EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CASE NO. ANUHCR2023/0026

BETWEEN:

THE KING

-and-

TREMRON WHYTE

Appearances:

Mr. Cedric Dyer for the Crown
Defendant in Person

2024: May 7th

Sentencing Judgment

[1] **BAKRE, J.:** By Indictment filed on 4th August 2023 the Defendant Tremron Whyte was charged with **OBTAINING, contrary to section 15(1) b of the Electronics Transfer of Funds Crime Act 2007** of the Laws of Antigua and Barbuda.

[2] The particulars of offence reads as follows: "**TREMRON WHYTE** between March 2nd 2021 and March 5th 2021, in the State of Antigua and Barbuda, obtained credit in the sum of EC $1,079.88, by using credit card 4960-3721-1432-0792, which is the property of **RAISA CHARLES**, without her consent."

[3] The Defendant was arraigned on April 22nd 2024, and pleaded guilty to the count. He is now before the court for sentencing.

[4] The court has had the benefit of the prosecution's sentencing brief.

Facts

[5] The Complainant in this matter is Ms. Raisa Charles.

[6] The Defendant and the Complainant were friends and had known each other since 2005 when the Complainant was in high school. They dated briefly prior to this incident before the court.

[7] On 4th March 2021, Ms. Charles while checking her ACB Caribbean savings account discovered that EC $1,079.88 was debited from her savings account via a PayPal transaction. Being unfamiliar with the transaction, she checked her own PayPal account to determine what had caused the debit from her savings account but saw no transaction that explained why the funds were debited.

[8] Later that day, Ms. Charles visited ACB Caribbean and spoke with the bank's debit card representative. She informed the representative of the suspicious transaction on her savings account and a Dispute Form was completed and sent to the bank's card processors. This action commenced an investigation within the bank to determine the origin of the suspicious transaction.

[9] On the 11th day of June 2021, Ms. Charles had a conversation with the bank's representative with respect to the suspicious transaction on her savings account, and it was revealed that the Defendant, caused the funds to be debited from her account using a PayPal account. This PayPal account was registered in the name of "Shawn Tonge" of Seaview Farm with the email shawn.tonge@yahoo.com.

[10] With Ms. Charles banking card information entered into the Shawn Tonge PayPal account the Defendant transferred EC $1,079.88 to Mrs. Amara Bacchus' PayPal Account. Mrs. Bacchus resides in the UK.

[11] Prior to sending the funds to Mrs. Bacchus, the Defendant told her that he needed the money to have an MRI done but was unable to gain access to his savings account in Antigua and Barbuda, as his dog had eaten his bank card. Having no other way to gain access to his money, he proposed that he would use the PayPal platform to send the equivalent of US $400.00 to Ms. Bacchus' Pay Pal account, and once she received the money, Mrs. Bacchus would forward the funds back to him in Antigua via Western Union, so that he could have the physical cash in hand.

[12] Mrs. Bacchus knew the Defendant previously as they were in a relationship between 2009 and 2010, and not knowing the origin of the money the Defendant was sending to her, and trusting the Defendant, she agreed to his request and sent the money to him via Western Union.

[13] Mrs. Bacchus later became aware that the PayPal transaction was not authorised by the owner of the bank account where the funds originated when a PayPal representative contacted her and enquired of the movement of the funds through her PayPal account.

[14] Following her conversation with the PayPal representative, Mrs. Bacchus confronted the Defendant, and he denied knowing anything about the transaction being unauthorized.

[15] Mrs. Bacchus was initially out of pocket of the funds she sent to the Defendant in Antigua, however, after providing proof that she was also a victim of this transaction PayPal refunded her.

[16] To date Ms. Charles has not been reimbursed as ACB Caribbean informed her that as she knew the person who caused the debit from her savings account, she would have to report the matter to the police.

Constructing the Sentence

[17] The court is guided by the Sentencing Guidelines for Offences of Dishonesty Re-Issue 8th November 2021, specifically the guidelines for the offence of theft.

Harm

[18] First the court must assess the harm caused by the offence. Having regard to the fact that funds stolen amounted to $1,079.88 the court has assessed the harm caused to be Category 4 (Lesser).

Seriousness

[19] Next the court must consider the seriousness of the offence by assessing the culpability of the offender. The court notes the sophisticated nature of the offence and the significant amount of planning that was involved having regard to the use of technology to remove funds from the Complainant's bank account. Additionally, the Defendant made arrangements to have the funds remitted to his account in Antigua after they were sent overseas. In the circumstances the level of seriousness is assessed to be Level A (High).

The Starting Point

[20] Having assessed the harm caused to be Lesser and the seriousness to be High the court must now determine an appropriate starting point. In the circumstances of this case the starting point is 10% of the maximum sentence. The range of sentencing is a non-custodial sentence - 20% of the maximum sentence.

[21] Section 15(1)(b) of the **Electronic Transfer of Funds Crimes Act No. 16 of 2007** states that "no person shall knowingly obtain credit or purchase any goods, services or anything else of value…by use of another person's card, card number, or other credit device without the authority of that other person…" Section 15(2)(b) of the Act goes on to indicate the maximum sentence for this offence. It states that "A person who contravenes subsection (1) commits an offence and…is liable on conviction on indictment to a fine of fifty thousand dollars or to imprisonment for five years or both."

[22] Thus, the starting point translates to 6 months imprisonment.

Aggravating and Mitigating Factors of the Offence

[23] The court must now consider the aggravating and mitigating factors of this offence. The court notes the Defendant's attempt to conceal his identity through the use of a fake identity and the financial loss suffered by the Complainant and Amara Bacchus. I also note that the Defendant was romantically involved with both the Complainant and Ms. Bacchus and abused their trust to commit the offence. There are no mitigating factors relevant to this offence.

[24] In the circumstances the sentence is adjusted upwards to 9 months imprisonment.

Aggravating and Mitigating Factors of the Offender

[25] I will now consider the aggravating and mitigating factors relevant to the Defendant. The Crown has submitted that an aggravating factor is the lack of remorse displayed by the Defendant. At the sentencing hearing the Defendant offered a rather lacklustre apology to the court and to the Complainant for what has transpired, I am therefore in agreement with the Crown on this point.

[26] As for mitigating factors I note that this Defendant has no previous convictions.

[27] In the circumstances the sentence will not be adjusted at this stage.

Credit for Guilty Plea.

[28] The Defendant has pled guilty at the earliest opportunity and will be given a one third reduction in his sentence accordingly. The sentence is therefore reduced to 6 months imprisonment.

Order

[29] The court has discretion to impose a fine for this offence. Having regard to the fact that the sum taken was relatively low and there does not appear to have been any long-term harm caused to the victims of this offence the court will order the Defendant to pay a fine of EC 2,000.00 forthwith failing which he will be imprisoned for 6 months. Having regard to the nature of the offence and in the interest of justice, the Court further orders the payment of the sum of the sum of EC 1, 079.88 as compensation to the virtual complainant, payable within the next 30 days.

Tunde A. Bakre
High Court Judge

By the Court

The

Registrar