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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



Neutral Citation Number:  
[2024] EWCA Crim 845

CASE NO: 2024 01007/2024 01279 A2

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 13 June 2024

Before:

LORD JUSTICE STUART-SMITH

MR JUSTICE HILLIARD

HIS HONOUR JUDGE CONRAD KC

REX

v

TAOFEEQ BALOGUN  
OLUWADAMILOLA BOLAJI

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MR H HUGES appeared on behalf of the Appellant BALOGUN  
MR A RIMMER appeared on behalf of the Appellant BOLAJI

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**J U D G M E N T**



MR JUSTICE HILLIARD:

1. On 23 January 2024, in the Crown Court at Portsmouth, the appellant Taofeeq Balogun (then aged 30) and the applicant Oluwadamilola Bolaji (then aged 32) pleaded guilty on re-arraignment to conspiracy to defraud. The pleas were entered after the jury had been put in charge.
2. On 8 March 2024, Mr Balogun was sentenced to 3 years' imprisonment. Mr Bolaji was sentenced to 6-years-and-3-months' imprisonment.
3. A co-accused, Taiwo Augusto, pleaded guilty on re-arraignment to conspiracy to defraud and was sentenced to 8 months' imprisonment, with a consecutive sentence of 13 months' imprisonment on a separate indictment for possession of articles for use in fraud, resulting in a total sentence of 21 months' imprisonment.
4. Carriba Johnson pleaded guilty on re-arraignment to conspiracy to defraud and was sentenced to a 24-month community order, with a rehabilitation activity requirement of 35 days.
5. Mr Balogun now appeals against sentence by leave of the single judge. Mr Bolaji renews his application for leave to appeal against sentence and for a representation order after refusal by the Single Judge.
6. The case involved the fraudulent acquisition of mobile telephones and other electrical goods from mobile telephone providers throughout England. They were stolen through the fraudulent use of false identification documents. The offences caused the mobile telephone providers large amounts of financial loss over a significant period of time, but also caused profound concern and worry to the legitimate customers whose identification was used.
7. The fraudster would acquire a genuine customer's details and telephone number and use this information to gain a telephone handset upgrade, open a new account or acquire items such as iPhone watches, iPads and the like. This type of fraud was often discovered by the customer when they received a new bill, got a call from a debt collector, or their telephone was switched off because the bill had not been paid, or because a new telephone had been

provided to the fraudster. There were 176 genuine customers affected across this conspiracy. For example, Jamie Ford from Portsmouth reported fraudulent activity that was committed on his account on 14 February 2020. His telephone suddenly stopped working as the network was lost. He contacted EE and they undertook an investigation and discovered that his account had been used to acquire three high-end handsets and an iWatch. These items had been procured at stores in the Hampshire area. In order to obtain such an upgrade the fraudster would have had to enter an EE store and produce some form of identification in the name of Mr Ford and would have to know the telephone number linked to his account. EE store upgrades at that time required a one-time PIN (or an “OTP” number) to be sent to customers’ telephone numbers to confirm their identity to the representative in store. A new SIM was provided with the fraudulently acquired telephone upgrade. A SIM card was used in mobile telephones linked to the defendants. The new SIM was placed into a mobile telephone handset. This was not the handset that was provided during the purchase in Mr Ford's name. The initial fraudulent upgrade was followed by two further fraudulent transactions and the OTP process was used on each occasion. The fraudster then used the SIM provided with the initial fraud to produce additional OTP codes which were sent to the fraudster in control of the handset, Mr Bolaji, who was seen on CCTV. EE discovered that the fraudulent use of Mr Ford's account, involving loss of a Samsung Note Plus 10, an iWatch, a Samsung Fold handset and an iPhone 11 Pro Max, caused losses of £3,746.

8. The investigation continued and it was discovered that a large number of other SIMs were being utilised through the handset. Other acts of fraud had also been committed against customers of EE linked to this handset. One such telephone number led to Mr Bolaji. The number was investigated and discovered to be linked to a pre-paid account in the false name of “Eddie Williams”. The telephone number had been used in six other mobile handsets which had all received a large number of OTP requests. It was discovered that a series of frauds was being perpetrated using at least nine handsets. Those nine different handsets

were linked to the defendants and culminated in significant financial loss to the mobile providers EE, O2 and Vodafone. The overall fraud for those nine IMEI numbers amounted to £429,304. There were roughly 600 fraudulent transactions across the nine IMEI numbers, involving 176 customers and 257 different SIM cards. Vodafone determined that a large number of their company's customer details had been subject to fraud in order to acquire handsets and other technology of significant value.

9. Mr Bolaji was caught on CCTV entering the shop to acquire the telephone in Mr Ford's name. Augusto's telephone travelled with Mr Bolaji that day. Mr Bolaji's home address in Tooley Street, London, was searched. Seized from the property were a huge number of SIM cards and new SIM card packs, mobile telephone handsets, banking information, a Monzo banking card, passports (including two female Nigerian passports with the same picture of Ms Johnson), a card embossing machine used to emboss driving licences, cash of around £42,000 and a huge array of driving licences in various names. Two photographs of Mr Balogun were found in false passports. Financial enquiries were undertaken into Mr Bolaji, and casino gambling accounts were discovered. A Maserati was seized from outside the address. Mr Bolaji was arrested and made no comment in interview.
10. Mr Balogun was arrested on 22 October 2020 and a search was executed at the address he shared with his partner. An array of identification material linked to the frauds was discovered. A number of SIM cards were found, including an O2 SIM with an IMEI number ending 5511 obtained from Carphone Warehouse in March 2020 using the name Hayley Lenton and another, ending 5332, which was obtained via an online order on 4 October using the name Paula Beveridge. Also discovered were driving licences in the names of Rachel Parsons and Jim Foley containing the correct details but photographs of someone else. Frauds were committed against Mr Foley on 12 October 2020, when a Samsung Galaxy worth £1,491 was obtained. Barclays Bank account statements were recovered in the name of Anthony Gosling whose details had been used to commit an online fraud worth £906 for the acquisition of an iPad. Mr Gosling later confirmed that the name

and address on the statements were correct but that he did not have an account with Barclays. Barclays statements were seized in another three names which had again been linked to frauds committed against O2 and Vodafone. An HSBC statement discovered in the name of Nicholas Short related to frauds in that name, and a utility bill in the name of Alan Kant related to a fraud on 20 October for a Samsung Galaxy, again worth £1,491. There was also a Nigerian passport in the name of James Davis which contained an image of Augusto; there were sixteen SIMs found, of which fourteen were obtained in England and two in Scotland, which had all been placed into the handset attributed to Mr Balogun. Some of those fraudulently acquired SIMs were also placed into Mr Bolaji's handset. Mr Balogun also made no comment when interviewed.

11. Victim impact statements were obtained from a large number of the individual victims. They spoke of distress, stress, inconvenience and in some cases of the effect on their credit ratings.
12. In his basis of plea Mr Bolaji accepted being directly responsible for fraud to the value of £145,000. Mr Balogun's basis of plea said that he was directly responsible for obtaining property to a value of £25,000; he was paid a small amount of money for assisting after a request to do so had been made to him. He said he was told what to do and followed instructions. He accepted the people he was helping would come to his flat and that there were materials at the flat relating to them.
13. Mr Bolaji had previous convictions in 2010 and 2015 for fraud by false representation. He had been made the subject of community orders. Mr Balogun had some previous convictions although none for dishonesty. He did, however, have a caution in 2015 for fraud by false representation. He had been given a suspended sentence in 2016 for driving whilst disqualified. He subsequently breached that order and received a short sentence of imprisonment.
14. Mr Bolaji's pre-sentence report said that he presented as remorseful. He had had a significant gambling addiction and this fraud had represented a quick and easy way for him

to obtain money. He had a 10-year-old son. Custody was shared with his ex-partner.

15. In a pre-sentence report for Mr Balogun it was said that he denied involvement in any of the offending. The writer said that if the court wished to consider an alternative to custody there could be a community order. Mr Balogun had a young child who was autistic, non-verbal and suffered with epilepsy.
16. When he passed sentence in Mr Bolaji's case, the judge said that his culpability fell into category A of the applicable sentencing guideline. That was because this was sophisticated offending, there was a large number of victims, the fraud took place over a sustained period of time, and he had a leading role in organising group activity. Initial harm fell into category 2 because he admitted causing direct loss of £145,000, but the judge noted that he was involved with a conspiracy where the overall loss was nearer to £500,000. On the guideline the starting point would be 5 years' imprisonment. However, the judge said that there was clear evidence of a high level of victim impact such that the case should be put into a higher category, as the guideline specifically provides for. A category 1A offence has a starting point of 7 years' imprisonment, and a range of 5 to 8 years' imprisonment. The judge referred to Mr Bolaji's previous convictions. He said that after a trial a sentence of 7 years' imprisonment would have been appropriate. With 10 per cent credit for the guilty plea, the result was a sentence of 6-years-and-3-months' imprisonment.
17. In Mr Balogun's case, the judge acknowledged the difficulties of his son, for whom Mr Balogun was co-parent. He said that Mr Balogun was an organiser in the middle rank. He said that culpability was high because this was planned and sophisticated offending over months. Harm fell into category 3. A category A3 offence has a starting point of 3 years' imprisonment. The judge said that the sentence after a trial would have been one of 3-and-a-half years' imprisonment. With credit for the guilty plea, this was reduced to 3 years' imprisonment.
18. It is argued on Mr Bolaji's behalf by Mr Rimmer that the judge took too high a starting point given that Mr Bolaji was only responsible for loss of £145,000. It is said that the judge did

not give sufficient credit for the remorse he had expressed and the result was a sentence which was manifestly excessive. We are grateful to Mr Rimmer for his assistance.

19. In Mr Balogun's case it is argued by Mr Hughes, to whom we are also grateful, that the sentence was too long and should have been suspended. Mr Balogun had performed a secondary role at the direction of others and with limited awareness of the fraud. It is accepted that he was involved for some months and that his culpability was medium category B. Mr Hughes says that his involvement extended to actions on maybe ten occasions over a year or so. He says there was an absence of relevant previous convictions; his denial to the author of the pre-sentence report was made in panic at not being able to care for his son; he was remorseful; he had obtained employment in the meantime; and we have seen a letter from his wife which indicates that she was struggling to cope with their child on her own.
20. So far as Mr Bolaji is concerned, we think it is clear that he was at least one of the leading lights in the conspiracy and that his culpability was properly described as high. Although his direct responsibility for the loss was put at £145,000, his involvement was such that he cannot escape all responsibility for the remainder of the loss. This, and the additional harm caused to many victims by both his particular actions and by the overall conspiracy, amply justified the judge in moving the case to a higher category in accordance with the guideline. His previous convictions were an aggravating factor and his mitigation was very limited in scope. In our judgment, the judge's approach is not susceptible to legitimate criticism and nor is the final sentence. There are no arguable grounds of appeal and his renewed applications must be refused.
21. In Mr Balogun's case we accept that his culpability is best described as medium category B. Although the fraud itself was extensive and sophisticated, his personal culpability has to be assessed in line with his accepted basis of plea. As to harm, his direct contribution to harm fell into category 3, which has an indicative amount of £50,000. Category 3B has a starting point of 18 months' imprisonment. Some increase overall is required to reflect the



appellant's involvement in a conspiracy which caused loss beyond his own individual actions and also to reflect the harm caused to individuals which went beyond purely financial loss. The quantity of incriminating items at his address indicates that he was a trusted conspirator who must have had an awareness of the scale of the fraud beyond his own participation and from his own involvement he must have been aware that this fraud was continuing for a considerable period of time.

22. The category 3B range extends up to 3 years' imprisonment. In our judgment, the factors we have identified lead to the conclusion that Mr Balogun could have expected a sentence in the order of 30 months' imprisonment after a trial before mitigating factors are considered. There was significant mitigation to be found in his family situation. The appellant played a large part in his son's care; he had, as we have said, obtained employment whilst awaiting trial; and there was the absence of relevant convictions. We attach particular weight to his family circumstances. All this would have led to a sentence after a trial in the order of 21 months' imprisonment. With credit for plea, the result is a sentence of 18 months' imprisonment.
23. The final question is whether that sentence has to be served immediately or whether it can be suspended. We have given careful consideration to all the factors in the Imposition Guideline and to the overall discretion in the matter.
24. The appellant has a caution for fraud by false representation and further offending of this kind would present a risk to the public. There are, however, prospects for rehabilitation, and that is so notwithstanding the denial of responsibility to the probation officer even after the late plea of guilty. There was the breach of the suspended sentence on his record. The real mitigation, as we have said, lay in his family circumstances and in the impact of immediate custody upon his son. We have taken account of all these matters. Having done so, we are nonetheless satisfied that only immediate custody was appropriate for this offending. The appellant was involved for a year or so in a conspiracy involving other conspirators which he must have known went far beyond his own particular actions. That follows from the

items found at his address. The conspiracy itself represented sophisticated dishonesty which led to significant harm. The sentence of 18 months' imprisonment includes a substantial reduction on account of the family circumstances. We have considered them again when considering whether the sentence could be suspended, but for the reasons we have given we have concluded that it cannot. Accordingly, in his case we quash the sentence of 3 years' imprisonment and substitute a sentence of 18 months' imprisonment. To that extent this appeal is allowed.

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