appellant had pleaded guilty on 5 April 2022, so approximately one month earlier. There was a basis of plea, to which we will come in due course.
- 3 The second count on the indictment, namely one of blackmail, was not proceeded with by the prosecution. On the single count to which the appellant had pleaded guilty the judge sentenced him to a period of imprisonment of two years and nine months. The judge also imposed a restraining order upon him, not to contact either the victim of the fraud or his cousin, who had also received messages from him during the course of the offending.
- 4 The facts of the offending are as follows. The victim of the fraud was a young woman of 18 years old at the time, called Emily. In February 2020 she received a communication from someone who was calling themselves Joe Avery. The appellant had created a number of fake accounts on the social media applications Snapchat and Instagram. He knew the victim because they had both attended the same school, but he had never spoken to her. Joe Avery was one of the false profiles that he had created. The appellant and Emily communicated over the following days via social media, and a few days later he asked her if she was interested in modelling, and he sent her a link to something called Vision Models New. This account was designed to look like Vision Models, which is a genuine modelling agency based in London, but it had no connection with the genuine modelling agency and was a wholly false link.
- 5 Emily added this link to her Snapchat account, and the appellant, by now posing as the agency, asked her to send a photograph of her face and another of her in a bikini. Given that she was interested in a modelling career and also believing that she was dealing with a genuine agency, she sent those pictures of herself. In fact, she was sending them to the appellant, although she did not know this. Having received these pictures, the appellant, again pretending to be acting for Vision Models New, told her she was indeed suitable to model lingerie. The following day the agency asked her to send a photograph of her in her underwear, which she did. The Snapchat account for Vision Models New then asked her for a topless photograph. She became suspicious of this and messaged Joe Avery on Instagram to check the *bona fides* of the agency, and asked him if it was "Legit". He was the person who had sent her the link in the first place and it was understandable that she would ask him about this. He reassured her that it was a genuine request from a genuine agency, and so she sent Vision Models New a topless picture. She had by this stage sent what she believed to be the agency a number of photographs of herself, including those of her in a bikini, in underwear and now a photograph of herself topless.
- 6 She then received a message via Snapchat from another profile called Molly Proctor 567. This, again, was the appellant using another false profile, with the difference being that this time he was pretending to be a female photographer employed by the modelling agency. This message asked Emily to send further topless photographs of herself to that account, which she did.

- 7 At the beginning of March the agency contacted her again. This time she enquired when she would receive payment for the photographs she had sent already. A negotiation followed about how much she would be paid and a number of photographs, additional to those she had already sent she would have to submit. The agency told her she had to provide a photograph of herself fully naked in order to receive payment, and she agreed to do this. The agency agreed to pay her £90 on the proviso that this time the photographs would include her face. Previous photographs had not. She sent the fully naked photographs which included her face, as requested, and also provided her bank details, but she did not receive any payment.
- 8 What then occurred was as follows. The appellant contacted Emily, not disclosing that he was the person behind this behaviour in obtaining the photographs, and said that he had hacked into the computer system of the agency and obtained her photographs as a result of that exercise. He said he had both topless and nude photographs of her and would both post them online and distribute them around the town where she lived for everyone to see unless she sent more nude photographs to him, and he said she should also be prepared to do "what I tell you". There were some explicit sexual references in some of these messages. Luckily, rather than give in to these threats as some victims of such threatening behaviour sometimes do, she wisely contacted the police, and the appellant was arrested and the officer seized two mobile telephones.
- 9 In interview, the appellant fully denied being involved in this behaviour and claimed to police merely that he had received a topless photograph of her from an online friend who he called Harry Corbin. He also claimed that Joe Avery, which was the name of the original fake profile, was another online friend who lived in Manchester. A few weeks later, at the end of March 2020, the victim's cousin received the following message from the Joe Avery Instagram account:
- "Your sister was a joke, getting people arrested for something they didn't do. My mate messaged her saying, 'I'll help you out with something', then got him arrested for making bullshit up. Ha ha ha... Did you know about it? ...airing me now. Calm I'll just block you then I don't chat to Lee anymore but it's a joke. He's got a girlfriend and Emily accusing him of blackmailing her, what a joke."
- 10 The same day another friend of the victim received a message from Joe Avery warning him to be careful around her because she had "people arrested for no reason".
- 11 The appellant was then interviewed for a second time by police. He provided a prepared statement in which he stood by the claims made in his initial interview, and then answered "no comment" to all questions. It was necessary, therefore, for the investigation to interrogate his electronic devices, and this was done and a detailed forensic investigation followed. The two mobile telephones taken from his address were analysed. The results clearly demonstrated that the two phones used in the behaviour we have recounted were the two phones seized from the appellant, and also that the Instagram and Snapchat of Joe Avery, Molly Proctor 567 and Vision Models New had all accessed the internet via an IP registered to the appellant's home address. This led to the appellant eventually accepting responsibility for what he had done and pleading guilty some time later. He entered a basis of plea which accepted the count of fraud on a full facts basis and also stated that that plea, "included the facts of the blackmail". This means that he accepted sending the messages demanding other nude photographs from the victim and threatening to distribute the ones that he had fraudulently obtained.

- 12 The court had before it for sentencing both a Pre-sentence Report and a psychiatric report. The Pre-sentence Report noted that the offences were sexually motivated and that "The Digital Media Investigator Report suggests the index offence was not an isolated incident."
- 13 In paragraphs 115 and 116 it is stated that:
- "Mr Alexander creates numerous real and fake personas online via Snapchat and Instagram and uses them to coerce, harm and blackmail females into sending him naked and sexual images of themselves. He pretends to be females and males and adopts images and accounts from other Snapchat and Instagram users and pretends to be these persons. He has pretended to be a fashion modelling agency as well as a photographer working for these companies, all with the intention of obtaining naked images of females."
- 14 The Psychiatric Report found that he suffered from social phobia and potentially also atypical autism, also known as Autistic Spectrum Disorder. This was mild. He was 22 and had no previous convictions.
- 15 The parties were agreed that culpability was high. Given the sophistication, amount of planning, the continuation of the deception, and indeed, the initial explanation given to the police in two interviews, such a conclusion is, in our judgment, inescapable.
- 16 In his sentencing remarks the judge said he had taken account of the guidelines for fraud but he could not factor in any monetary factor. He did, however, have regard to the high impact the offending had on the victim and the serious detrimental effect on the victim in terms of harm. It was agreed that the appropriate discount for the guilty plea was 10 per cent. The sentencing judge took a figure of three years and applied the 10 per cent discount to arrive at the sentence of two years and nine months' imprisonment.
- 17 The grounds of appeal, which have been very well put before us today, are that this should have been a Category 5 harm case and that the guidelines for a Category 5A offence should have been used. There are three grounds, which are as follows:
- (1) The judge took too high a starting point.
 - (2) He failed to take account of relevant mitigating factors, including the mental health difficulties the appellant has.
 - (3) The overall sentence is manifestly excessive.
- 18 We deal first with the guidelines. When dealing with harm, there are five categories, all identified or specified by money value of the fraud in question. However, the guidelines expressly state that harm is initially assessed by the actual, intended or risk loss. There is then a second aspect to this exercise which is to consider harm B, namely victim impact. This permits movement upwards within the category or, indeed, within the next category above. Here, this is an unusual fraud offence because there is no express financial impact. The victim here was not someone who suffered a financial loss, and what in fact she provided cannot be equated to any money value. The impact on her was something far greater, and in a sense, something that money cannot buy or put right, namely the supply to another of intimate photographs, including fully naked photographs that she would not have sent to this person at all, absent of the fraud. It was a fraud by representation, with those fraudulent representations being repeated numerous times and in more than one guise

as a course of conduct. The victim did not suffer financial harm *per se*, but she suffered great harm.

19 The fact that there is no financial impact does not mean that one automatically starts the categorisation exercise in Category 5 based on value or perceived value of loss or gain, and then go on to consider whether or not to move up a category at stage B of the harm analysis. Because of the high impact, it was common ground that this could be categorised as a Category 4 case which has a starting point of 18 months and with the top of that range being three years. We have carefully considered the correct approach. We consider the harm suffered here can equate the offence to one falling into Category 3 or Category 4. Using table 1, which we consider to be the most suitable table, that would give under Category 3 a starting point of 3 years with a range of 18 months to 4 years, and as we have observed, the top of Category 4 is a 3-year figure.

20 We have also considered the authority of *R v Falder* [2018] EWCA Crim 2514 and is a judgment of this court presided over by Holroyde LJ, now Vice President of the Court of Appeal Criminal Division. That is a very different case and considers a large range of far more serious offences, but within those committed by the defendant in that case are similar frauds. We quote from paragraph 14:

“The applicant targeted victims whom he knew to be both young and vulnerable – for example, by picking out girls who posted on a website devoted to those suffering from anorexia. He began by offering his chosen victim money in exchange for naked photographs of herself. In order to make the offer more acceptable he used a variety of deceptions. He posed, for example, as a female artist who had suffered from depression who found therapy making life sketches from photographs. Once his selected victim had been induced to provide initial images, the applicant asked for more. He continued to offer (but never actually to make) payment.”

21 Mr Turuduja-Austin has drawn our attention to the distinguishing features of that case compared to this one, namely that the offences took place over a longer period, there were far more victims and that the defendant (appellant in this case) is ten years younger. She does, however, very sensibly accept that there are similarities and the offences in that case that were charged as section 1 fraud offences attracted sentences after plea of three years' imprisonment. In the instant case before us there are significant aggravating factors. The deception went on for a period of time, included threats and intimidation, and as put in the basis of plea, that accepted the facts of the blackmail but also involved lying to the police during two separate interviews.

22 The appellant is young and does have some limited personal mitigation, but in our judgment, these would, putting it at its best for the appellant, balance out or reduce the aggravating factors. It must also be remembered that guidelines are exactly that, guidelines, and are not rigid tramlines into which sentencing for an offence must be forced. They are to guide the sentencing judge, who is expected realistically to take account all the relevant factors of any particular offence. No set of guidelines can accurately predict all aspects of any specific offence that may be committed, and they do not provide rigid boxes into which all offences must be forced regardless of their facts. The test for this court is whether the sentence passed is manifestly excessive or wrong in principle.

23 In our judgment, neither of these is demonstrated in the appellant's favour. The judge arrived at a sentence within the range that was properly open to him on the unusual facts

of this offence.

24 It is not manifestly excessive, and therefore, we dismiss the appeal.

CERTIFICATE

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