



Summary of Judgment

Secretary for Justice (“SJ”) v Yiu Ka Yu (姚家瑜) (“Defendant”)

HCMP 1068/2020; [2020] HKCFI 3148

Decision : Defendant liable for civil contempt and sentenced to 21 days’ imprisonment, suspended for 12 months, and liable to contribute to SJ’s costs

Date of Hearing : 29 December 2020

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Background

1. On 25 October 2019, the Court of First Instance (“CFI”) granted an injunction order (“**Doxxing Injunction**”)¹ to SJ as the guardian of public interest and to the Commissioner of Police on behalf of the police officers, restraining anyone from:-
 - (a) using, publishing, communicating or disclosing the personal data of and concerning any Police Officer(s) and/or their family members, intended or likely to intimidate, molest, harass, threaten or pester them without consent;
 - (b) intimidating, molesting, harassing, threatening or pestering any Police Officer(s) and/or their family members; and
 - (c) assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorizing others to commit or participate in any of the aforesaid acts.
2. On 11 November 2019, a police officer (“**the subject officer**”) used his firearm during a public order event in Sai Wan Ho. Since then, the subject officer and his family have been subjected to widespread doxing on social media platforms.
3. Upon Police investigation, the Defendant was found to have made a post on a Telegram chat group named “SUCK 公海” on 11 November 2019 (“**Post**”) containing the personal data of the subject officer and his family member, namely the subject officer’s residential address and his wife’s mobile phone number. The Post also included a purported “warning” to readers not to repost the personal data mentioned in the Post, and a

¹ The order was amended on 28 October 2019, re-amended on 31 October 2019, continued and varied on 8 November 2019.

reported “request” to readers not to forward it to third parties. At the same time, the Post highlighted the subject officer’s residential address as being “important”. It is clear, and the Defendant accepts, that the purported warning and request were the very opposite of what was intended.

4. Immediately after the Defendant made the Post, many other users copied or forwarded the same in the same Telegram chat group. As a result of extensive doxxing activities, the subject officer and his family have been subjected to abuse including having received harassing calls. The subject officer was also subject to fraudulent loan applications.
5. In light of the breach of the Doxxing Injunction, SJ commenced the present civil contempt proceedings against the Defendant. The Defendant having admitted liability for civil contempt in late August 2020, the CFI dealt with mitigation and sentencing on 29 December 2020.

Issues in dispute

6. The two questions for determination are :-
 - (a) the appropriate sentence; and
 - (b) costs.

Department of Justice’s Summary of the Court’s rulings

(full text of the CFI judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=132642&QS=%2B&TP=JU&currpage=T)

7. In so far as anyone might think that stating matters in the opposite way would shield them from legal responsibility for their wrongful acts, that is fundamentally misconceived. (§4)
8. The general principles on sentencing in cases of civil contempt include:
 - (a) Court orders are to be obeyed. Contempt of civil court orders is a serious matter.
 - (b) Subject to mitigating factors, the starting and primary penalty for contempt of court in breaching injunction orders is imprisonment, normally measured in months.
 - (c) Imprisonment for a wilful failure to observe a court order can often be appropriate, but imprisonment should be regarded as a sanction of last resort in civil contempt. Where the contempt was not deliberate

or not contumelious, it would be only in very rare circumstances that a sentence of imprisonment would be appropriate. (§38)

9. The aggravating features of this case include:
 - (a) An objective reading of the Post shows that its maker was intent on instigating others to disseminate widely the subject officer's personal data, despite the purported warnings not to re-post that data. The Court should correct any misguided belief that any contemnor can hide behind ironic language as to their motives when committing unlawful acts such as doxxing.
 - (b) Though the Defendant claims that she shared the Post when blinded by hatred, and when she "forgot" about the Doxxing Injunction at that moment, as the Court has previously recognised in Chan Oi Yau Riyo [2020] HKCFI 1194 at §75, that is precisely part of the problem: it is easy to post something on social media or the internet with just a few clicks or keystrokes, but the effects can be far wider and last for far longer.
 - (c) The fact that, in this internet-age, information can be disseminated very quickly and widely online makes the Defendant's breach worse rather than less serious. On the facts of this case, immediately after the Defendant made the Post, many other users or forwarded the same in the same Telegram chat group. The "ripple effect" of one single post cannot be ignored.
 - (d) The impact of doxxing on victims is severe and long-lasting. The sentence imposed should have a deterrent effect on would-be defendants or contemnors. (§§44 & 45)
10. The CFI also took into account the following mitigating factors, including that the Defendant came from a broken family and is of young age, the Defendant's genuine remorse and good character, her early admission of liability and cooperation with the Police, that the incident was one-off, that she has already suffered serious consequences for her behaviour and herself been subject to doxxing after the incident, and that she is taking action to turn a new page in her life. (§§46, 48 & 49)
11. In the circumstances, the appropriate starting point for sentencing is one of a custodial sentence. In light of the Defendant's prior clear record and other strong mitigating factors, the contempt would properly be reflected in a custodial sentence of 21 days suspended for 12 months. (§§53 - 56)
12. On the basis of costs, the CFI accepted that the usual order in a successful

committal procedure is for costs to follow the event and so to be payable by the person found guilty of contempt on an indemnity basis. The Defendant was granted legal aid since 5 October 2020. The practical effect of section 16C(1)(b)(ii) of the Legal Aid Ordinance (Cap 91) is that for the period after the grant of Legal Aid in this case, neither the Director of Legal Aid nor the Defendant would be liable for the costs. The CFI noted that a costs order relating to the period after the grant of Legal Aid would, if enforceable, simply be moving public funds from one public body to another. Taking into account all the circumstances, the CFI ordered the Defendant to contribute a sum of HK\$1,000 to SJ's costs for the period up to 4 October 2020. (§§57 - 61)

Civil Division
Department of Justice
29 December 2020