



**Supreme Court of New Zealand
Te Kōti Mana Nui**

20 October 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

DIXON v R

(SC 82/2014) [2015] NZSC 147

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The appellant, Jonathan Dixon, worked for a company which provided security services to a bar in Queenstown. During the 2011 Rugby World Cup, members of the English rugby squad visited the bar, including the vice-captain Mike Tindall. Mr Tindall was seen socialising, then leaving, with a female patron. This was recorded on the bar’s closed circuit television (CCTV) system. Mr Dixon obtained a compilation of the relevant CCTV footage and attempted, unsuccessfully, to sell it to overseas media interests. He eventually posted it on a video-sharing site, where it was picked up by various media outlets.

Mr Dixon was charged with accessing a computer system for a dishonest purpose under s 249(1)(a) of the Crimes Act 1961. Section 249(1)(a) provides that a person commits an offence if he or she “directly or indirectly, accesses any computer system and thereby, dishonestly or by deception, and without claim of right ... obtains any property, privilege, service, pecuniary advantage, benefit, or valuable consideration.” The Crown case was that the digital footage that Mr Dixon had obtained was “property”. At trial in the District Court, Judge Phillips accepted that the footage was “property” and directed the jury accordingly. Mr Dixon was found guilty, and sentenced to four months’ community detention and 300 hours of community work.

Mr Dixon appealed to the Court of Appeal against both conviction and sentence. The main ground of the conviction appeal was that Judge Phillips had erred in finding that the digital files were “property” under s 249(1)(a). After the hearing, Mr Dixon also raised complaints about his trial counsel and about the Judge’s summing up. The Court of Appeal accepted that the files were not property within the meaning in the Crimes Act because they were simply “pure information”, the orthodox view being that information is not property. However, the Court considered that Mr Dixon was guilty of accessing a computer to obtain a benefit, which is also an offence under s 249(1)(a). Exercising its power to substitute a verdict under s 386(2) of the Crimes Act, the Court of Appeal quashed Mr Dixon’s conviction and substituted a conviction for obtaining a benefit. The Court was satisfied that none of the other matters raised by Mr Dixon justified quashing his conviction. The Court also dismissed Mr Dixon’s sentence appeal.

The Supreme Court granted Mr Dixon leave to appeal on the question whether the Court of Appeal erred in dismissing his appeal.

Prior to the hearing in this Court, Mr Dixon dismissed his counsel and presented submissions for himself. Those submissions focussed on errors which he argued had been made by the trial Judge, resulting in a miscarriage of justice. Written submissions filed on his behalf by counsel before they were dismissed supported the Court of Appeal’s finding that the digital files were not “property” but argued that the Court of Appeal was wrong to exercise its power to substitute a conviction.

The Crown argued that the digital files were not “pure information” but were “property” within the meaning of the legislation as they were things which could be owned and dealt with in the same way as other items of personal property.

The Supreme Court has unanimously dismissed Mr Dixon’s appeal. The Court has held that Judge Phillips was right to find that the digital files which Mr Dixon acquired were “property” for the purposes of s 249(1)(a), and that the Court of Appeal was wrong to quash Mr Dixon’s conviction for obtaining “property” and substitute a conviction on the basis he obtained a “benefit”.

The Court has reached this conclusion taking account of the fact that the word “property” does not have a fixed, technical meaning but must be interpreted in context. Here, “property” was defined broadly, to include both tangible and intangible property. Considering both statutory purpose and context, “property” in s 249(1)(a) included the data files at issue. Those data files were identifiable, were capable of being owned and transferred and had an economic value; they fell within both the popular and legal meanings of “property”. The Court was satisfied that it is a more natural interpretation of s 249(1)(a) to say Mr Dixon took “property” when he acquired the digital files, than it is to say that he acquired a “benefit”.

The Court also considered whether Mr Dixon's trial miscarried. The Court has found that Mr Dixon had the opportunity to put his explanation for his conduct before the jury and there is no risk of a miscarriage of justice resulting from the way the case was left to the jury by trial counsel or the trial Judge.

Accordingly, the Court has reinstated Mr Dixon's original conviction for obtaining property contrary to s 249(1)(a) and has quashed the Court of Appeal's decision quashing that conviction and substituting a conviction for obtaining a benefit contrary to section 249(1)(a).

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