

PRESS SUMMARY

REGINA v Peter HUNTER & David Thomas SMITH

Case No: 202000948/B3 & 202000949/B3

NOTE: This summary is designed to assist in reporting the Court's judgment. It makes reference to the judgment, a copy of which is available at www.judiciary.uk, but it is not a substitute for the judgment which provides a full record of the Court's reasons.

The appeals

1. The appeals relate to the convictions by a jury of Peter Hunter and David Smith under Section 933 Companies Act 200 which makes it a criminal offence to carry on business for a fraudulent purpose. The offence applies to individuals who run, manage and control fraudulent companies.
2. Hunter and Smith were ticket touts. They used sophisticated software, some purchased on the dark web, for the bulk purchase or "harvesting" of tickets for popular sporting, music and cultural events and then resold them, at a substantial premium, on secondary ticketing websites.
3. Hunter was sentenced to imprisonment for 4 years and Smith was sentenced to imprisonment for 2 years and 6 months. Both were disqualified from acting as directors under Section 1 of the Company Directors Disqualification Act.
4. Evidence given at trial indicated that there are a substantial number of similar businesses, probably numbering in the hundreds, to that run and managed by Hunter and Smith.

The ticket touting business system

5. The business method or system used is relatively simple.
6. Organisers of popular sporting, music and entertainment events routinely impose contractual restrictions limiting the number of tickets that any one individual can purchase and prohibiting resale. They will often make plain that if these restrictions are breached, they reserve the right to cancel the ticket and refuse the ticket holder entry to the event.
7. Some event organisers sell the tickets themselves, but it is common for organisers to use agents to sell the tickets for them. In particular, they use primary ticketing websites who are required to respect the restrictions which the event organisers have imposed.
8. The purpose behind the restrictions is to prevent the "harvesting" of tickets for an event with a view to resale by touts at a substantial profit on secondary sites to the detriment of consumers both as to price and risk.
9. Ticket touts circumvent these restrictions by the use of "bots" and other software designed to make multiple applications to ticket sellers when tickets become available. These systems operate to make a false representation to the ticket vendor that the purchasers are individual consumers who intend to use the tickets for their personal use. The bots perform multiple simultaneous applications using false names and addresses and in so doing deceive the vendor into thinking that the sale is a genuine one by a consumer who will respect the restrictions set out in the terms and conditions of sale.
10. Tickets acquired in this manner are then sold on secondary ticketing websites invariably at a substantial mark-up on the ticket face value. These websites act as markets or platforms for ticket touts to sell the tickets they have acquired. They do not act as vendors themselves. Hunter and Smith never made clear to consumers the risk attached to the purchase of a

ticket, namely that consumers were acquiring at inflated prices tickets that the event organiser might treat as null and void. Had this been clear and transparent, purchasers might have been reluctant to spend large sums on tickets that could turn out not to permit entry to the event in question.

11. Secondary sites are rewarded in a variety of ways and normally take their cut out of the amount paid by the consumer for the ticket before remitting the balance to the tout. There was some evidence before the court that the cut might be as much as 25% of the ticket price.
12. Touts can make huge profits from this business. The Prosecution obtained evidence from Hunter and Smith, based on PayPal sales and bank records, which indicated that during a period of 30 months (June 2015 – December 2017) they made an outlay of about £4m on acquiring tickets and obtained returns exceeding £10.8m.
13. Evidence given at the trial also highlighted the practical difficulties confronting event organisers seeking to enforce these contractual resale restrictions. They are concerned that allowing touts to sell tickets at inflated prices causes them reputational harm but also that it is, simply put, deeply unfair on fans. Some organisers go to considerable efforts to enforce the restrictions and do so successfully. For example, evidence was given at the trial by the organisers of concerts by Ed Sheeran and Arianne Grande about the steps they took to curb ticket touting.

The Prosecution case at trial

14. The Prosecution alleged that Hunter and Smith set up a business system which was designed to deceive ticket vendors into selling them tickets when, had they known the true identity of the purchaser and their intended use of the tickets, they would have refused to make the sale. Further, in failing to warn consumers buying tickets on secondary websites of the risk of cancellation, they were deceiving those consumers into believing that they were purchasing valid tickets. It was alleged that the central “*purpose*” behind the way in which Hunter and Smith carried on their business was dishonest and fraudulent. The jury agreed.

Links between touts and ticketing websites.

15. An important part of the defence of Hunter at trial was that the primary and secondary websites were not only aware that the touts were purchasing tickets in order to sell them in bulk on the secondary sites, but actively encouraged such purchases and resale, for example by providing financial incentives to encourage bulk dealing. It was argued that this being so no one was deceived and no one was harmed and that what they did was normal business practice and not dishonest.
16. During the appeal Hunter and Smith sought to introduce new evidence about this. They argued that for many years the commercial sale of tickets on the secondary sites by the “big four” (Stubhub, Seatwave, GetMeln! and Viagogo) had been not merely tolerated but in fact actively encouraged. They did this knowing full well that tickets were sold subject to restrictions.
17. Moreover, they argued that three of the big four secondary sites were owned by, or operated in partnership with, primary ticketing sites. These sites classified traders like Hunter and Smith as “*trusted*”, and it was acknowledged that they would circumvent the purported restrictions. One secondary site gave them and other traders a bar code scanner so that they could resell digital tickets with a unique trader-secondary site generated barcode.

The appeal arguments

18. On the appeal Smith and Hunter raised a large number of legal and procedural grounds. They alleged that the Judge wrongly directed the jury on the law and acted unfairly and prejudicially in his conduct of the trial and in the manner in which he directed the jury. They argued that the restrictions attaching to the sale of the tickets were void and invalid. They argued that the verdicts were unsafe and should be quashed.

The Court of Appeal rejects the appeals

19. In the judgement handed down today the Court of Appeal has rejected all of the arguments advanced by Hunter and Smith. The Court upheld the conclusion of the Judge at trial that the restrictions imposed by event organisers were valid. The Court concluded that the Judge acted properly in all relevant respects and that the convictions are safe and lawful.
20. In relation to the wider evidence of clandestine agreements between touts and ticketing websites, the Court of Appeal stated:

“If the appellants are correct and there are potentially hundreds of other operators all running businesses like theirs; and if they are also correct and there is connivance and collusion between ticket touts and the [primary ticketing websites] and [secondary ticketing websites], then the ticketing market is one which appears to be characterised by a high degree of criminal fraud. The evidence we have seen certainly suggests this possibility.

This appeal, however, focuses more narrowly upon the conduct of the appellants as buyers and resellers of tickets, and not on the possibility that fraud is also being perpetrated by others. It will be for the prosecutorial authorities to consider whether other and broader enforcement action is necessary.”

26th November 2021