

ROYAL COURT
(Samedi Division)

104.

6th June, 1996

Before: The Deputy Bailiff, and Jurats
Blampied, Myles, Gruchy, Le Ruez,
Vibert, Potter, Jones.

The Attorney General

- v -

Stuart Bryan Jones,
Malcolm Peter Rayner.

Sentencing by the Superior Number of the Royal Court, to which the Inferior Number remanded the accused Jones on 8th March, 1996, and the accused Rayner on 15th May, 1996, following guilty pleas to the following counts:

Stuart Bryan Jones

- 1 count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug (M.D.M.A.), contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972 (count 1);
- 1 count of supplying a controlled drug (M.D.M.A.), contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978 (count 2);
- 1 count of possession of a controlled drug (M.D.M.A.) with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978 (count 3).

Age: 28.

Details of Offence:

Courier of 5,469 tabs of Ecstasy from disclosed contact in UK to Jersey in October, 1995. Value £109,380.00.

Details of Mitigation:

Bad debts totalling £7,914 personally and £15,500 in liquidated business. Totally co-operative - named supplier. Family - future looked bleak. Two children (3 and 6 years old). Guilty plea. No previous convictions drugs or otherwise. Mere custodian.

Previous Convictions: None.

Conclusions:

Starting point 11 years. Mitigation exceptional due to naming supplier.

Count 1 : 4 years' imprisonment.
Count 2 : 4 years' imprisonment, concurrent.
Count 3 : 4 years' imprisonment, concurrent.

Sentence and Observations of the Court:

Conclusions granted. Starting point 11 years, ordinary mitigation down to 7 years - naming supplier down to 4 years. Court reinforced previous stance that naming suppliers will afford the defendant "substantial mitigation".

Malcolm Peter Rayner

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug (M.D.M.A.), contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972 (count 4);

1 count of possession of a controlled drug (M.D.M.A.) with intent to supply it to another, contrary to article 6(2) of the Misuse of Drugs (Jersey) Law, 1978 (count 5);

2 counts of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978:
count 6 : M.D.M.A.
count 7 : cannabis resin.

On 8th March, 1996, Rayner pleaded not guilty to counts 4, 5 and 6 and guilty to count 7.

On 15th May, 1996, Rayner was given leave to plead guilty to all counts laid against him.

Age: 47.

Details of Offence:

Local contact and recipient of 5,469 tabs of Ecstasy brought into Island by co-defendant Jones. Value at £20 per tab = £109,380 in October, 1995.

Details of Mitigation:

Mistake as to nature and quantity of drugs - expected Cannabis Resin. Rayner only 'buffer' between courier and actual Island dealer, i.e. no ultimate recipient. Never actually touched drugs - merely instructed they were placed in glove compartment of car while he figured out what to do. Guilty plea - late.

Previous Convictions:

Numerous including in 1982 - utensils; aiding and abetting; possession with intent to supply 6 oz. Cannabis Resin.

Conclusions:

Starting point: 14 years on three leading counts, concurrent. Allow three years for mitigation.

Count 4 : 11 years' imprisonment.
Count 5 : 11 years' imprisonment, concurrent.
Count 6 : 11 years' imprisonment, concurrent.

Count 7 : 2 weeks' imprisonment, concurrent.

Sentence and Observations of the Court:

Conclusions granted. Starting point accepted; 3 years' mitigation correct.

J.A. Clyde-Smith, Esq., Crown Advocate.
Advocate S. Sharpe for Jones.
Advocate N.M. Santos-Costa for Rayner.

JUDGMENT

THE DEPUTY BAILIFF: The facts of this case are that a drug dealer made contact with Jones in England and offered him £480 to run drugs to Jersey.

5 Jones arrived in Jersey on Sunday, 15th October, 1995, having travelled alone on 'Condor' 11 from Weymouth. He cleared customs and went to the 'Apollo' Hotel in St. Helier. He had a room reserved there.

10 At about 12.50 on the morning of the following day, he received a telephone call from an unidentified male, stating that he would be collected by a silver coloured Ford 'Fiesta'. Jones put his consignment of drugs into a briefcase and was met by Rayner who was driving the 'Fiesta'.

15 The Ecstasy tablets which Jones identified to Rayner were placed, at Rayner's suggestion, in the glove compartment. Rayner had previously made contact with Jones, firstly by telephone and then in person at the hotel, but he had knocked at the wrong door
20 and had made enquiries of two plain clothes police officers.

At the traffic signals near the hotel the car was surrounded by police officers and they discovered 5,469 Ecstasy tablets with a total street value of £109,380. This is the largest amount of
25 Ecstasy tablets (which is a Class A drug) ever seized in Jersey.

Let us first deal with Jones. He is 28 years old and we have no doubt, having regard to the strictures in Fogq which is contained in the Judgment of Campbell, Molloy, MacKenzie -v- A.G.
30 (4th April, 1995) Jersey Unreported CofA, that the initial starting point in his case would be eleven years. That eleven

years as a starting point is not particularly disturbing on the facts of the case. But this is an extremely unusual case because of what has occurred since Jones has been in custody. In Campbell, the Court of Appeal said this at p.7:

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"A substantial allowance may be expected where a defendant has identified his supplier or otherwise provided information which is of significant assistance to the authorities".

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Jones was a courier foolish, if we may say so, beyond belief. He has no previous involvement with drugs and has no criminal record. Sadly we see few cases of co-operation in this vicious and frightening trade. However, in A.G. -v- Chadwick (30th October, 1995) Jersey Unreported, the Court said this at p.3 of its Judgment:

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"We propose, however, encouraged by the Court of Appeal in the case of Campbell, to apply a further deduction to mark the exceptional co-operation of the defendant by naming her supplier and by publicly showing her remorse by instructing her advocate to acknowledge that co-operation in open Court. The Court wishes to make it clear that it will regard the naming of the supplier as a significant mitigating factor and will reward that co-operation - provided that it can be satisfied that the information is genuine and is of assistance to the police - by making a substantial allowance in the sentence which would otherwise be imposed".

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In that case, a very substantial allowance was made and eleven years as a starting point was reduced, eventually, to four. Again, in the case of A.G. -v- Marella & Ors. (2nd May, 1996) Jersey Unreported, generous discounts were given for co-operating with the police, 8½ years' imprisonment in the case of Se was reduced to four years.

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In this case, Jones not only named his supplier, but he provided the police with information assessed by the police as being of good quality and useful. That information may result in arrests in the future. He was even prepared to be a witness in open court against his co-accused.

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Jones, will you stand up, please. We realise that your life in prison will be extremely difficult, but your willingness to help the police which took, if we may say so, some courage has done you credit. Because of your guilty plea and the special circumstances - and we should also mention the letter that you wrote to us which has impressed us greatly - you are sentenced, in these particular circumstances, to four years' imprisonment on each count, concurrent.

Now we are going to deal with Rayner. We must reiterate that the value and quantity of the drugs is five times that set out in Fogg and again - we do not need to say it but we will say it - is the largest seizure in Jersey of a commercial quantity of Ecstasy. Rayner has been previously involved with drugs.

Comparisons are not really helpful but Melville received 12 years for her activities and that was later reduced by the Court of Appeal to 11 years. The amounts in this case are substantially more than the case of Melville. We have to say that Rayner pleaded guilty only on the eve of trial.

Mr. Costa has said everything that could have been said on Rayner's behalf, but particularly he relies strongly on this passage in a question and answer session that took place with Jones and the police officers and I will read it in this way:

Q: "Did the man know what you had in your bag?"

A: "Yes".

Q: "How did he know?"

A: "I had already told him the tablets were in the bag".

Q: "Was he only interested in the E's?"

A: "No, he wanted to know if there was any 'blow'".

Q: "What is 'blow'?"

A: "Something you smoke. I know it's a drug".

Q: "So, what did you tell him?"

A: "I said there's no 'blow' in the bag just tablets. He said 'shit' and was disappointed".

Q: "What else did he say?"

A: "He said 'oh, shit' and seemed disappointed. I then said 'where do you want them?'. He pointed to the glove compartment, so that is where I put them".

Mr. Costa relied on Bilinski (1988) 86 Cr.App.R. which involved a belief by an importer of drugs that Class A drugs were in fact Class B drugs. However, we must repeat that when Rayner clearly knew that he had possession of Class A drugs, he pointed to the glove compartment. In any event we would draw some distinction because it appears to us that there is a difference between believing that one class of drugs is something else and not knowing what the drugs were at all.

We accept that the Court of Appeal acknowledges that there are exceptional circumstances which would entitle it to consider the effect of a person's belief on the proper sentence.

Mr. Costa implies that Rayner is only a 'cat's paw'. He did not actually use those words. We would rather regard his activities as an important cog in a vicious machine. We regretfully can see little difference between the facts in the case of A.G. -v- Raffray (20th July, 1995) Jersey Unreported and this case. Raffray, which Mr. Costa cited to us, was no doubt

going to pass the heroin on to somebody else; that did not excuse him and does not excuse Rayner.

5 We have had regard to the fact that Rayner knew what he was doing but where he was going in his car that afternoon he prefers to keep to himself. So be it.

10 Rayner, will you stand up, please. You are sentenced to 11 years' imprisonment on counts 4, 5 and 6; on count 7, you are sentenced to 2 weeks' imprisonment; all to run concurrently. The drugs are to be forfeited and destroyed; but we would say this in conclusion. We would like to pay tribute in this Judgment to those officers who carried out the operation which, had it not been so successful, could have allowed another assault on the fabric of this society which most of us are determined to preserve.

20 We also say this; those who co-operate will continue - if the value of their evidence is weighty - to receive from this Court substantial discounts in their sentences.

Authorities

Campbell, Molloy, MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported CofA.

A.G. -v- Chadwick (30th October, 1995) Jersey Unreported.

A.G. -v- Burke (24th January, 1996) Jersey Unreported.

Melville -v- A.G. (17th January, 1996) Jersey Unreported CofA.

A.G. -v- Hunter (5th January, 1995) Jersey Unreported.

Bilinski (1988) 86 Cr.App.R.

A.G. -v- Lundy (20th July, 1995) Jersey Unreported.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
May 1994-1995 Noter-up: pp.24-25.

A.G. -v- Raffray (20th July, 1995) Jersey Unreported.

A.G. -v- Marella & Ors. (2nd May, 1996) Jersey Unreported.