

IN THE MAGISTRATE COURT AT LAUTOKA
[CRIMINAL JURISDICTION]

Lautoka Cr Case No: 932 of 2017

BETWEEN : STATE

Prosecution

AND : 1. SIMEON STEFANOV MINCHEV
2. VELIKO ZHELEV VELIKOV
3. PLAMEN DIMITROV PETROV

Accused

BEFORE : The Resident Magistrate
Mr Mosese V. W. Naivalu

Date of Mitigation : 30 November 2017

Date of Sentencing : 8 December 2017

For Prosecution : Divisional Prosecuting Officer, Mr. Anil Prasad

For Accused : Anthony M, & Singh Vijay of AC Law

SENTENCING

[1] **Simeon Stefanov Minchev, Veliko Zhelev and Plamen Dimitrov Petrov** you all appear for sentencing after pleading guilty to Criminal Case Number 932 of 2017. Being foreigners from Bulgaria I accept that you are comfortable with the proceedings being conducted in the English language and that you have all refused the services of an interpreter made available to the court with the assistance of the Fiji Police, Anastasia Shipitsyne. After enquiry, I am satisfied that your pleas are unequivocal and that you all understand the consequences of your pleas. I am therefore satisfied that you have entered your guilty pleas freely and voluntarily. Accordingly, you are all convicted as charged.

[2] **Count 1**

Possession of Skimming Device with Intent to Dishonestly Obtain Personal Financial Information: Contrary to Section 350 of the Crimes Act, 2009.

Simeon Stefanov Minchev, Veliko Zhelev and Plamen Dimitrov Petrov between 9th day of November 2017 to 12th day of November, 2017 at Lautoka in the Western Division had in Possession of skimming device with the intention of obtaining personal financial information from **BRED BANK AUTOMATIC TELLER MACHINE [ATM]**.

[3] **Count 2**

Unauthorized Excess to Restricted Data: Contrary to Section 44 and Section 343, (1) (a) of the Crime Act, 2009.

Simeon Stefanov Minchev between 9th day of November 2017 to 12th day of November, 2017 at Nadi in the Western Division had unauthorized access of restricted data namely pin number by installing a camera at **BRED BANK AUTOMATIC TELLER MACHINE [ATM]** to obtain personal information.

[4] **Count 3**

Attempted Unauthorized Excess of Restricted Data: Contrary to Section 343, (1) (a) of Crimes Act, 2009.

Plamen Dimitrov Petrov and Veliko Zhelev Velikov between 9th day of November 2017 to 12th day of November, 2017 at Namaka in the Western Division had attempted to access restricted data by installing namely skimming device at **WESTPAC BANK AUTOMATIC TELLER [ATM]** to obtain personal financial information.

FACTS

[5] On 8 November 2017 at about 03.03pm, flight number FJ 414 arrived from Auckland New Zealand and the passengers started to disembark. In the flight were **Veliko Zhelev Velikov** and **Plamen Dimitrov Petrov**. At about 4.03pm, at customs luggage hall, Navneet Singh, Customs Officer noticed both of you acting in a suspicious manner with little luggage and called both of you in the examination room.

[6] Navneet Singh questioned both of you and found you **Veliko Zhelev Velikov** in possession of 1 x Laptop bag containing 1 x Laptop, Multi Electronic cables, 1 x card reader, 2 x Samsung mobile, a wallet containing 3 ATM cards while you **Plamen Dimitrov Petrov** were found in possession of 1 x Black Carry-on bag containing a boarding pass, travel itinerary, phone charger and 1 x mobile phone. You both informed

Navneet Singh that your luggage was coming on the following day's flight. Navneet Singh then passed this information to the Transnational Crime Unit [TCU] to check on both of you. After sometimes you both booked yourselves a room at Mercure Hotel, Martintar Nadi awaiting **Simeon Stefanov Minchev's** arrival.

- [7] On 9 November, 2017 at about 5.46am, flight FJ 410 arrived from Auckland New Zealand and the Customs Officer namely, Litimai opened you, **Simeon Stefanov Minchev's** Samsonite brand black bag and found a white plastic containing two mobile phone boxes, a Samsung Galaxy S4 with 54 magnetic cards and Lenovo mobile phone with 84 magnetic cards, a packet of rubber bands and an ear-piece. Further, Customs Officer, Roko also opened your Ormi brand brown bag and found a leather wallet containing 69 magnetic cards, 10 different types of credit cards, 1x laptop with charger, modified multi charger, two wigs, 1 x digital meter, 1 x plastic containing stationeries, 1 x prepaid sim card and sand paper. The contents of the bag were photographed by Customs Officers and released to you, **Simeon Stefanov Minchev**.
- [8] After sometime, you **Simeon Stefanov Minchev** checked into room 329 at Mercure Hotel. All of you then had breakfast together and after breakfast left together to book a rental car, LR 3796 which was booked under you, **Simeon Stefanov Minchev's** after paying cash of \$700.00 for 10 days hire. Between 9 day of November 2017 and 12 day of November 2017 you all took turns and started placing the skimming devices in the ATM's around the Lautoka, Nadi and Namaka corridor.
- [9] On 11 November, 2017 between 10.30am to 11.15am Ravneet Prasad, 27 years, Bank Officer at Bred Bank went to withdraw from the Bred Bank ATM machine and found the entrance to the card slot to be loose. Upon closer examination, he noticed that an electronic (skimming) device was attached to the card slot. He removed the skimming device from the ATM machine and informed Roshil Kumar, Assistant Manager at Bred Bank for necessary action who then informed his Superior, Salim Buksh who then reported the matter to Police that same day.
- [10] The next day, on 12 November, 2017 at about 2.30pm, you **Simeon Stefanov Minchev** and **Plamen Dimitrov Petrov** were on your way to Suva in LR 3796 when Police

intercepted both of you in front of Vunahalu Post, Sigatoka where you both were arrested and escorted to the Lautoka Police Station.

[11] After your arrest, **Veliko Zhelev Velikov** the next day, 13 November, 2017 wanted to flee the country in Korean Airlines flight KE 138 but was arrested by Police Officers.

[12] All of you then voluntarily handed over the following properties that were in your possession;-

1. 1 x Black Suitcase with male clothes
2. 1 x brown suitcase with male clothes
3. 1 x black laptop bag
4. 1 x orange knapsack bag
5. 1 x Samsung Mobile Phone
6. 1 x Dell laptop
7. 1 x USB Port Connection
8. 1 x HP Laptop
9. Assorted Shoes/Slippers
10. Assorted electronic devices and personal items
11. 1 x Brown leather wallet with assorted cards/Visa cards/ATM cards
12. 1 x mobile phone box [Samsung] with assorted cards/Visa cards/ATM cards
13. 1 x mobile phone box [Lenovo] with assorted cards/Visa cards/ATM cards
14. 1 x soldering iron
15. 1 x Lenovo tablet
16. 4 x caps
17. 1 x black hand bag
18. 1 x black leather wallet
19. 2 x metal piece
20. LR 3796 [white Toyota Fielder]

[13] Cyber Crime Unit of Police Department examined all the devices. Upon examination of Laptop, it was revealed that is in respect of Count 2 that you **Simeon Stefanov Minchev** did obtain unauthorized data namely PIN numbers of the customers of Bred Bank, Nadi.

[14] In respect of Count 3, the Westpac ATM machine in Namaka went out of order. When examined by the bank technician a foreign object namely a computer chip was already installed. Camera footage of Westpac Bank surveillance camera was then viewed whereby **Veliko Zhelev Velikov** and **Plamen Dimitrov Petrov** were seen at the said ATM machine installing the said computer chip. Both of you could not retrieve any data as the computer chip was discovered by the bank staff and seized.

[15] **Simeon Stefanov Minchev** in your record of interview with Police from question 102 to question 286 admitted committing count 1 and count 2 of the offences you are charged with while you **Veliko Zhelev Velikov** and **Plamen Dimitrov Petrov** chose to remain silent.

Analysis

[16] You all therefore stand convicted for 1 count of **Possession of Skimming Device with Intent to Dishonestly Obtain Personal Financial Information**, 1 count of **Unauthorized Excess to Restricted Data** and 1 count of **Attempt of Unauthorized Excess of Restricted Data**.

Previous convictions

[17] The prosecution informs me that you all have no previous convictions with the Criminal Records Office.

Sentencing Guidelines

[18] The offences you all are charged with are new offences under the Crimes Act 2009 and precedents are minimal if not unavailable. At this juncture therefore the Court is grateful to your counsel, Mr Anthony and Mr Singh for submitting the authority, *Levente Boyte v State* Criminal Appeal No. HAA 22 of 2012 and submitting that the Court in its determination distinguish the same from your current circumstances.

[19] The maximum sentences (and accepted local tariff) for the offences you are currently charged with are as follows:

Possession of Skimming Device with Intent to Dishonestly Obtain Financial Information - 3 years

Unauthorized Excess to Restricted Data - 2 years (9-18 months)
Levente Boyte v State Criminal Appeal No. HAA 22 of 2012

Attempted Unauthorised Excess of Restricted Data - 2 years(9-18 months)
Levente Boyte v State Criminal Appeal No. HAA 22 of 2012

[20] Justice Madigan, P in the *Levente Boyte* case (supra), a case involving a Romanian national, stated:-

“There is no known principle in Fiji law allowing discount for being a foreigner and nor should there be. We do not wish to encourage foreigners to offend here and receive credit for their national status. All nationalities be they Fijian or not are treated equally in this Court, and in very serious cases with long sentences it then becomes a matter for the representatives of a prisoner's state and the Executive. It does not and should not concern a sentencing court.

Personal Circumstances

[21] You, **Simeon Stefanov Minchev** are 35 years old and reside in Varna City, Bulgaria, you are a real estate agent in Bulgaria and also holds a diploma in Psychology, you look after your elderly mother and brother, you are the sole breadwinner of the family and have no previous convictions in Bulgaria.

You, **Veliko Zhelev Velikov** are 33 years old and reside in Bulgaria, you are a agriculture officer and businessman by profession, you reside with your wife and 3 year old daughter and you are the sole breadwinner of the family.

You, **Plamen Dimitrov Petrov** are 42 years old and reside in in Varna City, Bulgaria, You are a construction worker and also a part time farmer by profession. You reside with your wife and also provides solely for his son aged 6 years and daughter aged 13 years.

Aggravating Factors

- [22] You are all foreign nationals. You all posed as tourists. You had extensive equipment to aid in the offences.

Mitigating Factors

- [23] The mitigating factors are that you all have taken a guilty plea at the earliest opportunity saving the Honourable Court's time. While this Court appreciates the right to silence during a caution-interview this Court notes that you **Veliko Zhelev Velikov** and **Plamen Dimitrov Petrov** were ultimately uncooperative with Police Investigators. It was **Simeon Stefanov Minchev** who revealed the whole background and scheme to Police Investigators. You all did not obtain any funds from customer's ATM accounts and were unsuccessful in your illegal activities. You are all remorseful for your actions and seek forgiveness from the Court and you all want to return back to your families in Bulgaria. You have all learnt your lesson and promise to live a crime free life from here onwards.

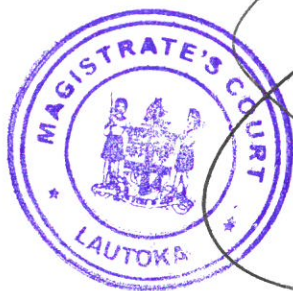
Sentence

- [24] At the outset, I accept and adopt the Sentencing remarks by Justice Madigan above and find it apt in this case.
- [25] For the offence of **Possession of Skimming Device with intent to Dishonestly Obtain Personal Financial Information** and with no local tariff I decide to fix this at between 18 – 24 months subject to correction by the High Court. I therefore start with 18 months and increase this by 12 months for your aggravating features before reducing it by the same for your mitigation features and arrive at 18 months imprisonment interim for all of you.
- [26] For the offence of **Unauthorized Excess to Restricted Data** I start with 12 months and increase this by 12 months for your aggravating factors before reducing it by the same to arrive at 12 months imprisonment interim for you **Simeon Stefanov Minchev**.
- [27] For the offence of **Attempted Unauthorised Excess of Restricted Data** I start with 12 months and increase this by 12 months for your aggravating factors before reducing it by the same to arrive at 12 months imprisonment interim for you **Veliko Zhelev Veliko** and **Plamen Dimitrov Petrov**.

- [28] All sentences to be served concurrently.
- [29] There was a guilty plea hence the authorities on reduction of sentences upon a guilty plea being *Isoa Nausa v State* Criminal Appeal No. HAA022 of 2010 and *Aliki Vilimone v State* Criminal Appeal No. HAA131 of 2008 will assist you. Your net sentence is therefore now reduced by 30% given you had pleaded guilty at the first available opportunity. All of your total net sentences is now 12 months and 6 days imprisonment.
- [30] Pursuant to Section 26(2) of the Sentencing & Penalties Decree 2009 as your total sentences fall under 2 years the Court has a discretion whether to suspend your sentences or not. I have thought long and hard over the circumstances of your offending. I have considered your travel from Bulgaria (via Qatar, Singapore and New Zealand) and in your choosing Fiji, a popular tourist destination albeit a developing country as your destination to come and employ your fraudulent activities. I have considered that you had just started your initial activities along the Lautoka and Nadi corridors and were enroute to Suva to continue with your activities when you were arrested. You are indeed professional fraudsters judging by all the equipment found in your possession including wigs with the full intention to change your appearances when you chose to. Then, I have weighed this against your early guilty pleas together with your voluntariness to pay a minimum fine of \$10,000 as submitted by your counsel.
- [31] Before concluding however, I wish to highlight here and thank the quick action primarily of Customs Officer, Navneet Singh who first spotted **Veliko Zhelev Veliko** and **Plamen Dimitrov Petrov**'s suspicious movements and behavior as incoming passengers on 8 November, 2017 as well as his fellow colleagues, Litimai and Roko. Further, Bred Bank Officer, Ravneet Prasad who first observed the unusually loose card slot of the Bred Bank ATM on 11 November, 2017 which triggered the investigations that followed which eventually led to your arrest. Last but not least, the quick action by the Police Force in intercepting you both **Simeon Stefanov Minchev** and **Plamen Dimitrov Petrov** while on your way to Suva as well as apprehending you **Veliko Zhelev Velikov** as you attempted to flee the country in Korean Airlines flight KE 138 on 13 November, 2017. Were you all able to carry out indiscriminately your illegal

activities undisturbed the damage and losses to your unsuspecting victims would have been catastrophic especially over this festive season and the approaching start of school in the new year, next month.

- [32] Ultimately, I find that the circumstances of your offending including your aggravating factors far outweigh your mitigation and decide that a deterrent and custodial sentence is inevitable. No foreigner should ever be allowed to enter the country to engage in such an illegal adventure such as yours at the expense of our hardworking citizens who earn decent wages while continuing to live a happy life only to return to their country of origin after apprehension and subsequent prosecution. This should serve as a stern warning to any would-be foreigners intent on following suit your path of offending. You will all serve 12 months and 6 days imprisonment with no minimum term imposed. I accept that you have spent a total of 26 days both in custody and in remand and pursuant to Section 24 of the Sentencing & Penalties Decree 2009 I decide not to take this into consideration having already given you the minimum sentences available under the tariffs.
- [33] I further order that all seized equipment that aided in your offending be destroyed after the 28 days appeal period has lapsed.



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Moses V. W. Naivalu [Mr]
RESIDENT MAGISTRATE