

JERSEY / JUDGMENT

AG v Cooney [2019] JRC 039A (15 March 2019)

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JUDGMENT

THE LIEUTENANT BAILIFF: 1. Sean Liam Cooney appears to be sentenced in respect of a total of eight counts spread across two indictments. The First Indictment: Count 1 possession with intent to supply cannabis resin; Count 2 possession of cannabis resin; Count 3 obstructing a police officer in the execution of his duty; Count 4 malicious damage; Count 5 using a vehicle without a policy of insurance in respect of third party risks; Count 6 wrongful use of a windscreen insurance disc; Count 7 possession of cannabis resin. The Second Indictment contains one count, entering into or becoming concerned in an arrangement that facilitates the acquisition, use, possession or control of criminal property by or on behalf of another, and that is contrary to Article 30(3) of the Proceeds of Crime (Jersey) Law, 1999 . The defendant entered early guilty pleas and a basis was accepted by the Crown on the 2 nd February. 2. Very briefly, the facts are that on 23 rd October, 2018, police officers located a blue BMW car outside an address in St Clement. The officers were responding to a call from a member of a public to the effect that the occupants of the vehicle had been seen smoking drugs in it while it was parked at a nearby school. The officers spoke to the defendant, who told them that the BMW belonged to him and that he had valid insurance. The officers however, observed that the insurance disc on the vehicle displayed another vehicle's details, and the police system indicated that the registration displayed on the disc was not assigned to any vehicle (Count 5 and Count 6). The defendant admitted that he had been driving the car that day. The officers informed the defendant and a male who was with him at the time that they were going to be detained and that they would be searched, as would the vehicle. The defendant denied that any drugs would be found on him or in the vehicle. He suddenly turned away and ran from the officers (Count 3). He ran towards a parked red Mitsubishi car and used the roof of this car, in the words of a witness " to launch himself over a wall and hedge which is about 10 foot high". In doing so the defendant made a large dent in the roof of the vehicle (Count 4). The defendant made good his escape and was to remain at large for three days. 3. Meanwhile, the officers searched the BMW with the aid of a police search dog. They found cash totalling £670, a total of 46 bars of cannabis resin and a further £5,350 in a bag in the boot. The following day a plastic wrapping containing a residue of cannabis resin was seized from the defendant's Land Rover. To his credit the defendant gave himself up at about a quarter to ten in the evening of 26 th October and he was arrested. He was interviewed under caution that

evening and answered "no comment" to all questions asked by the interviewing officers. 4. The total weight of the cannabis found in the BMW was nearly 4.5 kilograms, with a street value of between £67,500 and £90,000. In his basis of plea the defendant accepted that all the cannabis that had been found in the car was his, and that he had intended to supply it (Count 1). He also said that the £670 found in the front part of the car was his and was the proceeds of sale of cannabis and, he said, gambling proceeds. 5. As to the Second Indictment, the defendant said that the cash found in the boot of his car was not his although he accepted that he suspected it was, as he put it, "illegitimate money" and that he, "was minding it for the person who had supplied [him] with the cannabis." He said he was due to return the cash to this person later that same day. 6. The offence of possession of a Class B controlled drug with intent to supply carries a maximum sentence of 14 years' imprisonment. The guidelines in *Campbell v AG*

[1995] JLR 136 indicate a starting point for quantities between 1kg and 10kg of cannabis as between 2 to 6 years' imprisonment. We remind ourselves that the defendant was in possession of 4½kg of cannabis, roughly half way up the scale of 1 to 10. 7. The Crown submits that the correct starting point on an arithmetical basis is 3½ years' imprisonment; however, they say, given the potential street value of the drugs, the fact that the defendant had already supplied some of the cannabis, and the quantity of cash recovered (Count 1 on the Second Indictment) the Crown has adopted a starting point of 4½ years' imprisonment, to reflect the defendant's overall involvement. 8. The maximum sentence for the money laundering offence is 14 years' imprisonment or a fine or both, and in *AG v Goodwin*

[2016] JRC 165, the Superior Number formulated principles for sentencing cases involving the laundering of proceeds of drug trafficking. Applying those principles to this case: (i) The court finds that the source of cash seized was the proceeds of drug trafficking and the defendant could not have thought otherwise. (ii) As to the assistance provided, the defendant was minding the money for the person who had also provided him with the cannabis and to whom the defendant was to return the cash later that day. The defendant's actions in this way would have perpetuated his supplier's criminal activities. (iii) As regards knowledge of the predicate offence, the defendant has provided a basis that he suspected it was illegitimate money, and the total amount of cash seized was £5,350. The Crown accepts, however, as do we, that the defendant's possession of the money was not sophisticated or long term; indeed it was anything but sophisticated. 9. Driving without insurance, Count 5, carries a maximum sentence of 18 months' imprisonment or a level 3 fine, and the Court also has the power to endorse the defendant's licence or disqualify him. The Crown has asked for a consecutive sentence in respect of that offence. 10. The defendant is not of good character. He has been convicted of many public order and motoring offences and offences of dishonesty in the past. He has 11 convictions for 26 offences, although some of these were committed when he was a youth. He has been to prison before. But it is important to bear in mind that he has no previous convictions for drug-related offences, and we have taken due account of that. 11. The Social Enquiry Report contains the interesting comment that the defendant appears to be, "a trusted

associated of someone above him in a drug-dealing enterprise" , and the defendant at the time of the report was assessed as being at high risk of reconviction. 12. In an eloquent address to us Advocate Hillier has pointed to the fact that this was not a sophisticated crime. He described his client as a disorganised person, as an individual who was making poor choices, and he also pointed to the difficulties which the defendant had as a youth and which are set out in the Social Enquiry Report, to which we have paid due regard. Advocate Hillier also pointed out that the defendant had until this series of offending been out of trouble for three years, and he also made the very good point that there was an early plea of guilty. It is the defendant's first major offence and his first drugs conviction, and he is using the opportunities available to him in the prison. We commend him for that. 13. Having regard to all matters in the Social Enquiry Report and the mitigation we move to sentence. As to Count 1 of the First Indictment, the Jurats are divided as to the correct starting point. It is either 4 or 4½ years, but taking into account all the mitigation they are agreed that the correct final sentence is as moved for by the Crown, 2 years' and 9 months' imprisonment. Count 2, simple possession, no separate penalty. The obstruction of the police; with some reservations we are going to pass a concurrent sentence of 3 months' imprisonment, but perhaps the defendant can consider himself lucky that it is not consecutive. We feel sorry for the defendant and the difficulties he has had, and we exercise a degree of mercy in that regard. Count 4, malicious damage, 2 months' imprisonment, concurrent. The count of no insurance, Count 5, we agree with the Crown is a very serious offence. It was completely separate to the drug offending and the money laundering and the Crown was right to move for 3 months' imprisonment consecutive. The windscreen insurance disc in Count 6, 1 month's imprisonment, concurrent. Count 7, no separate penalty. The Second Indictment, money laundering, we think 12 months' imprisonment is correct, but having regard to the totality principle we order that the sentence should be concurrent. So that makes a total of 3 years' imprisonment. 14. We order the forfeiture and destruction of the drugs. 15. We have adjourned the compensation and confiscation applications for six weeks. Authorities Proceeds of Crime (Jersey) Law, 1999. Campbell v AG

[1995] JLR 136 . AG v Goodwin

[2016] JRC 165 . Criminal Justice (Compensation Orders) (Jersey) Law 1994 AG v Bailey

[2009] JLR Noted 19. AG v Bailey

[2009] JRC 077 . AG v Munro

[2011] JRC 12 AG v Allen

[2011] JRC128 AG v E

[2016] JRC 131 AG v Maton

[2016] JRC 148 AG v Fish and Hinds

[2016] JRC 181A AG v Dixey & Pereira

[2017] JRC 081 AG v Gasulla-Sole

[2018] JRC 122 AG v Davies

[2018] JRC 002 AG v Simon

[2018] JRC 076A Magistrate's Court Sentencing Guidelines Part 1B Other Road Traffic Offences
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