

IN THE CROWN COURT IN NORTHERN IRELAND

DOWNPATRICK CROWN COURT
(sitting at Belfast)

THE QUEEN

-v-

JAMES STEWART, KEVIN BRENDAN KELLY
AND WILLIAM JOHN McANALLY

HART J

[1] The defendants are to be sentenced on their pleas of guilty to various offences. Stewart and Kelly have each pleaded guilty to a single count of corruption, contrary to Section 1 of the Prevention of Corruption Act, 1906, and all three defendants have pleaded guilty to offences under either the Data Protection Act 1984 or the Data Protection Act, 1998.

[2] Stewart pleaded guilty on the second day of the trial before he was put in charge of the jury to count 1, corruption between the 12 September 2000 and 15 November 2002. At the same time he pleaded guilty to counts 2 to 22, offences of procuring the disclosure of unlawful data, contrary to Section 5(6) of the Data Protection Act 1984, and offences of the disclosure of personal data or the information contained therein, contrary to Section 55(3) of the Data Protection Act, 1998. The data protection charges covered a period between 10 October 1999 and 22 February 2004.

[3] Kelly also pleaded guilty to count 23, a corruption charge in the same terms as count 1 against Stewart, on the second day of the trial prior to being put in charge of the jury. Counts 24 to 50 are all charges relating to offences contrary to the Data Protection Act 1998 committed between 4 April 2000 and 1 January 2003. He pleaded guilty to these counts upon his arraignment on 9 November 2007.

[4] McAnally is charged only with counts contrary to the Data Protection Act 1998 contained in counts 51 to 70. These offences cover a period between 15 September 2003 and 17 February 2004. He pleaded guilty to these counts on arraignment on 9 November 2007, and has been awaiting sentence pending the outcome of the contested charges relating to his co-defendants since then.

[5] Stewart is a retired police officer who retired in 1993 on medical grounds. Following his retirement he set up business as a private detective agency under the name of Alpha Investigations. His business included investigations carried out on behalf of insurance brokers, insurance companies, and solicitors acting on behalf of insurance companies. At the time these offences were committed Kelly and McAnally were serving police officers.

[6] A major part of Stewart's investigations involved enquiries into the backgrounds of those involved in motor accident claims, particularly, though by no means exclusively, in relation to accidents involving drivers who benefited from the Motability scheme which was administered by a firm known as RSA Motability, a separate organisation from the Royal Sun Alliance insurance company, although Royal Sun Alliance administered the Motability scheme. As part of his investigation into suspect claims Stewart obtained information from his co-defendants who made use of their ability to access the police ICIS computer system to obtain and pass to him details of the criminal convictions of various individuals, as well as other information of an intelligence nature, such as the backgrounds of individuals, their connections with other individuals, their addresses and suspicions that some may have had terrorist or criminal links. Stewart then supplied this information to his clients in order that they could consider how to approach, and in no doubt many cases to resist, claims which they regarded as suspect or fraudulent. Stewart charged a fee for this information in each case.

[7] Kelly and McAnally were therefore in breach of their trust as police officers in obtaining this information for unauthorised purposes and passing it to Stewart. The corruption charges against Stewart and Kelly relate to a series of six payments which Stewart made to Kelly for the provision of this information totalling £1,000 altogether between 13 September 2000 and 15 November 2002.

[8] The data protection counts against each defendant are specimen counts and represent a lengthy period during which this information was improperly disclosed by Kelly or McAnally to Stewart.

[9] Whilst offences under the Data Protection Acts of 1984 and 1998 are only punishable by way of a fine, corruption under the Prevention of Corruption Act 1906 carries a maximum penalty of 7 years imprisonment. I

have been referred to a number of cases which indicate that the offence of corruption almost invariably involves the imposition of an immediate custodial sentence because, as was stated in R v. Foxley (1995) 16 Cr. App. R (S.) 879 -

“Sentences for public servants taking bribes must contain substantial elements of deterrence and punishment”.

It is self-evident that the same approach must be taken to those who offer or give bribes as to those who accept them.

[10] The sentences imposed for such offences range from short periods up to several years imprisonment as may be seen from the following cases.

R v. McGovern (1980) 2 Cr. App. R. (S.) 389 - 9 months for bribing a police officer with £2000.

R v. Wilson (1982) 4 Cr. App. R. (S.) 337 - a corrupt payment of £2,500 - 18 months imprisonment.

R v. Ozdemir (1985) 7 Cr. App. R. (S.) 382 - offering £50 to a police officer not to report an offence - 3 months imprisonment.

R v. Garner (1988) 10 Cr. App. R. (S.) 445 - conspiracy to corrupt - principal offender sentenced to 18 months imprisonment.

R v. Foxley where the defendant was convicted of receiving payments in excess of £2 million in relation to the placing of government contracts over many years - 4 years imprisonment.

R v. Donald (1997) 2 Cr. App. R. (S.) 272 - the defendant agreed to receive £50,000 (but only received £18,500) for the destruction of evidence in a major trial - 11 years imprisonment.

R v. Threapleton (2001) 2 Cr. App. R. (S.) 42- the defendant received a car worth £5,445 - 12 months imprisonment.

The cases of McGovern, Ozdemir and Donald involved corruption of police officers and therefore attempts to pervert the course of justice, an additional factor of great importance in those cases. As will be apparent from the dates on which those offences were committed, the amounts involved have to be increased, in some instances by substantial percentages, to represent the present day value of money because of inflation. The amount involved is also a significant factor when assessing the appropriate length of sentence.

[11] Mr John McCrudden QC, on behalf of Stewart, recognised that a charge of corruption almost invariably results in a period of imprisonment, but sought to argue that there were a number of mitigating factors in the present case. The first was that the defendant had been asked to provide assistance to RSA Motability by that organisation because it was concerned at the very high level of fraudulent claims that were being brought in relation to their vehicles. Mr Weir QC for the prosecution accepted that there was a very high level of fraudulent claims in relation to Motability vehicles in Northern Ireland, and that a meeting which the defendant attended at Stormont was convened because RSA Motability sought official help in an effort to curb the number of fraudulent claims. However, whether the defendant believed that he was playing a useful part in combating fraudulent claims is immaterial so far as these charges are concerned because he was obviously obtaining the information from his co-defendants by improper means, something which was demonstrated by his making payments to Kelly for this information.

[12] As might be expected from a former police officer Stewart has a clear record, and had a lengthy period of service in the RUC in dangerous times. These matters are to his credit, but personal factors such as these can play little part in sentencing in cases of this nature because those who accept bribes are invariably individuals in positions of responsibility and trust.

[13] Mr McCrudden also points to the fact that Stewart's eldest son, who I shall refer to only as J, was gravely injured as the result of a car accident which took place in July 2007, and I understand that the driver of that vehicle has recently been sentenced to a substantial period of imprisonment. A report dated 6 May 2008 from Dr McCann, a consultant in rehabilitation medicine, shows that J has -

- Significant neurologic impairment and disability.
- Whilst he is able to walk with a stick he needs supervision, his balance remains affected and he walks with an abnormal gait. He can manage to go up stairs with supervision, but can only take one step at a time coming down stairs.
- His speech remains poorly intelligible.
- He continues to have significant cognitive deficits and continues to exhibit problems with initiation and planning.
- He continues to require a high level of care and supervision provided by family.
- He is not capable of living independently. It is probable that, in the longer term, he will not be able to live independently.

Dr McCann concludes -

“In summary therefore [J] continues to exhibit a high level neurologic deficit as a result of his traumatic brain injury. He

is now some 10 months following the road traffic accident in which he sustained his injury. It is unlikely that there will be major improvement in his physical capabilities hereafter. He will therefore always have reduced mobility and will have significantly impaired communication. He is also going to have longer-term cognitive deficits and on the basis of all of these he is not going to be capable of living independently nor do I feel that he will be able to obtain employment or continue with any form of higher level education.”

[14] Sadly therefore this young man has suffered very grave and permanent injuries. Mr McCrudden says that as a result he requires 24 hour supervision and cannot be left alone at any time. Mr Stewart and his wife have two other children aged 15 and 12, and because carers cannot be found in this locality the full time care of their disabled son falls upon the accused and his wife.

[15] It is rare, but not unknown, for the courts to extend a degree of leniency to a defendant who has family members suffering from serious ill health. Thus in R v. Moore and others vol. 2 *Northern Ireland Sentencing Guidelines* at 5.2.8 the ill health of the parents of one of the defendants was taken into account by way of mitigation of sentence. Similarly in R v. Whitehead (1996) 1 Cr. App. R (S.) 111 and R v. Frankyn (1981) 3 Cr. App. R. (S.) 65 the court felt able to suspend sentences of imprisonment because of the demands of children upon the parents concerned.

[16] In Stewart’s case there are therefore the following mitigating factors. (1) His plea of guilty, albeit at a late stage. (2) His previous good character. (3) There was no question of perversion of the course of justice connected with the corruption that took place in each instance. (4) Although there were a large number of data protection offences, the amount involved in the corruption charge is modest. (5) Because of his son’s severe and tragic disabilities which have arisen since these offences were committed, and the demands which those disabilities place upon Stewart and his wife, I propose to extend a degree of mercy to him and suspend what would otherwise be an inevitable custodial sentence. On count 1 I sentence him to 6 months imprisonment suspended for 2 years. On the charges under the Data Protection Act he will be fined £100 in each case making a total of £2,100 and will be allowed the appropriate period of time to pay.

[17] On behalf of Kelly Mr McCrory QC pointed to his pleas of guilty to the data protection charges upon arraignment in November 2007. He said that his client regarded the payments he received as payment for surveillance he carried out on behalf of Stewart rather than for the provision of the data protection information. Like Stewart, Kelly has a long and worthy career in the police, and before that he served in the RAF. He has a clear record. His wife suffers from fibromyalgia. He is a full time carer for her and receives a weekly

carer's allowance as a result. Documentary evidence placed before the court confirmed that and that his wife receives Disability Living Allowance. I do not consider that there is any material difference between the culpability of Kelly and Stewart. Stewart could not have obtained this information were his co-defendants not willing to impart it to him in breach of their duty, and in Kelly's case he received payment which he must have known was of a suspect nature, even if he was in part motivated by a desire to assist a former colleague. However, he is now 62, and his wife suffers from poor health. As there is no material difference between Stewart and himself I consider it would be unjust if he received an immediate custodial sentence when Stewart is to receive a suspended sentence. In those circumstances I propose to suspend his sentence also. I therefore sentence him to 6 months imprisonment suspended for 2 years on count 23. He pleaded guilty to the data protection charges upon arraignment and I consider that the fine in his case should reflect this. He will be fined £80 on each of the 27 data protection counts making a total of £2,160. He also will be given the appropriate period of time to pay.

[18] As already stated McAnally pleaded guilty to the 19 counts against him when he was arraigned. He is distantly related to Stewart. When arrested he was about to retire from the police and because of these charges his retirement was postponed for some time, and he was unable to avail of the so-called "Patten" package. He has a clear record and had an exemplary police career. He has had to await the outcome of the case against his co-defendants before he could be sentenced. As a result it is clear from a report dated 14 November 2007 from Dr Loughrey, a consultant psychiatrist, that McAnally has been under considerable strain as a result of this investigation which commenced in 2004. Inevitably because of the volume of material to be examined and the complexity of the investigation it took a considerable period of time. The passage of time however has placed a considerable burden upon him, and in view of this, and in view of his plea of guilty at the first opportunity I propose to impose a fine, which is the only penalty open to the court in relation to the data protection charges, of a lower level than I have imposed in the case of his co-defendants. He will be fined £50 on each of the 20 counts, a total of £1000. He also will be given the appropriate period of time to pay.