



Summary of Judgment

Secretary for Justice (“SJ”) v Chan Kin Chung (陳健聰) (“Defendant”)
HCMP 744/2020; [2020] HKCFI 3147

Decision : Defendant liable for civil contempt and sentenced to 21 days’ imprisonment, and liable to contribute to SJ’s costs
Date of Hearing : 28 December 2020
Date of Judgment/Decision : 28 December 2020

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. In the morning on 11 November 2019, a Police Officer (“**the subject officer**”) used his firearm during a public order event in Sai Wan Ho.
3. Upon Police investigation, the Defendant was found to have made 4 posts on his Facebook page on the same day (“**Posts**”). The Posts contained the personal data of the subject officer and his family members (namely, his wife and two young children). The Posts also contained the following:-
 - (a) a description of the subject officer as “cockroach”;
 - (b) a caption that “善惡到頭終有報” (“good and evil will have their just rewards”);

¹ The order was amended on 28 October 2019, re-amended on 31 October 2019, continued and varied on 8 November 2019, and further amended on 11 December 2019.

- (c) A handwritten description of PW1 as “西灣河殺人犯” (“Sai Wan Ho killer”); and
- (d) A caption made by the Defendant that he will “有排同你玩香港警察” (“take time playing with you, Hong Kong Police”).

The status of the Posts was “Public”.

- 4. Subsequently, the Defendant was arrested. Under caution, he stated that he copied the personal data of the subject officer and his family members somewhere from the internet and posted the same on his Facebook page. The Defendant removed the Posts a few days after he posted them.
- 5. As a result of the Posts, the subject officer, his wife and their young two children have been subjected to abuse including having received harassing calls, having been distanced and bullied at school and having been victim(s) of fraudulent loan applications.
- 6. 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 on 25 September 2020, the CFI dealt with sentencing on 28 December 2020.

Issues in dispute

- 7. 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=132632&QS=%2B&TP=JU)

- 8. In determining the appropriate sentence for civil contempt, the general principles include:
 - (a) Court orders are to be obeyed. Contempt of civil court orders is a serious matter.
 - (b) The normal penalty for breaches of injunction orders is imprisonment 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 contemptuous, it would be rare that a sentence of imprisonment would be appropriate. (§40)

9. The aggravating features of this case include:-
- (a) Though the Defendant claims that he shared the Posts without a second thought, the Court has previously recognised in Chan Oi Yau Riyo [2020] HKCFI 1194 at §75 that 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. (§§46, 47)
 - (b) The impact of doxxing on victims is severe and long-lasting. Once personal data has been publicly revealed on social media or the internet, even if the original point of revelation is subsequently removed, that personal data will almost certainly forever remain publicly available. Given the “ripple effect” of doxxing activities by wider and wider dissemination of the offending materials, the kind of prejudice caused to the victims are unable to be remedied. (§§51, 52)
 - (c) Acting without any thought as to the obvious and logical consequences of that act, even if not consciously intended, is likely to be an aggravating feature. In any event, the caption added by the Defendant that he will “take time playing with you, Hong Kong Police” suggests that he was consciously intent on causing at least nuisance to PW1. (§§53, 56)
 - (d) The Defendant divulged extensive personal data of four victims – not only relating to the subject officer, but also to his wife and two young children, which is despicable and wholly unforgivable (§55)
 - (e) The Defendant posted a series of offending posts and added his own comments. This seems to be a more serious breach than a ‘one-off’ post. (§§46, 57)
10. The CFI also took into account the following mitigating factors including, the Defendant’s genuine remorse, that he on his own initiative removed the posts before the arrest, that he did not create the original posts, and that he has cooperated fully and admitted liability at an early stage. However, the CFI took the view that in this case, the mitigating factors are more properly reflected in the reduction of the custodial sentence to a relatively short period rather than a suspended custodial sentence. (§§49, 57 & 58)

11. As regards costs, the CFI accepted that the usual order in a successful contempt proceeding is for costs to follow the event and to be payable by the person found guilty of contempt on indemnity basis. Nevertheless, approaching costs by requiring payment of a contribution only, may also reflect the appropriate degree of proportionality when the penalty and costs can be regarded as composite elements of the proceedings' impact on a defendant. The Defendant is thus ordered to contribute a sum of HK\$20,000 to SJ's costs in these proceedings. (§§60, 62 & 64)

Civil Division
Department of Justice
28 December 2020