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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO: 202400454 A2

NCN: [2024] EWCA Crim 818



Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 5 June 2024

Before:

LORD JUSTICE FRASER

MRS JUSTICE MAY

MR JUSTICE BRIGHT

REX

v

CHARLOTTE BYRON

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MR M WATSON appeared on behalf of the Appellant

JUDGMENT

MR JUSTICE MAY:

1. On 20 November 2023, in the Crown Court at Woolwich, the appellant (then aged 36) pleaded guilty on re-arraignment to one offence of conspiracy to commit fraud by false representation. On 27 January 2024, at the same court, the appellant was sentenced to a term of 27 months' imprisonment. She appeals that sentence with partial leave of the single judge.

Facts of the offending

2. The case involved the advertising and sale of puppies to members of the public falsely representing them to have been home bred, socialised and healthy. The prosecution found evidence of over 363 enquiries from prospective purchasers on the telephones that were seized. Of the 77 known purchases, 25 of those had puppies who were sick, some of which died.
3. In 2019 calls were received by the RSPCA from members of the public relating to puppies purchased from 2 Beechwood Gardens, Meopham, which were becoming sick shortly after purchase. The seller was believed to be a man by the name of Wally Beany. Six statements were obtained and warrants were due to be executed in April 2020 but had to be cancelled due to Covid lockdown restrictions. The investigation recommenced following lockdown. It was apparent that there had been further calls from members of the public reporting similar issues. A warrant was executed at 2 Beechwood Gardens in March 2021. There was one puppy, with an advert live at the time, and a number of adult dogs at the location. There were concerns in relation to environment and lack of care of the dogs. Warning notices relating to animal welfare were issued and the local authority gave advice about selling puppies without a licence. In July 2021, three calls were received by the RSPCA relating to sales of puppies from an address at 14 Longfield Road, Meopham, where the appellant lived. These calls were from purchasers who had responded to adverts placed in the names of Stephen Collins and Joseph Payne, neither of whom were selling puppies and neither of whom were resident at that address.

4. On 22nd September 2021 warrants for premises at 1 and 2 Beechwood Gardens and 14 Longfield Road were executed. At 1 Beechwood Gardens, Louise Smith was present and her mobile telephone was seized. Also found at the property were a cocker spaniel with a litter of puppies, a golden retriever with a litter of puppies, and Petlog paperwork. The dogs were all taken into possession as they were not being kept in good enough conditions and three of the puppies were suffering, needing urgent vet attention. A mobile telephone was found at the side of the road outside the address, apparently discarded. Data on it related to sales of puppies in late 2020 and early 2021 which could be linked to 1 Beechwood Gardens and Louise Smith. A further mobile telephone contained a number of puppy sales under the username of Christopher Jacobs. Purchasers making enquiries were directed to view or buy puppies at 1 and 2 Beechwood Gardens, 14 Longfield Road, or a further address of 123 High View. This last address was that of Debbie Lampard, the appellant's mother. There were over 30 different prospective purchasers or enquiries and sales messages on this telephone.
5. The address at 2 Beechwood Gardens contained two residences. The front bungalow was the residence of Walter Beany senior and the rear chalet was the residence of Maria Smith, her children and Wally Beany. There were twelve dogs, three cats and seven puppies present, and all, except for a French bulldog, were kept in sheds and kennels in the outside space of the address. Five of the dogs had various diseases and were said by the vet to be suffering. Other adult dogs at the property, including pregnant dogs, had matted fur, coats that were stained with urine and faeces. One dog tested positive for Giardia -- a parasite that can cause diarrhoea. These dogs were all being kept in appalling conditions with very poor care which did not remotely reflect the expectations of the buyers who saw the adverts placed for them. One of the pens contained seven cross-breed puppies from different litters but which had been advertised as one litter from a Cavalier King Charles spaniel said to be a family pet. The puppies all tested positive for Campylobacter, a zoonotic disease causing diarrhoea which showed that they had been kept in unsanitary conditions. That advert was live on the day that the warrant was executed. When interviewed, Maria Smith claimed to

own the puppies but not their mother. Wally Beany attempted to leave the premises during the execution of the warrant and was noted to be concealing items under his clothes. When searched, he had £10,000 in cash and seven vaccination cards relating to the puppies in the name of Maria Smith, with five of the microchips being registered to Beany. Also found at the property were multiple boxes of microchips, including some used packaging with chip stickers but no chip, SIM card packaging with a telephone number which was on a golden retriever advert that a witness had responded to, and notes making reference to other names and addresses that have been used in relation to puppy sales including the name and address of the appellant.

6. 14 Longfield Road was occupied by the appellant, who was present with her partner. There were no animals relevant to the investigation at the appellant's address. The appellant said that it was her ex-partner Stephen Collins (also known as Stephen Wally) who was the owner and seller of the retriever puppies sold from her house, and that they had been at her house for about a week. She claimed that he sold them from her property as he lived on a traveller site and did not want to sell them from there. The appellant's telephone was seized. On this telephone was a conversation thread with Jessica Lydon, a customer whose puppy had died and who had returned to the house as the seller was not responding to calls. In addition there were pictures of puppies from March and April 2021 as well as the ones from July 2021. Also seized from the property were the remnants of microchip packaging and a notepad with some dog-related information. The microchip packaging was linked to Beany at 2 Beechwood Gardens.
7. A number of telephones were seized during the execution of the warrants, eight of which contained data showing enquiries from potential purchasers, some of whom went on to buy puppies. One telephone seized from 2 Beechwood Gardens had on the back "Yorkie 1750" and contained details of over 80 enquiries for puppies as well as reports from people whose puppies were sick. Another telephone from the same address with "Shitzu £1750" on the back had enquiries and purchases from over 90 people throughout 2020 and 2021. A further telephone seized from Beechwood but associated with the appellant contained 96 enquiries

where some people attended 14 Longfield Drive. A number associated with Debbie Lampard showed that buyers were directed to the Longfield Road address from March 2021, after the first warrant had been executed at Beechwood Gardens. A further device seized from Beechwood Gardens with a number used by the name Stephen Collins was found to have enquiries and messages from potential purchasers as well as two of the witnesses whose golden retriever puppies had died. A device seized from the kitchen at 2 Beechwood Gardens and associated with the name Christopher Jacobs contained enquiries and messages from over 30 people who were directed to addresses including 1 and 2 Beechwood Gardens, Longfield Road and 123 High View. Two further devices, one located in a vehicle at 2 Beechwood Gardens and one linked to Louise Smith, between them contained a further 50-plus enquiries with the numbers linked to Robert Taylor and "Jack" respectively. Beany's telephone was found to contain large quantities of data relating to arranging breeding of dogs and purchasing of large quantities of puppies of varying breeds from a variety of different sources, including from Wales. It was seen from the telephone messages that Beany travelled to Wales to collect puppies and made arrangements for adverts and sales. His communications with Maria Smith gave a flavour of the way in which the trade worked, communicating what to say, what name to use, and providing pictures of the supposed parent dogs. There were numerous messages between the appellant and Beany's telephone arranging sales and providing information to give to buyers. One such message from the appellant to Beany on 22nd July 2021 read: "I've got someone at my door! I'm gonna call you as if you're my boyfriend and we have split up! They said the puppy has died."

8. It was the prosecution case that the appellant and her co-defendants conspired together to acquire and sell puppies through advertising them in such a way as to entice the potential purchaser into coming to see the puppy, where they would inevitably want to purchase it regardless of any "warning bells". This was done by advertising the puppies with different names as a "private" seller, as if they were puppy bred from a family pet because purchasers

would not wish to buy a puppy of unknown or farmed origin. Data requests were made to the advertising sites Pets4Homes and Preloved from which it was established that frequent adverts were placed describing "home-bred puppies". The adverts described puppies as growing up in loving families, well socialised, well bred, healthy and up to date with all treatments and vaccinations. Analysis of bank records for two accounts showed income related to puppy sales in excess of half a million pounds during the indictment period. Additionally, PayPal transactions showed the purchase of 870 microchips during the same period. Many payments for puppies were made in cash and not identified in the bank records. Messages on mobile telephones showed that puppies were purchased from various sources, sometimes in large numbers and in whole litters. They were then advertised as home bred with pictures and documents that did not relate to the puppies.

9. The appellant was responsible for the use of her address to sell puppies through Beany and herself. Analysis of the telephones showed 52 people being sent to her property to view puppies. Her driving licence was provided for identification for the purpose of placing adverts. Her mother was also directed to sell puppies from another address.
10. Four other persons were charged with the appellant on the same indictment.
 - Wally Beaney pleaded guilty to the main conspiracy together with four counts of causing unnecessary suffering to an animal and was sentenced to 4-and-a-half years' imprisonment.
 - Maria Smith pleaded guilty to the conspiracy and was sentenced to 28 months' imprisonment.
 - Louise Smith pleaded guilty to the conspiracy and to one count of causing unnecessary suffering to an animal and was sentenced to 28 months' imprisonment.
 - The appellant's mother, Deborah Lampard, pleaded guilty to a summary offence of selling puppies without the necessary licence and received a conditional discharge.

Mitigation and Sentence

11. The appellant was aged 36 at the time of sentence and of previous good character. She was a single mother of a 14-year-old daughter and had recently become pregnant. As two of the

appellant's grounds advanced and renewed by counsel on her behalf raise issues of bias and unfairness arising from remarks made by the judge during the course of defence counsel's mitigation on behalf of the appellant, a transcript of that mitigation has been obtained. The following passages have been highlighted to us. After Mr Watson had referred to difficulties experienced by the 14-year-old daughter of the appellant, it can be seen that the judge intervenes:

"JUDGE: No, I am just waiting for you to say it. She is expecting.

MR WATSON: She is, your Honour, yes.

JUDGE: She announced her pregnancy of I think 12 weeks on the day that she came to enter her pleas. She talks about the father being her ex-partner which is a slightly worrying thing to discover during the course of the pregnancy but you know, I have to be careful when I say these things but I think you might have an inkling of what I am about to say. She knew, she knew that this matter was not going to go away. She knew that she was facing and she knew that she was going to plead guilty. What does that say about responsibility in a mature woman that she decides, 'I'll tell you what, I'll get pregnant again'?

MR WATSON: Your Honour will see the relationship is an on/off relationship.

JUDGE: Oh. Well, does that make it any better, Mr Watson? I am sorry, I am making you go pink. That is possibly because I am a woman, you are a man, but I am going to say it because it is an important matter because you are going to ask me to think very carefully whether it is appropriate to send a pregnant woman to prison. I know you are going to say that. I would say it if I was you but I am going to say it very clearly. This is a matter which she must have known, as I say, it is not going to go away, somebody is going to sit up here with a wig and a gown on and tell her what is going to happen to her because she was involved in a conspiracy which everybody else has acknowledged. Sorry, I do not mean that pejoratively because I am not sure you have – you know, acknowledged the involvement of their respective clients passes the custody threshold and I think you do too.

MR WATSON: I fully accept that, yes.

JUDGE: So, you know, why – it is a personal choice to get pregnant, a personal choice apparently by somebody who is in an on/off relationship and that is going to be I think, as I say, something which I should take into consideration."

12. The judge also had available a detailed pre-sentence report. The author of that report observed that:

"[The appellant] committed this offence purely for financial gain. She was complicit in allowing the use of her property by Mr Beany to view and sell puppies from dubious sources. She displayed poor consequential thinking and poor problem-solving skills as she did not consider the consequences of her actions and the precarious position, she has placed herself in, where she could lose her liberty."

There was extensive reference also to the appellant's family circumstances, her concerns about her 14-year-old daughter and to her pregnancy. The appellant was assessed by the author of the report as low risk of further offending, and the probation recommendation was for a community order with a rehabilitation activity requirement and curfew.

13. The judge's approach to sentencing all parties to the conspiracy was not entirely straightforward. After a series of remarks about the offending generally, she explained how she arrived at what she termed "starting points" for Wally Beany, Louise Smith, Maria Smith and the appellant individually. She then went back to each defendant, adjusting the previously ascribed "starting point" by reference to personal mitigation and reduction for plea before finally arriving at a sentence for each. When dealing with the appellant the judge described her as "enthusiastically" participating in the conspiracy from March 2021 "more than adept ... at convincing people that you were selling a dog that had indeed been brought up in your own home and socialised, loved, etc". The judge then referred to the appellant's family circumstances in these terms:

"... those who choose to enter into criminal activities with a risk of imprisonment must think very carefully about what effect that will have on their responsibilities, vis-à-vis their children or their family, matters of that sort, and must be assumed to have had an understanding of the risk that they ran and the willingness to do so."

The judge set a "starting point" for the appellant of 3 years compared to one of 6 ½ years for Beany as organiser and 3 ½ years for each of Maria and Louise Beany. In the case of the appellant the judge dealt with mitigation extremely briefly, deducting 6 months "for your good character" before applying a discount of 10 per cent for the guilty plea entered on the day of trial to arrive at the final sentence of 27 months.

Grounds of Appeal

14. Mr Watson, who appears for the appellant on this appeal as he did at sentence, advances four grounds of appeal as follows.
- (1) The sentence was wrong in principle;
 - (2) The "starting point" was too high;
 - (3) The behaviour of the judge precluded the appellant from having a fair sentencing hearing, and, linked to this;
 - (4) A fair-minded and informed observer would conclude that there was a real possibility that the judge was biased.
15. The Single Judge gave leave in respect of 1 and 2 but refused leave in respect of 3 and 4. In a skeleton argument served last week Mr Watson notified the court of his intention to renew an application for leave in respect of his third and fourth grounds alleging bias and absence of a fair hearing. However in his succinct and helpful oral submissions this morning, he sensibly focussed on the grounds for which he has leave.
16. Mr Watson drew attention to the judge's remarks which we have set out above. He relied also on a document entitled '*Safeguarding Children when Sentencing Parents*' and a series of authorities addressing the sentencing of pregnant women. He referred us to Sentencing Council guidance issued with effect from 1 April 2024 specifying pregnancy and childbirth as a separate mitigating factor. Yesterday we received an expert midwifery report dealing with the increased risks of pregnancy and birth in custody in general and for this appellant in particular.

Discussion and Conclusions

17. As we have already observed, the judge's sentencing process was not easy to follow. As this court has observed before, the use of "starting point" to refer to anything save the technical starting point given for each category in the relevant table of the applicable sentencing guideline is to be deprecated as it is apt to confuse. Use of terms such as "the notional

sentence after trial” or “the appropriate sentence before mitigation and discount for plea” will convey the same meaning.

18. We can deal shortly with renewed grounds 3 and 4. The judge's remarks which we have set out above should not have been made. It is inappropriate to pass comment on how or why a female defendant has become pregnant. As it happens, the appellant's medical notes refer to her pregnancy as not having been planned, contrary to what the judge appears to have assumed. In any event, whether a pregnancy is planned or not can be of no concern to a sentencing judge whose focus must be on the risks to mother and baby of pregnancy and birth in custody, to which we revert further below. Having said this, although the judge's remarks about the appellant's pregnancy were regrettable, in our view they do not arguably indicate bias or unfairness affecting the entire sentencing hearing. As is clear from the transcript, Mr Watson was able to meet and deal with the judge's comments and he did so robustly. There is a significant distinction between a judge making a few unwise remarks during the course of a long hearing and conducting the whole hearing unfairly or in a biased manner. The judge's comments made here were confined to a few lines in a transcript running to many pages and were very far from indicating unfairness or bias in her approach to the entire sentencing hearing.
19. Moving to the grounds for which leave was given, we take the view that the judge's remarks to counsel during his mitigation, taken together with the absence of any reference to the appellant's dependant teenage daughter or her pregnancy when applying a reduction for mitigation indicate that she fell into error in giving no or no adequate consideration to the welfare of the 14-year-old daughter or the unborn baby when arriving at a sentence in the appellant's case. The judge also failed to distinguish sufficiently between the nature of the appellant's involvement in the conspiracy, which was from March to September 2021 only, with no breeding dogs kept on her premises and no offence of animal cruelty alleged against her, and that of her co-defendants whose involvement was for far longer, dating from at least 2019 and in the case of two of them included additional offences of animal cruelty. The judge was clearly right to place the offending comprised in the conspiracy as a whole

within harm category 2 and to categorise the involvement of those other than Wally Beany at culpability B. Category 2B of the relevant Sentencing Council guideline has a starting point of 3 years with a range of 18 months to 4 years. However, so far as this appellant was concerned, her involvement at a lesser level (no breeding dogs were kept at her address and no puppies raised there) and for a far shorter time than the others, together with her previous good character and family circumstances, in our view called for a much more significant reduction from the starting point in the guideline than the judge allowed. For these reasons we conclude that the sentence of 27 months which the judge passed in the case of this appellant was manifestly excessive. In our view the appropriate notional sentence after trial was one of 24 months, to which a 10 per cent reduction for plea must be applied, resulting in a sentence of 21 months when rounded down.

20. The level of sentence which the judge passed was too high to permit of suspension. As we have reduced the sentence to a level which engages that possibility, we have considered it afresh.
21. The appellant has been at HMP Bronzefield since sentence was passed in January. She has been assessed as suitable for open conditions, her prison report (which we have seen) being very favourable, but she cannot be transferred on account of her pregnancy which is now very advanced. To date she has served the equivalent of an 8-month sentence. Her 14-year-old daughter has had some issues in the past and is residing with her maternal aunt whilst her mother is in custody. We have seen reference to the problems she is now experiencing at school with her mother away.
22. As to the pregnancy, the medical notes record that the appellant has a condition which renders her pregnancy a higher risk one before the additional risks associated with pregnancy and birth in custody. The expert midwifery report refers to scientific literature showing that "it is seven times more likely for a pregnant woman in prison to suffer a stillbirth than if she were not incarcerated" and gives further statistics demonstrating other kinds of increased risk to mother and baby where the mother is in custody. Recent guidance provided by the Sentencing Council identifies pregnancy and childbirth as a specific

separate mitigating factor. This guidance, effective from 1 April 2024, was not in force at the time of the appellant's sentence, but the considerations arising from her pregnancy were nevertheless highly material. The risks to this appellant and her baby are further increased by a recent diagnosis of gestational diabetes, which is less easy to manage in prison. The appellant is now aged 36 and had a miscarriage two years before this pregnancy. Her medical notes from the prison record her anxiety at giving birth whilst in custody, moreover there can be no guarantee that the baby will be able to stay with its mother in prison once it is born. The baby is due in July -- just over one month from now. The welfare of the appellant's unborn baby is a highly relevant consideration.

23. The Sentencing Council guideline which applies to the offence of fraud and conspiracy to defraud deals with considerations relevant to the imposition of immediate/suspended sentences in a drop down box. The factors in favour of suspension are given as:

- Realistic prospect of rehabilitation;
- Strong personal mitigation; and
- Immediate custody will result in significant harmful impact upon others.

The factors telling against suspension are:

- Offender presents a risk/danger to the public;
- Appropriate punishment can only be achieved by immediate custody; and
- History of poor compliance with court orders.

All three of the factors in favour of suspension apply to the appellant, quite apart from the very weighty matter of her pregnancy. As to the factors against, the first and third are plainly inapplicable. We have carefully considered the matter of appropriate punishment, bearing in mind the size and value of the conspiracy and the pernicious impact upon the dogs and their actual or putative owners. We bear in mind that the appellant has now served the equivalent of an 8-month sentence. She is assessed as low risk of any further offending; she was previously of good character and there is strong personal mitigation by reason of her being the sole parent of one child with some health concerns, and with another child imminent. We have concluded that the risk to mother and baby calls overwhelmingly for

a merciful approach. Accordingly, we propose to suspend the sentence of 21 months for a period of 24 months.

24. We therefore refuse the renewed application for leave on the third and fourth grounds but allow the appeal on the first and second grounds for which leave was given. We quash the sentence of 27 months' immediate custody and replace it with a sentence of 21 months suspended for 24 months.

I need to explain what that means. Ms Byron, can you hear me?

THE APPELLANT: Yes.

MRS JUSTICE MAY: Yes. I am sure your counsel will also explain it to you, but a suspended sentence works like this. The sentence of 21 months will not take effect unless, within the period of 24 months (the period of suspension), you commit any further offences. If you do commit a further offence during that period of 24 months, the court will be obliged to activate the sentence of 21 months; do you understand?

THE APPELLANT: (Nodded assent.)

MRS JUSTICE MAY: And if you commit any further offence, that period can be *added* to any sentence for any further offence; is that clear?

THE APPELLANT: (Nodded assent.)

MRS JUSTICE MAY: All right.

LORD JUSTICE FRASER: Ms Byron, the other effect of what has happened today with your appeal being allowed is that you have become entitled to immediate release. I think you have Ms Sadler sitting next to you. Is that right, Ms Sadler? Ms Sadler will obviously be involved in the arrangements at your end. Mr Watson will, I am sure, carefully explain to you, even though my Lady has already explained it, the effect of what a suspended sentence is: that your appeal is allowed and you should be released under your suspended sentence later today.

THE CLERK OF THE COURT: Ms Bryon, the hearing is concluded. I am sure you have been able to follow. Your appeal against sentence has been allowed. Your sentence of 27 months' imprisonment has been quashed and substituted therefor a suspended sentence order comprising 21 months' imprisonment suspended for 24 months, with no requirements. The victim surcharge amount is now £187. You will have the opportunity to speak to your counsel in a post-court conference now. I will terminate this link, thank you

LORD JUSTICE FRASER: Thank you very much, Mr Watson.

MR WATSON: I am very grateful.

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