**[2013 (2) CILR 72]**
**R. v. WEBSTER**

GRAND COURT, CRIMINAL DIVISION (Quin, J.): May 16th, 2013

*Criminal Law—misconduct in public office—sentence—custodial sentence normally justified for unauthorized search of confidential police database—system compromised and public confidence reduced—aggravated by offender obtaining profit from disclosure or causing detriment to individual whose privacy breached—mitigation if naïve misuse of system without criminal intent or financial advantage, merely to provide addresses for friends, previous good character, early admission to police and guilty plea, sole carer and provider for two small children—suspended sentence then justified*

The defendant was charged with two counts of misconduct in a public office contrary to the common law.

The defendant was the civilian receptionist at George Town Police Station and, although she was not a member of the police force, it was accepted that she held a public office. The first count charged her with making unauthorized searches of the confidential police database and soliciting information from the confidential immigration database to ascertain whether a named person was the subject of a criminal investigation, and would be barred from entering the Islands.

The second count charged her with making an unauthorized search of the confidential police database to obtain the private telephone number of a named person and providing that number to a third party.

The defendant pleaded guilty to both counts. She offered the mitigation that, in both cases, she was trying to help a friend. In the first case, her friend lived abroad and was attempting to find out whether a stop notice (barring him from re-entering the country) was in force in respect of him. His inquiries from the Immigration Department had been inconclusive and the defendant agreed to help him; she made several fruitless searches of the police database and then herself contacted officers in the Immigration Department to ask if they could provide her with the information. None was forthcoming and the defendant was therefore unable to provide any to her friend. Her explanation to the police was that she had not known that her actions were unauthorized and she had merely been innocently trying to help her friend.

In the second case, the defendant received an inquiry about a friend's private telephone number from a mutual friend who lived abroad. She called the friend to tell her that someone was inquiring about her but was

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unable to make contact as the friend was away on vacation. She therefore obtained the number from the police confidential database (although it was in fact available from the public telephone directory) and supplied it to the friend abroad without the knowledge or permission of the subscriber. She explained that she merely believed that she was facilitating contact between two friends.

The Crown emphasized that the defendant knew that information in the official databases was confidential and that, under her terms of service, she was forbidden to make unauthorized searches and disclose information obtained. In relation to the first count, no information was in fact disclosed. It pointed out as aggravating features that (a) the defendant was acting in the course of her duties as an employee of the RCIPS; (b) she was trying to obtain confidential information and was therefore guilty of invading the privacy of third parties; (c) the security of the police database and the information it contained were put at risk; and (d) the harm that could result from any breach of the confidentiality of the police database was potentially very grave.

**Held,** passing a sentence of 9 months' imprisonment suspended for 12 months:

(1) The unauthorized disclosure of information from confidential records kept for public purposes was always a serious offence and normally required an immediate custodial sentence. Someone who was a police officer, or worked for the police, held a position of trust and a breach of that position damaged the confidence of the public in the way the records were kept and maintained. A sentence for misuse of public office in this way would be aggravated if the offender made a profit from the disclosure of confidential information, or the disclosure had a detrimental impact on any individual (paras. 33–36).

(2) The defendant's offences here, however, were at the lower end of the scale of seriousness. She had no criminal intent; she did not act for financial reward; her acts were incredibly naïve—she was simply thinking of doing favours for her friends without thinking of the legal implications of her actions; no third party had suffered detriment from her actions; she was of good character, had made an early admission to the police of her offences and pleaded guilty; and she had two young children for whom she was the sole carer and provider. The social inquiry report on her commented on her contrition and drew attention to the possible implications of a custodial sentence for her children (paras. 39–41).

(3) She would therefore be sentenced to 9 months' imprisonment on each count, to run concurrently, suspended for 12 months (paras. 40–41).

**Cases cited:**

(1) *Att.-Gen.'s Ref. (No. 2 of 1993)*, [1993] 5 NIJB 71, followed.
(2) *Att.-Gen.'s Ref. (Nos. 1 & 2 of 1996)*, [1996] N.I. 456, followed.



(3) *Att.-Gen.'s Ref. (No. 140 of 2004)*, [2004] EWCA Crim 3525, *dicta* of Judge, L.J. applied.
(4) *Att.-Gen.'s Ref. (No. 1 of 2007)*, [2007] 2 Cr. App. R. (S.) 86; [2007] EWCA Crim 760, considered.
(5) *R.* v. *Griffiths*, [2009] NICC 23, considered.
(6) *R.* v. *Kassim*, [2006] 1 Cr. App. R. (S.) 4; [2005] EWCA Crim 1020, considered.
(7) *R.* v. *Keyte*, [1998] 2 Cr. App. R. (S.) 165, considered.
(8) *R.* v. *Nazir*, [2003] 2 Cr. App. R. (S.) 114; [2003] EWCA Crim 901, considered.
(9) *R.* v. *O'Leary*, [2007] 2 Cr. App. R. (S.) 51; [2007] EWCA Crim 186, referred to.

*Ms. L. Manson*, *Crown Counsel*, for the Crown;
*B. Tonner* for the defendant.

1 **QUIN, J.:** The defendant has pleaded guilty to two counts of misconduct in a public office contrary to common law.

2 On the first count, the particulars of the offence are that the defendant, between April 19th, 2011 and August 11th, 2011, within the Cayman Islands, being a public officer, did wilfully misconduct herself in abuse of the public trust, by making extensive searches of the confidential police database and soliciting information from the immigration database, otherwise than in accordance with her authorized duties, in order to ascertain whether X was the subject of a criminal investigation.

3 The particulars of the second count are that the defendant, on or before August 16th, 2011, within the Cayman Islands, being a public officer, did misconduct herself in abuse of the public trust by using the confidential police database, otherwise than in accordance with her authorized duties, to obtain the personal telephone number of Y and passing that number on to a third party.

**Summary of facts**

4 The court has been provided with an agreed summary of facts. The defendant had been employed by the Royal Cayman Islands Police Service ("RCIPS") in various roles since 1998. In 2011, she was a communications officer at the front desk of the George Town Police Station. She was not a police officer. However, it is common ground that she was in public office.

5 In her capacity as the receptionist at the police station, the defendant's duties, amongst others, included taking calls from the public, dealing with walk-in matters, inputting data into the police database, creating crime reports and liaising with fellow RCIPS employees. Her duties brought her into contact with a great deal of police information data including



personal contact details of victims and witnesses and details of investigations, including those being investigated and details of people's criminal records. The defendant was given access to this type of

information in order to fulfil her official duties. This information is confidential and she was not permitted to give any confidential information out to anyone unauthorized to receive it.

6 She should have been aware of the requirement not to disseminate unauthorized information because it was stated in her job description. In addition, she would have been aware of this requirement from the regular Crime Desk general meetings. Also, cl. 5 of the RCIPS Code of Conduct would have been known to her and this states: "All members of the Service shall maintain strict confidentiality. No one shall improperly disclose either information or documents to those unauthorised to receive them."

7 Both offences took place in August 2011.

***Count 1***

8 X was a friend of the defendant who was living overseas. In August 2011, he contacted the defendant and asked her to find out whether a stop notice was in place in relation to him.

9 When a stop notice is placed against a person in the immigration database, it states that he or she should be stopped from either entering or exiting the Cayman Islands. These notices sometimes contain instructions that the person in question is to be arrested.

10 The court notes that the investigations into this matter had revealed that, prior to contacting the defendant, X had made contact with other people, largely in the Immigration Department, in attempts to find out whether the stop notice existed and what it was for. These attempts had either been unsuccessful or X needed further confirmation of what had been told.

11 From a review of the BBM messages on the defendant's Blackberry, it is clear that she agreed to try and find out this information for him. It was also clear from a review of the police database that the defendant had made several checks in attempts to find out whether the stop notice existed and, if so, what it was for.

12 Her attempts to find out the information failed. Consequently, she then sent an email to Immigration Officer A, and copied the email to a Senior Immigration Officer, asking Immigration Officer A for the information. It is clear that this information was never provided to the defendant and therefore she never provided the information to X.



13 The defendant was subsequently interviewed by the police on September 21st, 2011. She accepted that she performed these checks for X, but, in summary, said she did not know she was doing anything wrong and she was simply trying to help out a friend. She told the police that X had told her that he had already been told that a stop notice was in force. He was concerned that his ex-wife was making false allegations about him and therefore he wanted know whether it was safe to return to the Cayman Islands.

***Count 2***

14 In August 2011, the defendant was contacted by Y who asked her to get the telephone number of a third party for him. Y was a former employee of the RCIPS and had worked at the George Town Crime Desk with the defendant, but had since moved overseas. He was visiting Cayman in August 2011 for a vacation and wanted to get in contact with the third party.

15 On August 16th, 2011, the defendant searched the police database and found the telephone number of the third party. She passed on this telephone number to Y. She was interviewed about this offence on September 1st and 21st, 2011. The defendant explained that she intended to contact the third party to notify the third party of Y's request. However, due to pressure at work at the time, she did not manage to make the call.

16 The defendant accepted that she had given Y the third party's telephone number without the third party's permission. She said she did this because she believed that Y and the third party were good friends. (The third party's statement confirmed that Y and the third party were, in fact, friends.)

17 The defendant said that she had attempted to call the third party, but the third party was on vacation. Investigations supported this—that is, that the third party was in fact on vacation. This led to the defendant's entering the RCIPS database.

18 Ironically, the telephone number and home address of the third party are listed in the yellow pages, and are therefore freely available to the public.

**Submissions from the Crown**

19 Crown Counsel, Ms. Manson, on behalf of the Director of Public Prosecutions, pointed out that the defendant knew that this information was confidential and not to be disclosed without official authorization.

20 In relation to Count 1, it is accepted that the defendant made no attempt to delete the records of the BBM messages which recorded her request to obtain the information. In addition, despite the defendant's



efforts, no information was revealed to her, and therefore information was not disclosed by her.

21 The Crown accepts that Count 2 is moderately less serious than Count 1. However, the Crown points out the following as aggravating features in relation to both counts: (a) the defendant was acting in the course of her duties as an employee of the RCIPS; (b) the defendant was trying to obtain confidential information and therefore is guilty of invading the privacy of third parties; (c) the security of the police database and the information it contains were put at risk; and (d) the potential harm that could result from the breach of the security of the RCIPS database is very serious.

**The law**

22 As far as both counsel are aware, and as far as this court is aware, there are no previous cases in the Cayman Islands which give guidance as to the appropriate sentence for misconduct in public office. This court therefore looks at the case law for similar offences in the United Kingdom.

23 In *R.* v. *Keyte* (7), the applicant was a serving police officer who was convicted of misconduct in public office. Over a period of 12 months he obtained information on 192 occasions from the police national computer and supplied it to private investigators. In most cases the information related to the identities of the registered keepers of motor vehicles. The High Court had sentenced the police officer to two years' imprisonment.

24 The Court of Appeal upheld the sentence of imprisonment of two years and said that as he was a serving police officer he was in a position of trust. He had abused his position for profit and, accordingly, the sentence was not found to be manifestly excessive. Swinton Thomas, L.J., in the English Court of Appeal, stated ([1998] 2 Cr. App. R. (S.) at 166):

"Police officers are given considerable powers and privileges which are necessary for the proper performance of their duties. If they dishonestly abuse their position and do so for profit, then not only must a prison sentence follow, but it must of necessity in our view be a severe one."

25 In *R.* v. *Nazir* (8), a police officer pleaded guilty to misconduct in a public office. The officer was intending to destroy a fixed penalty ticket issued to a friend. The Court of Appeal reduced the original 3 months' imprisonment for misconduct in a public office to one month.

26 In *R.* v. *Kassim* (6), the defendant was a police officer who had pleaded guilty to three counts of misconduct in public office. He had made the acquaintance of a diplomat and used his status as a police officer to make enquiries into private individuals on behalf of the diplomat and was



paid for doing so. The defendant gained access to data stored on police computers in order to obtain information about persons who were of interest to the diplomat. Over the period in question, the defendant received an estimated payment of £14,000.

27 The Court of Appeal held that the 2½ years' imprisonment for the misconduct in public office was not manifestly excessive and therefore upheld the sentence. The Court of Appeal judgment was delivered by Bodey, J., who stated ([2006] 1 Cr. App. R. (S.) 4, at para. 19):

"It seems to us that, especially nowadays, the preservation of the integrity of information regarding members of the public held on databases, like those maintained by the police, is of fundamental importance to the well-being of society. Any abuse of that integrity by officials including the police is a gross breach of trust, which unless the wrongdoing is really minimal . . . will necessarily be met by a severe punishment even in the face of substantial personal mitigation."

28 In *Att.-Gen.'s Ref. (No. 1 of 2007)* (4), the Attorney-General asked the Court of Appeal to review the sentence on the ground that it was unduly lenient. The offender, a serving police officer, pleaded guilty to misfeasance in public office. The Attorney-General submitted that the offence involved a gross breach of trust, in that confidential information was passed by the police officer to a known criminal who had recent convictions for offences of violence and harassment. The officer was sentenced to 28 weeks' imprisonment, suspended for 2 years. The Court of Appeal held that was unduly lenient and substituted a sentence of 9 months of immediate imprisonment.

29 Lord Phillips, the then Lord Chief Justice, stated ([2007] 2 Cr. App. R. (S.) 86, at para. 24) in relation to the aggravating features:

"Most significant of these is that the offender gave information to a known criminal whose record included offences of violence in order to enable him to take the law into his own hands by dealing with no less than three men who had, so he believed, committed offences against himself or a close friend. It must have been obvious to the offender that there was a serious risk that [the defendant's co-defendant] would subject these men to physical violence."

Clearly an immediate prison sentence was the appropriate sentence in that case.

30 These cases were all reviewed in the Northern Ireland Crown Court by McCloskey, J. in *R.* v. *Griffiths* (5). The defendant had initially been charged with 56 counts. He pleaded guilty to the first count which was aiding, abetting, counselling or procuring misconduct in public office contrary to common law. The mechanism of the single count was also



employed by the English Court of Appeal in *R.* v. *O'Leary* (9), so that the defendant would be sentenced for the totality of his offending during the period under consideration, and his plea of guilty to the first count covered all the offences.

31 The Northern Ireland Crown Court relied on the judgment of Judge, L.J. (as he then was) in *Att.-Gen.'s Ref. (No. 140 of 2004)* (3) and in particular the following *dicta* from that judgment ([2004] EWCA Crim 3525, at para. 9):

"The offender was in a position of trust. His activity has damaged confidence in the way in which DVLA records are kept and maintained. The information at the DVLA is confidential. The unauthorised disclosure of information held in any records kept and maintained only for public purposes should also always be regarded as a serious offence. The amount of private information about each and every single citizen in this country, available to public servants, has increased and with modern technology

continuing increase is virtually inevitable. Citizens are entitled to assume that the information so kept will only be made available to those who are entitled to see it, and only for the express purpose permitted by law. Wrongful disclosure sometimes works to the benefit of someone who is not entitled to the advantage so provided. Sometimes wrongful disclosure causes damage. Even if an offender has not fully anticipated the consequences of disclosure, it will be very unusual for him to be entirely ignorant of the possible consequences, and, even if those consequences are unforeseen, the impact of disclosure on any individual whose privacy has been betrayed is a critical ingredient of the sentencing decision. It seems to us these are essential principles which should be noted by any judge facing a sentencing decision in this class of case."

McCloskey, J. in *Griffiths* went to add ([2009] NICC 23, at para. 12):

"... [W]here there is evidence of detrimental impact on some individual or individuals, this will undoubtedly be a material factor and is likely to rank as an aggravating feature in a great majority of cases."

32 This court respectfully adopts Judge, L.J.'s clear statement of the principles to be applied in cases of misconduct in public office.

**Analysis and conclusion**

33 In relation to Count 1, the defendant made no secret of her attempt to obtain this information. Not only did she forward her request for the information to an immigration officer, but she copied it to the Senior Immigration Officer. This constituted extreme naïveté on the part of the



defendant, but goes towards illustrating that she had a lack of criminal intent. It was a very stupid act on the defendant's part, as it compromised the integrity of the data system and it resulted in these charges being brought against her.

34 The Crown accepts that the second count is even less serious than the first count. The defendant clearly thought she was carrying out a simple act of trying to assist a former co-worker—whom she had no reason to distrust—with a telephone number. The defendant knew that her former co-worker was trying to find the telephone number of someone who was a good friend of his. Moreover, the information sought by the defendant from the database is information which could have been obtained from a telephone book.

35 The defendant, because she thought of this as a simple and very normal request, clearly forgot that supplying information from the database must be authorized, and that she had strict duties of confidentiality in relation to the database. Again, this was a very naïve and foolish offence. However, I accept that, as in the first count, the defendant did not seek to obtain any benefit, financial or otherwise.

36 The defendant should have clearly understood the seriousness of accessing the RCIPS confidential database without formal or official authorization. Where someone abuses his or her position of trust, the court must of necessity consider an immediate prison sentence. Whilst not, in any way, minimizing the seriousness of these two offences, I find that they are at the very lower end of the scale. The sole motive for both offences was to help a friend and not to help herself. The defendant has been extremely foolish and obviously did not consider or anticipate the serious consequences of her actions.

37 I fully accept that the defendant's commission of these offences did not involve the conferral of any pecuniary benefit to her. When I review the relevant UK case law for offences of misconduct in public office, I find that in light of the facts of this case, the sentence can be placed at the lower end of the scale.

38 The defendant admitted her involvement when confronted by the police. The probation officer, Trisha Smith, has stated that after the Level of Service/Case Management Inventory Risk Assessment,

the defendant scored "very low" as a repeat offender. I quote from the social inquiry report prepared by Probation Officer Trisha Smith, dated May 3rd, 2013. Ms. Smith states:

"The court now also has to consider that Ms. Webster is a first-time offender and is truly contrite about what she did. Whilst this will not remit her from facing the consequences of her actions, the court



could take into consideration that a custodial sentence might have implications for her fairly young children."

39 In my view, because of the seriousness of the offences, they warrant a prison sentence of 9 months on each count, to run concurrently. However, I am going to adopt the approach taken by Hutton, L.C.J. in *Att. Gen.'s Ref. (No. 2 of 1993)* (1) ([1993] 5 NIJB at 75–76) and reiterated by McDermott, L.J. in *Att. Gen.'s Ref. (Nos. 1 & 2 of 1996)* (2) ([1996] N.I. at 463):

"At this stage, we would venture to repeat the elementary, but sometimes forgotten, proposition that before suspending a sentence a Judge has to apply his mind to two separate questions: (1) Does the offence require a custodial sentence and (2) if it does, do circumstances exist which would justify a suspension of the sentence."

40 In my view, the offences of this nature require a custodial sentence but, in light of the following circumstances, I believe that the sentence of 9 months' imprisonment should be suspended for 12 months:

(i) *No criminal intent*: The defendant did not have any criminal motive for her actions which she knew were in breach of the RCIPS Code of Conduct.

(ii) *No pecuniary reward*: The defendant did not ask for, or receive, any benefit, financial or otherwise, for her actions.

(iii) *The naïveté of the acts*: The defendant was naïve in the extreme in both cases—that is, in her view, aiming simply to assist friends in both cases without considering the strict conditions attached to her access to information in the database. Because the defendant had no criminal or illegal intent in carrying out her actions, she did not stop to think that there could still be consequences for what she was doing. The defendant did not consider these consequences of her actions, and, in this way, her naïveté was extreme.

(iv) *No third party detriment*: Save and except for the obvious compromise to the security of the RCIPS database, there is no evidence of any specific detrimental impact on any individual as a result of the defendant's actions.

(v) *The defendant's good character*: The defendant has no history of wrongdoing or any previous convictions.

(vi) *The defendant's early admission to the police*: The defendant was honest and forthcoming to the authorities and her account of both incidents has been consistent.

(vii) *The defendant's guilty plea*: The defendant admitted her guilt when faced with the fact of her wrongdoing.



(viii) *The sole provider for two young children*: I take into account that the defendant is a young mother of previous good character and that she is the sole provider for her two young children. To send her to an immediate term of imprisonment would have a devastating effect on her two children.

41 Accordingly, for the aforesaid reasons, I suspend the defendant's sentence of imprisonment for 12 months.

42 I make it very clear that this is still a sentence of imprisonment of 9 months. It will remain on the defendant's record with all the associated adverse consequences. Furthermore, should the defendant commit any further offences within 12 months, she will be liable to immediate imprisonment for the two offences on this indictment.

*Sentence accordingly.*

Attorneys: *Govt. Legal Dept.*: *Samson & McGrath* for the defendant.