

ROYAL COURT

191

11th December, 1990

Before: The Deputy Bailiff, and the
Superior Number of the Court

The Attorney General

- v -

Peter Thomas Fogg

Sentencing on two counts of possession of a controlled drug with intent to supply to another (being cannabis resin and lysergide), contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978, and one count of supplying a controlled drug, contrary to Article 5 of the Misuse of Drugs (Jersey) Law, 1978. Included in the sentencing was an application by H.M. Attorney General for a Confiscation Order in accordance with the provisions of the Drug Trafficking (Jersey) Law, 1988.

Judgment on the application for a
Confiscation Order.

C.E. Whelan, Esq., Crown Advocate
Advocate G.R. Boxall for the accused.

JUDGMENT

DEPUTY BAILIFF: Mr. Whelan told us that because the Drug Trafficking (Offences) (Jersey) Law, 1988, and the English Act of 1986 upon which it is based are in their comparative infancy, there is as yet no legal authority available on the detailed interpretation of the legislation.

The Court does not entirely share that view because the case of R. -v- Dickens ("The Times", 12th April, 1990) is a decision of the Court of Appeal, as are R. -v- Small (Michael) ("The Times", 16th April, 1988) and R. -v- Smith (Ian) ("The Times", 13th June, 1989). The Times Law Reports are reliable and the decisions of the Court of Appeal, Criminal Division, are of persuasive authority and the Court proposes to apply them. The Crown Court cases of R. -v- Bradley (5th November, 1987) and R. -v- Rose and others (15th January, 1990) whilst not precedents to be followed in the same sense have nevertheless been helpful as a demonstration of the reasoning applied by able Judges in similar cases.

It follows, therefore, that the Court has asked itself a series of questions.

The first question: does Fogg appear before us to be sentenced in respect of one or more drug trafficking offences?

It is not in dispute that the answer is in the affirmative.

On the 10th August, 1990, Fogg pleaded guilty to an offence contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978, and on the 16th November, 1990, pleaded guilty to one further offence under the same paragraph, and also to an offence under Article 5 of the same Law.

By virtue of Article 1 of the Drug Trafficking Offences (Jersey) Law, 1988, these offences are defined as drug trafficking offences and therefore Fogg is indeed a person who is to be sentenced for drug trafficking offences.

The second question: has Fogg benefited from drug trafficking?

I refer here to Article 3 of the 1988 Law, paragraph (3):

"For the purposes of this Law a person who has at any time, (whether before or after the commencement of this Article) received any payment or other reward in connection with drug trafficking carried on by him or another, has benefited from drug trafficking".

I now turn to Article 4 of the same Law, paragraphs (2) and (3)(a). Paragraph (2):

"The Court may for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking" (I will come back to that later) "make the following assumptions except to the extent that any of the assumptions are shown to be incorrect in the defendant's case".

Paragraph (3):

"Those assumptions are -

- (a) That any property appearing to the Court (i) to have been held by him at any time since his conviction or (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him was received by him at the earliest time at which he appears to the Court to have held it as a payment or reward in connection with drug trafficking carried on by him".

With the help of those assumptions - and we accept that we are here administering draconian legislation - we found that Fogg has benefited from drug trafficking, and that placed upon Fogg the burden of proving, on the balance of probabilities, that it was more probable than not that his money came from a source other than drug trafficking.

In the judgment of the Court Fogg has failed totally to discharge that burden. The Court positively disbelieves the explanation about

the initial deposit of £12,600. Fogg has failed to provide any reliable evidence about his other source of income, that is to say the sale of cars. The Court finds it improbable that he dealt with high value cars, making substantial profit, because the only evidence we have relates to cars costing an average of some £300. In the judgment of this Court Fogg has led a life of deceit; he is a self-confessed liar; he cannot in any circumstances be regarded as a credible witness. So, rejecting his evidence as a tissue of lies, the Court comes to the inevitable conclusion that he has benefited from drug trafficking.

We next have to determine the amount of money which Fogg has made from drug trafficking. Again the assumptions apply, and I come back to Article 4(2) that I mentioned just now:

"The Court may for the purpose of determining whether the defendant has benefited from drug trafficking" (which we have already dealt with) "and if he has, of assessing the value of his proceeds of drug trafficking make the following assumptions". (And the same assumptions apply). Here also Article 4(3)(b) applies that: "Any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him".

The Court does not have to engage in an accountancy exercise. That is clear from R. -v- Smith (Ian) reported in "The Times" Law Reports of 13th June, 1989, and the relevant paragraph reads:

"It seemed to their Lordships that the section was deliberately worded so as to avoid the necessity which the appellant's construction of the section would involve of the Judge exercising or having to carry out an accountancy exercise which would be quite impossible in the circumstances of the instant case".

It is equally impossible in the instant case.

The Court is satisfied therefore that it can accept the rough estimate contained in the Attorney General's statement and the Court

declares that the amount made from drug trafficking amounts to £15,681.10.

The Court now comes to the Confiscation Order:

i) There is no problem over the cash in Fogg's possession. The explanation regarding the possession of Jersey currency is rejected. Even if it were true, under the Court's earlier findings the money would represent drug proceeds. So the order will apply to the £1,007 found on him.

ii) The whole of the monies in the Halifax Account are available. The Court does not accept the explanation about the deposit monies on the 10 Marquis Street, Birkenhead purchase. But even if it did, the monies are available. Therefore £7,294.69 is available.

iii) We come to the more difficult question of the Alliance and Leicester Account because monies were drawn out of this account after Fogg's arrest. The Court is convinced that the monies were drawn by Fogg's common-law wife, Elaine Mitchell. Fogg supplied the pin number to enable this to be done. It was a deliberate attempt (a) to provide for her and (b) to reduce the monies in the account. As such he is accountable for the whole of the balance available on the day of his arrest. The Court accepts that some, if not most - there is a small balance in the account - may have been spent. But Fogg is beneficially entitled to that money. The principle of this legislation as I have said earlier is draconian. It is to punish drugs offenders, and it is to deter others. The Court hopes that the deterrent effect will reverberate throughout the drug using community in Jersey. The amount involved is £5,563.59.

Accordingly a Confiscation Order in the sum of £13,865.28, the total of those three sums, is hereby made.

AUTHORITIES.

R-v-Dickens (12th April, 1990): "The Times".

R-v-Bradley (5th November, 1987): Isleworth Crown Court

R-v-Rose & ors (15th January, 1990): Chelmsford Crown Court

R-v-Small (16th April, 1988): "The Times".

R-v-Smith (13th June, 1989): "The Times".

Drug Trafficking Offences (Jersey) Law, 1988.

Misuse of Drugs (Jersey) Law, 1978